

**ORDER BELOW EXH. NO. 44**

This is an application for restoration of the suit.

2. It is the contention of the plaintiff that he filed suit for partition, separate possession and in the alternative prayed for permanent injunction. The suit was posted for hearing on 17.04.2017. Plaintiff is suffering from illness on that day, hence he could not remain present in the court. He has taken treatment of Dr. Aniruddha Bhujbal and medical certificate is on record. His Advocate could not file an application and suit is dismissed in default on 17.04.2017. If the suit is not restored the loss would be caused to them. Lastly prayed to allow the application and prayed for restoration of the said suit. The application is supported with an affidavit.

3. Defendant has filed say below Exh. 51 and contended that plaintiff had knowledge about the hearing of suit. He has not filed application for adjournment, produced medical certificate of BAMS. If Court come to conclusion to allow the application same be allowed on heavy costs.

4. Considering the facts, submissions of the plaintiff and defendant, following points arise for my determination and I have recorded my finding with reasons thereon as under.

**POINTS****FINDINGS**

- |    |                                                                       |                        |
|----|-----------------------------------------------------------------------|------------------------|
| 1) | Whether Plaintiff has shown sufficient cause for his non-appearance ? | ..Yes..                |
| 2) | Whether restoration of the suit is necessary ?                        | ...Yes.                |
| 3) | What order ?                                                          | ...As per final order. |

**REASONS****AS TO POINTS NO. 1 AND 2:**

5. The Plaintiff examined himself and medical practitioner and produced some documents. The defendant has not filed any documents. No evidence is adduced by him.

6. It is the contention of the plaintiff that on 17/04/2017 his suit was posted for evidence, he was suffering from illness. To prove his contention he examined himself by furnishing an affidavit and mentioned same fact as per application. Defendant cross examined him and his witness and the questions in regard to the knowledge and possibility that he could remain present before the Court tried to bring upon record. On perusal of the record it is seen that plaintiff examined PW-2 Mr. Bhujbal who deposed that plaintiff had come to him for treatment and he had given treatment to him. On perusal of cross examination the questions in regard to the practice, physical capacity of plaintiff has been asked and it has come upon record that Plaintiff was able to speak and walk. It is seen that document vide Exh. 56 and 59 shows that plaintiff has taken treatment on 17.04.2017. It is admitted that it is the duty of party to show the sufficient

reason for their non-appearance and he shown reason for his absence. It is seen that present application is filed on the very next date of passing an order. Under such circumstances I come to conclusion that plaintiff shown reason for his non-appearance in the Court.

7. So far as restoration of the suit is concerned, it is seen that the suit is for partition, separate possession and permanent injunction. The interest and right of small child of plaintiff is involved in it. The Court of law is established for doing substantial justice. It is duty of Court to see that, due to technical formalities no party shall be deprived from his legal right. Considering all these facts it is clear that no prejudice will be caused to defendants if the suit is restored. On the other hand, if the suit is not restored then the plaintiff is likely to suffer irreparable loss and he is likely to be deprived from immovable property. For the reasons stated above and considering facts and circumstances of the case, in the interest of justice it is necessary to restore the suit but subject to costs. With this I pass following order.

**ORDER**

- 1) The application is allowed subject to compensatory cost of Rs. 800/-.
- 2) The suit be restored after depositing costs by the plaintiff.

Date: 01.12.2018

(Sou. J.R. Raut)  
2<sup>nd</sup> Jt. Civil Judge Junior Divison,  
Barshi, Dist. Solapur.

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RCS No. 809/2010  
Rohan & Ors. Vs. Rajendra & Anr.

**CERTIFICATE**

I affirm that the contents of this PDF file Judgment is same word to word as per the original Judgment.

- (a) Name of the Stenographer :- S. V. Kokate
- (b) Court :- JMFC Court, Barshi
- (c) Judgment signed by P.O.on :- 01.12.2018
- (d) Judgment uploaded on :- 07.12.2018