

ORDER BELOW EXH.38

This is an application on behalf of the plaintiff for setting aside dismissal of suit order dated 12/04/2017 against the defendant No. 8. It has submitted that the Court has dismissed the suit against the said defendant for want of steps in regard to service of summons. However, the summons was served upon him vide Exh. 21, but inadvertently suit came to be dismissed against him.

02] The defendants did not file say. Heard plaintiff.

03] Record goes to show that the suit is for partition of landed properties. The order of below Exh. 1 dated 12/04/2017 discloses that the suit came to be dismissed against the defendant No. 8 for want of steps in regard to service of summons. However, the report at Exh. 21 indeed shows that suit summons was personally served upon him on 07/09/2015. As such, the said order on the said count needs to be reviewed. The said order has been passed as per Order 9 Rule 5 of the C.P.C.. In the case of, **Hariba Tatyaba More & Ors. vs. Dada Eknath More & Ors., 2020 (2) ALL MR 823 (Full Bench) Bom.** It has been held that suit dismissed u/O. 9. R.5(1) can be restored by invoking provision u/s. 151 C.P.C. although, sub rule (2) says only separate suit can lie.

04] In view of the matter, the suit needs to be restored against defendant No. 8 otherwise suit would fail on that count. Hence, order.

ORDER

1. The order below Exh. 1 dated 12/04/2017 in regard to dismissal of suit against defendant No. 8 is hereby set aside.
2. The suit be restored against defendant No. 8.

Date : 17/04/2025

(Y.S.Akhare)
Jt. Civil Judge, J.D., Madha.