

In the High Court of Judicature, Bombay.

Tues day, the 28<sup>th</sup> day of February 1865.

SPECIAL APPEAL No. 424 of 1864.

Daood Khan Wuled  
Atal Khan Adhikari &  
of the Kankun Dis-  
trict ——— (Original Defendants)

Appellant

versus

Nizamuddin Inok.  
deceased his heir his widow Begumbibi  
& heirs, of the Kankun  
District ———  
————— (Original Plaintiff)

Respondent

Rs. 292-0-0

The claim in the Original Suit was to recover possession of the property of Plaintiff's deceased father, which was fully retained by the Defendants.

In Appeal No. 357 of 1863 the <sup>Chief</sup> Judge of the District of the Kankun at <sup>Surat</sup> <sup>reversed</sup> the Decree of the <sup>Judge</sup> of <sup>the</sup> <sup>District</sup> <sup>of</sup> <sup>the</sup> <sup>Kankun</sup> who <sup>had</sup> <sup>awarded</sup> the whole sum claimed, by awarding  $\frac{5}{8}$  only of the deceased's property to Plaintiff.

A Special Appeal was preferred in the High Court on the grounds that (1) it is contrary to law in that the property in dispute is <sup>the</sup> <sup>property</sup> <sup>of</sup> <sup>the</sup> <sup>deceased</sup> <sup>Abi</sup>, and I have been

been managing it as proprietor -  
for thirty years, while Aba, never  
had the management of it, -  
and therefore, the appellate court  
having admitted the claim of the  
Respondent through Aba's right,  
the decision of the appellate -  
Court is contrary to Section 1 Re-  
-gulation 5 of 1827, that (2) there  
has been a substantial error in  
law in the investigation of the  
Case which has produced error in  
the decision of the Case upon its  
merits in that the claim of the  
Respondent being derived through  
her father, Aba's right only, and  
being not a claim for her mother's  
right, the Appellate Court was in  
error in awarding one eighth -  
more without the same being -  
claimed. that (3) Aba having died  
before David, the latter was, according  
to Mahamedan Law, entitled to a  
portion of the right of the former;  
and therefore it was an error that  
the whole of Aba's right was award-  
-ed to the Respondent. and that (4)  
the point that ought to have been  
first laid down in this suit was  
as to who acquired the property in -  
dispute, and whether Aba had a  
any claim thereto; but these points  
were not laid down at all. -  
The Court finds that the Circuit Judge was  
in error in treating the family as if it were a  
Hindoo family, to which the law of unity of

interest was applicable, whereas the parties are Mahomedans.

Daood Khan, the only defendant who made answer, stated that he was not in possession, and therefore no plea of limitation could be raised on his behalf. The real issue raised by his answer was whether the Plaintiff Begum's father Abakhan died in the lifetime of his father Ibrahim, in which case Begum would not be entitled to inherit during the lifetime of her uncle Defendant Daood Khan.

As this question of fact has not been determined the Court reverses the decrees of the Circuit Judge and Dunsiff and remands the case to the Court of first instance in order that the said issue may be determined; and if it be decided against the Defendant that it may further be determined what share of the property in dispute Plaintiff Begum is entitled to; and that a new decision may be passed in which costs shall be apportioned.

Abdulach Forbes.

Atty. Genl.

*Book a certificate in the name of the Bank of Bombay for the value of Rs 10000*

MEMORANDUM OF COSTS incurred in Special Appeal No. 424

of 186 4 against the decision of the Assistant Judge of the District of the <sup>Tanna</sup> ~~Houhu~~ and disposed of on the 28<sup>th</sup> Febry 1865 by remanding the same for retrial

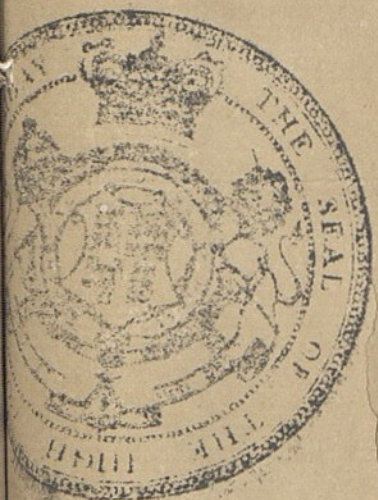
IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment .....	3	8	✓
Stamp for Vukeelutnama .....	2	"	✓
Stamp for an application to alter the name of the Respondent .....	2	"	✓
Batta for Process and Postage .....	3	4	✓
Sectioner's Fee .....	1	1	✓
Vukeel's Fee one-fourth .....	2	3	✓
		14	"
		Rupees	14

BY THE RESPONDENT—

Stamp for Vukeelutnama .....	2	"	✓
Vukeel's Fee one-fourth .....	2	3	✓
		4	3
		Rupees	4



*W. J. P. Seal*

*P. West Registrar*

*28<sup>th</sup> day of February 1865.*

Issued a certificate on Her Majesty's Treasury  
the Bank of Bombay for the refund of Rupees (10)  
sixteen only being the value of stamp used for  
Special Appeal in this case.

Dated the 28<sup>th</sup> February 1865.

West  
Registrar

Ed. W. S.

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