

*Precedent*

In the High Court of Judicature, Bombay.

*Nov* day, the *20* day of *July* 186*5*.

SPECIAL APPEAL No. *1028* OF 186*4*.

*Chintamun Dumaje and Daje Gun-  
gaje and Ramji Lukshmun and Anant  
Dhakoji and Venkut Raghonath and  
Abaje Wittul of the Honkum District*  
(Original Defendants)

Appellants - *S. D. Gun-  
gaje*

versus

*Govind Raghaji Rane of the  
Rutnagiri Division of the  
Honkum District.*  
(Original Plaintiff)

Respondent *P. M. Rane*

Rs. 36-6-6

The claim in the Original Suit was to establish the plaintiffs title to a half share of a hereditary allowance called "Patilke Mahashwa"

In Appeal No. *503* of 186*3* the *Sy A Judge* of the District of *Honkum* at *Rutnagiri* enjoined the Decree of the *Jy at Mahum* who had awarded  $\frac{1}{6}$ th of the allowance to the plaintiff

A Special Appeal was preferred in the High Court on the grounds that the decision of the Acting Senior Assistant Judge is contrary to law in that (a) the lower Court has recorded

no finding upon the distinct issues sent down from the High Court and which were taken by the Moonsiff for adjudication: that (b) the claim is barred by the law of limitation: that (c) the claim is barred by a previous decree of the Sudder Adawlat of 4<sup>th</sup> January 1825 that (d) the Court below held that the opposite party sues upon a deed of settlement N<sup>o</sup> 134 but he does not do so, the same having been disputed and not held proved: that (e) the Court below has held that no lapse of time bars the claim of a Bhaubund: that (f) there being no evidence as to the produce of the Patilkee Wuttien being over the allowance from the Collector, the Moonsiff held that it was so, and the lower Court has confirmed that decree: and that (g) the decision quoted by the <sup>S.A.</sup> Judge has been since overruled. -

The Court <sup>of</sup> ~~reversed~~ the decree of the Court below and remanded the cause for retrial and a new decree upon the merits. Costs to follow the final decision.

R. Couper  
H. Couper

A. W. M. W.

MEMORANDUM OF COSTS incurred in Special Appeal No. 1028

of 1864 against the decision of the Senior App<sup>t</sup> Judge of the District of the Konkan and disposed of on the 20<sup>th</sup> February 1865 by remanding the same for retrial.

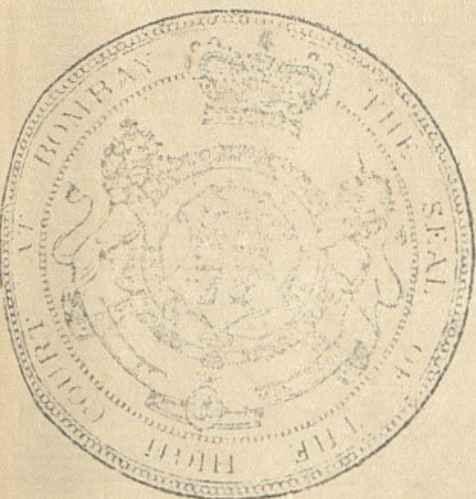
IN THIS COURT.

BY THE APPELLANT

Stamps for copies of Decree and Judgment .....	3	8	4
Stamp for Vukeelutnama .....	2	..	..
Batta for Process and Postage .....	1	1	"
Sectioner's Fee .....	2	6	"
Vukeel's Fee one-fourth .....	"	4	4
			9 3 4
	Rupees ...		9 3 4

BY THE RESPONDENT—

Stamp for Vukeelutnama .....	2	..	..
Vukeel's Fee one-fourth .....	"	4	4
			2 4 4
	Rupees....		2 4 4



*W. J. ...*  
*Deputy Registrar*  
*Sealer*  
 The 20<sup>th</sup> day of February 1865.

Issued a certificate on Her Majesty's  
Treasury the Bank of Bombay for the  
refund of Rupees (4) four being the value  
of Stamp used for Special Appeal  
in this case.

Dated the 20<sup>th</sup> February 1865.

