

In the High Court of Judicature, Bombay.

Friday, the 30th day of September 1864.

SPECIAL APPEAL No. 505 of 1864

Jagganath Hari Mahatra
of the Konkan District } Appellant,

————— (Original Plaintiff)

versus

Harkubai widow of —
Jwan Govind Mahatra &
Govind Damp of the Konkan
District } Respondent,
(Original Defendants)

Rs. 10—11—11—

The claim in the Original Suit was to establish a right to a strip
of ground, $37\frac{1}{2} \times 1\frac{1}{2}$ cubits, adjoining Off's house.

In Appeal No. 650 of 1863 the Assistant Judge
of the District of the Konkan at Tanuva awarded
the Decree of the Mrooy. Bassen who had awarded the claim.

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

(a)

(a) ~~It~~ the decision of the lower courts does not do equity between the parties

(b) The onus of proof in regard to the ownership of the gutter adjoining the appellants' house has been wrongly pleaded

II There has been mistake in law in the investigation of the case which has produced substantial error in the decision of the case on its merits.

The following point has not been raised and decided viz: "Whether it was not customary for the proprietor of each house in that locality to have his own land for the Pagoli on the south side.

The Court reverses the decree of the Assistant Judge and remands the case in order that the Assistant Judge may determine the rights of the Plaintiff, not only with reference to the sale deed, but with reference to the sale deed and also to any evidence which he may consider to establish a custom in the locality for each house to

Leave a strip of ground for its drippings from
the eaves on the South Side.

Certs to follow final decision.

Joseph Arnold

H. Weston.

206
3/10
Issued a Certificate on Her Ma-
jesty's Treasury Bank of Bombay
for the refund of Rupee (1) one
being the value of Stamp used
for Special Appeal in this case.

Dated this 30th September 1864.

(Sd)

H. J. [Signature]

1st Assistant Registrar

Certificate sent to [unclear]