

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPEAL FROM ORDER NO. 92 OF 2014

Baba Khan Subhan Khan .. Appellant

Versus

Popat Kachru Chavan .. Respondent

Shri Krishnarao U. Nikam, Advocate for the Appellant.
Shri A. B. Kale, Advocate for the Respondent.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 02ND SEPTEMBER, 2015.**

PER COURT :

. The judgment and order of the District Court remanding the matter to the Trial Court is assailed in the present appeal from order.

2. Mr. Nikam, the learned counsel for the appellant submits that, the appellant is the original plaintiff who had filed suit for possession on the basis of previous possession. The suit is decreed. Aggrieved thereby the present respondent filed appeal before the District Court bearing R.C.A. No. 163 of 2010. The learned counsel further submits that, the matter is remanded for retrial. The learned counsel submits that, remand of the matter cannot be as a matter of course. The Appellate Court could have decided the appeal on its own merits. Moreover, there was no prayer in the

appeal memo for remand.

2. The learned counsel for the respondent submits that, for the proper adjudication, the retrial was necessary. The Appellate Court has given proper reasons while remanding the matter U/O 41 Rule 23-A of the Code of Civil Procedure.

3. I had heard the matter in the last week i. e. on 26.08.2015. During the course of arguments, the learned counsel for the appellant had submitted that, the plaintiff is claiming possession on the basis of previous possession and not on the basis of title. This Court had asked the learned counsel for the plaintiff to take instructions as to whether the plaintiff would agitate the factum of its ownership over the suit property in the present matter and for the said purpose the matter was adjourned to 02nd September, 2015.

4. Today Mr. Nikam, the learned counsel for the appellant on instructions states that, the appellant would not agitate his right in the present matter on the basis of ownership/title and would restrict his claim for possession only on the basis of previous possession. The said statement is accepted of the plaintiff.

5. In view of the fact that, the plaintiff would not be agitating his rights on the basis of ownership/title, there is no need to decide the issue of title/ownership.

6. In the light of that, it was not necessary to remand the matter back to the Trial Court. The Appellate Court will be required to decide the appeal on its own merits on the basis of evidence adduced by the parties and considering the legal position as it exists.

7. In view of the above, the impugned order passed by the District Court is quashed and set aside. The District Court shall decide the appeal on its own merits on the premise that the plaintiff would not be agitating his rights on the basis of title/ownership and is restricting his right to claim possession on the basis of previous possession. The appeal from order is accordingly disposed of. The Appellate Court shall decide the appeal bearing R.C.A. No. 163 of 2010 afresh on its own merits. The parties shall appear before the Appellate Court on 05th October, 2015. In view of that, it is not necessary for the District Court to issue fresh notices of appearance of the party. The District Court shall endeavour to dispose of the appeal expeditiously on its own merits and in the light of the observations made hereinabove and preferably within a period of six (6) months from the date of appearance of the parties. The first appeal as such is disposed of. No costs.

[S. V. GANGAPURWALA, J.]