In the High Court of Judicature, Bombay.

Tues-day, the 23rd day of August — 1864.

SPECIAL APPEAL No. 416 — OF 1864.

Fakeer Nagoo Ma-hatro of the Konkun District — (Original Defendant)	Appellant,

versus

Devidas Oodhuv Shet of the Konkun Dis-trict — (Original Plaintiff)	Respondent

Rs. 150 — " — " —

The claim in the Original Suit was to obtain removal of a house and possession of a piece of ground in Koudri, the Plff alleging that the ground belonged to his father and that Defdt Fakir had built a house on it.

In Appeal No. 371 — of 1863 — the Asst Judge — — — — — — of the District of the Konkun at Tanna reversed — — — the Decree of the Aff of Panwell who had thrown out the claim, and awarded the ground to Devidas.

A Special Appeal was preferred in the High Court on the grounds that (1) there has been an error in law in the procedure of the case which has produced error in the decision of the

the case upon the merits in that,

(a) The Court below holding that there were no valid reasons for holding the deed of Sale to the opposite party valid, still allowed his claim.-

(b) The Court below has dismissed the Appellants' claim because he produced no document of any kind. this not being necessary.-

(c) The right of Bappoo to convey the ground to the opposite party has not been determined, nor laid down as a point for decision.-

(d) The genuineness of the opposite party's deed has not been determined.-

(e) The Map being prepared for the purposes of the suit could afford no evidence as to the ownership of the land.-

(f) The Appellant being in possession, the onus of proof has been wrongly thrown upon him.-

(g) Assuming the land to be that of the opposite party, he having wilfully, or negligently suffered the Appellant to build upon the land in dispute bonâfide believing it to be his own, cannot now equitably claim the removal of the house. but the Court below might (if he were entitled to it) have allowed him due compensation.-

The Court reverses the Decree of the Asst. Judge and remands the Case for the determination of the following points.

Whether, admitting that the ground did belong to Daindass, & has therefore been properly awarded to him, Tukir is not, under the circumstances of the case, entitled to some allowance or Compensation in respect of having to remove his house, wh., as alleged in his answer, he had been allowed to build without warning or ~~obstruction~~ interruption from Daindass.

A new Decree to be passed. Costs to follow the final decision.

Joseph Arnold

T. Madden

MEMORANDUM OF COSTS incurred in Special Appeal No. 416.

of 186 4 *against the decision of the* Assistant Judge *of the District of* the ~~Kur~~ Rontaw — *and disposed of on the* 23 Aug. 1864 *by* remanding the same for retrial.

IN THIS COURT.

By the Appellant—

Stamps for copies of Decree and Judgment	3	"	"			
Stamp for Vukeelutnama	2	"	"			
Batta for Process and Postage	1	5	"			
Sectioner's Fee	"	13	9			
Vukeel's Fee one-fourth	1	2	"	8	4	9
Rupees				8	4	9

By the Respondent—

Stamp for Vukeelutnama	2	"	"			
Vukeel's Fee one-fourth	1	2	"	3	2	"
Rupees				3	2	"

Registrar

Issued a Certificate on the Treasury of the Collector of Tanna for the refund of Rupees Eight (8) being the value of the Stamp used in Special appeal in this Case.

23rd August 1864

G. L. Simson

For Acting Registrar

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