

In the High Court of Judicature, Bombay.

Tues day, the 6th day of September 1864.

SPECIAL APPEAL No. 328 of 1864

Gungadhur Purushram Khair of
the Rutnagiri Division of the Kon-
kan District

Appellant

(Original Defendant.)

versus

Balaji yadow Khair of the Rut-
nagiri Division of the Konkans
District

Respondent

(Original Plaintiff.)

Rs. 992-13-9

The claim in the Original Suit was to recover a share in certain
joint property.

In Appeal No. 46 of 1861 the Senior Assistant Judge
of the District of the Konkans at Rutnagiri annulled
the Decree of the Pudderance, who decreed for (original)
Defendant.

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 property being entirely the Appellants

in

in his own right, the same having been self-acquired by himself and his father.

¶ There has been a substantial 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) a material issue has not been decided vizt whether the property in dispute is subject to partition, since even though a division may not have taken place till the 1778 the said property may be claimed by the Appellant as his own, that (b) the Court has assumed without any evidence that the property in dispute is common family property, that (c) there has been misconstruction of the letters - the same being quite consistent with the fact that the property was the exclusive property of the Appellant, that (d) the letters upon which dependance has been placed have neither been proved, nor admitted. The Court in the absence of any evidence has assumed them to be "undoubtedly genuine".

The decision of the Senior Assistant Judge is confirmed with costs

Abraham Forbes.

J. Newton

MEMORANDUM OF COSTS incurred in Special Appeal No. 328

of 1864 against the decision of the Senior Appellate Judge of the District of the Honkum and disposed of on the 6th September 1864 by *confirming the same with costs*

BY THE APPELLANT—

In the District.

In the *Sudder Amins Court* 66 10 15

In the *Senior Appellate Judge's Court* 90 12 2

In this Court.

Stamp for Memorandum of Special Appeal 50 " "

Stamps for copies of Decree and Judgment 3 " "

Stamp for Vukeelutnama 2 " "

Batta for Process and Postage 1 8 "

Sectioner's Fee 1 11 3

Vukeel's Fee 29 12 7

157 63
87 15 10

Rupees..... 245 6 1

BY THE RESPONDENT.

In the District.

In the *Sudder Amins Court* 137 1 "

In the *Senior Appellate Judge's Court* 102 6 1

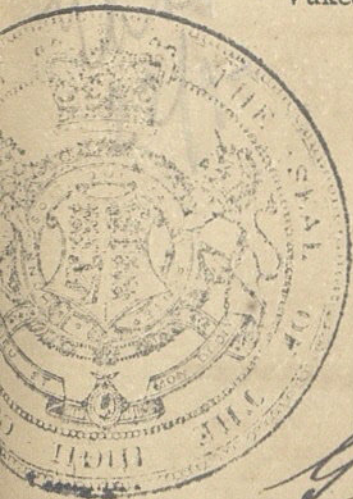
In this Court.

Stamp for Vukeelutnama 2 " "

Vukeel's Fee 29 12 7

239 7 1
31 12 7

Rupees..... 271 3 8



G. S. M. S. S.
G. S. M. S. S.
By Acting Registrar
For Sealer

The 6 day of September 1864