

Konkan

In the High Court of Judicature, Bombay.

On day, the 15th day of August 1864.

SPECIAL APPEAL No. 323 of 1864.

Vasudev Dinkar Kelkar
of the Konkan District

Appellant

(Original Defendant)

versus

Jaganath Babajirav -
Vaidya of the Konkan District

Respondent

(Original Plaintiff)

Rs. 15 — " — "

The claim in the Original Suit was to recover possession of a piece of ground alleged to have been purchased and to detain ~~the~~ Deft from throwing rubbish on the same.

In Appeal No. 238 of 1863 the Assist Judge of the District of Konkan at Tannah amended the Decree of the ~~Judge~~ of Alibag who had awarded possession to Deft but allowed Deft to throw rubbish on the disputed ground and admitted the whole claim.

A Special Appeal was preferred in the High Court on the grounds that ~~it is~~ the decision of the assist Judge is ~~in~~ contrary to law in that the cause of action having arisen more than twelve years ago the Appellate Court ought to have rejected the claim under section 12 of Act XIX of 1857

(2) that there has been a substantial error in law in the investigation of the case which has produced error in the decision thereof upon its merits in that as he was in the habit (of flinging rubbish) even many years before the Respondent got the ownership of the grounds and had thereby acquired such a right as even the original owner himself could not have disputed, it was therefore an error to have deprived him of it (3) the Respondent depends for his right on exhibit N^o 3 which gives no right to the Respondent to interfere with a usage admitted by the original owner. The Appellate Court therefore in conferring such a right upon the Respondent decided in opposition to the terms of N^o 3.

The Court confirms
the decree of the Assistant
Judge with costs on the
Special Appellant

H. P. 14/18

J. M. W.

MEMORANDUM OF COSTS incurred in Special Appeal No. 323.

of 186 4, against the decision of the *assistant judge* of the District of *the Koutum* and disposed of on the 15th August 1864 by *Confirming the same with Costs.*

BY THE APPELLANT—

<i>In the District.</i>			
In the <i>Moonsiff's Court</i>	5 12 2		
In the <i>Sp^{ts} Judge's Court</i>	1 7 2		
<i>In this Court.</i>			7 34
Stamp for Memorandum of Special Appeal	1 "		
Stamps for copies of Decree and Judgment	1 8 "		
Stamp for Vukeelutnama	2 "		
Batta for Process and Postage	6 2 "		
Sectioner's Fee	1 1 "		
Vukeel's Fee	" 7 2		
		7 2 2	
Rupees....		14 56	

BY THE RESPONDENT.

<i>In the District.</i>			
In the <i>Moonsiff's Court</i>	6 15 11		
In the <i>Sp^{ts} Judge's Court</i>	3 5 2		
<i>In this Court.</i>			10 51
Stamp for Vukeelutnama	2 "		
Vukeel's Fee	" 7 2		
		2 7 2	
Rupees....		12 12 3	



E. G. G. G.
Acting Registrar

E. G. G. G.
Sealer
The 15th day of August 1864