

In the High Court of Judicature, Bombay.

Monday, the first day of August 1864.

SPECIAL APPEAL No. 212 of 1864.

Babaji Tanaji anokile his
Manager his son and heir
Hirachind of the Koutum
District. _____ (Original Defendant) } Appellant,

versus

Phaso Bhaskarji of the
Tarna District and Nara-
yem Pandarung Khutis
of Bombay _____ } Respondent ✓
_____ (Original Plaintiffs)

Rs. 52—15—6

The claim in the Original Suit was to recover four divisions of
a warree which four divisions, the Claimants al-
leged, they had leased to (original) Defendants 1, 3,
and 5

In Appeal No. 685 of 1862 the Actual Judge _____
Respondent of the District of the Koutum — at Tarna reversed with costs
the Decree of the Miff of Alibag — who had thrown out the claim

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 one part of his decision is inconsi-
sistent with and repugnant to another part
thereof for while professing to hold the Bond

No. 18 not proved the Acting Judge nevertheless refers Appellant to another suit for recovery of the money due thereon, that (2) the Acting Judge has erroneously negatived Appellants' right to hold the land in dispute until payment of his lien thereon, because there were other persons entitled to this land in addition to the individual mortgaging the same; that (3) the Acting Judge has failed to give any opinion on the documentary evidence in support of the mortgage to Appellant other than to mortgage bond No. 18 that (4) the Acting Judge has erroneously held Appellants' possession of the land in dispute to be unlawful (on what ground it does not appear) because he did not obtain possession of the same under his mortgage that (5) the Acting Judge has failed to give the right due by law to Appellants' possession of the property in question that (6) there has been a substantial error in law in the investigation of the case which has produced error in the decision of the case on its merits in that the Acting Judge has failed to enquire into and decide whether ^{the} grantor of the mortgage in question had the power as manager of the estate or otherwise to bind all the sharers of the property in dispute by his the said grantor's acts and that (7) the Acting Judge has failed to enquire into and decide as to the validity of the mortgage in question to the extent of the share of the grantor thereof in the property in dispute.

The Court reverse the finding Deceit
of the acting Judge and remand
the case to be tried on the following
issue viz: whether the Mortgage
Bond No 17 is a genuine document
or not.

A new decree to be given - Costs
to follow the final decision

Joseph Arnould.

H. Weston.

MEMORANDUM OF COSTS incurred in Special Appeal No. 212

of 1864 against the decision of the Acting Judge of the District of *The Nonkum* and disposed of on the 1st August 1864 by *remanding the same for retrial.*

IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment	3	00			
Stamp for Vukeelutnama	2	00			
Batta for Process and Postage	1	12			
Sectioner's Fee	1	49			
Vukeel's Fee one-fourth	"	64			
			8	71	
			Rupees	8	71

BY THE RESPONDENT

Stamp for Vukeelutnama	2	00			
Vukeel's Fee one-fourth	"	64			
			2	64	
			Rupees	2	64



Cymme
Acting Registrar

Cymme
Sealer
The 1st day of August 1864

Issued a Certificate on Her Majesty's
Treasury Bank of Bombay for the refund
of Rupees four (4) being the value of the stamps
used for Special appeal in this case.

1st August 1864

Cymme

Acting Registrar

8/1/64

Certificate
Registrar