

In the High Court of Judicature, Bombay.

Monday, the 10 day of July 1864

SPECIAL APPEAL No. 140 OF 1864.

Raboo Pootaji of the Konkan District
(Original Plaintiff) Appellant

versus

Juzua bin Abajirav, a minor, by his mother and guardian Sukshumi Ayal Abajirav Murate of the Konkan District.
(Original Defendant) Respondent

Rs. 10-0-0

The claim in the Original Suit was to cause the deft to be ejected from a field which Raboo (Plaintiff) alleged to belong to him

In Appeal No. 364 of 1864 the Acting Judge of the District of the Poollah at Saurashtra annulled the Decree of the Koorol-Panach who had decreed for Plaintiff but that according to the terms of the Award the deft should be ejected as long as he paid Rent for the field & denied the Plaintiff any rights in the land.

A Special Appeal was preferred in the High Court on the grounds that (1) a substantial error in law has occurred in the investigation of the case which has produced error in the decision of the case upon its merits in that the land in

in dispute is comprised in the 22½ Bighas granted to the appellant by the Peshwa Government under a Kowl and it falls within the boundaries mentioned in it and belongs to the appellant and the claim is to recover it and therefore the appellate Court was in error in giving the decision without ascertaining whether the land in dispute was comprised in the Kowl. that (2) according to the decree N^o 25 the appellant is the proprietor of the whole of the land specified in the Kowl and therefore it was an error to give decision contrary to the said exhibit. that (3) when the appellant is the proprietor of the land in dispute it was for the Respondent to show why the appellant should not get it back, whereas the onus probandi was not thrown on him. that (4) the decision is contrary to usage having the force of law, in that the land in dispute is not in the Respondent's name but in that of the appellant and therefore according to the Survey Rules and the custom of the country, the appellant should be considered its proprietor and consequently the claim could not be rejected unless the Respondent had proved his proprietary right to the land. that (5) although the

Noansiff admitted that the appellant was the proprietor of the land, he held that the Appellant should receive rent, and the appellate Court should not have reserved the decision when the Respondent had not objected to it. that (6) the decision was erroneously given without examining all the proof mentioned in the appellants application.

The Court are of opinion that the D. J. having decided that the letting of the land to the Plaintiff by D. J. was not proved should have proceeded to determine -

- 1st Whether Plaintiff had established his original proprietary title to the land in dispute
- 2nd If so, whether Defendant had established adverse possession as proper -
- = for more than ^{three} years.

The Court therefore reverse the decree of the D. J. & demand the rent that there may be determined & any other issues which the D. J. may deem necessary, and that a new Decree be passed on the merits awarding costs.

H. P. 14. Tucker
Lawrence & Popham

MEMORANDUM OF COSTS incurred in Special Appeal No. 140

of 1864 against the decision of the District Judge of the District of the Nontum and disposed of on the 18th July 1864 by remanding the same for retrial.

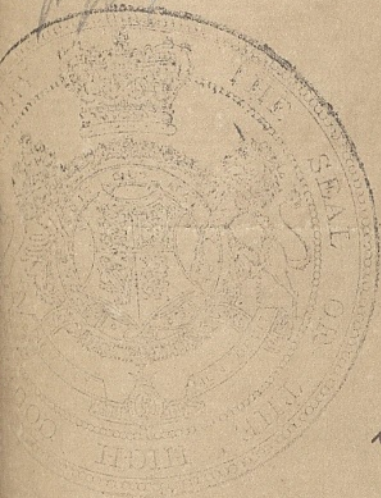
IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment	2	"	"			
Stamp for Vukeelutnama <i>two</i>	4	"	"			
Batta for Process and Postage	1	"	"			
Sectioner's Fee	1	2	6			
Vukeel's Fee one-fourth	"	1	2			
				8	3	8
Rupees ...				8	3	8

BY THE RESPONDENT—

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



Spence
Sealer

Spence
Acting Registrar

The 18th day of July 1864.

Issued a Certificate on Her Majesty's Treasury
Bank of Bombay for the refund of ~~sixty~~ Rupees
one (1) being the value of the Stamp used for
Special Appeal in this case

18th July 1864

C. J. M.

Acting Registrar

Ed. M.

Acting Registrar

Bank of Bombay