

In the High Court of Judicature, Bombay.

Wednesday, the 29 day of March 1864.

SPECIAL APPEAL No. 1033 — OF 1864

Nath Khan Beeram Khan of
the Ahmednugur District
Appellant
(Original Defendant)

versus

Bhadookhan & Lalloonia
sons of Banooia of the
Ahmednugur District
Respondents
(Original Plaintiffs)

Rs. 60 — " — "

The claim in the Original Suit was to obtain an injunction against Defendant to prevent his appropriating the water of a well belonging to Plaintiff.

In Appeal No. 272 of 1864 the Judge of the District of Ahmednugur at Ahmednugur reversed the Decree of the Court at Solapur who had thrown out the claim and granted the injunction prayed for.

A Special Appeal was preferred in the High Court on the grounds that there has been an error of law in the investigation of the case producing an error in the decision of the case upon its merits.

(a) The Court below had no jurisdiction in the case.

(b) The Court below did not raise an issue, vizt whether the appellant has a right to the use of the well in dispute, either by long use or as Co. share, the Moonriff having held that both the parties were members of the same family and that the well was joint property.

(c) The Court below held that "no period of usage can restrain the right inherent in the proprietary right of the maker over the thing made," and under this view awarded against the long prescriptive user of the appellant.

The Court find that this suit ought to have been brought and decided in a Pleas Court. The Court therefore annul the decree of the District Judge & refer the suit to be tried in the Court of the Collector of Ahmednagar. Costs to follow the final decision.

Amulock Forbes.

J. Newton.

MEMORANDUM OF COSTS incurred in Special Appeal No. 1033

of 1864 against the decision of the Judge _____ of the District of Ahmednager and disposed of on the 29th March 1865 by annulling ~~the same~~ and referring the same to be tried by Revenue Court

BY THE APPELLANT—

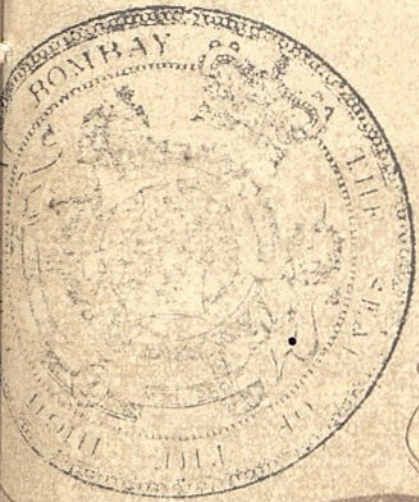
In the District.

In the Moonjeff's Court	5	7	00	✓
In the Judge's Court (including v. fee)	2	4	00	✓
				7. 12 8 ✓
In this Court.				
Stamp for Memorandum of Special Appeal	4	"	"	✓
Stamps for copies of Decree and Judgment	3	8	"	✓
Stamp for Vukeelutnama	2	"	"	✓
Batta for Process and Postage	2	11	"	✓
Sectioner's Fee	1	2	"	✓
Vukeel's Fee (one fourth)	"	7	2	✓
				13. 12 2 ✓
Rupees....				21. 8 10 ✓

BY THE RESPONDENT.

In the District.

In the Moonjeff's Court	10	12	00	✓
In the Judge's Court	8	4	00	✓
				19 18 ✓
In this Court.				
Stamp for Vukeelutnama	2	"	"	✓
Vukeel's Fee (one fourth)	"	7	2	✓
				2 7 2 ✓
Rupees....				21. 8 10 ✓



[Signature]
Deputy Registrar
[Signature]
Clerk

The 29th day of March 1865.