

In the High Court of Judicature, Bombay.

day, the 18<sup>th</sup> day of April 1864.

SPECIAL APPEAL No. 9 of 1864.

Chembisupa bin Erupa deceased his widow and heir Chenvirwa of the Solapoor District (Original Plaintiff) Appellant

VERSUS

Ramnya bin Papnya deceased his son and heir Kingnya of the Solapoor District (Original Defendant) Respondent

Rs. 55- 10- "

The claim in the Original Suit was to recover possession of a shop mortgaged by Chembisupa to Ramnya on payment of the mortgage money Rs 357-2-8.

In Appeal No. 239 of 1864 the Judge of the District of Solapoor at Solapoor annulled the Decree of the S.C. of Solapoor who had awarded the claim and allowed the claim on condition that the Plff refunded to Deft certain disbursements paid by him (Deft) in repairing the shop in dispute. A Special Appeal was preferred in the High Court on the grounds that the

decision of the District Judge appealed against was: (1) that a substantial error in law had occurred in the investigation of the case which

which has produced error in the decision  
of the case upon its <sup>merits</sup> in that it being pro-  
vided in the bond N<sup>o</sup> that in case  
any new work is to be executed it should  
be done by the appellant and it being not  
stated therein that the Respondent should  
do it the appellant is not bound by what  
the respondent has done without any  
authority and in the absence of a writing  
from the appellant to that effect and there-  
fore the District Judge was in error  
to have directed the appellant to repay  
the Respondent his outlay. (2) that there  
being no clause in the mortgage bond  
to the effect that the additional building  
be retained possession of being re-im-  
bursed the outlay the decision should  
not have been passed beyond the  
terms thereof (3) that unless the Respondent  
showed the appellants agreement autho-  
rizing him to perform the work, the  
burden of proof ought not to have  
been wrongly laid on the appellant.

The Court confirms  
the decree of the District  
Judge with costs

A. M. Forbes  
1884

*Bill of Costs*

*By the Appellant*  
*In the District*

<i>In the Sudder Ameen's Court</i> _____	<i>44.3.5</i>	
<i>D<sup>o</sup> Judge's Court</i> _____	<i>15.2.9</i>	<i>59.6.2</i>
<i>In this Court</i>		
<i>Stamp for memo. of special appl.</i> _____	<i>4. . .</i>	
<i>Stamps for Copies of decree &amp; judgment</i> _____	<i>3. 8. .</i>	
<i>Stamp for Vukhatuama</i> _____	<i>2. . .</i>	
<i>Patlu for Procep &amp; Postage</i> _____	<i>1. 2. .</i>	
<i>Sectioner's Fee</i> _____	<i>" 7.9</i>	
<i>Vukhel's Fee</i> _____	<i>1.10.8</i>	<i>12.13.5</i>
		<i>Rspees 72.3.7</i>

*By the Respondent*  
*In the District*

<i>In the Sudder Ameen's Court</i> _____	<i>12.3.5</i>	
<i>D<sup>o</sup> Judge's Court</i> _____	<i>26.11.9</i>	<i>38.15.2</i>
<i>In this Court</i>		
<i>Stamp for Vukhatuama</i> _____	<i>2. . .</i>	
<i>Vukhel's Fee</i> _____	<i>1.10.8</i>	<i>3.10.8</i>
		<i>Rspees 42.9.10</i>



*R. West*  
*Registrar*

*R. West*  
*Sealed*  
*The 18<sup>th</sup> day of April 1864*





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True Translation

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*Alfred*  
Registrar

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(570)

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No. 659 of 1863.

Chanbasapa the son of Irappa  
deceased - his wife and heir Chen-  
virawa widow of Chenbasapa  
Badale residing in Peth Mangalwar  
of the town of Sholapoor

Appellant

(Original Plaintiff)

vs

Ramaya the son of Papaya deceased  
his son and heir Nagaya the son of  
Ramaya residing in Peth Mangalwar  
(Original Defendant)

Respondent

No. 55-10 - - -

The grounds of objection to the decision ap-  
pealed against are:-

1. That a substantial error in law has oc-  
curred in the investigation of the case which has produced  
error in the decision of the case upon its merits - in that it  
being provided in the bond No. that in case  
any new work is to be executed it should be done  
by the Appellant and it being not stated therein  
that the Respondent should do it the Appellant  
is not bound by what the respondent has done  
without any authority and in the absence of a  
writing from the Appellant to that effect. and  
therefore the Judge was in error to have directed  
the

the appellant to repay the Respondent his outlay.

2. That there being no clause in the mortgage bond, to the effect that the additional building be retained possession of being re-embursed the outlay the decision should not have been passed beyond the terms thereof.

3. That unless the Respondent show the appellants agreement authorising him to perform the work, the burden of proof ought not to have been wrongly laid on the appellant.

Dated 28<sup>th</sup> October 1863 / Signed / Ganesh Hari

Vakil in behalf

Translated by

Dil Shikhar

Civil Translator

July 16<sup>th</sup> 1863.

Appellant - Ramaya bin Pa -  
 (Defendant) - paya -  
 Versus.

