No. 228 of 1864 Special

The High Court of Judicature Bombay

Special appeal, No. 30 of 1864.

Appellant.

Bápusá bin Sadáshivá Gujar,-
of the Puná District.

Respondent.

Dinkar Ballál Paranjpe, by his
agent [Mookhtyár] Krishnáji
Ballál Paranjpe,- of the Puna
District.-

Rs. 103-4-6.

The grounds of objection to the decision
appealed against are:-

1. That it is contrary to law in that,
the Respondent having neglected to put
forth his objections against the appellants
getting the possession of the disputed
land, at the time it was obtained by him,
by [virtue of a decree of] a Court [of Justice],
it is contrary to law to have awarded his
claim

claim for produce of the land (in dispute).

2. That a substantial error in law in the investigation of the case has produced an error in the decision of the case upon its merits in that – though the deed of mort-gage upon which the claim for produce (of the land) is based, does not contain a stipulation by which produce (of the land) could be demanded in addition to interest, in Appeal No. interest was awarded to him – whereas, in the prevent case, produce (of the land) has been awarded to him:– Wherefore, it is an error to have awarded two kinds of claim against the appellant –

3. That though no interest or produce exceeding the principal of a debt could be awarded – it is an error to have awarded Rs. 103-4-6 for a debt of Rs. 21-8-0, due to

the

the Respondent against the property in dispute.

The 9th January 1864.

For [the appellant]

Ganesh Hari

Translated by
Trimbakrao Bapuji Mayadev.

Translator
(23/1/64)

Appeal

No. 1010 of 1862.

October 12th 1863.

Court of the District Judge of Poona

Dinkur Bullal ——— Appellant.

-Versus-

Bapoosa bin Sudasewsa ——— Respondent

—Rupees 147-4-4—

Appellant Dinkur has brought this action against Respondent Bapoosa to recover the value of seven years produce of a piece of land of which Respondent Bapoosa had dispossessed him by virtue of a decree obtained by Respondent Bapoosa against his (Appellant Dinkur's) Brother Appellant Dinkur has deducted from his claim the expenses of cultivation Respondent Bapoosa in reply urged that he had been put in possession of the land by virtue of a decree and that Appellant Dinkur ought at the time to have preferred any claim which he had to the land. That the expenses of cultivation had equalled the proceeds of the land and he had therefore derived no profit whatever.

On the 15th of November 1862 the Moonsiff of Kher threw out the claim on the ground that when Respondent Bapoosa dispossessed Appellant Dinkur of the land, Appellant Dinkur did not represent that he had a mortgage lien on the land Appellant Dinkur in his petition of appeal urges that his mortgage lien is not affected by its not having been made public at the time the land was put up to sale and purchased by Respondent Bapoosa, secondly that he was not a party to the decree No. 15 that in the decree of the Suddur Adawlut it is mentioned that there was no necessity for him Appellant Dinkur to shew the extent of his lien on the land, thirdly that he has proved his right to the compensation claimed by him.

The points for decision are 1st whether Appellant Dinkur is entitled to the two years produce of the land which Respondent Bapoosa obtained from Appellant Dinkur's Brother Kirshna by virtue of a decree; secondly how long was the land in Respondent Bapoosa's possession, thirdly what amount of compensation is Appellant Dinkur entitled to for the period that the

land

land was enjoyed by Respondent Bapoosa.

With regard to the first point the Court holds that Appellant Dinkur has not the shadow of a right to claim the proceeds which Respondent Bapoosa recovered by a decree from Krishna, for Appellant Dinkur has in no way suffered therefrom - With reference to the second point the wukeels of both parties admit that Respondent Bapoosa had possession of the land for five years, as the Civil Courts have decided that Respondent Bapoosa had no right to dispossess Appellant Dinkur of it. Appellant Dinkur is clearly entitled to compensation for that period and the Court calculates the compensation in the absence of other satisfactory proof at the rate of Rupees 20-10-6 per annum being the rate at which Respondent Bapoosa obtained compensation from Krishna - The Moonsiff's decree is reversed and Appellant Dinkur is awarded Rs. 103-4-6 with costs thereon - The rest of the claim thrown out.

(Sigd) A. B. Warden
Judge

Sectioner's fee annas 5

H.C.

True Copy

Judge

[illegible]

Presented this 9th day of January 1864. with copies of bond, order, judgment, one minute and a valuation.

[illegible]

1st Assist Register.

No 30 of 1864.

Registered 5/2/64

[illegible]

222

[illegible]