

In the High Court of Judicature, Bombay.

~~Tues~~ <sup>Thurs</sup> day, the 22<sup>nd</sup> day of April 1864.

SPECIAL APPEAL No. 5 — OF 1864.

Babaji Tanaji not present his son and agent in charge of his estate Herachund Babaji of the Konkan District (Original Defendant)

Appellant,

versus

Bhasker Shubhut Shenday of the Konkan District (Original Plaintiff)

Respondent,

Rs. 413 — " —

The claim in the Original Suit was to recover the amount due on a mortgage deed.

In Appeal No. 620 of 1862 the acting Judge of the District of the Konkan at Tanva amended the Decree of the Juff at Adiboy who had decreed that the ~~Juff should be paid only from the Depts Gungee alone should pay the Juff's claim by decreeing that the amount should be recovered from his estate or from the proceeds of the mortgaged property and giving this for~~

A Special Appeal was preferred in the High Court on the grounds, that (1) the decision of the sitting Judge is contrary to Law, in that he has given precedence to the Respondent's mortgage Deed over the Appellant's Deed of sale, altho' the latter was registered

registered prior to the former, that (2) the Judge erroneously held that it was open to Respondent to sue again altho' the subject matter of the present action had already been adjudicated on; that (3) the Acting Judge has erroneously held that the Respondent's right as mortgagor was not extinguished when he purchased the mortgaged property from the mortgagor; that (4) the Judge has given precedence to a mortgage deed admittedly without possession to a Deed of Sale accompanied by possession; that (5) the Acting Judge has erroneously held that Respondent's possession under his invalid Deed of Sale was possession under his mortgage Deed; that (6) the Acting Judge has given precedence to Respondent's mortgage Deed altho' stamped subsequently to Appellant's Deed of Sale; that (7) the Acting Judge has erroneously held that Appellant had notice of Respondent's lien as mortgagor of the property in dispute; that (8) granting that Appellant had no notice of Respondent's lien as mortgagor, the Acting Judge was nevertheless in error in holding Appellant liable for the same.

of  
The Court confirm  
the decree of the Court below  
with costs.

Whitlock Forbes,  
R. Couch

Bill of Costs  
By the Appellant  
In the District


In the Moonjeff's Court ————— 13. 14 3  
D<sup>o</sup> Judges Court ————— 13. 6 3  
27. 4. 6

In this Court  
Stamp for memo of special appl — 32 " "  
Stamps for copies of decree & judgment — 3 " "  
Stamp for Vukalutnama — 2 " "  
Batta for Process & Postage — 1 8 "  
Sectioner's Fee — 1. 1. 9  
Vukel's Fee — 12. 6. 3 52. " "  
Purses — 79. 4. 6

By the Respondent  
In the District  
In the Moonjeff's Court ————— 56. 3. 1  
D<sup>o</sup> Judges Court ————— 47. 12. 3 103. 15. 4

In this Court  
Stamp for Vukalutnama — 2 " "  
Vukel's Fee — 12. 6. 3 14. 6. 3  
Purses — 118. 5. 7



  
 R. West  
 Registrar  
 Sealer  
 The 22<sup>nd</sup> day of April 1864