

In the High Court of Judicature, Bombay.

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

SPECIAL APPEAL No. 418 of 1864.

Bapas Ram Krishna
of the Ahmednagar
District - (Original Defendant)

Appellant

versus

Luchhimundas Johar
- mul. Moota Marwadi
of the Ahmednagar
District - (Original Plaintiff)

Respondent

Rs. 300-0-0

The claim in the Original Suit was to obtain possession of
house bought at Public Auction.

In Appeal No. 406 of 1863 the Judge
of the District of Ahmednagar at Ahmednagar amended
the Decree of the P.D.C. Ahmednagar who has decreed for Plaintiff
on condition of his paying Defendant Rs. 105.

A Special Appeal was preferred in the High Court on the grounds that (1) sub-
stantial errors in law in the investi-
gation of the case have been made -
which have produced errors in the
decision of the case upon its merits
in that the District Judge was in error

in applying the provision of clause 3
section 1 of Act 14 of 1859 to this case
the same being inapplicable; that (2)
as the Appellant is in possession of the
property - he had no necessity of bring-
ing an action to set aside the sale; that (3)
as the dispute between parties relates
to the rights or interests in immovable
property the District Judge was in error in
not applying the provision of section
12 of Act 14 of 1859 to this case: that (4)
the District Judge was in error in hold-
ing that as the Appellants did not file
the suit at the time the property was
sold he had no valid objection to that
sale: that (5) the purchaser having
purchased the property with all its
incumbrances the District Judge was
in error in holding that he is entitled
to recover possession of it without
paying off a prior mortgage and even
before the expiration of the period men-
tioned in the mortgage bond: that (6) the
District Judge has wrongly applied
the ruling in Special Appeal No. 4241
to this case: and that (7) the District
Judge was in error in holding that
Appellant's defence cannot be admitted
as he neglected to bring an action within
the period of limitation.

The Court in this case holds the
Judge to have been in error in applying
the limitation prescribed in Act XII of 59
Sec 1 cl 3 to the case of a Defendant

resisting a purchaser at an auction sale seeking to obtain possession.

The Court also holds that Special Appeal No 4231 p 323 of Harringtons Reports vol 7 which (and edit No 4241 must be the precedent intended to be referred to) has no applicability to the present case which is simply that of a purchaser at an auction sale, seeking to oust a mortgagee in possession.

The Court therefore reverses the decree of the Judge, and remands the case for the determination of the following issues.

1. Was the Mortgage Bond of 19th March 1859 proved, and was the Mortgage to which it relates a bona fide transaction.
2. Whether, if so, the purchaser under the auction sale can oust the mortgagee prior to the expiration of the period of 10 years specified in the Mortgage Bond.

A new Decree to be given or merits. Costs to follow the

final decision -

To be
9/9/64
td 16/9

Joseph Arnold

A. W. Mander



8002 7 4/8/16

MEMORANDUM OF COSTS incurred in Special Appeal No. 418

of 186 4 against the decision of the Judge of the
 District of Ahmednagar and disposed of on the 23rd Aug^t 1864
 by *confirming the same for retrial.*

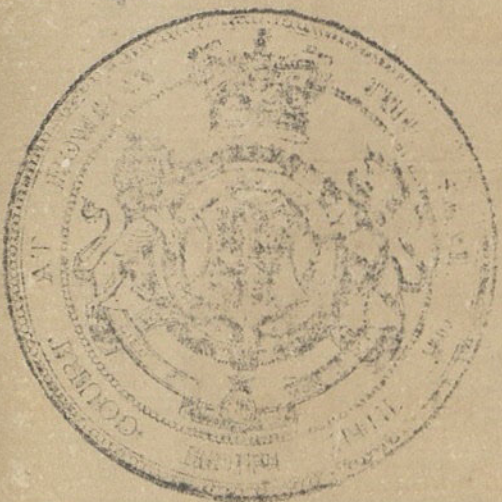
IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment	4	"	"		
Stamp for Vukeelutnamas <i>two</i>	4	"	"		
Batta for Process and Postage	1	1	"		
Sectioner's Fee	1	10	3		
Vukeel's Fee one-fourth	2	4	"	12	15 3
				Rupees	12 15 3

BY THE RESPONDENT—

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



Gyome

Gyome
 Acting Registrar

The 23rd day of August 1864
Sealer

Issued a certificate on His Majesty's
Treasury Bank of Bombay for the
refund of Rupees sixteen (16) being
the value of stamps used for special
appeal in this case

Chynce
acting Registrar

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APR