

In the High Court of Judicature, Bombay.

On day, the 18th day of April 1864.

SPECIAL APPEAL No. 58 of 1864.

Vitaldas Bhaoo Goozerathi } Appellant
of the Ahmednugur District }
(Original Plaintiff) }

versus

Bhugvandas and Varayun - } Respondents,
Ravji Kudos of the Ahmed }
-nugur District }
(Original Defendants) }

Rs. 15⁰⁰ - - -

The claim in the Original Suit was to eject Defts from a piece of ground behind Plff's House alleged to have been occupied by them (Defts) during Plff's absence in ^{the} District. Under the Decree of the ^{Asst} Judge of Ahmednuggur at Ahmednuggur the claim, and admitted Defts' right of way over the land in suit.

A Special Appeal was preferred in the High Court on the grounds that (1) the decision of the Assistant Judge is contrary to usage having the force of Law. in that the Government having no interest whatever

in the ground in dispute which belonged to the Patel as his private property and was in the possession of the appellant for many years as proprietor under a right of purchase and ^{the} Government not being a party to the suit the appellate Court should not have thrown out his (Appellants) claim by deciding that the Government a third party had a proprietary right thereto, contrary to the ruling in ~~evs~~ 3010 and 3442 and ~~evs~~ 23 of the certified list. That (2) a substantial error in law has occurred in the investigation of the case which has produced error in the decision of the case upon its merits in that the decree ~~evs~~ 20 being about the "Gully" (lane) ground alone and it being in-operative to this day and the Respondents not being parties the said decree it should not properly have been applied to this suit; that the deed of sale ~~evs~~ 30 not being in his fathers hands at the institution of the suit ~~evs~~ 20 (meaning probably when the suit in which the decree ~~evs~~ 20 was passed, was filed) it was not produced in evidence and had the Court of first instance raised any objection as to its nonproduction he would have proved the fact of nonpossession itself by producing evidence in support thereof: that (4) whether the land in dispute belonged

belonged to the Patel as his private property and if not whether he was competent to sell it or not should have been ^{the} main points laid down for decision: and that (5) The Respondents having departed from old practice and adopted a new one and the latter not being admissible according to the usage of the country the Appellate Court should not have admitted as it did.

The Court confirms
 The decree of the Assist
 Judge with costs

Abhinav Chakravarty

H.P. S. S. S.

Bill of costs

By the appellants

In the District

In the moonsiff's Court	_____	7.72	
Do " Special Judge's Court (including 4% fee)	_____	2.152	10 64

In this Court

Stamp for memo: of special app ^l	_____	1 " "	
Stamps for copies of decree & judgment	_____	3.8 "	
Stamp for Vakalatnama	_____	2 " "	
Butta for process and postage	_____	1.5 "	
Sectioner's fee	_____	1.39	
Vakils fee	_____	" 7.2	9.7.11

Rspees 19.14.3

Pay

To be trans
Received
translation

By the Respondents

In the District

In the Mooniffs' Court (including V. Fee) — 3.13.2

In the Supt. Judge's Court — 2.13.2 6.10.4

In this Court

Stamp for Vukalutana — 2. " "

Vukel's Fee — " 7.2 2.7.2

Pupees 9.1.6



West
sealer

West
Registrar

The 18th day of April 1864