

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

**APPEAL FROM ORDER NO. 673 OF 2017
IN
NOTICE OF MOTION NO. 3437 OF 2015
IN
B.C.C.C. L.C. SUIT NO. 2987 OF 2013
WITH
CIVIL APPLICATION NO. 867 OF 2017**

Samarth Prasanna Co-op.Housing Society Ltd. ...Appellant
Vs.

Saraswatibai wd/o. Nagesh Jhagade,
since deceased

1(a) Mr.Kishor Nagesh Zagade & Ors. ...Respondents

Mr.Kunal Damle I/b. J.P. Singh for Appellant.

Mr.Rajesh Singh with Priya Patil and Amit Talgaonkar for Respondent
Nos.1(a) to 1(e).

Ms.Madhuri More for Respondent No.2 – MCGM.

CORAM : S.C. GUPTE, J.

DATE : 19 AUGUST 2019

P.C. :

After the matter is heard at some length, it is agreed between the learned Counsel for the parties that the impugned order dated 5 May 2017 passed by the City Civil Court at Bombay may be set aside and the notice of motion be remanded to the trial court for a fresh hearing in accordance with law. Accordingly, the impugned order dated 5 May 2017 passed by the City Civil Court at Bombay is set aside and the notice of motion be remanded to the trial court for a fresh hearing in accordance with law. It is agreed that the court, whilst hearing the matter on remand, shall consider the second Defendant Society's case that the suit structure of

the Plaintiff is on plot bearing CTS No.733 and not the Society's plot, namely, plot bearing CTS No.731. All rights and contentions of the parties on merits in that behalf are kept open. Liberty to the parties to file such additional pleadings as they may choose to do.

2 In view of the disposal of the appeal from order, the civil application does not survive and the same is also disposed of.

(S.C. GUPTE, J.)