

In the High Court of Judicature, Bombay.

Thursday, the 6th day of October 1864.

SPECIAL APPEAL No. 603 OF 1864

Kusha alias Krishna bin
Nathu Mali of the Satara
District

Appellant,

(Original Plaintiff)

versus

Raoji Ramchandr Koolkur
ni of the Satara District

Respondent,

(Original Defendant)

Rs. 34-1-9-

The claim in the Original Suit was to recover possession of some
Govt. land, which had been mortgaged to Dept.

In Appeal No. 391 of 1863 the Judge
of the District of Satara at Satara reversed
the Decree of the Mof. Magistrate who had awarded the claim.

A Special Appeal was preferred in the High Court on the grounds that (1) the
decision of the District Judge is against
Law in that the lower court by basing
its

its finding upon Defendant No. 1's de-
position has excluded all the ^{other} evidence
in the case, ^{and} that (2) the finding is
against certain admissions of the De-
fendant Rowji in the case. -

The Court considers that the Judge has erred in
law in omitting to raise and determine the material
issue, whether the Pff. had, either by proof of the
alleged mortgage or in any other way, established
his proprietary right to the land sued for, and in
thus failing to take into consideration a ma-
terial portion of the Plaintiff's proof.

The Court does not consider that the validity
of the Plaintiff's claim depended ^{necessarily} on proof of the
alleged mortgage; but that in his succeeding
in establishing a proprietary title, the defendant
might rely on any admission of transp. to
himself, or in the absence of such admission
would be required to prove the transp.

The Court finds also that the Plaintiff in his
pleint in this suit requested the Jrooniff to cause
the Defendants to produce the mortgage deed,
and under these circumstances it does not
think the Judge's arguments as to the non-production
of the deed justifiable, though formal notice for
its production under sec. 107 of the Code of Civil
Procedure was not given.

The Court therefore reverses the decree of the
Judge and remands the case for a new decree on

the merits.

Costs to follow final decision.

A. Weston.

A. W. Weston.

MEMORANDUM OF COSTS incurred in Special Appeal No. 603

of 1864 against the decision of the Judge of the District of Satara and disposed of on the 6th October 1864 by remanding the same for retrial

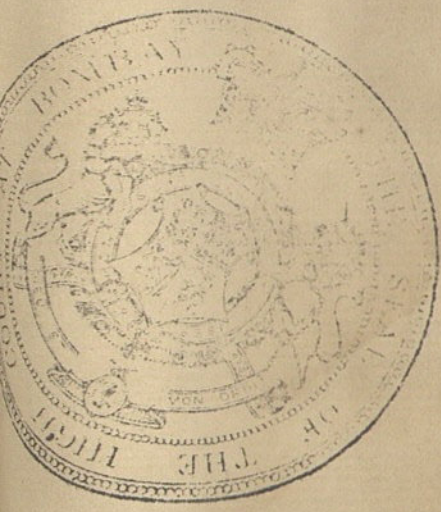
IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment	1	8	✓
Stamp for Vukeelutnama <i>sure</i>	4	"	✓
Batta for Process and Postage	1	"	✓
Sectioner's Fee	1	2	✓
Vukeel's Fee one-fourth	"	4	✓
		7	14
Rupees		7	14

BY THE RESPONDENT—

Stamp for Vukeelutnama	2	"	✓
Vukeel's Fee one-fourth	"	4	✓
		2	4
Rupees		2	4



W. J. ...
For Sealer

W. J. ...
For Acty. Registrars

The 6th day of October 1864

Issued a Certificate on the Treasury
of the Collector of Sataroo for the re-
fund of Rupees (4) Four being
the value of Stamp used for "

Special Appeal in this case

Dated the 6th October 1864



[Signature]
For Acting
1st Asst Registrar

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