

Kankar

In the High Court of Judicature, Bombay.

Tuesday, the 6th day of September 1864.

SPECIAL APPEAL No. 322. or 1864.

Ramchundur Mahadev Agashe of Solbe in the Rutnagiri Division of the Konkan District, and now at Pen in the Sanna Collectorate - Appellant, (Original Plaintiff)

Balaji Raghunath Dambre and Vinayak Sadashev Aglekar of the Rutnagiri Division of the Konkan District - Respondents, (Original Defendants)

Rs. 65-9-5

Special Appeal No. 449 of 1864

Balaji Raghunath Dambre of the Rutnagiri Division of the Konkan District - Appellant, (Original Defendant)

Ramchundur Mahadev Agashe of Pen, his Agent Chandras Parasan Phaturkar of the Rutnagiri Division of the Konkan District - Respondents, (Original Plaintiff)

Rs. 94-7-5

The claim in the Original Suit was to recover a share of the Motee village Bejhal, and a share of Comberan in the village Kolimbay.

In Appeal No. 125 of 1861 the Senior Assistant Judge of the District of the Konkan at the detached station of Rutnagiri (appointed) the Decree of the S. C. of Rutnagiri who had decreed for Plaintiff

2322 Cross Special Appeal was preferred in the High Court on the grounds that the decision of the Senior Assistant Judge is contrary to law. In that according to the Regulation - tion

• laws XVI and XVII of 1827, the col-
• lector's right to the land in dis-
• pute lies to the extent of levy-
• ing rent only, and his interfer-
• ence to assist (others) under a
• title of proprietorship cannot
• be legal such being the case, &
• this claim which was brought
• for the purpose of establishing
• proprietary title to the land &
• should not have been thrown
• out merely on the ground of
• the land being Whāiātā be-
• cause of the (non payment) &
• of rent.

2. That a substantial error in
• law has occurred in the investi-
• gation of the case which has
• produced an error in the decision
• of the case upon its merits in that
• it was an error to have given de-
• cision without a consideration
• of the claim which was brought
• for the purpose of taking posses-
• sion of the property under the
• rent. note N^o 5.

3. So long as the possession &
• of the property is not duly restored
• to the Appellant under the &
• terms of the deed N^o 5 the impro-
• per conduct of the Respondents
• will in no way affect the claims
• of the Appellant against the &
• Respondents. Such being the case,
• the claims of the Appellant should
• not have been thrown out.

4. According to the Joint rules,
• the right of the collector over
• land lies to the extent only of the
• rent

rent and nonpayment of the
rent does in no way affect any
title over property. It was there-
fore an error to have disallowed
the claims merely on an objection
taken by the Respondents in the
absence of a similar one on the
part of the collector.

no 449
That substantial errors in
law in the investigations of the case
have been made which have produ-
ced errors in the decision of the case
upon its merits.

1. In that the Respondents
Shreeks having been determined
by his refusing to give the ne-
cessary Subdolajet to Govern-
ment and the land having
been made "Shalsa" the Senior
Assistant Judge was in error
in awarding possession of the
property to the Respondent.

2. In that the Government
whose interests are affected by
this decision is not made par-
ty to the suit.

3. In that it is incompetent
for a Khoti and especially the
Respondent whose rights are
determined to throw out a
cultivator from his possession
so long as he pays assessment.

4. In that it is competent
for a tenant to question the
title of a landlord after the
termination of the tenancy.

5. In that the Respondent
not having obtained the land
from

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from Government at the time when it was made. It is not competent for him to oust the Appellant from his possession.

6. In that the award of the rent for the 2 years is contrary to the terms of the lease since the land was flooded with salt water.

7. In that the Plaintiff being a resident of the Zilla could not see by Agent.

8. In that all his evidence is not taken.

The court held that the Thika Bagh Ajastri land having been let to have become Khalsa and Bahajee being in occupation thereof as tenant under Govt. he cannot be removed from his tenancy under Raim Chunder's former title, which has determined. The Court therefore reject Raim Chunder's claim to possession of the said Thika reversing so much of the Senior Assistant Judge's decree as relates thereto with costs.

The court find that the action for rent should have been brought and decided in a Revenue Court, and they annul so much of the Senior Assistant Judge's decree as relates to the said rent and direct the suit in regard thereto to be tried in the Court of the Collector of Bhatnagar. Costs to follow the final decision.

Atkinloch Forbes
Attorney

Special Appeal No 322 of 1864

Bill of costs

By the Appellant

In the District

In the Suder Ameen's Court — 29. 5. 4. ✓

— Do. Senior Asst. Judge's Do. — 5. 5. 4. ✓ 34. 10. 8. ✓

In this Court

Stamp for Memo. of Special Appeal. 8. " " ✓

Stamps for copies of Decree & judgment — 4 " " ✓

Stamps for two Vukalutuanas — 4 " " ✓

Batta for Proccds and Postage — 1. 2. " ✓

Sectioner's Fee — 1. 12. 9 ✓

Vukeel's Fee — 2. " " ✓

20. 14. 9 ✓

Rupees 55. 9. 5.

By the Respondents

In the District

In the Suder Ameen's Court (including v. Fee) — 6. 5. 4. ✓

— Do. Senior Asst. Judge's Do. — 22. 5. 4. ✓ 28. 10. 8. ✓

In this Court

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Rupees 28. 10. 8.

Special Appeal No 449 of 1864.

By the Appellant

In this Court

Stamp for Memo. of Special Appeal — 8. " " ✓

Stamps for copies of Decree & judgment — 3. " " ✓

Stamp for Vukalutuanas — 2 " " ✓

Batta for Proccds and Postage — " 14. " ✓

Sectioner's Fee — 1. 8. 3. ✓

Vukeel's fee (one from the) — " 11. 4. ✓

16. 1. 7. ✓

Rupees 16. 1. 7.

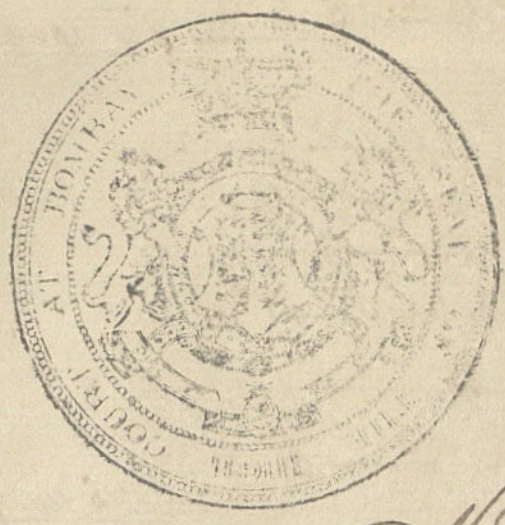
By

By the Respondent
Stamp for Vukabutraama
Vukheel's Fee (one fourth)

2. " "
" 11. 4

2. 11. 4

Rupees. 2. 11. 4.



[Signature]
For Acting Registrar

[Signature]
For Sealer

The 6th day of September 1864.