

In the High Court of Judicature, Bombay.

Monday, the 8 day of August 1864.

SPECIAL APPEAL No. 284 of 1864.

Gungadhur Govind Railkar  
deceased, his son and heir Trimbuk of the  
Konkan District (Original Defendant)

Appellant

versus

Rambhut bin Balumbhut Shende,  
deceased, his son and heir Sudaashiv  
Shut Shende of the Konkan District  
(Original Plaintiff)

Respondent

Rs. 19-15-6

The claim in the Original Suit was to redeem a garden  
alleged to have been mortgaged by Plaintiff's  
father to Defendant.

In Appeal No. 222 of 1863 the Assistant Judge  
of the District of Konkan at Shamal confirmed  
the Decree of the District Judge who had awarded the  
claim.

A Special Appeal was preferred in the High Court on the grounds that (1) there  
has been an error in law in the procedure of the  
case which has produced error in the decision  
of the case of ~~the case~~ upon the merits in that

(a) the opposite party having admitted the property in dispute to have been mortgaged but disputed a condition in it, it was incumbent upon him to shew that a mortgage as he described existed. The onus has been wrongly thrown upon the Appellant. (b) The Court did not take to its aid assessors in deciding upon the hand-writing of the bond, which being more than thirty years old should have been held as prima facie proved. The comparison was not made agreeably to Act II of 1855 Section 48. (c) the property in dispute has been in the <sup>possession</sup> ~~possession~~ of the Appellant for more than 35 years for 20 as mortgagee and 15 years as owner, and ten years ago the Appellant sold his right of ownership to another. The burden of proof has therefore been wrongly placed upon the Appellant.

The Court confirm the decree of this <sup>Assistant</sup> District Judge with costs in Special Appellant.

Joseph Arnold  
J. C. C. C.

A. J. Warden

MEMORANDUM OF COSTS incurred in Special Appeal No. 284

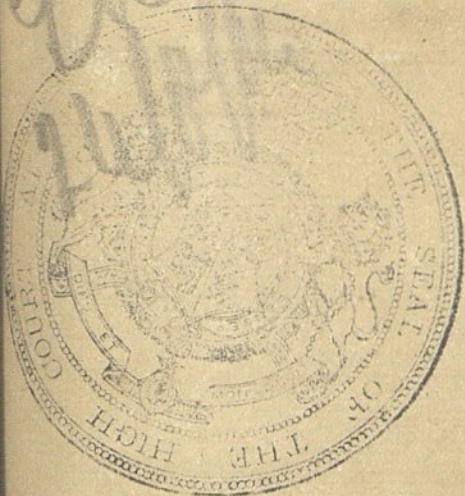
of 186 4 against the decision of the *Assistant Judge* of the District of *the Kanton* and disposed of on the 8 August 1864 by *Confirming the same with Costs*

BY THE APPELLANT—

<i>In the District.</i>			
In the <i>Mooneeffs' Court</i> .....	3 1 7		
In the <i>Asst<sup>n</sup> Judges Court</i> .....	4 7 7		
<i>In this Court.</i>			7 9 2
Stamp for Memorandum of Special Appeal .....	2 " "		
Stamps for copies of Decree and Judgment .....	1 8 "		
Stamp for Vukeelutnama .....	2 " "		
Batta for Process and Postage .....	1 " "		
Sectioner's Fee .....	1 3 9		
Vukeel's Fee .....	" 9 7		
			8 5 4
		Rupees.....	15 14 6

BY THE RESPONDENT.

<i>In the District.</i>			
In the <i>Mooneeffs' Court</i> .....	7 9 7		
In the <i>Asst<sup>n</sup> Judges Court</i> .....	1 9 7		
<i>In this Court.</i>			9 3 2
Stamp for Vukeelutnama .....	2 " "		
Vukeel's Fee .....	" 9 7		
			2 9 7
		Rupees.....	11 12 9



*Gunn*

*Gunn*  
Acting Registrar

*The sealer*  
The 8<sup>th</sup> day of August 1864