

In the High Court of Judicature, Bombay.

Friday, the 24 day of March 1864.

SPECIAL APPEAL No. 1011 — OF 1864.

Titul Gungadhar Buhiratt of
the Solapoor Division of the Poona
District ————— (Original Defendant.)

Appellant

versus

Ramchandra Ravji Buhiratt
of the Solapoor Division of the
Poona District. —————
(Original Plaintiff.)

Respondent

Rs. 450 - - -

The claim in the Original Suit was to obtain a half share in certain immovable property consisting of a "Kade", house &c.

In Appeal No. 451 of 1864 the District Judge of Solapoor at Solapoor conferred the Decree of the District Judge who had decreed in favor of plaintiff's claim excepting that portion given in charity.

A Special Appeal was preferred in the High Court on the grounds that the decision of the District Judge is contrary to law: in that (1) that the Dist. Judge has awarded a claim barred by the law of limitation of Suits.

That

That there has been a substantial error in law in the investigation of the case which has produced error in the decision of the case upon its merits. that [2] the Dist^t judge has entirely overlooked the circumstance of Respondent attesting a deed for appellant, this being a presumption of law or of fact that the interests of the parties were entirely separate and distinct that [3] the onus of proof has been cast on appellant that [4] the Dist^t judge has failed to go into the question as to whether at the time of separation certain property was not assigned or was not left with Respondent, and in which appellant would be entitled to share before Respondent could recover and that [5] the Dist^t judge has erroneously laid the point for decision to be whether Respondent had or had not received his share of the property in dispute the point really being whether respondent had shown his right at the date of action to recover a share in the same.

The court decide that the Alleged attestation by Plaintiff of the deed of gift executed by Deft. was simply a piece of evidence from which, if established, the lower courts were competent to draw such inference as might to them seem just & proper. The court however find that the separation being admitted, the burden was on the appellant that the

property remained undivided by apportionment
Plaintiff; & as neither of the ^{lower} Courts
appear to have borne this rule in mind
when forming their conclusions, the Court
reverses the Decrees of the acting Judge
& promissory and remands the suit to
the Court of first instance that it may determine
1st whether Deft has established ex-
clusive possession of the property
in dispute ^{as owner} for more than thirty years
& if this issue should be decided in the negative
2nd whether Plaintiff has established
that at the time a separation of interests
took place the property in dispute
remained undivided.

The Court of first instance to
exercise its discretion with regard to the
admission of new evidence of Deft as to
a new Decree on the merits & apportioning
costs.

Abinloch Forbes.

Att. Gen. Forbes,

Special Appeal No. 4011
of 1864
against the decision of the Acting Judge of the District of Solapur - and disposed of on the 24th March 1865 by reversing the same for retrial.

MEMORANDUM OF COSTS incurred in Special Appeal No. 4011

of 1864 against the decision of the Acting Judge of the District of Solapur - and disposed of on the 24th March 1865 by reversing the same for retrial.

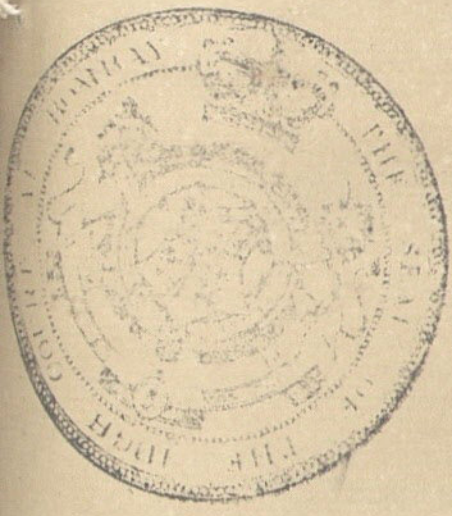
IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment	3	0	0		
Stamp for Vukeelutnama <i>two</i>	4	0	0		
Batta for Process and Postage	1	6	0		
Sectioner's Fee	1	10	6		
Vukeel's Fee one-fourth	3	6	0		
				13	6
				6	6
				Rupees	13 6 6

BY THE RESPONDENT—

Stamp for Vukeelutnama	2	0	0		
Vukeel's Fee one-fourth	3	6	0		
				5	6
				0	0
				Rupees	5 6 0



W. S. S.

Deputy Registrar
Sealer

The 24th day of March 1865

मुंघरैथीरन्नायाथीमरीघअमेस्तांत.

~~कुंम तारतुधि २४ मघे २००० ७११०६२~~

~~सोहीअरुथीरनंधर १० ११ ७११०६२~~

~~(मिळगांधू धरी ० ठीरलीक मरु)~~ }
~~धीरलीक ० ठीरने~~ } थीरनें.
(मुळ मारपी)

प्रतीपक्षी.

~~माम जंभुसापठि धरी ० ठीरलीक मरु~~ }
~~धीरलीक ० ठीरने.~~ } ठीरपोडे.
(मुळ मरु)

सपणे: १००० - - ०

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~~वडु उमाइगा. ठीर धाकापार उमाइपार.~~

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