

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**Second Appeal No.268 of 1994
With
Civil Application No. 13719 of 2015**

Shantabai Sitaram Firake
And Others.

.. Appellants.

Versus

Vasudeo Ananda Patil
And Others.

.. Respondents.

Shri. Vijay K. Parkhe, Advocate, for respondents.

CORAM: T.V. NALAWADE, J.

DATE : 28th OCTOBER 2015

ORDER:

1) Seen the order made by this Court on 11-9-2015. Learned counsel Shri. Parkhe is present for the respondents. Nobody has turned up for the appellants. On last occasion also nobody was present for the appellants.

2) Learned counsel for the respondent Shri. Parkhe brought to the notice of this Court order made by this Court in Civil Application No.11672/2003. In the

order dated 3-3-2005 this Court had allowed the appellant to get restoration of the appeal which was dismissed as against respondent Nos.2 and 3 but the order was subject to condition of payment of cost of Rs.1000/-. Learned counsel submits that the cost amount was not deposited. He submits that the circumstance of pendency of this appeal is being misused and the execution of the decree is protracted. He submits that as the cost amount is not deposited and the respondent Nos.2 and 3 are not on record, the matter at least as against respondent Nos.2 and 3 needs to be treated as dismissed so that they can proceed with the execution. He alternatively submits that it was a joint cause of action and due to absence of respondent Nos.2 and 3 on record, the entire appeal needs to be dismissed.

3) This Court has gone through the judgment delivered by the trial Court. It was a suit for possession. The First Appellate Court has decreed the suit in respect of entire portion when the trial Court had decreed the suit in respect of some portion i.e. 1/5th portion which was of defendant No.1 only. In view of these circumstances, this

Court holds that the appeal needs to be dismissed for both reasons. The appeal is dismissed. Civil Application is disposed of.

Sd/-
(T.V. NALAWADE, J.)

rsl