Special Appeal
No 367 of 1864
Appeal with accompanying
See the order

THIRTY TWO RUPEES
बत्तीस रुपये
STAMP OFFICE

In the High Court of Judicature at Bombay

No. on the File

No. 462 of 1863 of appeal in the District Court

Motibai, widow of Jetha Khetsi deceased inhabitant of Tama (Plaintiff) ——— } Appellant.

versus

Govind Kallyanji also of Tama (Defendant) ——— } Respondent

Claim Rupees 775 — — —

The grounds of objection to the decision appealed against are

I That it is against Law, in that,

(a) ~~[illegible]~~ The statute of Limitations does not bar the claim ~~[illegible]~~ with respect to the purchase from the family priests = chy.

(b) The onus probandi has been improperly thrown on the Appellant.

II That there have been material errors in law in the investigation of the case which have produced substantial errors in the decision of the case on its merits in that,

(a) The finding of the Judge is ~~incomprehensible~~ by both indistinct and inconclusive —

Vithu Anath Mandlik
vakil

Bombay
8th March
1864

B 4616

Venkata Rao Valad Vishwanath Narayan Mandlik
vs
Bhiyaji Narayan
Stamp Vendor

9

No. 187 of 1864.

Presented 8th day of March 1864 with copies of two decrees, 2 judgments and a vakalatnama.

[illegible]
1st Asst. Registrar.

[illegible]

In the High Court of Judicature, at Bombay
Special Appeal No. 367 of 1864

Motibáï widow of the late Jetha Khetsi of Jamna (Plaintiff) ..... } Appellant.
vs
Goovind Kallyánji also of Jamna (Defendant) ..... Respondent.

To
The Honble the Chief Justice and the Judges of
Her Majesty's High Court of Judicature at
Bombay.

The humble Petition of Motibáï
appellant in the above cause,

Most respectfully sheweth,

That your Petitioner and her respondent Goovind Kallyánji have agreed to refer the subject matter of the above suit for arbitration to Messrs Lukhmidás Khimji and Dosá Lálji of Bombay and pray the permission of your Lordships to withdraw from the above suit ~~with liberty to bring a fresh suit for the same matter, should all attempts at amicable adjustment fail.~~ &c.

2 That your Petitioner shall bear her own costs, the respondent having agreed to bear his own.

And your Petitioner as in duty bound
shall ever pray

Bombay
28th June 1864

Pinto Cursetjee & Co
Pleaders

[Civil] No. 8 Motibai widow of Jetha Khetsi
versus Vishwanath Narayen Mundlick
30th June 1864.

30/6/64

Appeal No 462 of 1863

Judge's Court: Panvel

Wednesday, 9th Decr 1863

Appellant - Rotebaee widow of Jeta Khetee decd - Pltff:

Respondent - Govind Vithujanji ——— Deft

Claim Rs 775 - - - -

P. G. Ameen. Pansee

Appts Vakeel - Bhaskar Moreshwar

Respdts ~~has~~ been duly served with a Notice -

The Plaintiff represented that her late husband had bought at public auction from one Jagoo Karagee 2 rooms in a house in the Bazar, and being blind & cripple, he had allowed defendant's father (his brother) to live in the lower room for the purpose of superintending the shop - he had accordingly lived there for 9 or 10 years and now expected to vacate -

Defendant answered that he had been so long in possession that the suit was barred, and it was brought on an insufficient stamp. -

His brother Jeta and his father and defendant had been an undivided family - Jeta's wife, the Plaintiff, had lived by herself being unable to agree with the others, but defendant and his father had not separated from Jeta, but had lived with him up to his death - and had tended him in his blindness. The house [illegible] because he was the eldest. -

The Plaintiff then as the widow of

The Plaintiff then as the widow of a member of an undivided family has no right to any of the property.—

The Principal Sadr Ameen found the suit barred by statute of limitation because defendants' father had according to the admission of plaintiffs' witnesses resided in the house for 20 years, and as plaintiff alleged he had separated before this from jointness in his possession must have been separate on his own account. He for the last 10 years only he had lived in the lower story, made up difference.—

The claim was therefore thrown out.—

Plaintiff appeals on the ground that the evidence showed that defendants' father had lived in the house only for about 10 years and therefore the suit was not barred — and the onus being on defendant to prove that the house had been bought by the joint ancestral means of the family, he had not done so.— Defendant has lived by sufferance only and therefore this possession could give him no right.—

The point for decision being whether the suit is barred or not the Court finds that it is.—

The defendants' father has lived more than 20 years in the house from which his sister-in-law now seeks to eject him. The question is whether he has lived in the house as an owner, or merely on sufferance. The evidence of the witnesses is quite insufficient to prove

prove that he only lived on sufferance

the decree is affirmed

costs on appellants

Sgd/ C. Gome

Ag: Judge

Verilier

True Copy

Assistant Judge

[illegible]
[illegible]
[illegible]

[illegible]
[illegible]
[illegible]

[illegible]
[illegible]
[illegible]

In the High Court of Judicature at Bombay

Special Appeal No. 367 of 1864

Motibáï widow of the late Jethá Khetsi of Jamna, (Plaintiff) — Appellant.

vs

Govind Kallyanji also of Jamna (Defdt) Respondt.

To The Hon'ble the Chief Justice and the Judges of Her Majesty's High Court of Judicature at Bombay

The humble Petition of Govind Kallyanji respondent in the above Cause.

Most respectfully sheweth.

That your Petitioner has no objection to the withdrawal of the appellant from the above suit, the subject matter of which your Petitioner and his apponent Motibáï have agreed to refer for arbitration to Messrs Lakhmidas Khimji and Dosá Lálji of Bombay.

That your Petitioner agrees to bear his own Costs in the Bombay

28th June 1864

Filed No. 9 Govind Kallianji

30th June 1864

adjourned till next Thursday

30/6/64

Clerk

Ag. Reg

B40753

Issued to Govindji Kallyanji Thakar of Lunah off on the 28th June 1864

Dádáji Ráyáyan
Stamp Vendor