

Min 1537

Satara

In the High Court of Judicature, Bombay.

Saturday, the 12 day of Aug 1864.

SPECIAL APPEAL No. 1118 of 1864.

Sukurbai Kom Shivaji Raja } Appellant  
Zoonjarrav Deshmookh of the Satara  
District (Original Plaintiff)

versus

Bhavanji Raja Ghatge Zoon- } Respondent  
-jarrav Deshmookh of the Satara  
District (Original Defendant)

Rs. 8094-00

The claim in the Original Suit was to ~~obtain~~ obtain a  
maintenance.

In Appeal No. 222 of 1863 the Judge  
of the District of Satara at Satara confirmed  
the Decree of the District Judge who had awarded an allowance  
of Rs. 30 per mensem, throwing out the claim for  
the payment of her debts.

A Special Appeal was preferred in the High Court on the grounds that the  
decision of the District Judge is contrary to law  
in that:-

a The District Judge, in determining the  
amount

amount of the allowance to be paid to the Appellant, considered that she could not claim more than what would keep her; which he ought not to have done.

b. Although it was proved to the satisfaction of the Principal Suder Amin that ~~the~~ the Appellant could not live with the Respondent, she was directed to live in a house under his control.

c. The Courts below ordered the allowance to be paid from the date of the decree and not from the date of the filing of the suit.

d. The Courts below did not order the payment of the debts incurred by the Appellant since the death of her husband.

The Judge has wanted to determine material issues in this case namely

1<sup>st</sup> Is the Plaintiff entitled to arrears of maintenance from the date of her late husband's decease? If so what was the date of his decease?

2<sup>nd</sup> Are the circumstances of the case such as require that separate residence or an equivalent in money should be awarded to her, or should she be required to reside with the defendant?

The J. has further erred in law in holding that the Plaintiff

"Can any ~~one~~ have what will keep her  
"of no more" of that she receive this in  
"charity" a widow has by ~~rights~~  
law a legal right to maintenance,  
if the amount should be determined  
on a consideration not merely of her  
absolute necessities but also of the  
circumstances of the family. In the  
words of Sir Thomas Stoughton she  
should be provided for "an  
"assignment of land or an allowance  
"of money, in either case proportioned  
"to her support, & that of those de-  
"pendant on her, including the per-  
"formance of charities, & the discharge  
"of religious obligations, & this always  
"with a reference to the amount of the  
"property, so as ~~to~~ at the utmost  
"as has been said) not to exceed a sixth  
"or other particular share." And Sir  
Justice Stoughton states that the  
maintenance must be proportioned  
"to the condition of the party who is to  
"receive it, & the circumstances of those  
"who are to provide it."

The Court therefore reversed the  
Decree of the J. J. & remanded the  
case for a new Decree with reference

to these points.

Maintenance in arrears should ~~be~~  
be awarded at the same rate from  
the death of the Plaintiff's late hus-  
band as may be awarded prospec-  
tively, unless the Defendant show  
that it has been already received  
of her from him, or that any portion  
has been so received. The Plaintiff  
will also undertake the same conditions  
be settled as maintenance between  
the date of filing the suit & the  
date of the final decree  
not to follow the final decree.

J. Newton

Lawyer for Defendant

MEMORANDUM OF COSTS incurred in Special Appeal No. 148

of 186 4 against the decision of the Judge of the District of Sabara and disposed of on the 12<sup>th</sup> July 1864 by *rescinding the same for appeal.*

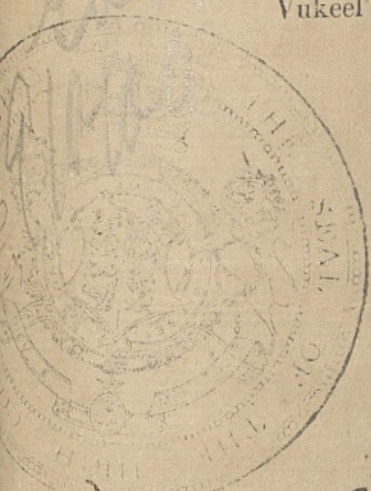
IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment .....	"	"	"		
Stamp for Vukeelutnama .....	2.	"	"		
Batta for Process and Postage .....	5.	"	"		
Sectioner's Fee .....	2.	8.	11		
Vukeel's Fee one-fourth .....	45.	7.	6.		
				55.	5.
				Rupees	55. " 5.

BY THE RESPONDENT—

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



*Ugume*  
Sealer

*Ugume*  
Acting Registrar

12<sup>th</sup> day of July 1864.

Issued a certificate on Her Treasury Bank  
of Bombay for the refund of Rupees two  
(2) being the value of the stamp used for  
special Appeal in this case.

12<sup>th</sup> July 1864.

*C. J. M. A.*  
Acting Registrar

*Ed. J. M. A.*

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6721

*Acting Registrar*

*[Faint, illegible handwriting]*