

In the High Court of Judicature, Bombay.

Wednesday, the 12th day of October 1864.

SPECIAL APPEAL No. 620 of 1864

Jyngraw bin Mansing and
Karayaurav bin Amroot of the
Satara District — — — — — } Appellants
(Original Defendants)

versus

Tookaram bin Sooryaji & Ramrao
bin Pudumsing & Babaji bin Bhu-
-waurav & Gumpurav bin Bapoorav
and Amritav bin Anandav of the
Satara District (Original Plaintiffs) } Respondents

Rs. 138-2-10

The claim in the Original Suit was to recover, as heirs to a deceased person $\frac{2}{3}$ (two thirds) of certain immovable lands, and of a house, and other property.

In Appeal No. 50 of 1864 the District Judge of Satara at Pimpri confirmed the Decree of the District Judge who had awarded the claim.

A Special Appeal was preferred in the High Court on the grounds that there has been a substantial error in law in the investigation of the case which has produced error in the decision of the case upon the merits.

merits in that:

(a) The Court below having no other evidence before it than certain geneological trees filed by appellants in another Court threw the onus of proof upon them notwithstanding the fact that they were dependants in possession.

(b) The Court below has erred in concluding from the names of the two wives of Pudinapi not being specified in the geneological tree of 1857 that he had not two wives.

(c) That the Court below overlooked the admission of the correctness of the geneological tree, N^o. 112, contained in the Petition N^o. 111 presented by the opposite party.

The Court is of opinion that the Dist^o. Judge was in error in holding that by a pedigree N^o. 163 in which that in construction judges it was conclusively established that all the four sons of the common ancestor Paddamsing Peral were the sons of one wife, and as the question of the descent from different wives is not distinctly raised by the issues relater by the Defendants, nor have the Plaintiffs been able distinctly to declare that they and the dependants and the deceased ~~plaintiffs~~ were descended from brothers of the whole

blood, the Court reverse the decree of both the Lower
Court and directs the suit to be remanded to the
Court of first instance, that the following issue
may be determined:—

Have the defendants established that they and
the deceased Linniger were descended from ~~the same~~
brothers, and that the Plaintiffs were the descendants
of sons by a different mother.

Each party to be allowed to produce new evidence
on the above ~~case~~^{issue}, and a new decree to be passed
in accordance with ^{the} Court's determination of the
said issue.

Court to follow the final decision.

H. P. G. Fisher

L. S. M. D.

MEMORANDUM OF COSTS incurred in Special Appeal No. 620

of 1864. against the decision of the *Acting Judge* of the District of *Satura* — and disposed of on the *12th October 1864* by *remanding the cause for retrial* —

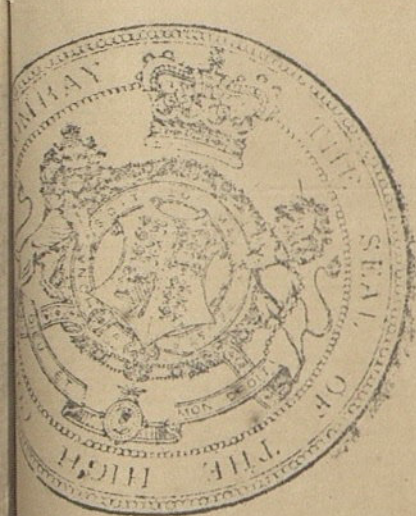
IN THIS COURT.

BY THE APPELLANT

Stamps for copies of Decree and Judgment	4	8	1/2		
Stamp for Vukeelutnama	2	0	0		
Batta for Process and Postage	3	14	0		
Sectioner's Fee	4	8	6		
Vukeel's Fee one-fourth	1	0	7		
				15	15
					1
				Rupees	15
					15
					1

BY THE RESPONDENT

Stamp for Vukeelutnama	2	0	0		
Vukeel's Fee one-fourth	1	0	7		
				3	0
					7
				Rupees	3
					0
					7



For Sealer
The 12th day of October 1864.

For Acting Registrar

Issued a Certificate on Her Majesty's
Treasury Bank of Bombay for the refund
of Rupees (8) Eight being the value of Stamp
used for Special appeal in this case.

Dated this 12th October 1861

[Signature]

For acting Registrar

Certificate delivered to
[Signature]

[Signature]

1961