

In the High Court of Judicature, Bombay.

*Friday*, the *3* day of *Sept* 186*4*

SPECIAL APPEAL No. *124* OF 186*4*.

*Shahaji Walud Pukhmaji Patil*  
of the *Ahmednagar District*

*deceased his sons and heirs Anurooti and Balwant  
and Ruyji and Hanmanta and the heirs of  
Ruyji and Hanmanta and the heirs of  
their brothers and guardians Anurooti and  
Balwant of the Ahmednagar District*  
(Original Defendants)

Appellant

versus

*Dhondiba Walud Khundoji Patil*  
of the *Ahmednagar District*

Respondent

(Original Plaintiff)

Rs. *4-12*-

The claim in the Original Suit was to *recover half of a field*  
*alleging that it was the heirs of his family but returned*  
*in the name of debt.*

In Appeal No. *140* of 186*3* the *Assistant Judge*  
of the District of *Ahmednagar* at *Ahmednagar* reversed  
the Decree of the *Magistrate* who *had thrown out the claim*  
& decreed in *favor of Plaintiff.*

A Special Appeal was preferred in the High Court on the grounds that (1) the  
decision of the Assistant judge is contrary to law  
in that ~~the~~ <sup>he</sup> Assistant judge has awarded a claim  
barred by the Statute of limitation that (2) the  
assis-

Assistant Judge though expressing doubts as to the conflicting nature of the evidence did not allow the maxims "metiores conditio - possidentis" and "metiores conditio defendentis" to operate on the case and that (3) the Assistant Judge has awarded Respondent's claim without expressly finding that he was entitled to the property in dispute to the extent claimed.

The parties being divided in interest as appears from the plaint and the deposition of the Plaintiff recorded as Exhibit No. 6. the burden of proving that the field remained undivided family property, lies upon the Plaintiff (Respondent) Shondiba. The decree of the A. J. is therefore reversed & the case remanded in order that the A. J. may decide whether Shondiba can show that the field is undivided family property in which he is entitled to share & may pass a new decree on the merits awarding costs.

Atmintoeh Forbes.

S. S. M. S.

MEMORANDUM OF COSTS incurred in Special Appeal No. 124

of 186 4 against the decision of the *Mrs<sup>th</sup>* Judge of the District of *Ahmednagar* and disposed of on the 2 September 1864 by *remanding the same for retrial.*

IN THIS COURT

BY THE APPELLANT

Stamps for copies of Decree and Judgment .....	4	"	"		
<i>Stamp for an application to enter the name of the appellant's <del>name</del></i> .....	2	"	"		
Stamp for Vukeelutnama, <i>Three</i> .....	6	"	"		
Batta for Process and Postage .....	1	1	"		
Sectioner's Fee .....	1	"	3		
Vukeel's Fee one-fourth .....	"	"	7	14	1 10 5
				Rupees ...	14 1 10 5

BY THE RESPONDENT—

Stamp for Vukeelutnama .....	2	"	"		
Vukeel's Fee one-fourth .....	"	"	7	2	" 4 2
				Rupees....	2 " 7.



*G. S. ...*  
For Acting Registrar

*G. S. ...*  
For Sealer

The 2<sup>nd</sup> day of September 1864

I paid a Certificate on Her Majesty's  
Treasury Bank of Bombay for the  
refund of Rupee one (1) being the  
value of the Stamp used for Special  
Appeal in this case

2<sup>nd</sup> September 1869

G. H. Linnell Esq  
Solicitor General

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1869

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