

In the High Court of Judicature, Bombay.

Monday, the 19th day of March 1866.

SPECIAL APPEAL No. 387 of 1864

Gurugaji Wulud Shema-
aji Patel Estate of the Poona
District - (Original Plaintiff)

Appellant,

versus

Shivaji Wulud Mukaji deceased his sons & heirs
& Domaji Wulud Shivaji, and
Lubaji Wulud Shivaji and
Pandoo Wulud Avdaji and
Dhondi Wulud Bhundaji and
Gunnor Wulud Mahadaji Patel Estate of the
Poona District (Original Defendants)

Sakaram & abaji

Respondents,

Rs. 11-10-00

The claim in the Original Suit was to recover a fourth share of certain fields wrongfully withheld by Defendants.

In Appeal No. 170 of 1864 the Principal Sudder Ameen of the District of Poona confirmed the Decree of the Sudder Ameen who had rejected the claim.

A Special Appeal was preferred in the High Court on the grounds that (1) the decision of the Principal Sudder Ameen is contrary to law in that although the Appellate Court did not hold

hold that the Respondent was in possession as a proprietor for more than thirty years, the claim of the Appellant who is the true proprietor was thrown out contrary to Section I of Regulation of 1827, that (2) it is contrary to usage having the force of law, in that the property in dispute was acquired by Panaji the founder of the family who had five sons, one of whom Panaji had no issue, and the Appellant being a descendant from Panaji was entitled to a fourth share, and therefore he was entitled to the share claimed according to Hindu Law. Whereas the lower Court threw out the claim on the ground that the Appellant was not entitled to so much, which was contrary to the Shastras, and that (3) a substantial error in law has occurred in the investigation of the case which has produced an error in the decision of the Case on its merits, in that as the names of the five shares are entered to the land in the Register's Nos. 31/50 it was presumed that each was an equal share, and the Appellant's claim was thrown out which was erroneous.

The court reverse the decree of the Principal Sudder Amin & remand the Case that the District Court may determine specifically

the following issues: ^{his title originally to}
1st Has the plaintiff proved that the land
was originally his?

2nd If so, have the Defendants Nos 1, 2, 3 & 4
or any of them succeeded in establishing
such length of possession as prescribes
as will suffice to give them or any of
them a title by prescription?

Costs to follow the final decision

A. Hewitt

A. M. M. M. M.

MEMORANDUM OF COSTS incurred in Special Appeal No. 387

of 1864 against the decision of the *Principale Amin* of the District of *Boona* and disposed of on the 19th March 1866 by *remanding the same for retrial.*

IN THIS COURT.

BY THE APPELLANT—

	Rs.	A.	P.	Rs.	A.	P.	
Stamps for copies of Decree and Judgment	2	8	"				
Stamps for 2 Vukeelutnama	4	"	"				
<i>Stamp for an application to enter the name of the Respondent's heirs</i>	3	"	"				
Batta for Progress and Postage	2	9	"				
Sectioner's Fee	"	15	9				
<i>Sheriff's and Clerk's Fees</i>	3	"	"				
Vukeel's Fee, one-fourth	"	1	4				
				15	2	1	
				Rupees....	15	2	1

BY THE RESPONDENT—

Stamp for 2 Vukeelutnama	4	"	"				
Vukeel's Fee, one-fourth	"	1	4				
				4	1	4	
				Rupees....	4	1	4

R. West

Registrar.

J. M. Campbell

Sealer:

The 19th day of *March* 1866.



Issued a certificate on Her Majesty's Treasury
Bank of Bombay for the refund of Rupees one
being the value of stamp used for special appeal
in this case.

Dated 19th March 1866

R West
Registrar

MS