

In the High Court of Judicature, Bombay.

Monday, the 14 day of November 1864

SPECIAL APPEAL No. 144 of 1864.

Behinto Bhikaji Gharpoore of
the Putnagiri Division of the
Konkan District — — — — — } Appellant
(Original Defendant.)

versus

Visaji Krishn Gharpoore of the
Putnagiri Division of the Kon-
kan District — — — — — } Respondent
(Original Plaintiff.)

Rs. 29 - 5 - 4.

The claim in the Original Suit was to *be put in possession*
of a four Akhace of a Coombawa.

In Appeal No. *377* of 1863 the *Senior Asst. Judge*
of the District of *the Konkan at the District Station of Putnagiri*
affirmed the Decree of the *J. B. of Putnagiri* - who *had decreed for the Plaintiff*

A Special Appeal was preferred in the High Court on the grounds that (1) the
decision of the Senior Assistant Judge is contrary
to law or usage having the force of law in
that. —

1 The Court has declared the remortgage to Appellant invalid, viewing it as an alienation, whereas in truth it was not so, but merely a substitution ~~for~~ one mortgage for another.

2 The eldest son having by Hindoo law power to manage the property (which too was ancestral and not self-acquired by the father) in the absence of the father the renewal of the mortgage under circumstances of necessity has ^{been} declared invalid, on the ground that it was without his consent, and that the absence was "neither protracted nor unheard of the Hindoo Law not requiring such absence.

3 The decision is contrary to the terms of the mortgage deed (N. 18), admitted to have been executed by the opposite party, and which reserves a power to any of the family to redeem the mortgage.

4 The Appellant being neither party nor privy to Agreement (N. 3), the Court has regarded him as bound by it solely because he was united in interest with his father.

5 Even assuming that the Appellant.
would be bound by the Agreement (p. 3)
the same was altogether inoperative and
did not affect the Appellant's competency
to take up the mortgage.

The Court affirm the decree
of the Sd. judge with costs.

Hecotm,

H.P. G. Fisher

