

100  
A.L.

In the High Court of Judicature, Bombay.

day, the                      day of                      1865.

SPECIAL APPEAL No. 1000 — or 1864.

Purnji bin Poojee  
of the Prana Dis-

Appellant

trict — (Original Defendant)

versus

Ladji bin Khandaji

Respondent

of the Prana Dis-

trict — (Original Plaintiff)

Rs. 150-0-0

The claim in the Original Suit was to

In Appeal No.                      of 186                      the  
of the District of                      at  
the Decree of the                      who

A Special Appeal was preferred in the High Court on the grounds that (1) the decision of the District Judge is contrary

contrary to law in that,

(a) The suit is barred by the Law of Limitation..

(b) No evidence was adduced by the Plaintiff to prove his claim to a moiety of the property purchased under Exhibit A & B..

(c) It is competent to a co-sharee to sell his interest in the property..

(d) The deed of sale to the Defendant having been proved, the Plaintiff should not have been awarded property to the extent claimed by him..

(e) A proper division of the property was not made..

II. That there has been a substantial error in law in the procedure of the case which has produced error in the decision of the case upon the merits in that, the onus of proving a division of the property was wrongly imposed on the Defendant..

No 1066 of  
Special 188



In the High Court of Judicature at Bombay.

No on the File:

No of Appeal in the District Court 373 of 1863.

Applicant Ramjee bin Rajoojee (Defendant)

Opposite Party Ladojee bin Khundojee (Plaintiff)

Claim Rupees 150-0-0

The grounds of objection to the ~~joins~~  
appealed against are

I That it is contrary to law in that

(a) The suit is barred by the Law of Limitation.

(b) No evidence was adduced by the Plaintiff to prove his claim to a moiety of the property purchased under Exhibit No. 8.

(c) It is competent to a co-sharer to sell his interest in the property.

(d) The Deed of sale to the ~~Drift~~ having been proved, the Plaintiff should not have been awarded property to the extent claimed by him.

(e) A proper division of the property was not made.

II

~~There has been a substantial error in~~  
law in the procedure of the case which has produced error in the decision of the case upon the merits in that

The onus of proving a division of the property was wrongly imposed on the Defendant.

Harisankar Balkrishna

15<sup>th</sup> December  
1864.

Vakil, High Court.



No. 373 of 1863

Ramjee bin Rajoojee (Defendant) Appellant  
Versus.

Ladojee bin Khandoojee (Plaintiff) - Respondent  
Rupees 150 - 0 - 0 -

Plaint In original suit Ladojee sued alleging that his father had purchased certain house and premises of which a certain portion (specified) was in possession of Defendant Babjee & Lukimon sons of Shivajee and Ramjee bin Radojee. he prayed that this might be made over to him.

Answer Babjee and Lukimon answered admitting <sup>the</sup> claim. Ramjee answered that when Plaintiff and Defendants Babjee and Lukimon (who are Baibands) came to a division the land in question fell to Defendants share and that they sold him the land now claimed by

Plaintiff -

Decree The ~~Principal~~ sudeer Ameen found that Ramjee did not prove his ~~de~~ <sup>deed</sup> he therefore awarded the claim against all ~~defendants~~.

Appeal Against this decision Ramjee appeals urging that the suit is beyond the limitation (Act XIV of 59) that his deed of sale is proved and he holds possession that he further holds Babjee and Lukimon title deeds. That Ladojee has not taken out a certificate of heirship to his father.

Minute The point for decision is whether the property in question was Babjee & Lukimon's alone so that their sale of it to Ramjee can be upheld.

Judgment My finding on this point is that the parties being undivided there is no doubt from the evidence but that Plaintiff has a right in four of the said rooms - the only question is whether he has exercised this right within 12 years so as to bring his claim within the limitation. The occupancy claimed as having been held by Ramjee for 20 years

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J. R.  
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L. R.  
S. R.

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appears to the Court to have been only in a portion of the rooms and would not affect Plaintiff's right in the others. I think it is established that Kawai was Plaintiff's tenant within the time necessary to bring his suit within the limitation. Under these circumstances it was not competent to the co-sharers to sell Parjee the property hence the Court affirms the decree with costs.

8<sup>th</sup> October 1864

Signed C. Walter

Sectioner's Fee annas 4

Acting Judge

M.S.

True Copy

H. C.

Acting Spt. Judge

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M.S.

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