Respondent - Chumbusaya w d l eraya  
 (Plaintiff) deceased, his widow & heirs Chumra -  
 = rawa -

In appeal No. 111-4.

This suit in appeal was remanded for retrial in this court by the High Court under date 5<sup>th</sup> February 1863. The decree of this court being reversed that it might be decided whether appellant is entitled to remove any building which he might have added to that received by him in mortgage and that a new decree might be passed in this suit on the merits with award of costs.

The question is whether Ramaya is entitled to recover <sup>Rs. 20</sup> 111-4 from Chumra for additional building, repairs and interest on the expenditure (or any less sum on that account) and in default of such payment being made as Ramaya may be found to be entitled to whether the Court may award that Ramaya may remove the additional building and carry away the materials.

The oral evidence to shew that whose cost the additional building and repairs were made, is most of it of little value. Most of the witnesses being ignorant of the facts. Ramaya has produced his father's accounts, which exhibit an expenditure of <sup>Rs. 20</sup> 53-10 on account of building and <sup>Rs.</sup> 2 on account of repairs done to a wall to the shop.

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The copy was ready for delivery on the 13<sup>th</sup>  
It was delivered on the 13<sup>th</sup>

One Luniaya deposes that he was the "gouudee" who built the Verandah (the additional building that is) and received his pay from Ramaya's father. Shidos deposes he was then Ramaya's (or his father's) servant and knows <sup>this</sup> to be true. He says also he used to bring wood and materials for making the Verandah on Ramaya (or his father's) order. It is in evidence too that Chumbusaya used to sit watching the work. If this latter bit of evidence is worth anything and it derive some confirmation from other oral evidence of witnesses who say Chumbusaya directed the work, the Court does not think it is of much value by itself to shew that Chumbusaya incurred the expense. There should be something more than this to shew it. It does not seem to justify an inference further than this that Chumbusaya knew what was being done there for this house was close to the shop and he being owner of the shop where the Verandah was built he would be likely to take interest in the progress of the work even though it were not executed at his expense. The Mortgage bond it is true contains a clause to the effect that Chumbusaya should build a verandah to the mortgaged shop <sup>two</sup> <sup>thru</sup> in extent and that this verandah should be included in the mortgage, a "prima facie" presumption therefore arises that Chumbusaya performed

performed this work as part of his contract but the evidence above adverted to rebuts the presumption and supports the inference that the verandah was built at Ramaya's cost.

The question then arises whether Ramaya may, if Chumbusaya will not pay him his outlay with interest as he demands, remove the verandah and carry away the materials. Ramaya is willing to leave the verandah, being reimbursed his outlay with a certain amount of interest. Now it is not discoverable from evidence of past usage which is the custom of the place in such a case - but all the witnesses seem to think that the verandah is the builder's property and that under circumstances similar to the present he might, if he chose, carry away the materials. This seems equitable and failing better available means of arriving at a decision on the point such evidence (witnesses' opinions) disposes the Court think of the question which is implied of Chumbusaya's right to retain possession of the verandah against Ramaya's consent. That consent being limited on his part, to the condition on which he expresses willingness to leave the verandah. Ramaya may therefore take what Chumbusaya offers and leave him the verandah but he must not refuse

refuse to accept the <sup>70</sup> 53<sup>as</sup> with the interest  
he demands if Chumbusaya should offer  
it otherwise he may remove the veranda  
and take away the materials.

As to the other question, the reimbursement  
with interest of outlay in repairs to the property.  
The mortgage deed has a clause to this effect  
that Chumbusaya should keep it in repair, if  
not that Ramaya should execute the repairs  
with the concurrence of Chumbusaya and should  
be reimbursed the expense with interest at 1  
per cent per annum. Ramaya's accounts as  
above said show a repairing of a wall. that is  
the extent of repairs, at a cost of 2<sup>Rs</sup>.

There is no independent evidence on this point  
but the court thinks the accounts have received  
sufficient corroboration from the gourdies and  
Sheddoo's evidence to make them reliable  
and that it must be concluded that the wall  
was repaired at Ramaya's expense. The pre-  
-sumption then seems to be that it was with  
Chumbusaya's concurrence, unless the repairs  
were of a nature, from which on the face of it,  
it can be supposed that they were such as  
Chumbusaya would have objected to, either  
because they were too extensive, too expensive,  
and unnecessary. But there is no such ground  
of

of presumption in Chumbusaya's favor.  
(The evidence properly so called, if Chumbusaya  
concurrence or objections, it should have been  
said, is wanting on the point). The repairs  
seem to be ordinary enough. both as to extent  
and expense, and Chumbusaya can not  
be supposed to have objected to such repairs.  
Hence the Court finds them to have been  
executed with his, at least, tacit consent. He  
must reimburse Ramaya for the outlay  
with 1 per cent per mensem interest. as  
agreed for. The Sudder Ameer's decree is amend-  
ed. Costs in proportion.

(Signed) G. A. Hobart  
Judge

(True Copy)  
G. A. Hobart

Judge.

MK