

Poona & Solapur

In the High Court of Judicature, Bombay.

15th day, the 15th day of February 1865.

SPECIAL APPEAL No. 136 of 1864.

Yaduvrav bin Abaji and Dhondi
bin Durayaji and Raghoo bin Harbutrav
deceased his son and heir Suktaram bin
Raghoo and Narayun bin Amritrav Patel of the
Poona District — (Original Plaintiffs)

Appellants

versus

Govindrav bin Sukhoji Patil Dhoo
mal of the Poona District

Respondent

(Original Defendant)

Rs. 149-14-8

The claim in the Original Suit was to establish a right to redeem
some land, viz. $\frac{1}{3}$ share of certain ancestral
Duan land, alleged to have been mortgaged.

In Appeal No. 874 of 1862 the District Judge
of the District of Poona at Poona
the Decree of the District Judge who had awarded the claim.

A Special Appeal was preferred in the High Court on the grounds that (1) the
decision of the District Judge is contrary to law in
that the District Judge has erroneously rejected
appellants' claim because they could not prove the
existence

existence of a mortgage deed, no such deed being
requisite to prove appellants case that (2) the District
Judge has erroneously rejected appellants claim
because they failed to prove the existence of the mort-
-gage to Naro, such mortgage not being required
to prove appellants case that (3) appellants title having
before been declared by a Court of competent jurisdiction
in a suit to which Respondent was a party the Dis-
trict Judge erred in not decreeing in appellants
favor Respondent having failed to prove the ^{existence} ~~existence~~
of ^{any} new title having accrued to him since the decree
aforesaid that (4) the District Judge has miscon-
strued exhibits Nos 29, 30 and 53 in holding that
appellants did not obtain possession of the land
in dispute on the passing of the decree mentioned
in the third point of this memorandum of Special
appeal that (5) the District Judge was in error
in holding that possession was necessary under the
decree aforesaid or otherwise to enable appellants to
succeed in ^{his} ~~his~~ action that (6) the District Judge
erroneously placed the burthen of proof on the wrong
party viz appellants that (7) the District Judge
has erroneously rejected the various leases filed in
this case, and more particularly referred to in the
judgment appealed against. that (8) the District
Judge ~~was~~ ^{has} totally misconstrued the said leases in
holding that they do not show the existence of a
mortgage that (9) there has been a substantial error
in

in law in the investigation of the case ~~has been made~~
which has produced error in the decision of the case upon
its merits in that the District Judge has failed to
decide the only material issue between the parties viz
whether Respondent had shewn any title by prescription
or otherwise, which could in any way invalidate a pre-
-sillants title to the land in question, declared by a
Court of competent jurisdiction in the year 1836 in
a suit to which Respondent was a party.

The Court confirms the decree of the District
Judge.

Costs of this Appeal on Special Appellant.

Joseph Arnold
Att'y for Appellant.

MEMORANDUM OF COSTS incurred in Special Appeal No. 136.

of 1864 against the decision of the *Acting Judge* of the District of *Poona* — and disposed of on the 15th February 1865⁺ by *Confirming the same with Costs*

BY THE APPELLANT

IN THE DISTRICT.

In the <i>Moonsiff's Court</i>	28	13	8		
In the <i>Judge's Court</i>	4	7	11		
				33	54

IN THIS COURT.

Stamp for Memorandum of Special Appeal	8	00			
Stamps for copies of Decree and Judgment	4	00			
<i>(two)</i> Stamp for Vukalutnama	4	00			
Stamp of an application to enter the name of the Appellant's heir	"	"	"		
Batta for Process and Postage	1	9	"		
Sectioner's Fee	1	6	3		
Vukeel's Fee	4	7	11	23	72
				Rupees....	56 129

BY THE RESPONDENT—

IN THE DISTRICT.

In the <i>Moonsiff's Court</i>	21	8	11		
In the <i>Judge's Court</i>	17	4	2		
				38	131

IN THIS COURT.

Stamp for Vukalutnama	2	00			
Vukeel's Fee	4	7	11	6	711
				Rupees....	45 54



[Handwritten Signature]

[Handwritten Signature]
Registrar

The 15th day of February 1865.