

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

**Appeal from Order No.92 of 2015**

- 1) Yuvraj s/o Sampat Salunke,  
Age 61 years,  
Occupation : Agri & Business,  
R/o C/o Venkatesh Hardware,  
Near New Bus Stand,  
Yeola Road, Vaijapur,  
District Aurangabad.
- 2) Sharad s/o Sampat Salunke,  
Age 48 years,  
Occupation : Agri & Business,  
R/o As above.
- 3) Alka w/o Vinayakrao Deshmukh,  
Age 58 years,  
Occupation: Household,  
R/o H.No.7, Mahatma Gandhi  
Khurnagar, Behind Mayur Society,  
Waghogiya Road,  
Baroda (Gujarat).
- 4) Kiran d/o Dattatraya Gaikwad,  
Age 45 years,  
Occupation: Household,  
R/o. Paregaon Road, Yeola,  
District Nasik.

**.. Appellants.**

**Versus**

- \* Laxman s/o Eknath Salunke,  
Age 75 years.  
Occupation: Labour,  
R/o Salunke Galli, Vaijapur,  
District Aurangabad.

**.. Respondent.**

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Shri. A.P. Bhandari, Advocate, for appellants.

Shri. S.G. Thombre, Advocate, for respondent.

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**CORAM: T.V. NALAWADE, J.**

**DATE : 16<sup>th</sup> FEBRUARY 2016**

**JUDGMENT:**

1) The appeal is admitted. Notice after admission made returnable forthwith. By consent heard both sides for final disposal.

2) The appellant from Regular Civil Appeal No.193 of 2012 which was pending in District Court has filed the present proceeding. His appeal came to be dismissed under provisions of Order 41 Rule 17 of the Civil Procedure Code and his application bearing MARJI No.27 of 2014 filed under Order 41 Rule 19 of the CPC for setting aside the dismissal order and for restoration of the appeal is dismissed by the District Court. The order of dismissal of Application No.27 of 2014 which was pending in the Court of the District Judge-1, Vaijapur is challenged in the present matter.

3) Regular Civil Suit No.418 of 2001 was filed against Yuvraj Salunke and Sampat Salunke by present respondent - Laxman Salunke. Yuvraj is son of Sampat and the suit was filed for relief of injunction in respect of agricultural land. The suit came to be decreed and relief of perpetual injunction came to be granted by the decision dated 23-4-2008. This decision was challenged by filing aforesaid appeal in District Court Aurangabad. In or prior to year 2011 separate sub division came to be created for Vaijapur from Aurangabad District. Some matters were shifted to Vaijapur District Court but some matters remained to be shifted. It appears that the appeal of the present appellant was not transferred to Vaijapur. During pendency of the appeal, Sampat died and application was moved by a son of Sampat viz. Sharad on 10-6-2011 in District Court Aurangabad for giving permission to bring legal representatives of Sampat on the record. Names of legal representatives were given by Sharad and one Advocate Shri. T.R. Deshpande had signed on the application. Advocate Shri. T.R. Deshmukh was representing the appellant, defendant in trial Court also.

4) Though the application was already moved to bring legal representatives of Sampat on the record, after transfer of the matter to Vaijapur Court, the appeal came to be dismissed on 4-3-2014 by making observations that appellant No.1, Yuvraj was duly served with the notice which was issued in routine course after transfer of the matter and Sampat was reported to be dead but the legal representatives of Sampat were not brought on the record and no interest was shown to prosecute the appeal, the appeal was required to be dismissed under the provision of Order 41 Rule 17 of the CPC.

5) In the Misc Application filed for restoration, the appellants contended that after transfer of the matter to Vaijapur, Advocate had not informed them about such transfer and they had no information and as it was appeal proceeding they were not regularly remaining present in the Court. This contention is not accepted by the District Court. The District Court has observed that probably Advocate Shri. Deshpande was not representing the appellants in the appeal and Advocate Shri. Deshpande has not come forward to take the blame to himself.

6) Parties are generally not called by the counsels in appeal as their presence is not necessary and the matters are decided only on the basis of arguments of the counsels. When already the application was moved by present legal representatives of Sampat on the record, the aforesaid observations were made by the District Court at Vaijapur. When matters are transferred to sub division like Vaijapur, parties are generally not aware of the procedure and they keep thinking that their Advocate will take care of the matters. Possibilities which are there in favour of the appellants in such case need to be considered by the Court while considering the application filed for restoration. There was relief of perpetual injunction against the appellants and nothing could have been achieved by them by not prosecuting the matter in District Court. Due to these circumstances this Court holds that the appeal needs to be allowed and the matter needs to be restored. In the result, following order is made :-

7) The appeal is allowed. The order made by the District Court Vaijapur is hereby set aside. The matter is restored to its original number subject to payment of cost

of Rs.2000/- (Rupees Two Thousand only) to respondent.  
Cost is to be deposited in the District Court Vaijapur. Only  
after deposit of the cost the order is to be given effect.  
Authenticated copy is allowed to both sides.

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

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