

In the High Court of Judicature, Bombay.

Tuesday, the 15 day of July 1864

SPECIAL APPEAL No. 167 of 1864.

Mankoteswari bai Kom. Butehant-sing Rao, deceased, her son and heir Dulpatsing of the Khandesh District. Appellant (Original Defendant)

versus

The Firm of Dhurundas Sumbhoo, deceased his heirs and grandsons Nanabhai and Nuthobhai Amthadas and Sumbhobhai Kurundas a minor by his cousins and guardians Nanabhai and Nuthobhai of the Khandesh District. Respondents. (Original Plaintiffs)

Rs. 5,000 - - -

The claim in the Original Suit was to recover principal of Rs. 5000 on a bond executed by Mankoteswari Bai.

In Appeal No. 120 of 1863 the Acting Judge of the District of Maudesh at Maudesh decided the Decree of the Court who had decreed that Dulpatsing pay the amount directed that the rest of the claim together with the interest be recovered from the property of the deceased Mankoteswari. Decreed the Plaintiff, directing that the claim be recovered from property of Dulpatsing, from Mankoteswari's estate of Dulpatsing's personal property.

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 deceased Mankoteswari, having no power by Hindoo law or otherwise to contract the debt in

in question so as to bind her husband's heirs
the acting judge under the circumstances was
in error in making appellants' property
generally liable for payment of the same
that (2) the acting judge has decreed against
appellants' property generally although, as
adopted son of Bukhutsing he is not liable
for Mantror's debts that (3) the acting judge
has erroneously placed the burden of proof
on appellant and that (4) there has been a
substantial error in law in the investigation
of the case ~~has been made~~ which has produced
error in the decision of the case upon its merits
in that the acting judge has not given any
opinion on the plea put in by appellants
that the debt was collusively incurred by man-
tror to injure appellants' rights.

The court considered that material issues
have not been expressly determined in this case
1. Whether the debt ~~of Bukhutsing~~ was a minor
of age at the time when the debt to which
is the subject of the suit was contracted
2. If ~~the~~ ^{Dulputsing was a minor} whether the deceased man-
tror was at that time acting as manager
of Dulputsing's estate
Now if it be supposed that Dulput-
sing was a minor at the date specified
the d.f. will have need in holding that

"it was incumbent on him to prove that the
"debt was incurred for his purposes" &
Hindoo Mother acting as guardian of the
estate of a minor has clearly no more authority
to alienate or to bind that estate than
the managing member of an undivided
Hindoo family, & with respect to the powers
of the latter, Sir J. Strange has laid down
that it imports creditors to take notice
"whether the family with which they are
"about to deal or contract be divided, or
"undivided; & if the latter, at their peril
"to see that the transaction be one of which
"the members will be concluded".

This principle has been affirmed by
the High Court in their Decree in Spl. Appeal
no. 206 of 1842, page 27 of the printed
reports, & in accordance with it theonus
Probandi should in this case have been
laid on the creditor, the Plaintiff.

The decree of the S. J. is therefore reversed
and the case remanded that he may de-
termine the issues above stated & also the following
issues:-

In case of Dalpatram's minority did the
Plaintiff after reasonable inquiry believe
in good faith that the money borrowed
by the deceased Kankhow was bona

file borrowed & intended by her to
be expended for or upon some necessary
or beneficial use of the said Union
It has been so passed
to follow the final decision.

Hewitt
New and on Saturday

Received
To be
by
9

MEMORANDUM OF COSTS incurred in Special Appeal No. 167
of 1864 against the decision of the Acting Judge of the
District of Khairabad and disposed of on the 15th July 1864
by remanding the same for retrial

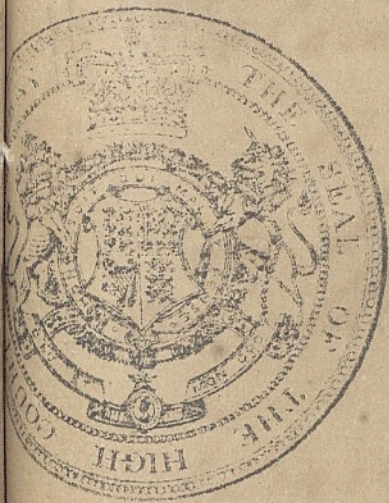
IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment	4	“	“	✓		
Stamp for Vukeelutnama	2	“	“	✓		
‘Batta for Process and Postage	5	“	“	✓		
Sectioner's Fee	2	1	6	✓		
Vukeel's Fee one-fourth	30	“	“	✓		
			43	1	6	✓
	Rupees ...		43	1	6	✓

BY THE RESPONDENT—

Stamp for Vukeelutnama	2	“	“	✓		
Vukeel's Fee one-fourth	30	“	“	✓		
			32	“	“	✓
	Rupees ...		32	“	“	✓



C. Mune
Acting Registrar

C. Mune
Sealer
The 15th Day of July 1864

Issued a Certificate on Her Majesty's
Treasury Bank of Bombay for the refund
of Rupees one hundred and fifty (150) being
the value of the Stamp used for Special
appeal in this case.

15th July 1864

CGM

Acting Registrar

rk
JAM

Certificate
Bungay