

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1134 OF 2015**

Shri Subhash Madhavprasad ChaudharyPetitioner.
Versus
Shri Jitendra Chandrashekhar Chaudhary
& Ors. ...Respondents.

Mr. Sanjiv Sawant, advocates for the Petitioner.
Mr. Bhushan Walimbe, advocate for the respondent nos.1 to 3.
Mrs. Aparna Vhatkar, AGP for the respondent no.4 to 6-State.

CORAM : SHRI M.S.SONAK, J.

DATED : February 25, 2015.

P.C.:

Rule. With consent and with request of the learned counsel for the parties, rule is made returnable forthwith.

2 This petition challenges the order dated 22.12.2014 made by the Deputy Director of Land Records, Konkan Division, Mumbai, dismissing the petitioner's application for amendment as also the petitioner's appeal no. 122 of 2014.

3 It is the case of the petitioner that on 22.12.2014, the petitioner was heard on the motion seeking leave to amend. However, the

impugned order dismisses not merely the motion seeking leave to amend, but the main appeal itself. It is the case of the petitioner that no opportunity was afforded to the petitioner to make submissions on the merits of the appeal.

4 The learned counsel for the respondents, however, submits that on 22.12.2014, the matter was fixed for hearing both on motion of amendment and on merits of the appeal. The impugned order holds that the appeal itself was not maintainable and, therefore, there was no question of considering the motion seeking leave to amend.

5 The records are not absolutely clear as to whether or not petitioner or his advocate were actually heard on the issue of maintainability of the appeal or the merits thereof. The impugned order is also not very clear on this aspect.

6 In the aforesaid circumstances, it would be appropriate if the impugned order, to the extent it dismisses the main appeal is set aside. The appeal shall stand restored before the Deputy Director of Land Records, Konkan Division, Mumbai, who shall afford an opportunity of hearing to the petitioner and the contesting respondents and decide the appeal itself. Such exercise shall be completed within a period of six

weeks from today.

7 It is recorded that the learned counsel for the petitioner no longer presses application for amendment and accordingly, that part of the impugned order, which rejects the motion for leave to amend is not interfered with.

8 It is also made clear that this order has not examined the merits of the matter and the same are left for the decision of the Deputy Director of Land Records.

9 All points and contentions of the respective parties are expressly kept open.

10 Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

11 Parties to appear before the Deputy Director of Land Records on 2.3.2015 at 3.00 pm for further direction. Both the parties to co-operate with the Deputy Director of Land Records in the matter of expeditious disposal of the appeal.

12 It is further clarified that the Deputy Director of Land Records shall hear and dispose of the main appeal on merits without advertng to any prayer of interim relief in the meanwhile.

(M.S.SONAK, J.)

