

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.693 OF 2014
WITH
CIVIL APPLICATION NO.1602 OF 2014**

Shankarlal Sundarlal Gupta And Others ... Appellants
Versus
Kap Ali Sarvajanik Mandal And Others ... Respondents

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Mr. Rajesh S. Datar for the Appellant.
Dr. Ramdas Sabban a/w Mr. Pravin Sabban for Respondent Nos. 1 and 2.
Ms. Pooja R. Singh i/b N.R. Bubna for Respondent No.3.
Mr. M.G. Patil, AGP for State-Respondent Nos.4 and 5.

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CORAM : S.C.GUPTE, J.

DATE : 9 JANUARY 2017

P.C. :

. After the matter was heard at some length, it is agreed between Counsel of both the sides that this matter will have to be remanded to the First Appellate Court for allowing the Respondent to cross examine the Plaintiff's witness, who has filed the affidavit of evidence in lieu of examination in chief to lay foundation for leading secondary evidence of the Plaintiff's title in the matter. Accordingly, the second appeal is allowed and the impugned order of the First Appellate Court dated 29 March 2014 is set aside and Civil Appeal No.10 of 2007 is remanded to the First Appellate Court, namely, District Judge-9, Thane for a fresh hearing in accordance with law. Learned District Judge shall permit the Respondent to cross examine the Plaintiff's witness, namely, Mr. Shankarlal Sunderlal

Gupta, whose affidavit of evidence in lieu of examination in chief dated 9 December 2013 is on record before the District Court. The District Court shall consider whether foundation for leading the secondary evidence is made out by the Appellant herein, and thereafter depending on its findings, consider the secondary evidence led before it by the Appellant.

2 Learned District Judge shall decide Civil Appeal No.10 of 2007 as expeditiously as possible, and in any event, within a period of six months from today.

3 The Second Appeal is disposed of accordingly.

4 In view of the disposal of the second appeal, the civil application does not survive and the same is disposed of.

(S.C.GUPTE, J.)