

Wankar

In the High Court of Judicature, Bombay.

Fri day, the 26th day of August - 1864.

SPECIAL APPEAL No. 310 of 1864.

Ulikhan Wulud Jamjathkhan and
Ahmedkhan Wulud Mohiddinkhan +
and Husseinkhan Wulud Foyderkhan
and Enookkhan Wulud Muhammed
+ Khan and Asmeerkhan Wulud +
Mahamoodkhan and Enayat
+ Khan Wulud Masoomkhan +
Deshmooke of the Northem Dis
+ trict (Original Plaintiffs)

Appellants,

Respondents

Jafar Khan and Gamraekhan and
Enayatkhan Wulud Akhbar of whom
Gamraekhan deceased, his Widow and
her heirs Shaghubibi, and Humaidkhan
Wulud Jafarkhan deceased his sons
and heirs Sojyukhan and Sunya
+ Sher Khan and Dawlatkhan and
+ Adil Khan Wulud Humaidkhan of
whom Sunsherkhan deceased his
sons and heir Doodkhan and Ali
+ Khan alias Lalokhan and Sunyat
+ Khan Wulud Sunsherkhan and
+ Muhammedkhan Wulud Sunsherkhan
deceased, his son and heir So
+ meerkhan and Majaveerkhan +
+ and Junglakhan and Duryakhan
Wulud Enayatkhan and Sunsherkhan
+ Khan and Ujan Khan and Pasheer
+ Khan Wulud Husseinkhan and
+ Najamalikhan and Goolamqli +
+ Khan Wulud Junitkhan and
+ Lodi Khan Wulud Foyderkhan
Deshmooke of the Northem Dis
+ trict (Original Defendants)

Rs 149-8-00

The claim in the Original Suit was to ^{Jodil} redeem 28 fields of ^{Jodil} ~~land~~,
the Plffs alleged that they were their family property, and
Masoom, their ancestor, had mortgaged them to Foyderkhan
and another Plaintiff and that Defendants had refused
to receive the money and restore them (viz: a sixth share
of three and half shares of the remainder of the fields)

In Appeal No. 176 of 1863 - the ^{Jodil} ~~1st~~ ^{part} ~~of~~ ^{of}
the District of the Northem at Paund affirmed
the Decree of the ^{Jodil} ~~Judg~~ ^{Judg} of Mahad who had awarded 6 Plffs a 10th
Share of field and had thrown out the remainder of
the claim.

A Special Appeal was preferred in the High Court on the grounds that (1) the
decision of the Assistant Judge is
contrary to law, in that he has mis-
-constructed Documents exhibits N^{os}
11, 23, 24, 26, 28, 29, and 30 in holding
that

that although there is proof of a mortgage, there is nothing to show that the property was the property so mortgaged, this fact appearing sufficiently from those documents for the purposes of this suit; that (2) the Assistant Judge has erred in holding Appellant prejudiced from the fact that he could not prove for what sum the mortgage was made and when and by whom the same was made; that (3) the Assistant Judge erred in requiring stranger proof than that he mentions, the mortgage according to Assistant Judge having been made so far back as A. D. 1821: and that (4) there has been substantial error in law in the investigation of the case which has produced error in the decision of the case in its merits in that it being held proved that Respondents hold some property in mortgage from Appellant, the onus of proof should have been thrown on Respondents to show that it was not the property so mortgaged that is sued for in this action instead of calling on Appellant to prove the converse.

The Court confirms the Decree of the Assistant Judge with costs on Special Appellants.

Joseph Arnold

A. W. Menden

MEMORANDUM OF COSTS incurred in Special Appeal No. 310

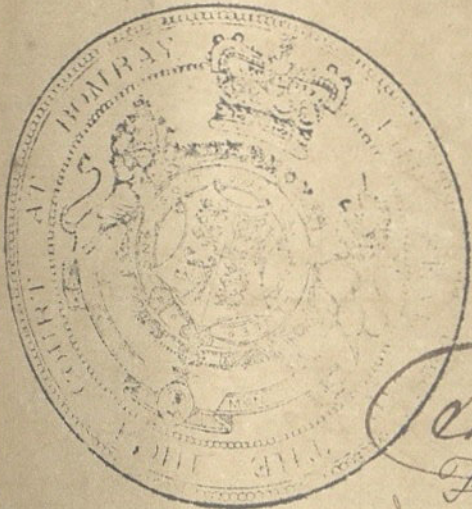
of 186 4 against the decision of the *Sp.^l* Judge of the District of *the Nontan* and disposed of on the 26th August 1864 by *Confirming the same with costs*

BY THE APPELLANT

<i>In the District.</i>			
In the <i>Moonneff's Court</i> -	.....	34	69
In the <i>Sp.^l Judge's Court</i> -	.....	23	39
<i>In this Court.</i>			57 106
Stamp for Memorandum of Special Appeal	.....	8	"
Stamps for copies of Decree and Judgment	.....	3	8
Stamp for Vukeelutnama	.....	2	"
Batta for Process and Postage	.....	10	2
Sectioner's Fee	.....	2	"
Vukeel's Fee	.....	4	7
		30	19
		Rupees	87 123

BY THE RESPONDENT

<i>In the District.</i>			
In the <i>Moonneff's Court</i> -	.....	11	79
In the <i>Sp.^l Judge's Court</i> -	.....	5	79
<i>In this Court.</i>			16 156
Stamp for Vukeelutnama	.....	2	"
Vukeel's Fee	.....	4	79
		6	79
		Rupees	23 73



[Signature]
For Sealer

[Signature]
For Acting Registrar