

**:: Order passed below Exh. 65 in R.C.S. No.05/2011 ::**

01. By this application, the plaintiffs are contending that, on 08-02-2012 the matter was fixed for taking steps against defendant Nos. 1,3 and 4. However, on that day, their advocate has not taken any steps and accordingly, the suit came to be dismissed against these defendants. It is their further contention that, the advocate Shri. S. Prataprao appointed by them at that time, did not inform them about the dates of hearing nor has taken any steps and therefore, they have appointed their present advocate on 11-12-2012. However, the order of dismissal remained intact. The matter is pertaining to immovable property and partition of the ancestral property. In such circumstances, in order to adjudicate the matter properly and finally, it is essential to restore the suit as against defendant Nos. 1, 3 and 4.

02. The defendant Nos. 1, 3 and 4 though appeared in pursuance of the notice issued to them, have not filed their say. More so, even the defendant Nos. 2 and 5 have not shown their inclination to resist this application by filing their say.

03. Heard. Perused record. Perusal of record shows that, after giving ample opportunity, as the plaintiffs have not taken any steps as against defendant Nos. 1, 3 and 4, as a last resort the matter came to be dismissed against them for want of prosecution. Further, perusal of record shows that, thereafter also the plaintiffs have not taken any pains to get the suit restored against these defendants and proceeded with the suit. Record further shows that, after adducing evidence by the plaintiffs and the other defendants, it was decreed on 05-05-2014. Further perusal of record shows that, against that decree and judgment, the defendant No. 5 preferred R.C.A. No. 16/2015. It is also significant to note that, in that appeal the defendant Nos. 1, 3 and 4 were impleaded as respondent Nos. 3, 5 and 6. It is also significant to note that, in that appeal the present defendant Nos. 1 and 3 have appeared and defendant No. 4 chose to remain Ex-parte.

04. Further perusal of record shows that, in that appeal by virtue of Judgment and order dated 03-01-2017, this suit is remanded with directions to give sufficient opportunity of cross-examination of the witnesses of the plaintiffs.

05. Thereafter, after remand of the suit, the plaintiffs sought various adjournments and when as per order below Exh. 57, the strict directions for conducting the matter expeditiously were imparted, this application is filed. It is also significant to note here that, the order of dismissal of suit as against defendant Nos.1, 3 and 4 is passed on 08-02-2012. It is also pertinent to note that, the suit is remanded and restored on the file of this Court on 03-02-2017. Perusal of record categorically shows that, the plaintiffs have appeared in this matter on 20-03-2017. However, this application is filed only on 26-07-2017.

06. It is also essential to mention here that, while remanding the suit, the appellate Court has given directions to dispose of the suit within one year. Even then, the plaintiffs are not prosecuting this matter expeditiously and playing the delaying tactics. This entire conduct of the plaintiffs disentitles them to get the relief sought.

07. However, at this juncture, a glance towards the provisions of Order-9, Rule-9 and 4 of the Code of Civil Procedure shows that, in these peculiar circumstances of this matter, the plaintiffs are having no other remedy than to seek the restoration of the suit as against defendant Nos. 1, 3 and 4. Considering this legal position, in order to adjudicate the matter finally and more particularly while looking at the nature of the relief sought, it appears that, the presence of defendant Nos. 1, 3 and 4 in this suit is of utmost importance as they are the necessary parties to this suit. Considering all these aspects, it appears that, it would be just and proper to restore the suit as against defendant Nos. 1, 3 and 4. Accordingly, following order is passed.:

**:: Order ::**

- 1) Application is allowed subject to cost of Rs. 1,500/- (Rs.One Thousand Five Hundred only), half of which to be deposited in Court for State and rest be distributed amongst all defendants equally.
- 2) As the defendant Nos. 1, 3 and 4 have appeared in this matter in pursuance of the notice of this application and as the matter is directed to be disposed of in a time bound manner, the defendant

**R.C.S. No.05/2011**  
**Order below Exh. 65.**

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Nos. 1, 3 and 4 are hereby directed to appear in this suit and file their written statement, if any, on or before next date.

- 3) The plaintiffs to comply with cost condition on or before next date.

Sd/-

( D.P. Kasat )

Date : 16-01-2018.

Civil Judge Jr. Division,

**Deoni.**

I affirm, the contents of P.D.F. file Order are correct word for word as per the original Order.

Name of the stenographer : M.Y. Wadiwale.  
Name of Court : Civil Court J.D., Deoni.  
Date : 16-01-2018.