

In the High Court of Judicature Bombay.

This day, the 29 day of March 1865.

SPECIAL APPEAL No. 172 of 1864.

Syedsha Mahomed and
Syedgah Mohomed Wad-
-ud Syed Sumsoodeen ab-
-d Khan Pirjaday of the Kan-
-kur District (Original Defendants)

Appellant

versus

Syed Salaoodeen and
Syed Goolam Mohideen
Waleed Sheerfoodeen
of the Kanbur Dis-
-trict
(Original Plaintiffs)

Respondent

Rs. 1599-0-0

The claim in the Original Suit was to establish the plaintiffs title to a share in the endowment of a Pir withheld by the Depts

In Appeal No. 158 of 1864 the Assistant Judge of the District of the Kanbur at Tana conjured the Decree of the court at Ahmednagar who had decreed for the claim

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

contrary to law in that,

(a) According to the Muham-
-dan law, there can be no division,
- or inheritance of religious endow-
-ments, whereas the lower court
- has awarded the claim for a par-
- -tition. -

(b) The relationship as well
- as the right of the opposite party,
- having been disputed from the
- the onus was upon the opposite par-
- -ty to show both the relation, and
- the right; but the lower court, ad-
- -mitting that the same had not
- been shown, awarded the claim
- upon what it erroneously deem-
- -ed an admission binding upon
- the appellant in the present suit.

(c) There has been a miscon-
- -struction, and misapplication of
- Exhibit N^o. 7 in as much as it is
- held to contain an admission by
- appellants of the opposite party's
- title. -

(d) The Court below has un-
- -warrantably assumed that because

one of the appellants, and one of the Respondents were present at Tanna in 1864 during the hearing of the appeal, therefore they must have been present in the Mission - siff's Court at Bheruundy in 1849 - in quite a different suit.

(D) The onus is wrongly - thrown upon the appellants to prove their assertion that the claimants do not belong to the family.

(F) The claim is barred by a limitation - an exercise of the right by the claimant (if any) within the 30 years preceding the suit having been held not proved by the lower court.

(G) The Court below has erred in holding the Exhibit N^o 7 to contain an admission capable of saving the claim from limitation.

(H) The admission in Exhibit N^o 9, if an admission at all, referred only to the property then in dispute, not the whole
of

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of the property at suit in the
present action.

(ii) The evidence of the appel-
lants was illegally rejected by the
original court though tendered at
the proper time, and the Appel-
late Court below was wrong in
law in holding that, because
there was no evidence on the
record of the rejection, and be-
cause it was not "put in with
the plea", therefore there was no
reason for admitting it.

The Court reverse the
decree of the Court below and Remand
the cause for retrial and a new de-
cree upon the merits. Costs to follow the
final decision.

R. Couch
Att. Gen.

Bank a certificate in the name of the Bank of Bengal for the purpose of depositing the value of the same in the case.

MEMORANDUM OF COSTS incurred in Special Appeal No. 1072

of 186 *4* against the decision of the *Assistant Judge* of the District of *the Kookan* and disposed of on the *29th March 1865* by *remanding the same for retrial.*

IN THIS COURT.

BY THE APPELLANT ✓

Stamps for copies of Decree and Judgment	3	✓
Stamp for Vukeelutnama	2	✓
Batta for Process and Postage	5.12	✓
Sectioner's Fee	3.2.3	✓
Vukeel's Fee one-fourth	11.15.10	✓
		25.14.1 ✓
	Rupees	25.14.1 ✓

BY THE RESPONDENT ✓

Stamp for Vukeelutnama	2	✓
Vukeel's Fee one-fourth	11.15.10	✓
		13.15.10 ✓
	Rupees	13.15.10 ✓



W. D. D. S.
Sealer

The 29th day of March 1865

R. West
Registrar

Issued a certificate on Her Majesty's Treasury
the Bank of Bombay for the refund of Rupees
(50) fifty only being the value of Stamp and
for Special Appeal in this case.

Dated 29th March 1865.

[Signature]
Registrar.

[Faint signature]

[Faint signature]

[Faint signature]