

In the High Court of Judicature, Bombay.

Now day, the 9<sup>th</sup> day of Jan'y 1864

SPECIAL APPEAL No. 327 of 1864

Venayak Bapooji Tawar  
-willetter of the Putnag-  
-geri Division of the  
Konkan District  

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(Original Plaintiff)

Appellant

versus

Vishnoo Bhekaji Phudke and  
Shitaram Gopal Samba and  
Keso Ramchunder Panwal-  
-ker and Subharam Lelke  
-man Panulker of the  
Putnageri Division of the  
Konkan District (Original Defendants)

Respondents,

Rs. 155-9-4-

The claim in the Original Suit was to before a division  
of a Khatia village and the allotment of a  
fourth share to the plaintiff

In Appeal No. 102 of 1861 the Senior Ass't Judge  
of the District of the Konkan at Putnag (Murcha  
the Decree of the S. Am at Putnag) who had been  
for the claim

A Special Appeal was preferred in the High Court on the grounds that (1) the  
decision of the Senior Assistant  
Judge is contrary to law in that  
(a) The mortgage of property by  
an unauthorized person has been  
upheld.

He

(b) The family of the Appel:  
- lant and that of Luxemman,  
and others has been assumed  
to be joint and undivided in  
contradiction to the admissions  
made by the Defendants. -

(c) Supposing the family to  
have been undivided, and that  
Luxemman was the manager  
thereof, still the mortgage of  
more than his own share was  
invalid. -

(d) The cognisance of the  
mortgage by the Appellant -  
does not constitute his cov:  
- sent to it, but there is autho:  
- rity for saying that he has al:  
- ways objected to it. -

2. That there has been an error  
in law in the procedure of the case  
which has produced error in the deci:  
- sions of the case on the merits in that,

(a) The genuineness of the  
interpretations in N. E. has been  
made to rest upon the correspon:  
- dence of the land with the Pa:  
- registry, though the latter affords  
no complete security on the sub:  
- ject. -

(c) Assuming the Genuinen:  
- ness of the interpretations -  
still they contain no recogni:  
- tion of the mortgage by Lux:  
- man. -

(c) The fact of appellant  
having been a surety for the  
opposite party implies parti:  
- tion according to Hindu  
Law. -

The Court considers that the Judge has erred in treating the suit as one for the division of family property still undivided, the claim being for a share which the Plaintiff alleged had been first held by himself and then entrusted to Luksh-  
man for management and in treating the statement in the Deed No. 6 as an admission by Bapooji of a mortgage of that share -

The decree of the Court below is reversed and the cause remanded for retrial and <sup>for a</sup> ~~for a~~ <sup>new</sup> ~~decre~~ <sup>decre</sup> ~~being passed~~ on the merits - Costs to follow the final decision -

R. Couch

J. Newton,

A. S. Warden



Issued a Certificate on Her Majesty's  
Treasury Bank of Bombay for the refund of  
Rupees (16) sixteen being the value of Stamp  
used for Special appeal in this case.

Dated 9<sup>th</sup> January 1865.

R. West  
Registrar

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Certificate given to Mr. Laram

Register