

In the High Court of Judicature, Bombay.

Thursday, the 18th day of August 1864.

SPECIAL APPEAL No. 339 of 1864.

Vitoo bin Krishnaji of the
Poona District

Appellant

(Original Defendant)

versus

Balwanta bin Appaji a
minor by his mother and guardian
Savitribai of the Poona District

Respondent

(Original Plaintiff)

Rs. 14 — 14 — 6.

The claim in the Original Suit was to recover possession
of certain ancestral success property.

In Appeal No. 19 of 1864 the Assist. Judge
of the District of Poona at Poona preferred
the Decree of the Dy. of Patil who had thrown out
the claim and awarded it with
costs.

A Special Appeal was preferred in the High Court on the grounds that (1) ~~that~~
the decision of the Assistant Judge
is contrary to law in that the Munsiff
having passed a judgment against the
Plaintiff (Respondent) by default for

non-appearance the Assistant Judge had no jurisdiction to hear an appeal against the plaintiff's decree (2) ^{that} ~~that~~ there has been a substantial error in law ^{and} in that ~~the~~ the Respondent having failed to produce a certificate of heirship and he being a minor Savitreebai is not competent to maintain this action; and that (3) the Respondent having admitted in his examination N^o 36 the appellants right to the property the said Judge was in error ~~in~~ awarding it to the Respondent.

The Court are of opinion that the following issues arose in this case.

1st Has Plff established that the land in dispute is held on themeeran tenure and that her son, the minor, is the heir of the last meeradar who was in occupation.

2nd If so, has Deft. established adverse possession as proprietor by himself and those through whom he derives his right for a term of thirty years.

The Court reverse the decrees of both the lower Courts and remand the suit that a new trial may be held before the Court of original jurisdiction, ~~where~~ in which these issues and any others which the lower Courts shall find necessary

may be decided and a new decree
passed on the merits awarding costs

A. H. Walker

A. H. Walker

MEMORANDUM OF COSTS incurred in Special Appeal No. 339.

of 1864 against the decision of the *Assistant* judge of the District of *Poona* and disposed of on the *18th Aug^r 1864* by *remanding the same for retrial.*

IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment	3	"	"		
Stamp for Vukeelutnama	2	"	"		
<i>Stamp for an application to stay execution</i>	2	"	"		
Batta for Process and Postage	2	5	"		
Sectioner's Fee	"	12	"		
Vukeel's Fee one-fourth	"	19	"		
				10	29 [✓]
				Rupees	10 29 [✓]

BY THE RESPONDENT—

Stamp for Vukeelutnama	2	"	"		
Vukeel's Fee one-fourth	"	19	"		
				2	19 [✓]
				Rupees	2 19 [✓]



Y. M. Sealon

Y. M. Acting Registrar

The 18th August 1864

Issued a Certificate on Her Majesty's
Treasury Bank of Bombay for the refund
of Rupee one (1) being the value of the
Stamp used for Special appeal in this
Case.

18th August 1864


Acting Registrar

21
1864