

**In the High Court of Judicature, Bombay.**

day, the                      day of                      186

SPECIAL APPEAL No. 439 of 1864

Chambhar Umbar &  
Gawad, and Sothaya  
mayu Gawad of the  
Kankun District  
\_\_\_\_\_ (Original Defendants)

Appellant,

versus

Sondur Seeroba.  
of Bombay  
\_\_\_\_\_ (Original Plaintiff)

Respondent,

Rs. 9-10-00

The claim in the Original Suit was to

In Appeal No.                      of 186                      the  
of the District of                      at  
the Decree of the                      who

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

decision of the case upon the merits in that,

(a) The court has erred in assuming the plea of the Appellants to be "that the land was made over about 1852 + by Keroba to Luckman alias Ghulam, their relation as security for a debt" whereas their plea was that the land was sold for the debt.

(b) A recognition of the debt in 1858 having been made the court rejected the admission on the surmise that Keroba may have previously become insolvent.

(c) The court has not recorded a finding regarding the genuineness, or otherwise of Exhibit number 41.

(d) The court has ignored the evidence of the Appellant as to the sale by Keroba to the Appellants' uncle.

Received by the Court of Sessions, Bombay, on the 18th day of April 1864  
No. 439 of 1864

In the High Court of Judicature, at Bombay.

No. on the file.

No. 406 of 1863 of appeal in the Zilla Court.

Applicant, Chabhar Amboo Gawund, & Tooka Mya Gawund.

Opposite party - Soondur Keroba.

Claim Rupees 9000.

The grounds of objection to the decision appealed against are.

I That there has been a substantial error in law in the procedure of the case which has ~~produced~~<sup>done</sup> error in the decision of the case upon the merits in that.

(a) The Court has erred in assuming the plea of the Applicants to be "that the land was made over about 1852 by Keroba to Luchma alias Ghulam, their relation, as security for a debt" whereas their plea was that the land was sold for the debt.

(c) The court has not recorded a finding regarding the genuineness or otherwise of Exhibit number 11.

(d) The court has ignored the evidence of the applicant as to the sale by Keroba to the Applicant's uncle.

Bombay }  
8<sup>th</sup> April 1864 }

Shanaram Narayan  
Vakeel for Appt

B80165

Issued by Southern Surveyor 8th April 1864 by Antonio de Silva

THE PROCEEDINGS  
OF THE  
LEGISLATIVE ASSEMBLY  
OF THE  
PROVINCE OF  
WESTERN AUSTRALIA  
IN  
PARLIAMENTS

Vol 263 of 1864

Printed 8<sup>th</sup> April

1864 with copies of  
two decrees, two pacts -

= meet to sign a contract

= name

Antonio de Silva

Printed Registrar

Printed

243

Printed

Legislate

12/4/64

Printed

Antonio de Silva

2356-262

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~~Handwritten text at the top of the page, possibly a title or reference number.~~

~~Handwritten text in Devanagari script, likely names of parties or locations.~~

received in English office 3<sup>rd</sup> April.

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Appeal 408 of 1853

Chaubhar, umun Gawud, Lookia maia } appt  
Gawud

Soondur Kerolia } resp.

Rs. 9-10-0

Action by Soondur to obtain possession of a field & a piece of grass land in village <sup>numun</sup> Salooka Sashti. he alleging that

the depts had taken it from him to cultivate in May 1853, & would not restore it.

Chaubhar & Lookia answered that the ground was their fathers, & they had not taken it of Plff.

The Junsiff decreed for Plff finding ownership proved by nos 8, 27, 28, 29, 33 and nos 19, 35 that depts had rented it of his

and that the ground was sold by Kerolia for debt to their father. - Nos 20-23. That there is no written rent agreement. That receipt No 41 produced by Plff is false, the debt being acknowledged in a notice No 49 of 1850.

Point for decision.

Whether Soondur is entitled to oust the original defendants.

The land appears to have been sold by one Puchua to Soondur in 1845, (Nos 8, 18, 19) and this is not disputed by appellants. It appears, indeed from 27, 28, 29, 33, 35 that the real purchaser was Kerolia, & that he who became insolvent (49) in 1850, effected the purchase in the name of his son

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probably with intent to defraud his creditors: but that was a question for the insolvent court at the time, & does not affect the present case.) Chaudhary and Lookia urge that the land was made over about 1852 by Keroba to Sukum, alias Ghulcum, their relation, as security for a debt, but they have no mortgage deed or any written agreement about this, which is only supported by the oral evidence of 20 & 22. They say that whereas Soondar produces a receipt (41) to show that this debt had been paid in 1849 it was admitted by Keroba in 1850.

This admission however in extract from schedule (40) bears no date whatever. The schedule was drawn then - or may be to a previous failure of Keroba's & the appellants should have shown that it was drawn in 1850. Their plea not being made out, & Soondar's original ownership admitted, & 19 & 35 deposing to the tenancy of Chaudhary & Lookia the Moonsiff's decree is affirmed with costs on appellants.

January 5<sup>th</sup> 1864 } signed W. H. Newhouse  
assistant Judge

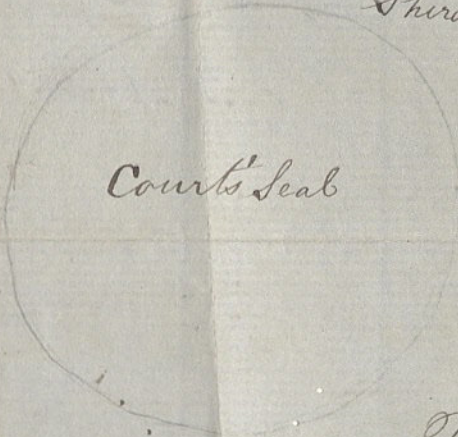
True Copy  
Wrenjen  
Ass. Judge

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~~Ass. Judge~~  
~~Wrenjen~~  
~~Ass. Judge~~

blue  
Jan 5

said Court on that day, and in default of such appearance the case will be heard and decided ex parte in your absence. Witness Sir Matthew Richard Lawrie, Knight, Chief Justice of Bombay aforesaid. Dated this 12<sup>th</sup> April ..... in the year one thousand eight hundred and sixty four.

[Signed] Atmaram Daji  
[Signed] Aba Balwant Shirastedar  
By order of the Court  
[Signed] R. West  
Registrar.



Court's Seal

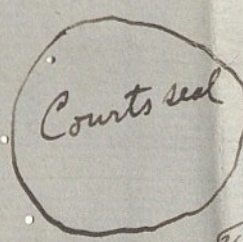
[Signed] R. West  
Sealer

The 12<sup>th</sup> April 1864

A true translation  
Dhankar A. Bhagwat.  
Translator.

The time for this notice has been extended to the 25<sup>th</sup> September 1864. The 27<sup>th</sup> July 1864.

By order of the Court  
(Signed) C. Gonne  
Acting Registrar



Court's seal

(Signed) C. Gonne  
Sealer  
The 27<sup>th</sup> July 1864

(A true translation)  
Dhankar A. Bhagwat  
Translator.