

In the High Court of Judicature, Bombay.

Done day, the 15th day of August 1864.

SPECIAL APPEAL No. 331 — of 1864.

Roobaji bin Dhondji of the
Satara District

Appellant

(Original Defendant)

versus

Kedari bin Babaji of the Satara
District

Respondent

(Original Plaintiff)

Rs. 4 — 2 — 9.

The claim in the Original Suit was to *recover possession*
of some Gov^t land

In Appeal No. 304 of 1863 the *Justice*
of the District of *Sattara* at *Sattara* reversed
the Decree of the *Judge of Kolhapur* who *had thrown out*
the claim and *awarded it with costs*

A Special Appeal was preferred in the High Court on the grounds that *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

the merits in that (a) the Court below has awarded the opposite party's claim, he being a plaintiff in ejectment, without his shewing a better title, but simply the entry of his name in the Revenue Register contrary to N^o. 94 of 1861 and 490 of 1863. - (b) the Court below has disregarded the presumption of ownership in favor of the Appellant arising from the fact of his possession and though admitting that the appellant "may have held this piece of one Bega for a long time," still gave for judgment against him because he did not prove 30 years - possession, such possession being unnecessary under Act 14 of 1859. - - - and (c) the issue laid down by the Court below is erroneous, since the entry in the Revenue Registers could not decide the ownership of the field - but even if it did, the Court lost sight of the fact that it commenced only from 1859-60 whereas the land was previously in the name as well as in the possession of the Appellant's brother, and no Razinama was produced to show a transfer from him. +

The Court find that in this suit the following material issues should have been determined;

1st Has Plff established that
he let the land in dispute to
the Deft.

2nd If not, has he established
that he possessed a proprietary
title to the land which entitled
him to eject the Deft. and
if the Plff's title be established

3rd Is the maintenance of the
action of ejectment barred
by the flaw of limitation or
has Deft established pro-
prietary possession for a
term which will give him
(Deft) a prescriptive title.

The Court reverse the decree
of the lower Courts and
remand the suit that these
issues, & any others which
the Judge may find to
be necessary, shall be decided,
and a new decree passed
on the merits awarding
costs.

H. P. P. P. P.

M. W. P. P. P.

Issued a certificate on the
~~Treasury~~ ^{Treasury} of Her Majesty's Bank of
Bombay for the refund of Rupees
one (1) being the value of ~~the~~
Stamp used for Special Appeal
in this case.

15th August 1864.

Chunna

Acting Registrar

Certificate

~~et~~
~~MM~~

Acting Registrar

15th August 1864