

In the High Court of Judicature, Bombay.

Monday, the 3rd day of October 1864.

SPECIAL APPEAL No. 59 — of 1864.

Bapoo bin Butirji Patil of
the Ahmednugur District — } Appellant
(Original Plaintiff) }

versus

Lukharam Wulud Ranoji of
the Ahmednugur District. — } Respondent
(Original Defendant.) }

Rs. 20 — " — " —

The claim in the Original Suit was to establish a right to build
one piece of ground in Durnunjav, and to
restrain Def. from offering opposition thereto

In Appeal No. 174 of 1863 the Assistant Judge
of the District of Ahmednugur Ahmednugur performed
the Decree of the Hon. J. Pillay who had thrown out the claim.

A Special Appeal was preferred in the High Court on the grounds that (1) a Sub-
stantial error in law in the investiga-
tion of the case has been made which
has produced error in the decision of
the

the case on its merits in that the Res-
pondent having admitted Appellants
original proprietary title to the land
in question and pleaded that he
had abandoned his rights to it in
agreement (N^o 10) The Assistant
Judge was in error in leaving the
following questions undecided -
Viz. Is the agreement proved? and
if so is it valid, and binding up-
on the Appellant, that (2) the Assist-
ant Judge was in error in throwing
out the claim on the ground that
no necessity on the part of the
Appellant within the last 12 years
is proved whereas Act 14 of 1859 -
enacts that an action for the recov-
ery of immovable property may
be brought at any time within
12 years from the time the cause of
action arose, that (3) the Assistant
Judge was in error in leaving
undetermined the time when the
cause of action arose, and the period
from which the Respondent com-
menced to be in possession of the
property in question; that (4) the sta-
tute of limitation is not specially
pleaded by the Respondent the As-
sistant Judge was therefore in
error in throwing out the claim;
and that (5) the Respondent having
admitted Appellants original title
to the property in question, the
onus of proving that he abandon-
ed that right should have been
thrown upon him. (Respondent) -

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

H. Newton.
Att. Gen.

MEMORANDUM OF COSTS incurred in Special Appeal No. 59.

of 1864 against the decision of the *asst* Judge of the District of *Ahmednagar* and disposed of on the 3rd Oct^r 1864 by *confirming the same with costs*

BY THE APPELLANT—

In the District.				
In the <i>Moonsiff's Court</i>	7	10	7	✓
In the <i>asst Judge's Court (Ahmednagar)</i>	3	6	7	✓
			11	12
In this Court.				
Stamp for Memorandum of Special Appeal	2	"	"	✓
Stamps for copies of Decree and Judgment	3	"	"	✓
Stamp for Vukeelutnama <i>two</i>	4	"	"	✓
Batta for Process and Postage	1	2	"	✓
Sectioner's Fee	"	10	9	✓
Vukeel's Fee	"	9	7	✓
			11	6
			4	✓
			Rupees....	22
				7
				6

BY THE RESPONDENT.

In the District.				
In the <i>Moonsiff's Court</i>	6	12	7	✓
In the <i>asst Judge's Court</i>	1	9	7	✓
			8	6
			2	✓
In this Court.				
Stamp for Vukeelutnama	2	"	"	✓
Vukeel's Fee	"	9	7	✓
			2	9
			7	✓
			Rupees....	10
				15
				9



W. D. ...
For Sealers
For Acting Registrar

The 3rd day of October 1864.