

In the High Court of Judicature, Bombay.

This day, the 22 day of April 1864

SPECIAL APPEAL No. 26 of 1864.

Babaji Tanaji not present his son and agent in charge of his estate Herachund Babaji of the Konkan District (Original Defendant) Appellant

versus

Bhaskur Abahlut Shende of the Konkan District (Original Plaintiff) Respondent

Rs. 413 — 1 — 6.

The claim in the Original Suit was to recover the amount due on a mortgage deed.

In Appeal No. 621 of 1862 the acting Judge of the District of the Konkan at Tanua amended the Decree of the Juff at Ellibag who had decreed that the Plaintiff should recover the amount claimed from the Defendants ~~and~~ Rungos only by decreeing that the amount should be paid by Herachund or realized from the ground of the mortgaged land and failing this recovered from the other Defendants No. 621. Originally

A Special Appeal was preferred in the High Court on the grounds that the decision of the Assistant District Judge is contrary to Law.

In that the District Judge has given precedence to

to the Respondent's mortgage deed over the
appellant's deed of sale, although the latter
deed was registered prior to the former (2nd) In
that the ^{District} judge erroneously held that it was open
to Respondent to sue again altho the subject
matter of the present action had already
been adjudicated on (3rd) In that the ^{District} judge
has erroneously held that Respondent's right
as mortgagee was not extinguished when he
purchased the mortgaged property from the
mortgagor. (4th) In that the ^{District} judge has given the
precedence to a mortgage deed admittedly without
possession to a Deed of sale accompanied by
possession. (5th) In that the ^{District} judge has erroneously
held that Respondent's possession under his
invalid deed of sale was possession under
his mortgage Deed. (6th) In that the ^{District} judge
has given precedence to Respondent's mort-
-gage deed altho stamped subsequently to
appellant's Deed of sale. (7th) In that the ^{District} judge
has erroneously held that appellant
had notice of Respondent's lien as mortgagee
of the property in dispute (8th) In that granting
that appellant had notice of Respondent's lien
as mortgagee the judge was nevertheless
in error in holding appellant liable for
the same. The Court confirms the decree
of the Court below with costs.

A. H. Lockwood
R. Couch

Bill of costs
By the appellant
In the District

In the mooniffs Court	13. 14. 3	
In the Judge's Court	13. 6. 3	27. 4. 6.
In this Court		
Stamp for memo. of special app ^l	32. " "	
Stamps for Copies of decree & judgment	3. " "	
Stamp for Vukalutnama	2. " "	
Patla for Procep and Postage	1. 8. "	
Sectioners Fee	1. " 6.	
Vukerls Fee	12. 6. 3	51. 14. 9.
	<u>Rupees</u>	<u>79 3 3</u>

By the Respondents
In the District

In the mooniffs Court	55. 0. 3	
In Judge's Court	47. 12. 3	102. 12. 6.
In this Court		
Stamp for Vukalutnama	2. " "	
Vukerls Fee	12. 6. 3	14 6. 3
	<u>Rupees</u>	<u>117. 2. 9.</u>



West
Sealed

West
Registrar

The 22nd day of April 1884