

In the High Court of Judicature, Bombay.

Tuesday, the 27th day of September 1864.

SPECIAL APPEAL No. 549 of 1864.

Mahadoo ben Melkunt of the
Khandesh District

Appellant,

(Original Plaintiff.)

versus

Baba and Nana Sudashiv of the
Khandesh District

Respondents,

(Original Defendants)

Rs. 50—

The claim in the Original Suit was to establish a proprietary right to a piece of unoccupied land.

In Appeal No. 193 of 1863 the Judge of the District of Khandesh at Dharwar confirmed the Decree of the ~~Magistrate~~ who had rejected the claim.

A Special Appeal was preferred in the High Court on the grounds that ~~the~~ the decision of the District Judge is contrary to law

(a) In that the District Judge has erroneously admitted

admitted as evidence against appellant a decree obtained by Respondents against third parties appellant being ^{no} party whatever to the same

(b) In that the District Judge erred in not allowing the oral evidence adduced by appellant to rebut any presumption ^{or} raised in favor of Respondent by the said decree

That there has been a substantial error in law in the investigation of the case ^{or} which has produced error in the decision of the case upon its merits.

(c) In that the District Judge failed to decide whether the land in question ^{or} vested in the deceased Abheyram not ^{or} withstanding the said decree ~~above mentioned~~

The Court finds that decree no 7, having been given in a suit to which neither plaintiff nor those who appeared therein in interest ~~or~~ were parties, was not admissible to prove as against the plaintiff that the party in whose favour it was passed (Sudeshwar) was owner of the land in dispute.

The Judge therefore in admitting it as against plaintiff as evidence for that purpose, has erred in law.

The Court therefore reverses the decree of the District Judge and remands the case that a decree may

be given on the merits.
Costs to follow final decision.

Joseph Arnold.
H. Leighton.

MEMORANDUM OF COSTS incurred in Special Appeal No. 549

of 186 4 against the decision of the Judge - - - of the District of Khandesh - and disposed of on the 27th Sep: 1864 by remanding the same for retrab-

IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment	4	00	00	✓
Stamp for Vukeelutnama	2	00	00	✓
Batta for Process and Postage	1	12	00	✓
Sectioner's Fee	1	11	00	✓
Vukeel's Fee one-fourth	"	6	00	✓
			931	
			Rupees ...	931 ✓

BY THE RESPONDENT

Stamp for Vukeelutnama	2	00	00	✓
Vukeel's Fee one-fourth	"	6	00	✓
			260	
			Rupees ...	260 ✓

Shree
For Acting Registrar



Shree
For Sealer

The 27th day of September 1864.

Issued certificate on Her Majesty's
Treasury Bank of Bombay for the refund of
Rupees (4) being the value of Stamp used for
Special appeal in this case.

27th September 1864.

[Signature]
For Acting Registrar.

[Faint signature]

[Signature]

10 p
10 p

The 27th of September 1864