

Poonas solepura

In the High Court of Judicature, Bombay.

Thursday, the 6th day of October 1864.

SPECIAL APPEAL No. 138 OF 1864.

Vitaji bin Sunbroji deceased his son and heir Narayan Bhugday, of the Poona District - (Original Defendant) } Appellant,

versus

Krishnaji bin Sun- deceased his son and heir Ballaya - a minor his mother and guardian Gases - Broji, of the Poona District - (Original Plaintiff) } Respondent,

Rs. 8-15-10-

The claim in the Original Suit was to recover possession of a half share of some heres land.

In Appeal No. 988 of 1862 the Acting Judge of the District of Poona at Poona informed the Decree of the Court of Poona who had awarded the claim.

A Special Appeal was preferred in the High Court on the grounds that (1) the Acting Judge has admitted illegal evidence to wit exhibits 13. 32. and 33 to substantiate Respondents claim, that

(2) the ^{Acting} Judge has erroneously held Appellants bound by the production of exhibit 13, and thus stopped from putting forward the defence alleged ^{to be} in his Judgment; and that (3) the Judge has failed to give proper weight to the fact admitted in the Judgment that the Chulle Patrak is in Appellants name.

In the reported case, Special Appeal No. 467 of 1863, it was held that a document containing a promise to pay interest, and as such requiring a stamp, might yet be received unstamped as evidence of an admission of balance due. And in Special Appeal No. 291 of 1862 the Court proceeding on the same principle, held that a rent note, which, if entered on as an agreement to pay rent, would have required a stamp, was admissible unstamped as evidence of an admission of proprietary right.

The Court considers that in this case the Judge should have received the deed of separation, though unstamped, as evidence of an admission of separation, if its terms establish this and if it be shown to be genuine and otherwise valid.

The Court reverses the decree of the lower Court and remands the case that the deed of separation may be enquired into, with reference to the above remarks, and a new decree given.

Court to follow first decision.

J. C. W. M.

A. M. W.

MEMORANDUM OF COSTS incurred in Special Appeal No. 138

of 186 4 against the decision of the *Acting Judge* of the District of *Poona* and disposed of on the *6th October 1864* by *remanding the same for retrial*.

IN THIS COURT.

By THE APPELLANT—

Stamps for copies of Decree and Judgment	2	8	"	✓			
<i>Stamp for an application to enter the ^{the} name of the appellants heirs ^{heirs} as co-defendants</i>	2	"	"	✓			
Stamps for Vukeelutnamas <i>two</i>	4	"	"	✓			
Batta for Process and Postage	1	11	"	✓			
Sectioner's Fee	"	14	6	✓			
Vukeel's Fee one-fourth	"	1	"	✓			
			11	2	6	✓	
			Rupees	11	2	6	✓

By THE RESPONDENT—

Stamp for Vukeelutnama	2	"	"	✓			
Vukeel's Fee one-fourth	"	1	"	✓			
			2	1	"	✓	
			Rupees	2	1	"	✓



[Signature]

[Signature]

For Sealer

For Acting Registrar

The 6 day of October 1864.