

Purna Solapur

In the High Court of Judicature, Bombay.

Wednesday, the 30 day of Nov 1864

SPECIAL APPEAL No. 241 of 1864

Moushi Sayed Ismail  
Ismail Sayed Imam Appellant  
of the Poona District  
(Original Plaintiff)

versus

Bunabi Hanu Hasim  
= Khan Sarwar Khan of the Respondent,  
Poona District (Original Defendant)

Rs. 795-0-0

*Row* The claim in the Original Suit was to recover possession of a house, the property of the plaintiff through an assignment to the plaintiff's father by the mother of the latter who had retained it in dower

In Appeal No. 1677 of 1862 the Asst Judge of the District of Purna was empowered by the Decree of the Munsiff (No. 1) of Purna 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 an error in the decision of

of the Case upon the merits in that  
1<sup>st</sup> The Court below raised for its  
decision a point which was un-  
necessary from the state of the  
pleadings and the Mousiff's decision.  
The genuineness of Appellants' -  
Documents not having been traversed  
by the opposite party, nor impeached  
by the Subordinate Court. The District  
Court therefore has unjustly and  
needlessly cast a suspicion upon  
the Appellants' Documents the same  
being more than 30 years old,  
and produced from proper custody.

2<sup>nd</sup> The decision of the Assistant  
Judge is contrary to law in that,  
by Mohamedan Law, a person  
giving property to his wife in dower,  
cannot afterwards reclaim it  
or reconvey it to any other person -  
that (2) the deed relied upon by the  
opposite party confers no power upon  
the Mother to dispose of the house as  
she pleased, it being granted her to  
live in for herself and her male lineal  
descendants; that (3) according to  
Mohamedan Law the Grantor had  
not the power to make the Mother of the  
opposite party a Waris (heir) to himself  
through

though he might have made her  
a gift: and that (4) the document  
relied upon by the opposite party  
is in the nature of a testamentary  
document; and assuring that the  
maker thereof had power to dispose  
of it as he did, still he could not  
devise more than a third of his property

The court reverses the  
decree of the Assistant Judge  
and remands the cause for  
trial upon the merits. Costs to  
follow the final decision

P. Couch

W. Newlin

A. S. Whiston

MEMORANDUM OF COSTS incurred in Special Appeal No. 24/

of 1864 against the decision of the *Appeal Judge* of the District of *Poona* and disposed of on the 30<sup>th</sup> Nov 1864 by *remanding the same for retrial.*

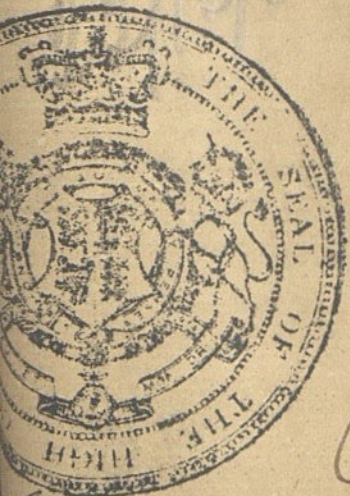
IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment .....	3	0	0	✓
Stamp for Vukeelutnama .....	2	0	0	✓
Batta for Process and Postage .....	1	7	0	✓
Sectioner's Fee .....	1	5	3	✓
Vukeel's Fee one-fourth .....	5	15	5	✓
			13 11 8	✓
Rupees .....	13	11	8	✓

BY THE RESPONDENT—

Stamp for Vukeelutnama .....	2	0	0	✓
Vukeel's Fee one-fourth .....	5	15	5	✓
			7 15 5	✓
Rupees .....	7	15	5	✓



*West*  
Sealer

*West*  
Registrar

30<sup>th</sup> day of November 1864.

Issued a certificate on Her Majesty's  
Treasury Bank of Bombay for the refund  
of Papers (32) thirty-two only being the  
value of Stamp used for Special in this  
case.

Dated the 30<sup>th</sup> day of November 1864

R. M. S.  
Registrar.

R. M. S.

Arbuckle given to Pringe