



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

**SECOND APPEAL NO. 262 OF 2021
WITH CA/5673/2021**

**GANPAT BABURAO BARVE AND ORS
VERSUS
KISHABAI BABURAO BARVE @ KISHABAI W/O PARAJI YAMGAR
AND ORS**

...
Advocate for Appellants : Mr. Salgar S. P.
Advocate for Respondent Nos.1 to 4 : Mr. C. C. Deshpande.

...
CORAM : S. G. MEHARE, J.
DATE : DECEMBER 11, 2023

PER COURT :-

1. Heard the learned counsel for the appellants and the learned counsel for the respondents.
2. It is a case wherein the written statement was filed, but the learned counsel representing the present appellants did not inform them about the progress in the trial, nor he attended the case on the date of the final argument. Therefore, the learned Trial Court accepted the unshattered evidence of the plaintiffs and decreed the suit. The appellants, who were the defendants, have specifically raised the ground that the counsel representing them did not inform them. Therefore, their case that the properties standing in the names of their sons were their self acquired property could not be proved. The First Appellate Court did not

even touch the ground Nos. (G) and (K) raised in the appeal memo.

3. Learned counsel for the respondents would submit that merely blaming the lawyer is not sufficient to believe the appellants. It is the duty of the party to the suit to attend the Court on each date and be in contact with the lawyer. The grounds for remand prayed before the First Appellate Court were not satisfactory. Hence, they were not required to be discussed. Otherwise, on merit, the present appellants had no good case. Both Courts have considered the material documents placed before them and correctly passed the impugned judgments and decrees.

4. Perused the impugned judgments and decrees. The counterclaim was also filed in the suit. Admittedly, the present appellants did not attend the Court, and the matter proceeded ex-parte i.e. without leading the evidence and cross-examining the plaintiffs' witness. A substantial right of exclusive ownership over some of the properties described in the suit was involved for the consideration, but only for the failure to appear and cross-examine the witnesses; the denial of the right to prove the title would not be justifiable. The record also reveals that the lawyer did not appear and argued the matter on the day of the argument. Hence, there is scope to believe the appellants that the lawyer did not inform them of the stage of the trial. It is true that it is the duty of

the parties to the suit to attend the trial and keep in contact with the lawyer. But in this case, the lawyer appointed by the appellants did not even take pains to appear before the Court and advance the arguments. That could have enlightened the Court on the legal positions of law. No party should suffer for the mistakes and wrongs committed by others. It is a suit for partition by the sisters and one of the brothers. The substantial questions of acquiring the title under a document that was not registered and acquiring the property from one's own income go to the root of the case. Hence, in the interest of justice, the Court is of the view that the appeal deserves to be allowed and that an opportunity needs to be granted to the appellants to contest the suit on merit. Some issues were also required to be framed by the trial Court. Hence, the following order :

ORDER

- (i) The appeal stands allowed.
- (ii) The impugned judgment and decree of the learned Court of Civil Judge Junior Division, Sonpeth in R.C.S. No.139 of 2008 dated 19.03.2013 and the judgment and decree of the District Judge-1, Gangakhed in R.C.A. No.8 of 2015 dated 06.03.2021 are set aside.
- (iii) The case is remitted to the Court of learned Civil Judge Junior Division, Sonpeth, for the decision on merit by granting an

opportunity to both sides to lead the evidence afresh and frame the issues, if proposed by either of the parties.

(iv) Both parties shall appear before the Court of learned Civil Judge Junior Division, Sonpeth, on 09.01.2024 at 11.00 am sharp.

(v) The learned Court of first instance shall decide the suit within three months from the date of appearance of the parties.

(vi) Both parties shall cooperate with the Court.

(vii) Record and proceedings be returned to the learned Court of first instance.

(viii) Civil Application No.5673 of 2021 stands disposed of.

(S. G. MEHARE, J.)