

In the High Court of Judicature, Bombay.

*Shilaga*, the 19 day of *August* 1864

SPECIAL APPEAL No. 369 of 1864.

*Mahomed Ebrahim Wulud* -  
*Mohomed Ali Esganey of the Hon.* Appellant  
*Honn District (Original Defendants)*

*Shahrukh Bibi Aqul Goolam*  
*Ali Khan Deshmukh of the Hon.* Respondent  
*Honn District (Original Plaintiff)*

*Shahrukh Bibi Aqul Goolam*  
*Ali Khan Deshmukh of the Hon.* Appellants  
*Honn District (Original Plaintiff)*

*Mohamed Ebrahim Wulud*  
*Mohomed Ali Esganey of the Hon.* Respondents  
*Honn District (Original Defendants)*

Rs. 800-11-11

The claim in the Original Suit was to recover profits of a fourth share of the village *Haror*, which had been mortgaged by her husband's other wife *Rabia*, to *Shahrukh Bibi*, which had been restored to her by decree of court for the years 1724-30, during which time she had restrained *id.* wrongfully: at Rs. 101 per annum, with interest *per cent 2*.

In Appeal No. 320 of 1863 the *best judge* of the District of *Koutra* at *Sayaph* decided the Decree of the *Prof. of law* who had thrown out the claim on the grounds that 3 of the years claimed were beyond limitation, & that while for the remaining years 1724 were due to *Shahrukh Bibi*, *Shahrukh* proved a set-off of 1720 - leaving *id.* that the former decree allowing *Shahrukh* to recover the said *Rabia* was wrong & had no right to do so & awarded to *Shahrukh* 4 years *rescue* profits, Rs. 724 & *per cent 2* *annum*, with costs in proportion in right but: costs of appeal on *Shahrukh*.

No. 369 Cross Special Appeal was preferred in the High Court on the grounds that there has been a substantial error in law in the investigation of the case & ~~been made~~ which has produced error in the decision of the case.

on its merits in that (Khorseed bibi)

(a) The Plaintiff, ought not to have been allowed to sue without a certificate of heirship.

(b) That the Assistant Judge ought to have allowed the sums due to the Appellant to be set off against the Plaintiffs' demands.

(c) The lower Court ought not to have decreed in the Plaintiffs' favor to the extent it has done, part of the claim being barred by the Law of limitation.

1. That the decision of the Assistant Judge is opposed to law in that he was in error in holding that a part of the claim is barred by the law of limitation since Appellants' right of action only commenced in 1860 when the Court ordered the restoration of the village. S. A.  
That the decision is opposed to usage of the country having the force of law in that the Assistant Judge has wrongly thrown out the appellants' claim for interest.

The Court confirms the decree of the Assistant Judge with costs in Spl. Appeal no 372 on Spl. Petition. costs in Spl. Appeal no 369 on Spl. Appeal.

Edward M. Bapendary

Bill of Costs

In Special app<sup>n</sup> No. 369 of 1864

By the Appellant

In the District

In the moonsiff's court	_____	71.5 "	
Do. of the Judge's court	_____	49. " "	120.5 "

In this Court

Stamp for memo. of special appeal	_____	32 " "	
Stamps for Copies of decree & judgment	_____	3 " "	
Stamp for Vukalutnama	_____	2 " "	
Batta for Procefs and Postage	_____	1.15 "	
Sectioner's Fee	_____	1.15 "	
Vukcel's Fee.	_____	21.11.6	62.9.6
			<u>Rspees 182.14.6</u>

By the Respondent

In the District

In the moonsiff's court	_____	122.1.3	
Do. of the Judge's court	_____	101.12 "	223.13.3

In this Court

Stamp for Vukalutnama	_____	2 " "	
Vukcel's Fee.	_____	21.11.6	23.11.6
			<u>Rspees 247.8.9</u>

In Special app<sup>n</sup> No. 372 of 1864

By the appellants

In the District

In the moonsiff's Court	_____	122.1.3	
Do. of the Judge's court	_____	101.12 "	223.13.3

In this Court

Stamp for Memo. of special appeal	_____	32 " "	
Stamps for Copies of decree and judgment	_____	3 " "	
Do. for two Vukalutnamas	_____	4 " "	
Batta for Procefs and Postage	_____	2.1 "	
Sectioner's Fee	_____	1.15.9	
Vukcel's Fee	_____	24 " "	67. " 9
			<u>Rspees 290.14.9</u>

By

By the Respondents  
In the District

In the Moorseiff's Court ————— 71.50  
D<sup>o</sup> Assistant Judges Court ————— 49.00  
In this Court ————— 120.50

————— " " —————  
Papers 120.50



*C. W. M. L.*  
Acting Registrar

*C. W. M. L.*  
sealer

The 19<sup>th</sup> day of August 1864.