

In the High Court of Judicature, Bombay.

Thursday, the 14th day of September 1864.

SPECIAL APPEAL No. 379 of 1864.

Rukhna Mulud Bhagos
Shimpi of the Ahmednagar District. —
(Original Plaintiff)

Appellant

versus

Muloo Mulud Shahadeo & Co
Shimpi and Shahados Mulud
Subhmin Buroe and Bapoo
Mulud Shivram Patel of the
Ahmednagar District. —
(Original Defendants)

Respondents.

Rs. 2 — 15 —

The claim in the Original Suit was to recover two fields comprising 2 acres 24 (claim) the land being the heirs of Salchoo & Ramoo late of Shubjee who had mortgaged the land to Rukhna & the latter had rented it to Bapoo & Shivram.

In Appeal No. 318 of 1863 the Judge of the District of Ahmednagar at Ahmednagar, pronounced the Decree of the Court who had decided in the Plaintiff's claim of garden lands & rejected the remainder of the claim and rejected the Plaintiff's claim against Mahaloo & Mahaloo, his wife being one of Plaintiff's claim to 1 acre & 5 (claim) the field was also rejected & directed to pay all Mahaloo & Shivram's costs & Bapoo & Shivram give over to Rukhna & Bhagos all the lands of Rs 264.4.4 which he had in his occupancy. The costs of Bapoo & Shivram.

A Special Appeal was preferred in the High Court on the grounds that (1) the decision of the District Judge is contrary to usage having the force of law, in that even if the land in dispute was sold by

by an action before the expiration of
the period of the conditional sale still
the proprietary right to it cannot be set
aside whereas the judge threw out the
Appellant's claim which was contrary
to the ruling in special Appeal N^o 4056.
that (2) a substantial error in law
has occurred in the investigation
of the case which has produced error
in the decision of the case upon its
merits, in that the ^{judge} observes that
the attachment was placed on the land
in dispute on the 5th December 1860,
that it was not removed until the 19th
August 1861 and that the Appellant's
deed was passed during the interval
but the Appellant having paid the money
for the recovery of which the property
was attached, the deed sued on was
passed to him and the attachment
was removed and the Respondent
Mahadoo has admitted in the petition
N^o 39 that the attachment was
removed wherefore the ^{judge} was
wrong in remarking
that

that the attachment remained till 1861. and that (3) the Appellants' deed is dated 5th July 1861 while the land in dispute was attached on the 24th October 1861 in execution of a decree other than the one above mentioned and the auction sale took place on the 7th January 1862 and consequently the Appellants' right as a mortgagee with possession cannot be set aside.

The Court reverse the decree of the D^c Judge & remand the case that the Court below may determine.

1st Whether the Plaintiff has established the execution of the deed No 3 of that the mortgage of which it is the Memorandum was made in good faith.

2nd The amount of the mortgagee's lien under the said deed.

and the Court direct, if the D^c Judge shall find the execution of the said deed of the honest character of the transaction to be established, that a decree be passed awarding to Plaintiff the amount found due.

Sub under the said Decree, & directing
the delivery of the mortgaged lands to
Plaintiff if the said sum be not paid
by the defts within a ^{term} ~~time~~ ^{to be spe-}
:cified in the Decree. Costs to follow
the final Decision

Atty General,

A. D. M. d. e. n.

MEMORANDUM OF COSTS incurred in Special Appeal No. 379-
of 186 4. against the decision of the Judge of the
District of Ahmednagar and disposed of on the 1st Sept 1864
by *remanding the same for retrial.*

IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment	3	00			
Stamp for Vukeelutnama	2	00			
Batta for Process and Postage	1	12	00		
Sectioner's Fee	1	9	9		
Vukeel's Fee one-fourth	"	"	4		
				8	61
				Rupees . . .	8 61 17

BY THE RESPONDENT—

Stamp for Vukeelutnama	2	00			
Vukeel's Fee one-fourth	"	"	4		
				2	04
				Rupees . . .	2 04



[Signature]
For Sealer

[Signature]
For Acty Registrar

The 1st day of September 1864

Issued a certificate on Her Majesty's
Treasury Bank of Bombay for the re-
fund of Rupees (1) one being the value of
Stamp used for Special Appeal in
this case.

Dated this 1st September 1864

(B)

A. J. S.
For acting
1st Assistant Registrar