

In the High Court of Judicature, Bombay.

Monday, the 4th day of September 1865.

SPECIAL APPEAL No. 647 of 1864

Balkrishna Wapodev Meshendule of the Konkan District

Appellant,

(Original Defendant)

versus

Pawji Amrit Gaudkari Khot of the Konkan District Bombay.

Respondent

(Original Plaintiff)

Rs. 4 + 4 - 9

The claim in the Original Suit was to recover a portion of a plot alleged to be Plaintiff's ancestral property, wrongfully withheld from him by Defendant.

In Appeal No. 557 of 1863 the Assistant Judge of the District of the Decree of the J. P. of Pohe who had thrown out the claim and awarded the land claimer.

A Special Appeal was preferred in the High Court on the grounds that (1) the decision of the assistant judge is against law in that the lower court held that the Respondent

Respondent was not bound by deed N^o 11,
it should have allowed the appellant to
fall back upon his his rights under deed
N^o 10; that (2) hearsay evidence of se-
=paration has been admitted by the
lower Court that (3) the statement of
the lower Court that there was "no
fact that" is opposed to evidence -
that (4) the onus with reference to the
proof of separation has been improperly
thrown upon the appellant that (5)
the mortgaged property being undi-
=vided it is against law to allow re-
=demption of a part. and that (6) the
present action being one of ejectment
is not maintainable against the
appellant who is a mortgagee in
possession. -

The Court finds that the Deceitiff appears
to have held both the mortgage deeds genuine
and valid. The Assistant Judge has found
that the later deed (that of Shukhe 1762) has
not been shown to be valid against the Plaintiff
inasmuch as he was at the date of its execution
separated in interests from the persons who
passed it. But he has not given any judgment
as to the obligation of the Plaintiff under the

bond no. 10 which is 24 years older, and may
therefore have been executed when the family
was undivided.

The Court reverses the decree of the Assis.
Judge and remands the case that a new
decision may be given on the point indicated.
Costs to follow final decision.

H. W. M.

A. M. Marden

MEMORANDUM OF COSTS incurred in Special Appeal No. 644
of 1864 against the decision of the Assistant Judge of the
District of the Poonah and disposed of on the 4th September 1865
by remanding the cause for retrial

IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment	1. 8. "
Stamp for Vukeelutnama	2. " "
Batta for Process and Postage	1. 12. "
<i>Sheriff's and Clerk's Fee</i>	3. " "
Sectioner's Fee	1. 10. "
Vukeel's Fee one fourth	" 4. 11. "

	10. 2. 11.
Rupees....	10. 2. 11.

BY THE RESPONDENT—

Stamp for Vukeelutnama	0 0 0
Vukeel's Fee one-fourth	0 0 0

	0 0 0
Rupees....	0-0-0.



W. J. Seal

West Registrar

The 4th day of September 1865

Issued a Certificate on Her Majesty's Lease
Bank of Bombay, for the refund of Rupees four only
being the ^{value} amount of Stamp duty used for Special
Appeal No 647 of 1864

Dated this 4th day of September 1865

R West
Registrar

Ed
H.S.