

In the High Court of Judicature, Bombay.

Tues day, the 27th day of September 1864.

SPECIAL APPEAL No. 545 OF 1864.

Balgaji bin Whondgajin
of the Konkan District } Appellant,
(Original Plaintiff)

versus

Damodar Yedueshwar Joshi
and Bhaskurav Trimbuk and
Gunputrav Bhaskur, the former
deceased, his heir Gunputrav
Bhaskur of the Konkan District } Respondent,
(Original Defendants)

Rs. 24.2. "

The claim in the Original Suit was to recover five fields at
Parnell, ~~and~~ ^{on} payment of the amount for
which they had been mortgaged.

In Appeal No. 565 of 1863 the Assist. Judge
of the District of the Konkan at Tanna reversed
the Decree of the ~~Magistrate~~ ^{Magistrate} Parnell who had awarded the claim.

A Special Appeal was preferred in the High Court on the grounds that Substan-
tial errors in law in the investigations
of the case have been made which have
produced errors in the decision of the case
upon

upon its merits.

1st In that the Assistant Judge was in error in ruling that consent or contract cannot be held proved except by written evidence and oral evidence is inadmissible there being no law in this country to warrant such a decision.

2nd In that the Assistant Judge having believed the evidence of witnesses produced to prove the subsequent verbal agreement entered into by Gunputrav to make over the property on the receipt of the money was in error in not considering him bound by his agreement.

3rd In that the sale of the property by Kashimath to Damodhur is not valid as it was without any consideration.

4th In that the Assistant Judge has given no opinion on the fact found by the Moonsiff that Kashimath was induced to sign the documents declaring that the property was sold to Damodhur through false representation and he was not aware of their contents.

The Court finds that the Assistant Judge has erred in law in holding that no oral evidence, however strong, is admissible to show that a person who has not executed a written

Contract has consented to be bound by it; there being no law in force in this country which renders writing necessary to give legal validity to contracts, even relating to the transfer and sale of land.

The Court therefore reverses the decree of the Assistant Judge and remands the case for a decision on the merits.

Costs to follow the final event.

Joseph Arnould
Attorney.

Issued a certificate on Her Majesty's Treasury
Bank of Bombay for the Refund of Paper
two (2) being the value of the stamp used
for special appeal in this case.

27th September 1864

[Signature]
For Acting Registrar.

[Signature]

Certificate
Registrar