

In the High Court of Judicature, Bombay.

Tuesday, the 8 day of July 1864.

SPECIAL APPEAL No. 57 of 1864.

Domingos Manuel Antonio Goncalves deceased, his sons and heirs Antonio = mo and Mingo Manuel Ignacio Silva deceased, his brother and heir Domingos deceased, his daughters and heirs Antonia and Francisca Minors by their mother and guardian Maria their step father Philip Lemoa Manuel Lemoa District (Original Defendants)

Appellants

versus

Gopal Tribhuvandas of the Honkum District (Original Plaintiff)

Respondent

Rs. 625

The claim in the Original Suit was to obtain possession of some mortgaged property, viz a house land a part of 2 buffaloes until the mortgage debt should be paid off

In Appeal No. 53 of 1862 the Joint Judge of the District of the Honkum at Lemoa affirmed the Decree of the Moolal Bessie who had awarded for the Plaintiff -

A Special Appeal was preferred in the High Court on the grounds, that (1) - a substantial error in law in the investigation of the case, which has produced error in the decision of the case upon it

its merits, in that the Joint Judge was in error in not giving precedence to the Registered deed of sale (N^o 23) of an earlier date over a deed of mortgage (N^o 3) which is not registered, and which was executed subsequently thereto, that (2) the Joint Judge was in error in declaring the sale of the property by the deceased to Mingo collesive and made to defraud the mortgagee whereas the deed of sale was executed and registered, and the purchaser was placed in possession of the property by the Vendor fitting a Razinama, and getting the property transferred to the name of the purchaser three months before the execution of the deed of mortgage, that (3) it was quite competent to the deceased to dispose of his property in any way he pleased during his life, and the sale made by him to Mingo is not affected by the former, subsequently contracting the debt and mortgaging the property over which he had resigned all right, title, and interest, that (4) the grounds upon which the Joint Judge has declared the deed of sale collesive does not amount to collusion in the eye of Law, that (5) the Joint Judge having declared at one part of his judgment that he cannot see the force of the several reasons on which the Moonsiff declared the sale collesive was in error in confirming his decree for the same reasons, that (6) the Joint Judge was in error in declaring that as the proof of the exercise of the right of ownership by the purchaser

The Court confirms the

is unconvincing he has forfeited his rights which he acquired by the sale: and that (7) the appointment of the Joint Judges in the Bombay Presidency being regulated by statute and the officer who tried this case not being appointed as required by that statute he was not Joint Judge at the time and he had no jurisdiction to try this suit.

The Court confirms the decree of the Joint Judge with costs.

Joseph Ananda

H. Weston.

Bill of Costs

By the Appellants

In the District

In the Moonjeffs Court (including 7cc)	31. 4 "	
Do Joint Judges Court	53. 4 "	84. 8 "

In this Court

Stamp for memo. of Special app ⁿ	32. "	
Stamps for Copies of decree & judgment.	5. "	
Do for two Vekalutamas	4. "	
Batta for Process & Postage	2. "	
Sectioner's Fee	2. 1/2 "	
Duties Fee	18. 12 "	64. 0 "

Due fees - 149. 2 "

By

Accounty
Lob. trans
" 7/7
trans. index

By the Respondent
In the District

In the Moonjeff's Court _____ 64.12 "

In the Joint Judges' Court _____ 19.12 "

84.8 "

In this Court

Stamp for Vukabutuama _____ 2 " "

Vukab's fee _____ 18.12 " 20.12 "

Rupees. 105.4 "



W. J. M. G.
Sealer

W. J. M. G.
Acting Registrar

The 8th day of July 1864.