

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9291 OF 2012

Mr.Mukesh Kumar Singh

...Petitioner

V/s.

State of Maharashtra & Ors.

...Respondents

Mr.Vaibhav Sugdane a/w Mr.M.M.Bhatt i/by M.Bhatt & Co. for Petitioner.

None for Respondents.

CORAM: K.R.SHRIRAM, J.

DATED : 17.2.2015.

P.C. :

1 This writ petition is filed challenging the judgment dated 26.7.2012 passed by the Additional Commissioner, Konkan Division-the appellate authority in Revision application filed in which the petitioner herein is respondent no.2. In the proceedings before the appellate authority, the petitioner herein raised a preliminary objection that the appellant before the appellate authority was not even a party to the original proceedings before the competent authority nor an application was taken by the appellant to intervene in the said proceedings and hence the appeal should be dismissed. The petitioner had also submitted that the appellant therein was un-concerned with the dispute between the petitioner and respondent no.3 who is respondent no.4 in the present petition. The appellate authority without dealing with the preliminary objection raised by the petitioner has simply remanded the matter back to the competent authority for denovo hearing. The appellate authority should have considered the objections and answered the same.

2 In the circumstances, the order passed by the appellate authority is set aside. The appellate authority is directed to take into consideration the preliminary objection raised by the petitioner and give its findings therein. At the same time, it is also clarified that this court is not making any observation on the merits of the preliminary objections or the matter or the other findings of the appellate authority.

3 The petition accordingly stands disposed.

4 The counsel for the petitioner states that all the respondents have been served and has filed an affidavit of one Vijay Bhiku Pawar affirmed on 16.2.2015 confirming service upon the respondents.

5 The respondents are directed not to create any third party rights as regards the suit property, until the appellate authority disposes of the matter after de-novo consideration.

(K.R.SHRIRAM, J.)