

In the High Court of Judicature, Bombay.

Wednesday, the 25<sup>th</sup> day of ~~May~~ <sup>June</sup> 1865.

SPECIAL APPEAL No. 1110 OF 1864.

Mirza Futehoolabeg Gulced Mirza  
Futehoolabeg on his own account and as heir to  
his deceased brother Mirza Abdoolkader beg  
Gulced Mirza Futehoolabeg of the Rutnagjee  
District of the Konkan District

Appellant

(Original Plaintiff)

versus

Abdoolgufoor M<sup>o</sup> Mohammed Ibrahim  
Purkas and of Mohammed Kungloridin Gulced  
Mohammed Ibrahim Purkas, deceased, his brother  
and heir Abdoolgufoor of Bantol and his habibi  
daughters of Allahgufur Ibrahim Purkas of Bantol  
and Goolam Ahmed M<sup>o</sup> Mohammed Ibrahim Purkas  
Kut of Mourree and Goolam Kheeruddin Gulced  
Mohammed Ibrahim Purkas of Bantol and Goolam  
M<sup>o</sup> Ibrahim Lala Satirul Khan deceased his  
heir Baboo M<sup>o</sup> Goolam Lala, Abdool Kareem  
M<sup>o</sup> Dabul Kheer (the elder) M<sup>o</sup> Goolam Lala and  
Mohammed Karoon M<sup>o</sup> Dabul Kheer (the younger)

Respondents

(Original

M<sup>o</sup> Goolam Lala and Abdoolgufoor M<sup>o</sup>  
Goolam Lala & Hafiza Beebe wife of deceased  
Goolam M<sup>o</sup> Ibrahim Lala and Shubhana Bibi  
wife of Kazi M<sup>o</sup> Kazi Babu M<sup>o</sup> Kazi Sayyid  
M<sup>o</sup> Dabul Kheer and of deceased Goolam  
Lala and Khuram Bibi wife of Kazi M<sup>o</sup> Kazi  
Abdool Kadir and daughter of Goolam Lala  
and Shubhana Beebe wife of Sunsoordin  
Malim and daughter of Goolam Lala of  
the Rutnagjee District of the Konkan District  
(Oryl Dept) Rs. 6,991 - 15 - 3.

The claim in the Original Suit was to

obtain payment of a balance

due on an agreement in the nature of a mortgage under which  
sum of Rs 600 and other sums had been borrowed and to  
take of the plaintiffs portions of the mortgaged property of which they  
had assumed possession

In Appeal No. 507 of 1863 the

Acting Judge

of the District of the Konkan

at Panvel concluded

the Decree of the Judge at

Rutnagjee who had awarded

Rs 600 as the balance due by Dpts No. 1, 2, 3, 4, 5, 6 on account of the  
value of two gardens and the village of ~~and~~ of ascending payment  
Rs 7000 and of finding payment of which the sum was to be  
possession of the property specified by the said

A Special Appeal was preferred in the High Court, on the grounds that

the decision of

the Acting Judge is against Law,

in that (1) the

recognition of Document No. 6 was

contrary to

the Stamp Law, the

(2) Being

two parts of one and the same

transaction

transaction and yet they have not been con-  
-strued in a uniform manner, that (3) the  
breach of agreement with regard to the village,  
Agweh, being held proved, and the Defendants  
not having the accounts of the village if  
it was wrong, not to allow the damages  
claimed; that (4) the houses being made  
over to Plaintiff (Appellant) under certain  
conditions, it was improper to deprive  
them of their rights over them, except  
under those conditions; that (5) the set-  
off allowed is opposed to the provisions  
of section 121 of the Civil Procedure Code  
and that (6) In the finding on the balance  
of account, no opinion is pronounced  
on all the evidence tendered except  
Exhibit No. 35. -

The Court considering  
that the District Judge, though his  
judgment was in other respects right  
erred in not finding what damages  
the plaintiffs (appellants) had sustained  
by being dispossessed of the village  
as found by him under point 5 in his  
judgment, reverses the decree of the court  
below and remands the case that the  
Judge may find what damages the ap-  
pellants sustained by being dispossessed  
of the village and having regard to  
that finding may pass a new decree  
upon the merits. Costs to follow the final  
decision.

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MEMORANDUM OF COSTS incurred in Special Appeal No. 410

of 186 4 against the decision of the Acting Judge of the District of the Nonkum and disposed of on the 21<sup>st</sup> June 1865 by remanding the same for retrial.

IN THIS COURT.

BY THE APPELLANT—

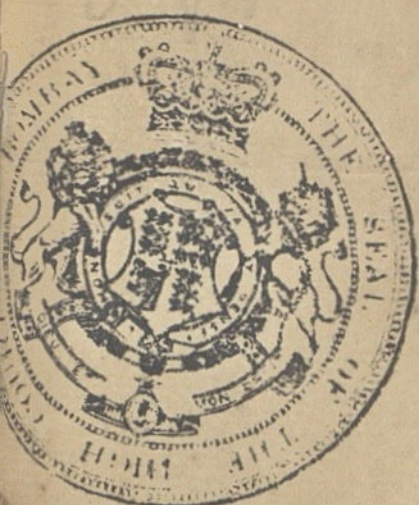
|   |    |    |   |
|---|----|----|---|
| Stamps for copies of Decree and Judgment .....                            | 4  | .. |   |
| Stamp for <sup>two</sup> Vukeelutnama's .....                             | 4  | "  |   |
| Stamp of an application to enter the names of the Respondent's heir ..... | 2  | "  |   |
| Batta for Process and Postage .....                                       | 60 | 2  |   |
| Sheriff's & clerk's Fee .....   | 3  | "  |   |
| Sectioner's Fee .....   | 6  | "  |   |
| Vukeel's Fee one-fourth .....   | 39 | 15 | 7 |

Rupees ... 119 17

BY THE RESPONDENT—

|   |    |    |   |
|---|----|----|---|
| Stamp for <sup>two</sup> Vukeelutnama's ..... | 4  | "  |   |
| Vukeel's Fee one-fourth .....                 | 39 | 15 | 7 |

Rupees ... 43 15 7



*R. West*  
Registration

Issued certificate on Her Majesty's  
Treasury the Bank of Bombay for the  
refund of Rupees two hundred and fifty  
(250) being the value of stamp used for  
Special Appeal in this case.

*West*  
Registrar.

*8/11/18*