In the High Court of Judicature, Bombay.

Wednesday, the 8 day of March 186 5.

SPECIAL APPEAL No. 613 OF 1864.

Bal Krishna Janardan Oke in the Ratnagiri Division of the Konkan District (Original Plaintiff) — Appellant,

v.s.

Yashwanth Moreshwar Soman in the Ratnagiri Division of the Konkan District (Original Defendant) — Respondent,

Rps 578-0-0

Special Appeal No. 614 of 1864.

Yashwanth Moreshwar Soman in the Ratnagiri Division of the Konkan District (Original Defendant) — Appellant,

v.s.

Bal Krishna Janardan Oke in the Ratnagiri Division of the Konkan District (Original Plaintiff) — Respondent,

Rs. 1,599-0-0

The claim in the Original Suit was to recover Rs 1599-0-0 on account of Khatee bills, Loss of interest & cost of Stamping Agreement.

In Appeal No. 12 of 186 2 the Senior Assistant Judge of the District of the Konkan at the detached station of Ratnagiri amended the Decree of the Moonsiff of Chiplooun who had awarded Rs 430-2-0 as interest to have been over collected, disallowing the rest of the claim & awarded to Bal Krishna the sum of Rs 1021-0-0 disallowing the claim to the penalty & cost of stamping the agreement, but awarding int. from date of suit up to date of final payment at 9 per cent per annum.

Nos 613 & 614 of 1864

A Special Appeal was preferred in the High Court on the grounds that (1) There has been a substantial error in law in the investigation of this case and which may have produced error in the decision of the case

case on its merits in that, owing to the Respondent's failure to act up to the agreement the Appellant was in virtue of the terms thereof, entitled to damages which have not been awarded to him, and that (2) the Appellant found himself under the necessity of stamping the agreement in consequence of the objections stated by the Respondent, who being the party to blame in the matter, the Appellant was entitled to the cost of stamping, and to damages. The Senior Assistant Judge, therefore should not have thrown his claim there to.

In Civil Appeal No. 614 of 1864

I That the decision of the Senior Assistant Judge is against Law, in that,

(1) The District Court has admitted secondary evidence without a satisfactory account of the loss, or destruction of the primary evidence on the part of the Plaintiff, or giving the defendant notice as provided by Law.

(2) The agreement sued upon has been insufficiently stamped.

II That there have been errors in Law in the investigation of the Case which have produced substantial errors in the decision of the Case on its merits, in that,

(1) The following point has been omitted to be raised, who has made a breach in the agreement sued upon.

Ile

The Court confirm the Decree of the Dl. Judge with costs in Spl. Appeals Nos 613 & 614 on Spl. Appeal to Calicut

N Wilcock Forbes.

T Pg Tucker

Bill of Costs.

In Special Appeal No. 613 of 1864.

By the Appellant.

In the District.

In the Moonsiff's Court	124.6.6	
Do — Sr. asst. Judge's Court	93.1.—	217.7.6

In this Court.

Stamp for memo: of Special appeal	32.—	
Stamps for copies of decree & judgment	3.—	
Stamps for two Vakalutnamas	4.—	
Stamp of an application to enter the name of the appellant's heir	2.—	
Batta for Process and Postage	1-12.—	
Sectioner's fee	1-9-6	
Vakeel's fee	17-5-5	
		61-10-11
	Rupees	279-2-5

By the Respondent.

In the District.

In the Moonsiff's Court	53-7-1	
Do — Senior asst. Judge's Court	35-9.—	89-5.—1

In this Court.

Stamp for Vakalutnama	2.—	
Vakeel's fee	17-5-5	19-5-5
	Rupees	108-5-6

In

Ed 15/3/

In Special appeal No. 614. of 1864.

By the appellant.

In this Court.

Stamp for Memo: of Special appeal	50-"-"	
Stamps for copies of decree & judgment	4-"-"	
Stamp for vakalutnama	2-"-"	
Stamp of an application to enter the name of the Respondent's heir	2-"-"	
Batta for Process and Postage	5-14-"	
Sectioner's fee	1-15-"	
Vakeel's fee	47-15-6	113-12-6
	Rupees	113-12-6

By the Respondent.

Stamp for vakalutnama	2-"-"	
Vakeel's fee	47-15-6	49-15-6
	Rupees	49-15-6

Ed 10.9.8

Sealer

Registrar

The 8th day of March 1865