

In the High Court of Judicature, Bombay.

Mon day, the 28th day of November 1864.

SPECIAL APPEAL No. 705 of 1864.

Balkrishn Jugunath of the
Konkan District ————— } Appellant,
————— " ————— (Original Plaintiff)

versus

Ganesh and Mahadaji Vitul
of the Konkan District ————— } Respondents
————— " ————— (Original Defendant)

Rs. 150 —————

The claim in the Original Suit was to *cause the removal of a building from a certain possession of a piece of ground*

In Appeal No. *108* of 1864 the *Assistant Judge*
of the District of *the Deccan* at *Sannah* *reversed*
the Decree of the *Magistrate* who *had awarded the restoration*
of the ground.

A Special Appeal was preferred in the High Court on the grounds that (1) the Assistant Judge was wrong in point of law in holding that the Plaintiff's right of action accrued at the time of Aha's death; that (2) the Assistant Judge was wrong in point of

of law in holding the suit barred by lapse of time in the absence of all evidence as to the date of Abba's death, from which, in his opinion the period of limitation commenced to run; that (3) the Assistant Judge was wrong in point of law in holding that the Defendants had acquired a prescriptive title to the land in dispute their possession not being adverse but permissive; and that (4) the assistt. Judge was wrong in holding that the Defendants had acquired a prescriptive title to the land in dispute their possession being merely as tenants by sufferance.

The Court finds that there is an error of law in the decision, inasmuch as the Assistant Judge, without hearing evidence before him of Abba's death, and acting upon a presumption not warranted by law, has held that the cause of action arose more than 12 years before the suit.

The Court remands the case for the Assistant Judge to pass a decree on the merits.
Costs to follow final decision.

R. Couch
H. Weston.

A. M. Warder

Received a certificate in the handwriting of the Deputy Registrar of the District of Benares for the value of Rs 100 (100) and the same was deposited in the Court of the Assistant Judge of the District of Benares on the 28th Nov 1864

MEMORANDUM OF COSTS incurred in Special Appeal No. 705
of 186 4 against the decision of the Assistant Judge of the
District of *the Muzaffarnagar* and disposed of on the 28th Nov 1864
by *remanding the same for retrial*

~~IN THIS COURT.~~

BY THE APPELLANT—

Stamps for copies of Decree and Judgment	3	0	0	✓			
Stamp for Vukeelutnama	2	0	0	✓			
Batta for Process and Postage	2	2	0	✓			
Sectioner's Fee	1	11	6	✓			
Vukeel's Fee one-fourth	1	2	0	✓			
			9	15	6	✓	
			Rupees ...	9	15	6	✓

BY THE RESPONDENT—

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



[Signature]
For Sealer

[Signature]
1st Assist. Registrar

The 28th day of November 1864

