

Kankar

In the High Court of Judicature, Bombay.

Monday, the 15th day of August 1864.

SPECIAL APPEAL No. 324 of 1864.

Bhica bin Prasad
of the Kankar
District — (Original Plaintiff)

Appellant

versus

Tranga bin Balkya
of the Kankar
District — (Original Defendant)

Respondent

Rs. 20-0-0

The claim in the Original Suit was to obtain entry of a field in Peppi's name on the ground that he had purchased it.

In Appeal No. 270 of 1863 the Assnt. Judge of the District of Kankar at Tannah reversed the Decree of the Poff of Pinwall who had awarded the claim and threw it out with costs.

A Special Appeal was preferred in the High Court on the grounds that (1) the decision was contrary to law in that,

(a) The deed of sale by the opposite party being held proved, the Court

did not award the claim, the objection to the validity of it not having been raised by him.

(b) Though the father of the opposite party may have been alive at the date of the deed, still as against the law, after the father's death, it is perfectly valid.

(c) To convey the estate during the father's life time was a fraud in the law which he could not plead as he would thereby be taking advantage of his wrong.

II There has been an error in law in the procedure of the case which has produced error in the decision of the case upon the merits in that,

(A) The Court below having laid down an issue regarding the genuineness of the deed, ultimately decided the case upon the validity of it.

(b) The evidence afforded by the Exhibit No. 29 is not correct as it can be shown that the payment in question was made by Bhicea the appellant, and not by deceased Balkya, the father of the opposite party personally.

The Court reverse the decree of the Assistant Judge and confirm that of the Moonsiff, with costs on the Special Respondents

H P H Dushie
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