

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 301 OF 2021

Shri Bhaskar Keshav Kasar
Age : 80 years,
Occupation : Business / Agriculture,
Resident of : At Desaipura,
Chavan Road, Nandurbar,
District Nandurbar

.. Appellant
(Orig. Plaintiff/
Appellant)

VERSUS

- 1] Shri Sanjay Abhimanyu Kasar
since deceased hence
Through legal representatives
- 1A. Smt. Jayashri Sanjay Kasar
Age : 45 years, Occupation : Business
- 1B. Shraddha Sanjay Kasar
Age : 26 years, Occupation : Household
- 1C. Shruti Sanjay Kasar
Age : 23 years, Occupation : Education
2. Shri Ganesh Abhimanyu Kasar
Age : 37 years, Occupation : Business
3. Kusum Abhimanyu Kasar
Age : 82 years, Occupation : Household

All residents of : Desaipura,
Nandurbar, District Nandurbar

4. Shri Pramod Keshav Kasar
Age : years, Occupation : Business,
Resident of : Desaipura,
Chavan Road, Nandurbar

.. Respondents
(Orig. Defendants/
Respondents)

...
Mr. Mukul S. Kulkarni, Advocate for the appellant
Mr. Sanket Palnitkar, Advocate h/f. Mr. M. R. Jadhav, Advocate for
respondents no. 1-A to 1-C, 2 and 3
...

CORAM : MANGESH S. PATIL, J.

DATE : 11 MARCH 2022

JUDGMENT :

This is a second appeal by the original plaintiff against the judgment and order passed by the lower appellate court in his civil appeal challenging the judgment and decree whereby the trial court dismissed his suit seeking a declaration that the suit properties were jointly owned by him, the predecessor of the respondent nos. 1 to 3 and, respondent no. 4. Even the respondent nos. 1 to 3 filed a counter claim and asserted that the suit properties were the self-acquired properties of their predecessor – Abhimanyu and the appellant had no concern with it. The trial court even dismissed the counter claim and they preferred separate appeal before the district court.

By the common judgment in both these appeals, which is under challenge in this appeal, the learned Ad-hoc District Judge dismissed the appeals. Though the plaintiff has preferred this second appeal, there is no second appeal by the respondent nos. 1 to 3.

2. I have heard both the sides.

3. The second appeal presents a sorry state-of-affairs and clearly reflects on the gross incompetence of the judge presiding over the lower appellate court, which is highly unbecoming of the position he is holding and the responsibility. As has been pointed out in the chart given in the appeal memo, the Judge of the lower appellate court has

reproduced several paragraphs from the judgment of the trial court *verbatim*, barring minor changes. The judgment of the lower appellate court runs into 43 paragraphs. Up to paragraph no. 26, the rival pleadings, points for determination and the submissions of the advocates of both the sides have been reproduced and the reasoning part starts from paragraph no. 27 and ends at paragraph no. 43. Out of these 17 paragraphs of the reasoning part, as many as 11 paragraphs are nothing but reproduction of the judgment from the judgment of the trial court, a clear case of plagiarism.

4. I have verified the fact by comparing between the respective paragraphs and am of a clear opinion that the learned Judge of the lower appellate court has resorted to a shortcut by simply reproducing *verbatim* all the afore-mentioned paragraphs from the trial court judgment, barring initial sentence of some of the paragraphs or the last sentence. This cannot be a sheer error. It is indeed too serious a matter and is liable to be looked upon and condemned with equal seriousness. This would clearly demonstrate utter lack of application of mind and the judgment would be no judgment in the eye of law.

5. Inescapable conclusion would be to quash and set aside the judgment of the lower appellate court and to remand the matter for decision afresh in respect of both the appeals since it is a common judgment; the one preferred by the appellant and the other by the respondent nos. 1 to 3 *albeit* the latter have not challenged it.

6. The second appeal is allowed.

7. In view of the afore-mentioned peculiar facts and circumstances, the common judgment and order in Regular Civil Appeal no. 14 of 2015 and Regular Civil Appeal no. 21 of 2015 passed by the learned Ad-hoc District Judge-1, Nandurbar, District – Nandurbar (Presided over by A.S. Bhagwat, Ad-hoc District Judge-1, Nandurbar) is quashed and set aside.

8. The appeals are remanded to the lower appellate court for decision afresh after hearing both the sides.

9. The parties shall appear before the lower appellate court on 01-04-2022.

10. A copy of the judgment be forwarded to the Registrar General for necessary action on the administrative side in the light of the observations made herein-above.

[MANGESH S. PATIL]
JUDGE

arp/