

Substance of the petition of Rhinabai
widow of Ramchunder Raghosett, pray-
ing for a revision of the Court's order
of the 23^d March 1860 rejecting her ap-
plication for special appeal No 1125
of 1859.

1. The deed of sale No 3 on
which the suit was brought, was
executed to me in adjustment of a
former mortgage bond. The persons
who executed the bond to me know
how to write. The two attesting wit-
nesses only were examined but
the other witnesses were not examined.
Had they been examined, every thing
would have been clear.

2. The property in question was
mortgaged to me by the defend-
ant's judgment debtors Duttajee
and Rao Babjee who subsequently
sold it to me. This was admitted
by the Defendant. The Defendant
therefore could not attach it unless
he prove that it belongs to his

judgment debtor.

3. The property was attached while it was in my possession. The Defendant's decree was for debts and my transaction regarding the mortgage and sale was duly registered and it took place before the defendant filed his suit. Hence there is no reason to suspect the transaction -

4. I paid money for building the house now attached and it was proved by the witnesses that it was built with my money -

5. Although the defendant's debtor is my father, the law does not prevent me from having a transaction with him -

6. The Assistant Judge of Luana has stated in his decree that the mortgage bond and the deed of sale are regular & that it does not appear to him that they were fabricated - but he ^{has} further stated that the attesting witnesses to the mortgage bond and the deed of sale have not deposed that the money was paid in their presence. It has been clearly stated

stated in the deed of sale that it was executed in adjustment of the mortgage bond. Hence the attesting witnesses could not depose that the money was paid in their presence. My claim is not founded on the mortgage bond.

7. From the Moonsiff's decree it will appear that he properly laid down the points for decision. The Appellate Court unjustly threw the onus probandi on me.

8. Although I had purchased the property from two persons, it was attached in execution of a decree obtained against one of them. The Defendant has admitted that the property does not belong to only one of them. It is therefore a matter of curiosity that the attachment placed in execution of a decree obtained against one of the persons from whom I had purchased the house, was confirmed. The Defendant caused the attachment to be raised from off a part (Khund) of the house. Hence it is evident that the

the Defendant and his judgment^{debtor} are in collusion. It will appear from the surkhaast that the above was the case -

9. The lower Court did not examine the whole of my proof considering that the evidence recorded in the case was satisfactory. The Appellate Court has recorded in its decree imaginary grounds which are inconsistent.

Morris part 1 Vol 1 page 6.

10. It was proved by the evidence in the case that the deceased Ramchundur was a married man & used to trade.

* Morris part 2 Vol 1 1855 page 1

11. As the Defendant did not shew with whose money the house was built and whence the money for building it was procured, the evidence already recorded in the case was sufficient to shew that the house was built with my money. As it is for the Defendant to prove that the attached property belongs to his judgment debtor the decision is contrary to the Court's decree nos 3401 and 3617.

I therefore pray that the above may be taken into consideration, that my application for special appeal may be ordered to be replaced on the file and that a decree passed in my favor with costs.

21/11/1900
21/11/1900
21/11/1900

Handwritten notes on the right margin, including "Morrison's Decree" and other illegible text.

Extracts from the Proceedings of the Sudder
Dewanee Adawlut dated the 20th and 27th
June 1860.

Wednesday 20th June 1860.

Keays
Hart
and
Hebert } Pursue
Judges

Read a petition of Rheimabae
Ayal Ramehundra praying for a revision
of the Court's order of the 23rd March 1850
rejecting her application for special
appeal No. 1125 of 1859.

Resolution

Under consideration

Mrs Keays
Hebert.

Wednesday 27th June 1860.

Resumed consideration of the
petition of Rheimabae Ayal Ramehundra
last before the Court on the 20th June 1860.

Minute recorded by H. Hebert Esquire

Acting Pursue Judge.

It appears the Moonsiff did
not examine all petitioner's witnesses being
satisfied of the justice of her claim.

the testimony of those he did examine.

