

Purna & Solepuri

In the High Court of Judicature, Bombay.

Wednesday, the 27th day of ~~November~~ June 1866

SPECIAL APPEAL No. 683 — of 1864.

Ganputrav bin Madhuvrav deceased
his son and heir Shriputi Deshmookh
of the Poona District

Appellant

(Original Plaintiff)

versus

Ganputrav bin Naroji Naik
Deshmookh of the Poona District

Respondent

(Original Defendant)

Rs. 21- 1- "

The claim in the Original Suit was to recover Plaintiff's Miras
land wrongfully withheld by Defendant.

In Appeal No. 409 of 1863 the Principal Sudder Ameer
of the District of Poona ~~is~~ reversed
the Decree of the Sudders of Poona who had awarded the claim

A Special Appeal was preferred in the High Court on the grounds that (1) that
the decision of the Principal Sudder Ameer is opposed to usage having
is a putta (lease) from the Government,
exhibit N^o 39 for the Miras land under dispute
in the name of the appellants' ancestor.

Narajee

Narajee, - showing that it belongs to the
appellant and after the death of Narajee,
the whole of the land, as described in the
putta, is entered as miras in the name
of the appellants paternal uncle Gopalrao
in the descriptive roll of lands, Exhibit
N^o 53. The Certificate of heirship to Narajee
obtained by Gopalrao, Exhibit N^o 47, is in
the case - Gopalrao was also examined -
see Exhibit N^o 37, in which he does not object
to the action being laid - And this action
is to obtain, in the appellants own right
to his share, as much land, as is cultivated
by the Respondent. Therefore, according to
the customs of the Country the decision
ought to have been given in the Appellants
favour - but which has not been so,
erroneously; (2) the whole of the land
is entered in the name of Gopalrao in
the descriptive roll exhibit N^o 53 and the
land under dispute is a part of it. But
as the land under claim does not corres-
pond to (that in) the descriptive roll,
the land in the descriptive roll must
be other than that sued for. The Lower
Court made such an unfounded as-
-sumption as that - which is erroneous, and that
(3) the assumption of the Lower Court
that the appellant lost his miras rights
was

over the land in dispute, simply because it was cultivated by the Respondent in consequence of the appellant not having done so, is erroneous.

A special appeal having been admitted on the above mentioned grounds the Respondent was permitted to ^{file his memo: of objections to} present another special appeal on the following grounds.

The late Principal Sudur Amin having decided on the evidence previously recorded that the land was not the "miras" of plaintiff, it was wrong to have held it to be the "Miras" of plaintiff in the absence of any fresh evidence on the part of appellant. The evidence recorded does not shew it to be "Miras."

2. Though the respondent tendered evidence as to the land in dispute not being with the ^{plaintiff} for more than thirty years nor to its having been ever held by the plaintiff's father within 40 years, and though the summonses were issued to the witnesses and though they appeared in Court, they were sent away without having been examined and a report to that effect was made. Those persons who on behalf of the respondent cultivated the

the land in dispute for the last 20
or 22 years were cited as witnesses and
though they attended the Court, their
depositions were not taken. He made an
application for their being examined for
the purpose of proving that if the de-
fendant or the persons under whom the
defendant held the land were in possession
for upwards of 30 years, he must be
considered entitled thereto as proprietor
under section 1 of Regulation 2 of 1821 and
though the Court admitted the same
and issued the necessary summonses,
and though the witnesses appeared in
Court, their evidence was not taken, which
is an error of the Principal Sudder Ameen.
Therefore the witnesses should be examined.

The Court reverse the decree of
the principal Sudder Ameen and
confirm that of the Moonsiff with
costs

HPY Puckin
J. C. B. L.

MEMORANDUM OF COSTS incurred in Special Appeal No. 683-

of 1864, against the decision of the Principal Sudder Amine of the District of Poona and disposed of on the 27th June 1866. by reversing the same and confirming that of the moonsiff

BY THE APPELLANT—

In the District.

In the moonsiff's Court 9 22

In the Principal S. Amine's Court 1 10 1

In this Court.

Stamp for Memorandum of Special Appeal 2 —

Stamps for copies of Decree and Judgment 1 8 —

Stamp for Vukeelutnama 4 —

Stamp for an application to enter the name of

the — — — — —

Batta for Process and Postage " 8 6

Sectioner's Fee " 13 6

Vukeel's Fee " 10 1

Rupees 20 4 4

10 12 3

9 8 1

BY THE RESPONDENT.

In the District.

In the moonsiff's Court (including V. Fee) } 6 4 1

In the Principal S. Amine's Court 4 9 1

In this Court.

Stamp for Vukeelutnama 4 —

Vukeel's Fee " 10 1

Rupees 15 7 3

10 13 2

4 10 1



W. Neuberger
Acting Registrar.

J. W. Campbell

Sealer.

The 27th day of June 1866.