

In the High Court of Judicature, Bombay,
Tuesday, the 2 day of August 1864

Special Appeal No. 142 of 1864

Jafurkhan and Enayuttkhan
Wulid Alikhan Deshmooch of the } Appellants
Koukran District (Original Defendants)

^{vs.}
Amirkhan Wulid Shadsollakhan
Deshmooch, deceased, his son and
his Amudkhan Wulid Amirkhan } Respondent
Deshmooch of the Koukran District
(Original Plaintiffs)

Rs. 32-5-5

Special Appeal No. 161 of 1864

Amirkhan Wulid Shadsollakhan
Deshmooch, deceased, his son and
his Amudkhan Wulid Amirkhan } Appellants
Deshmooch of the Koukran District
(Original Plaintiffs)

^{vs.}
Jafurkhan and Esmailkhan
and Enayuttkhan Wulid Alikhan
Deshmooch and Duryatkhan Wulid
Enayuttkhan Deshmooch and
Salekhan alias Talookhan W. } Respondents
Duryatkhan Deshmooch of these
Esmailkhan, deceased, his heir
and his widow Sheersheebibi
of the Koukran District (Original
Defendants)

Rs. 72-14-6

The claim in the original suit was to
recover possession of certain lands.

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In cross Appeals Nos 100 + 97 of 1863
the Acting Judge of the District of Doukhan
at Ilaumale amended the Decree
of the Juff _____ who had partly
awarded the claim and allowed
Duryukhan's claim to the field
Kamut.

A Special Appeal was preferred
in the High Court on the grounds that (1) the
decision of the Acting Judge is contrary to
law in that the alleged admissions in the
Khabulayats referred to by him are not such
as are sufficient in law to take the case
out of the statute of Limitations and
that (2) there has been a substantial
error in law in the procedure of the
case and which has produced error in
the decision of the case on its merits in
that the Acting Judge admitted in evidence
the Proceedings of 1862 in the present suit,
which he was not warranted in doing -

Points in special Appeal No 161 of 1864

That (1) the decision of the Acting Judge is
contrary to law in that he has erroneously
held that Appellants' claim to the share
in the Field Kamal and the village
of Toodell is barred by the statute of
limitations; that (2) the Acting Judge
has misconstrued the document Exhibit
No 64 in holding that it does not recognize
the proprietary rights of the parties
through whom Appellant claims; and
that

that (3) the Acting Judge has erroneously held that Duryakhan under the circumstances acquired any title as proprietor by thirty years possession.

The Court ~~reverse the decree of the acting judge~~ considering that the onus of proof has been thrown on the wrong party, and that ^{it} is desirable there should be a distinct finding as to whether the land in Todeel was held for more than 30 years by Sp Respondents 1, 2 & 3 as proprietors and whether the field Khamut was held by Special Respondent No 4 as proprietor reverse the decree of the acting judge and demand the case to be tried on the 2 following issues.

1st Whether Special Respondents 1, 2 & 3 have held the lands of Todeel for a longer period ~~as~~ than 30 years as proprietors within the meaning of Regs V of 27 Sec 1

2. Whether Durya Khan Resp No 4 has held the field called Khamut in Todeel for a longer period than 30 years as proprietor within the meaning of Regs V of 27 Sec 1

A new decree to be given - Costs to follow final result.

Joseph Arnould
A. C. W. M.

Bill of Costs

In this Court
 In Sp^l App^l No 142 of 1864

Received 3
 To be handed
 Given to
 L. S. S. S.
 11/

By the appellants

Stamps for Copies of decree & Judgment	4	"	"
Stamp for Vukalutnama	2	"	"
Patla for Process and Postage	1.3	"	"
Sectioner's Fee	3.9.6		
Vukel's Fee one fourth	" 3.10	11	" 4
		<u>Rupees</u>	<u>11 " 4</u>

By the Respondents

Stamp for Vukalutnama	2	"	"
Vukel's Fee one fourth	" 3.10	2.3.10.	
		<u>Rupees</u>	<u>2.3.10</u>

In Special app^l No 161 of 1864

By the appellants

Stamps for Copies of decree & Judgment	4.8	"	"
Stamp for Vukalutnama	2	"	"
Patla for Process and Postage	2.9	"	"
Sectioner's Fee	2.9.6		
Vukel's Fee one fourth	" 8.9.12.3.3.		
		<u>Rupees</u>	<u>12.3.3.</u>

By the Respondents

Stamps for two Vukalutnamas	4	"	"
Vukel's Fee one fourth	" 8.9	4.8.9	
		<u>Rupees</u>	<u>4.8.9</u>



G. S. S.
 Acting Registrar

G. S. S.
 Sealer

The 2nd day of August 1864.

Issued Certificates on Her Majesty's
Treasury Bank of Bombay for the
refund of Rupees four (4) and Rupees
eight (8) being the values of stamps
used for Special Appeals Nos 142
and 161 respectively

2nd August 1864

Yours
Acting Registrar

Certificates sent to Registrar

Ed
[Signature]