

In the High Court of Judicature, Bombay.

Monday, the 3rd day of October 1864.

SPECIAL APPEAL No. 623 of 1864.

Jokajirao, Nam Bahaji
deceased, of the Konkan District

Appellant

(Original Plaintiff)

versus

Rajho and Vitoba sons of
Sudoo Inhatrao and Sugona
wife of Yesaji of the Konkan Dis-
trict

Respondent

(Original Defendants)

Rs. 5-6-6-6

The claim in the Original Suit was to recover a house and two fields the property of a deceased person, and was brought by his heirs

In Appeal No. 534 of 1868 the Assistant Judge of the District of the Konkan at Tanjore (on review) the Decree of the Juff. of Alibay who had thrown out the claim, as barred by the 12 years rule.

A Special Appeal was preferred in the High Court on the grounds that the decision of the Assistant Judge is contrary to Law in that,

(a) The Court below has held the claim barred by the statute of limitation when it was not so

(b) The Court below has applied clause 13 section I of Act ~~XIV~~ of 1859 when it had no application to the case

(c) The Court below has held that there was not enjoyment or part payment; whereas it is in evidence that the Appellant used to live occasionally with her mother-in-law. The possession therefore by her mother-in-law was that of a trustee or joint possession

(d) The Court below has upheld an alienation of immovable property by a Hindoo widow which was illegal

(e) The claim of the Appellant-attached whether she was considered the heir of her son Pharo or of her mother-in-law Ganama

The Court thinks the App. Judge was in error in holding in his judgment in review that Cl 13 of Sect I Act ~~XIV~~ of 1859 applied to this case.

The clause applicable to the case is in the Court's opinion

Cl 12, and the point to be ascertained is the time when the cause of action arose;

Did it arise on the execution of the deed of gift, or was Ganama in adverse possession at any, and if so at what

proa time, in which case the
Cause of action would arise
at the time when such
adverse possession commenced.

With reference to the
Remand directed by the Am-
Judge at the close of his
original Judgment in appeal,
the Court considers that the
sum expended by Papp & Wittal
in the maintenance of the widow
Jumna, if any, should form
the subject of a separate suit
and ought not to be set off
against the Plaintiff's present
claim.

On the whole the Court reverses
the decree in review of the
Am- Judge & remands the case
for a determination on the merits.
Certi to abide the final event.

Joseph Arnold
Abinloch Forbes.

Issued a Certificate on Her Majesty's Treasury
Bank of Bombay for the refund of Rupees (4)⁰⁰
Four being the value of Stamp used for Special
Appeal in this case.

Dated this 3rd day of October 1864.

For acting
~~As~~ Registrar

[Signature]

Certificate released

[Signature]

[Signature]