

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO.720 OF 2017
WITH
CIVIL APPLICATION NO.963 OF 2017
IN
APPEAL FROM ORDER NO.720 OF 2017**

Razzaque Gulab Pinjari ... Appellant
Versus
Shaukat Mansur Khatique (Kothmire) ... Respondent

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Mr. M.M. Sathaye for the Appellant.
Mr. Mahendra N. Sandhyanshiv for the Respondent.

CORAM : M. S. KARNIK, J.

DATE : 9th JULY, 2019.

P. C.:

1. Shri Sathaye, learned counsel appearing on behalf of appellant invited my attention to paragraph 6 of the judgment and order dated 22.03.2017 passed by Appellate Court. According to him the specific contention was taken that the suit is not within limitation as the alleged encroachment and construction was made in the year 1983 and the suit was filed on 21.08.2007. Shri Sathaye has invited my attention to the issues framed by the Trial Court and the findings recorded thereon. The specific issue about

limitation was framed by the Trial Court. The Trial Court held that the suit is within limitation. In these circumstances Shri Sathaye would submit that the Appellate Court while remanding the matter to the Trial Court should have addressed itself on the issue of limitation as well. From the order I find that there is no discussion by the Appellate Court on this contention of the appellant.

2. Faced with this, Shri Sandhyanshiv, learned counsel appearing on behalf of the respondent fairly submitted that this aspect has not been considered. He would submit that nonetheless ample reasons have been given by the Appellate Court while remanding the matter for fresh consideration. Later on, on instructions of the respondent who is present in the Court, Shri Sandhyanshiv would submit that he has no objection if the order passed by the Appellate Court is set aside and the matter is reheard by the Appellate Court.

3. In this view of the matter, keeping all contentions open the impugned order is set aside. The Appellate Court to

rehear Civil Appeal No.24 of 2012 on its own merits and in accordance with law without being influenced by any observations made by me in this order.

4. The Appeal From Order is allowed.

5. In view of the disposal of the Appeal From Order, nothing survives for consideration in the Civil Application. The Civil Application is disposed of accordingly.

(M. S. KARNIK, J.)