



from the death of Hoosain whereas according to clause 13 section 1 of act 14 of 1859 it should be calculated from the death of Kadersab from whom the property alleged to be joint is said to be descended that (3) the claim for the dower is barred by the law of limitation as not laid within 3 years from the date of Hoosain's death that (4) the onus of proof is wrongly thrown upon the Appellant that (5) there is no legal proof in the case to shew the community of interests between the two brothers nor the amount or value of the joint family property that (6) the Appellants admission in respect to the property in his possession should have been received as a whole and not in part that (7) the District Judge was in error in awarding the Respondents claim for the Dower from the property belonging to the Appellant and not deducting it in the first instance from the share which the District Judge held to belong to Hoosain.

The Court finds that material issues in this case have not been disposed of. It therefore reverses the Decree of the Judge and remands the case for a determination of the following issues.

1. Does the Plaintiff prove that property belonging to her deceased husband remained at his death in the possession of the defendant to the extent claimed or to any smaller amount, and if so to what amount?

2. If the above issue be found in the affirmative, has the Plaintiff lost her right to recover such property by reason of lapse of time since the date on which a cause of action accrued to her deceased husband? The cause of action accrued at the death of Mr. Jathu Kabir Sahib, unless the Plaintiff can show that her deceased husband & his brother were subsequently partners in trade, in which case the cause of action would have arisen on the cessation of such partnership.

3. Whether there was such a partnership in trade between the two brothers proved by the Plaintiff?

4. If so when it ceased?

As a result of the foregoing the merits, costs to follow & final decision.

Jobe  
dated

If an award be given for any amount of the claim beyond the dower, the amount of dower sh<sup>d</sup> be first deducted to the Plaintiff & she have her share of the inheritance allotted to her out of the remainder only -

The Judge was in error in <sup>citing</sup> applying the Mahomedan law of limitation to this case although the litigants on both sides were Mahomedans - The law of limitation of suits is like the Law of Evidence, a portion of the Law of procedure: in all suits therefore by whomsoever brought, in all Courts subject to the jurisdiction of the High Court, the Law of limitation to be applied is that laid down in the Regulations & Acts in force at the time of the commencement of the suit - In this case the Rule of limitation to be applied is Act XIV of 1859 Sec 1 cl 16 -

Decree to be given on merits -  
Costs to follow the final event.

Joseph Arnould

Wm -

A. J. Mander

MEMORANDUM OF COSTS incurred in Special Appeal No. 307  
of 186 4 against the decision of the Judge of the  
District of Amritsar and disposed of on the 11<sup>th</sup> Aug 1864  
by remanding the same for retrial.

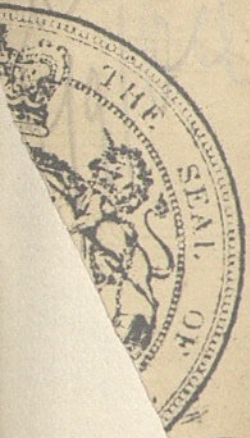
IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment .....	5 10				
Stamp for Vukeelutnama .....	2	"			
Batta for Process and Postage .....	2	15	"		
Sectioner's Fee .....	2	4	6		
Vukeel's Fee one-fourth .....	13	15	7		
				26	31
				Rupees	26 31

BY THE RESPONDENT—

Stamp for Vukeelutnama <i>two</i> .....	4	"			
Vukeel's Fee one-fourth .....	13	15	7		
				17	15 7
				Rupees	17 15 7



*G. S. M. S. S.*  
For Acting Registrar

*G. S. M. S. S.*  
*Sealer*  
*August 1864.*

Spent a certificate on Her Majesty's Treasury  
Bank of Bombay for the Refund of Stamp  
one hundred (£100) being the value  
of the Stamp used for Special app.  
in this case.

11<sup>th</sup> August 1864

G. L. Sumner  
For Acting Registrar

Ed  
1864

Certificate of the value of the stamp

For Acting Registrar