

In the High Court of Judicature, Bombay.

Wednesday, the 1st day of March 1865.

SPECIAL APPEAL No. 463 of 1864.

Nanabhai Amthadas and
Moorar Tapidas of the
Khandesh District — Appellants,

(Original Defendants)

versus

Nana Wuled Raghonath
of the Khandesh District — Respondent,

(Original Plaintiff)

Rs. 14-85 — 12 — 11 —

The claim in the Original Suit was to obtain the cancellation of a decree for auction sale under an attachment of property against a third party, and to recover possession of certain trees sold at the said sale; the aforesaid trees belong to Plaintiff and not to the judgment debtor. In Appeal No. 155 of 1863 the Judge of the District of Khandesh at Dhople confirmed the Decree of the Muff. of Mundroba who had awarded the claim.

A Special Appeal was preferred in the High Court on the grounds that (1) the decision of the District Judge is contrary to law in that he was in error in holding that

that the transfer of the land from
Bhana to his own brother Nana relieved
the land and trees standing thereon from
their liability for appellants' lien as
mortgagee see High Courts Report
Volume I Part I Page that (2) the
District Judge was in error in supposing
that trees planted after a mortgage
had been effected would not be
liable for the mortgages' lien that
(3) the District Judge was in error
in supposing the mortgage deed
No. 39 did not cover the field No.
131 for though the field No. 121 had
through a clerical error been entered
in the bond there is a sufficient
specification of boundaries in the
deed itself and other circumstances
in the case which fix one of the
fields mortgaged as the field No.
131 that (4) the District Judge
while finding that some of the trees
now standing on the land in
question are those originally
mortgaged did not confirm
appellants'

appellants them that (5) it is contrary usage having the force of law in that Respondent being an attesting witness to the deed No 39 he was by the custom of country bound by the same and the District Judge should not have relieved him from his liability that (6) 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 District Judge was failed to Enquire into and decide the following material issues in the cause.

1 was the transfer of the land in question from appellants debtor Bhana to his own brother the Respondent Nana a bona fide transaction or was it entered into with the object of attempting to defeat appellants rights as mortgagees that (2) Did the fact that Respondent was actually an attesting witness to the deed of mortgage No 39 bind him in any way or not and that (3) was there not sufficient intrinsic evidence in the mortgage bond in question and in the case generally to show that it was intended to mortgage the field

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field No 131 and not the field No 121
which was entered therein through a
clerical error

~~The Court sends down the following
issues to be determined~~

The Court confirms the decree of the
District Judge as to field No 131 and
reverses it as to field No 118; rejecting
Plaintiff's claim to field No 118.

Costs in proportion to the amount awarded.

Joseph Amundson

Attorney for the Plaintiff

Green M.

MEMORANDUM OF COSTS incurred in Special Appeal No. 463

of 1864 against the decision of the Judge of the District of *Khandesh* and disposed of on the 1st March 1865 by confirming the same with costs.

BY THE APPELLANT

In the District.			
In the <i>Mousaffi's Court</i> (including V.F.)	58. 14. 11	✓	
In the <i>Judge's Court</i>	100. 8. 11	✓	
			159. 7. 10 ✓
In this Court.			
Stamp for Memorandum of Special Appeal	50. . . .	✓	
Stamps for copies of Decree and Judgment	5	✓	
Stamp for Vukeelutnama	2	✓	
Batta for Process and Postage	3. 2 . . .	✓	
Sectioner's Fee	2. 6. 11	✓	
Vukeel's Fee	44 9. 2	✓	107. 2. 1 ✓
			Rupees.... 266. 9. 11 ✓

BY THE RESPONDENT.

In the District.			
In the <i>Mousaffi's Court</i>	132. 14. 3	✓	
In the <i>Judge's Court</i>	45. 9. 2	✓	
			178. 7. 5 ✓
In this Court.			
Stamp for Vukeelutnama	4	✓	
Vukeel's Fee	44 9. 2	✓	48. 9. 2 ✓
			Rupees.... 227. . 7 ✓



W. L. ...
 Seder

R. West
 Registrar

The 1st day of March 1865.