

In the High Court of Judicature, Bombay.

Friday day, the 30th day of September 1864.

SPECIAL APPEAL No. 503 — of 1864.

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| Hydurkhan Wulud Hamidkhan of the Konkan District (Original Plaintiff) | } Appellant, |
| Versus. | |
| Munawurkhan deceased, his Sons & heirs Allikhan and Salekhan and Muzungul Khan & Hamidkhan and ^{Abdulkhan & Abdulkhan & Abdulkhan & Abdulkhan} and and Roshankhan Khan & Sayam allikhan & Co = Lamallikhan and Chinto Vitul and Shreedhun Shundoo of the Konkan District (Original Defendants) | } Respondent, |
| Rupees 436. 7. 4. | |

Special Appeal No. 546 of 1864.

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| Siyam allikhan Wulud Sayibkhan Deshmooke of the Konkan District (Original Defendant) | } Appellant, |
| Versus. | |
| Hydurkhan Wulud Hamidkhan of the Konkan District (Original Plaintiff) | } Respondent, |

Rs. 368. 3. 8.

The claim in the Original Suit was to recover possession of the Khat village of Kurnoodi, or repayment of the sum for which it had been mortgaged.

In Appeal No. 676 of 1853 the Assistant Judge of the District of the Konkan at Tanja reversed the Decree of the ~~Jury~~ ^{Jury} ~~in favour of~~ ^{in favour of} the Plaintiff who had thrown out the claim.

~~Cross~~ Special Appeal ^{were} 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 of the case on its merits in that.

a. The lower Court was influenced by the decision of a Suit to which the Appellant was not

a party.

b. The lower Court did not take the whole of the Appellant's evidence

c. The Assistant Judge impeached the authenticity of the old papers produced by Jairam Keshav without any allegation or proof on the other side.

d. The Respondents having failed to prove how much had been paid to the first mortgagee on account of interest the Appellant ought not to have been made to pay more than his share of the principal debt.

e. The Court did not inquire who had paid the amount of the mortgage debt, and who therefore was entitled to receive from the Appellant the amount decreed to be paid by him.

That substantial errors in law in the investigation of the case have been made which have produced errors in the decision of the case upon its merits.

1st In that the Assistant Judge was in error in considering the decree in Appeal No 671 of 1862 binding upon the parties to this suit, and declaring that half the village belongs to the issue of Abdoola.

2nd In that there is no legal evidence to show that Hamid and Husnu jointly mortgaged the property and was redeemed by Junglee at Hyder's instance as alleged by the Plaintiff.

3rd In that the decree of 1839 alluded to by the Assistant Judge in his judgment is not recorded in the case and further that it is not binding upon the parties to this suit.

4th In that the Assistant Judge having held that the Defendants are in possession of the village since about 60 years was in error in throwing the onus upon them of showing that their possession was that of proprietors.

5th In that the reasons assigned by the Assistant Judge for Hyder taking a copy of the document declaring Junglee's right to the property are at variance with Hyder's statement in exhibit No. 43.

6th In that the Appellant being in possession of the property for upwards of 60 years the claim is barred by the law of limitation.

In special Appeal no 503 the Court rejects the appeal considering that the Special Appellant has not shown any grounds for a modification in his favour of a decree of the Assistant Judge.

In special Appeal no 546 the Court finds that the Judge has improperly assumed as proved (on evidence offered in a previous suit), instead of determining, a material issue:—viz, whether Hyder was entitled to one half the ~~the~~ village.

The Court therefore reverses the Assistant Judge's decree and sends down the case for decision on the merits.

Court to follow final decision.

Joseph Arnould
H. Newton.

Bill of costs
 No. 503 of 1864

By the appellant

In the District

In the Moonisiff's Court ————— 77.14.0
 Do Appellate Judges Court ————— 67.9.6
 145.7.6

In this Court

Stamp for memo. of Special appl. — 32.0.0
 Stamps for Copies of decree & Judg^t — 3.0.0
 Stamp for Vukhatulama — 2.0.0
 Patta for Process and Postage — 17.0.0
 Sectors Fee — 3.1.6
 Vukheel's Fee — 22.1.6
 79.3.
Ruppes — 224.10.6.

By the Respondents

In the District

In the Moonisiff's Court ————— 33.7.6
 Do Appellate Judges Court ————— 23.1.6
 56.9

In this Court

Stamp for Vukhatulama — 2.0.0
 Vukheel's Fee — 22.1.6
 24.1.6
Ruppes — 80.10.6.

In

In Special app. p. 526 of 1864
 In this Court

By the Appellant

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| Stamp for ^{all} copies of decree & ^{all} memo. of Special app. _" | 3 " " |
| Stamps for two Vithalutnamas | 4 " " |
| Patte for Process and Postage | 1.5. |
| Sectioner's Fee | 3. 1. 6. |
| Vithal's Fee one fourth | 2. 12. 2. |
| | <u>14. 2. 8.</u> |
| | Rupees 14. 2. 8. |

By the Respondent

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|-------------------------|------------------|
| Stamp for Vithalutnama | 2 " " |
| Vithal's Fee one fourth | 2. 12. 2. |
| | <u>4. 12. 2.</u> |
| | Rupees 4. 12. 2. |



[Signature]
 For Acting Registrar

For Dealer
 The 30th day of September 1864

Issued a certificate on Her Majesty's Treas-
ury Bank of Bombay for the refund
of Rupees ⁽³²⁾ Thirty-two being the value of
Stamp used for Special appeal No.
546 of 1864.

Dated the 30th day of September 1864

[Signature]
1st Asst. Registrar.

[Signature]

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