

In the High Court of Judicature, Bombay.

~~20~~ day, the 20 day of September 1864

SPECIAL APPEAL No. 47 of 1864.

Sudashubhut bin Krishnumbhut
Lale and nilkantbhut bin Gunesubhut
Lale and Wassodeo Trimbuk Lale and
Rutlimabai widow of Krishnumbhut
Lale and Gungadhar Moreshwar Lale
and Ramkrishnubhut bin Vinayk
bhut Lale by his authorized agent Govind
Yadneswar and Govind Yadneswar
for himself of the Northen District
(Original Defendants) } Appellant s,

versus

Narayun Trimbuk Lale deceased
by his heir and widow Sutraya
Bhama alias Rasibai of the
Northen District. } Respondent

(Original Plaintiff)

Rs. 738 - - -

The claim in the Original Suit was to recover 7/10 share of the
Jungle of the Village of Pauli, & 40 share of Orson jungle
of a 4/10 share of 11 fields in the latter Village, & a 40 share
of three houses, alleging that the property was undivided
& that the above was his (Plaintiff's) share

In Appeal No. 451 of 1863 the Assistant Judge
of the District of Northen at the Samah confirmed with
costs the Decree of the Magistrate who had awarded Rs 28-2-0 as expenses
of 1/10 of the share in the houses, & the remainder of the property as
claimed

A Special Appeal was preferred in the High Court on the grounds that (1) the
decision of the Assistant Judge is contrary
to law in that the jungle was at the division
of the property allowed to remain
as

as joint property and it was held as such for more than 30 years, whereas the said enjoyment was set aside and the claim was allowed contrary to section I of Regulation V of 1827 that (2) it is contrary to usage having the force of law, in that although the jungle in dispute was once divided the Appellate Court ordered it to be divided again which was contrary to the shastras that (3) by making a division of the jungle one party will be loser and the other a gainer and no equal division can be made, whereas the decision of the Appellate Court for dividing the jungle is contrary to the shastras and usage of the country since a thing which cannot be divided properly should remain joint property that (4) a substantial error in law has occurred in the investigation of the case which has produced error in the decision of the case upon its merits in that the present claim was not for a division of the land but of trees whereas the decision was not given according to the plaint that (5) the decision for dividing the land is beyond the terms of the plaint & that (6) in the deed of reference passed to the arbitrators by the parties

it

it is admitted by the Respondent that as the jungle cannot be divided properly it should remain joint property and therefore the Appellant prayed that the said deed of reference should be called for and recorded in the case but the lower court gave the decision without calling for it.

The parties having adjusted their claim by mutual agreement the Court decrees in conformity with its provisions that instead of the jungle being divided its produce be divided. Each party to pay their own costs excepting Rs. 45 which shall be paid to the Special Respondent by the Special Appellant.

Atmuloch Forties.

A. M. W. S.

MEMORANDUM OF COSTS incurred in Special Appeal No. 471

of 1864 against the decision of the *Assist. Judge*—of the District of *Koohoo*—and disposed of on the 20th September 1864 by decreeing in conformity with provisions of the mutual agreement of the parties.

BY THE APPELLANT—

In the District.

In the <i>Moo-wiff's Court</i> (including V. Fee)	30. 15. 0		
In the <i>Acting Judge's Court</i>	56. 14. 3	87. 13. 3	
In this Court.			
Stamp for Memorandum of Special Appeal	32. 0. 0		
Stamps for copies of Decree and Judgment	5. 0. 0		
Stamp for <i>Vukeelutnama</i>	4. 0. 0		
Stamp for <i>mutual agreement of the parties</i>	2. 0. 0		
Batta for Process and Postage	1. 14. 0		
Sectioner's Fee	2. 5. 9		
Vukeel's Fee	22. 2. 3	69. 6. 0	
Rupees		157. 3. 3	

BY THE RESPONDENT.

In the District.

In the <i>Moo-wiff's Court</i>	82. 2. 0		
In the <i>Acting Judge's Court</i>	23. 2. 3	105. 4. 3	
In this Court.			
Stamp for <i>Vukeelutnama</i>	4. 0. 0		
Vukeel's Fee	22. 2. 3	26. 2. 3	
Rupees		131. 6. 6	

Chas

For acting Registrar

Chas

For Sealer

The 20th day September 1864.

