

Satara

In the High Court of Judicature, Bombay.

This day, the 28<sup>th</sup> day of July 1864.

SPECIAL APPEAL No. 231 of 1864.

Tatia bin Moojapa of the Satara District

Appellant

(Original Plaintiff)

versus

Nana Konher deceased, his son and heir Buheroo of the Satara District

Respondent

(Original Defendant)

Rs. 30-7-10

The claim in the Original Suit was to recover possession of certain lands on payment of the mortgage loan.

In Appeal No. 214 of 1863 the Judge of the District of Satara at Satara confirmed the Decree of the Mjg of Walou who had thrown out the claim.

A Special Appeal was preferred in the High Court on the grounds that (1) there has been a substantial error in law in the procedure of the case which has produced error

error in the decision of the case on the merits in that ~~the~~ the District Judge has held that a mortgage must be proved by a written document and that (2) It has been ruled that an admission made by the father of the Defendant in a suit instituted by the coparceners of the Appellant for the redemption of the identical land is no evidence against the Defendant.

The Court find that the admission in the previous suit of the Deft's father Pana Kacher of the fact of the land having been held in mortgage from Balivros Khetra, and Nuroo bin Raalo, is binding on the Deft, it being the admission of a person from whom Deft derives his right; and that on this admission being established the only issues which remained to be determined were as follows:

1st Has Plff established that he is the legal representative of the original mortgagors, and if so;  
2nd What sum is the Deft entitled to demand before he surrenders the property. (The burden of proof in this last issue being on the Deft.)

The Court reverse the  
decree of the District Judge and  
Prothonotary and remand the suit  
to the Court of original jurisdiction  
that these issues may be  
determined, and a new decree  
passed on the merits awarding  
costs.

H. H. Fisher

S. M. Warden

MEMORANDUM OF COSTS incurred in Special Appeal No. 231-

of 1864 against the decision of the Judge ----- of the District of Sahara and disposed of on the 28<sup>th</sup> July 1864 by remanding the same for retrial.

IN THIS COURT.

By THE APPELLANT—

Stamps for copies of Decree and Judgment .....	2 8	✓
Stamp for Vukeelutnama .....	2	✓
Batta for Process and Postage .....	1 5	✓
Sectioner's Fee .....	1 13 4	✓
Vukeel's Fee one-fourth .....	" 3 8	✓

Rupees .... 7 14

By THE RESPONDENT—

Stamp for Vukeelutnama .....	2	✓
Vukeel's Fee one-fourth .....	" 3 8	✓

Rupees .... 2 3 8



*C. J. M. S.*  
Acting Registrar

*C. J. M. S.*  
Sealer  
The 28<sup>th</sup> day of July 1864

Issued a certificate on Her Majesty's Treasury Bank of Bombay for the Refund of Rupees 2,000 being the value of the stamp used for special Appeal in this case -

28<sup>th</sup> July 1864

Gunn  
Acting Registrar

21  
1864

The Secretary of the  
Treasury Bank of Bombay