JB

W. L. S.

Deputy Registrar

*Handwritten text, possibly a signature or title, partially obscured and faint.*

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Sp: app: No 1028 of 1864

The court considers the Judge to have been in error in holding the suit not to have been barred by the law of limitation on the ground stated by him the contrary to that precedent relied on by the Judge having been subsequently decided by this court. The decree is therefore reversed & the case remanded in order that the Judge may determine whether the operation of the law of limitation has been prevented under clause 1 section 7 Reg: V of 1827 by the deed No 134 and pass a new decree accordingly. Costs to follow the final decision -

In the High Court of Judicature

N<sup>o</sup>. on the File

N<sup>o</sup>. 560/63 of appeal in the Zilla Court

Applicant — 1 Chintaman Durnaji

2 Daji Gungaji

3 Ramji Laxuman

4 Amrit Dhatkaji

5 Venkut Rughoonath

6 Abaji Vittul —

opposite party — Govind Raghaji Ranay

Claim Rs. 36-6-6

The grounds of objection to the decision appealed against are

1 It is contrary to law in that

(a) The Lower Court has recorded no finding upon the District issues sent down from the High Court and which were taken by the mooniff for adjudication —

(b) That the claim is barred by the law of limitation

(b) The claim is barred by a previous decree of the Suddur Adawlut of 4<sup>th</sup> January 1825.

(d) The Court below held that the opposite party sues upon a deed of settlement No. 134, but he does not do so - the same having been disputed, and not held proved.

(e) The Court below has held that no lapse of time bars the claim of a Bhaibund.

(f) There being no evidence as to the produce of the Patithee Wuttun being over the allow from the Collector, the Moonsiff held that it was so, & the Lower Court has confirmed that decree.

(g) The decision quoted by the Judge has been since overruled.

Bombay  
3 December  
1864

} Signed, Phantaram Parajee  
Vutceel for Appt.

Court of Malwan Moonsiff

Chintaman Dumnajirav Ranay } appellants  
and 4 others } Defendants

Govind bin <sup>vs</sup> Raghujirav Ranay } Respondents  
[Plaintiff]

Rupees 36-6-6

Govind sued originally to establish his right as a member of the Ranay family to a half share in an hereditary allowance called "Pätellhee Meerasthee" in the village of Naringray.

Defendants answered that Govind was not a member of their family that neither he or his ancestors had ever enjoyed the right for which he sued. that they had been in enjoyment for upwards of 100 years.

A separate Memo: appended to this

miraste

minute shows the progress of this suit from court to court and from remand to remand up to the final remand by Mr. Cameron on the 12<sup>th</sup> October 1858

The Moonsiff has now decided that Patellkee Ineaskee is a wutton.

That Plaintiff is a member of a Panay family and entitled to  $\frac{1}{6}$  of the allowance left after payment by the collector of the salary of the officiating member.

Original Defendants now appeal

1<sup>st</sup> That the suit is barred by lapse of time. The decision of the Sudder Dewani Adwalut quoted has no application

Plaintiff has never had enjoyment at any time.

2<sup>nd</sup> That Plaintiff is concluded by a former decree in a suit brought by his uncle in which he was defeated—

3<sup>rdly</sup> That genealogical table No. 33 is not proved and does not tally with their table no. 76 Plaintiff is not a member of the family.

4<sup>th</sup> That in decreeing payment of a portion of the allowance the Moonsiff has transgressed beyond the Sudder Dewanee adawlat's judgment.

5<sup>th</sup> That the admissions of certain defendants (Nos. 132, 135, 137) who are members of Plaintiff's family and similarly interested do not conclude appellants.

The issues for decision are

1<sup>st</sup> Whether originally Plaintiff's claim is barred by lapse of time or by any previous decree?

2<sup>nd</sup> If not whether the Moonsiff's award of a 6<sup>th</sup> share should hold good.

On the 1<sup>st</sup> issue I find that Plaintiff's  
suit

Suit is not barred by lapse of time  
or by any previous decree.

It is true that in 1825 Plaintiff's  
Uncle sued Defendants on the same  
grounds and obtained a decree which was  
reversed in special appeal on the ground  
that the claim was barred by lapse of  
time. But independently of the fact  
that Plaintiff sues now on a deed of  
Settlement No. 134 dated 4<sup>th</sup> January  
1826. There has been a subsequent  
decision of the Sudder Dewanee Adawlat  
No. 2871 of 15<sup>th</sup> January 1853 in an  
analogous suit for a Patelkee Wutton  
to the effect that if a claimant is proved  
to be one of the Bhow bund of Defendants  
no lapse of time since the active enjoyment  
of the preveleges would bar his claim to  
such share as he would be entitled to.

This

This is the last decision in such a case so far as I am aware and I am bound by it I find all the evidence and by some of Defendants' own admissions (to the effect that Plaintiffs' grand father was a member of the family) that Plaintiff is a member of the family or Blood bond and that therefore his claim is not barred.

On the 2<sup>nd</sup> issue I consider the Moonsiff's award of a 6<sup>th</sup> share just and equitable - and I affirm his decree with costs on appellants.

10<sup>th</sup> September 1864 (signed) A. T. Crawford  
S<sup>r</sup> ap<sup>o</sup> Judge.