I think the Assistant Judge ought before he reversed the Moonsiff's decree and absolutely rejected the petitioner's claim, to have examined the rest of her witnesses. The doubts he entertained might have been removed had he done this.

I would admit the appeal on the above ground.

Notice to be given accordingly to the opposite party.

(Signed) W. Hebbert

Notice to be given to the opposite Resolved party.

True Extracts.

Friday 23rd March 1860.

Present

W. H. Harrison Esquire }
R. Leays Esquire } Prine
Judges.

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mabae Ayal
chunder +
hoseb.
W
a gadhowjee party.
Marwadee.

Brought on this petition as per margin.
Vukeel Vishnoo Raojee appears for
petitioner and Gunnesch Assry for opposite

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Morris report
t 1 page 91
Morris report
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1855 page
113.

The points raised here are -

1. That the decision is opposed to the rulings
in Special Appeals Nos 2918 and 3019.

2. That the burden of proof was errone-
ously placed upon petitioner she being in
possession of the property.

The Court finds that the case has
been decided on appreciation of the evidence
and that the burden of proof has not been
wrongly placed.

Rejected with costs.

(Signed) W. H. Harrison
Prine Judge.

Monday 13th August 1850.

Present,

R. Keay Esquire
and
H. Herbert Esquire } Puisne
Judges

1125

Madam ayal
Chunder Nagho
her agent

Brought on this petition from 27th
June last.

Madam Rughoo-

The opposite party does not appear
but petitioner is present by her Mooktiar
Damodar Rughoonath Gosi

Madam
Jodhaji
wadee

175

Madam

The appeal is admitted to try the
point before recorded.

(Signed) H. Herbert
acting Puisne Judge

True Extract.

MMS
1st assistant Registrar

संख्या २११
२४
२४/३/६१

१९८

२४३१९

२४/३/६१

Dear Sir,
Enclosed 28 lines

Wt

Wt

Wt

२४/३/६१

२४/३/६१

२४/३/६१

Bombay, Friday, 28th June 1861.

In the Suder



Dewanee Adawlut

N. 4319 Special.

Bhimabai widow of Ramchunder Raghoshet, her agent Damodar Raghonath Joshee, resident of Penn (original Plaintiff) ———— } Appellant

— Versus —

Tootsa Jadhoojee shet, Marwadee, resident of Penn (original Defendant) ———— } Respondent

— Rupees 175 ————

The claim in the original suit was for the removal of an attachment placed by Tootsa on a house, some cattle, and some wooden furniture.

This Special appeal is from a decision in appeal N. 64 of 1859 by the Acting Assistant Judge of the Zillah of the Konkan, awarding that Tootsa's attachment on the house and cattle be confirmed, but ordering it to be raised from the wooden couch and bed, with costs in proportion, which decision was in amendment of the decree in the original suit of the Moonsiff of Penn.

Whereat being dissatisfied, Bhimabai made Special appeal in the Suder Dewanee Adawlut on the grounds.

1. That the decision is opposed to the rulings in Special appeals nos 2918 and 3619.

2. That the burden of proof was erroneously placed upon Petitioner she being in possession of the property.

The Court reverse the Assistant Judge's decree and remand the case in order that the remaining evidence tendered may be taken, and a new decree passed on merits laying the costs.

Bill of Costs

In the Suder Dewanee Adawlut.

By appellant	_____	22-8-6
By Respondent	_____	2-8-"
		<u>Rupels 25-"-6</u>

Ch 9/7/61

Ch 9/7/61

Vakils' Fee to be reckoned according to the provisions of Act 4 of 1846.

A. Hays

Public Judge

H. H. Hobbes

Off. Public Judge

H. H. Hobbes

Act. Public Judge

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~~सुदर देवाने अदालत २८ मसुदा उमदीक ६९ ८३ मसुदा~~

