

In the High Court of Judicature, Bombay.

Thurs day, the 22 day of Dec 1864

SPECIAL APPEAL No. 773 of 1864.

Prishnaji Vishwanath
Toshi of the Kankar
District - (Original Plaintiff)

Appellant

versus

Mahomed Chimer -
- shet Kasar of the Kankar
District (Original Defendant)

Respondent

Rs. 10-8-0-

The claim in the Original Suit was to recover possession of a field alleged to have been purchased at an auction sale by the *Def* in 1868 but have been wrongfully occupied by the *Plff* in 1867

In Appeal No. 86 of 1864 the *Asst Judge* of the District of *the Kankar* at *Tamba* reversed the Decree of the *Judge* at *Pune* who had decreed for the *Plff*

A Special Appeal was preferred in the High Court on the grounds that the de-

cision of the Assistant Judge -

is contrary to law in that

(a) The court below has regarded this suit as one to set aside a sale whereas it was one to recover property of which Appellant was forcibly dispossessed.

(b) That clause 3 Section I of Act XIV of 1859 is erroneously applied to this case in as much as this suit is to be governed by clause 12 of the said Section.

(c) That even if clause 3 Section I of Act XIV of 1859 be held applicable, the court below did not consider that the statute was saved under Section XIV by the Appellant having instituted proceeding within the period of limitation in the Revenue Court.

(d) The Appellant being a purchaser with possession and the opposite party a mortgagee without possession the court below erred in expressing the opinion that he could pursue the property in the Appellant's hands.

The Court say:

from the decree of the Court below with costs

H. Couch
A. Weston.

MEMORANDUM OF COSTS incurred in Special Appeal No. 473

of 186 *A* against the decision of the *Asst. Judge* of the District of *the Kankarand* and disposed of on the *22nd* December 1864 by *confirming the same with costs.*

BY THE APPELLANT—

| <i>In the District.</i> | | | |
|--|----------|-------------|---------|
| In the <i>Mousiff's Court</i> | 3. 11.. | | |
| In the <i>Asst. Judge's Court</i> | 1 5.. | | |
| | | | 5 |
| <i>In this Court.</i> | | | |
| Stamp for Memorandum of Special Appeal | 1 | | |
| Stamps for copies of Decree and Judgment | 2. | | |
| Stamp for Vukeelutnama <i>tax</i> | 11 | | |
| Batta for Process and Postage | 1 2.. | | |
| Sectioner's Fee | 1 10.. | | |
| Vukeel's Fee | " 5" | | |
| | | | 10 1.. |
| | | Rupees..... | 151.. |

BY THE RESPONDENT.

| <i>In the District.</i> | | | |
|---|---------|-------------|---------|
| In the <i>Mousiff's Court</i> | 4 15.. | | |
| In the <i>Asst. Judge's Court</i> | 3. 3.. | | |
| | | | 8. 2 .. |
| <i>In this Court.</i> | | | |
| Stamp for Vukeelutnama | 2 | | |
| Vukeel's Fee | " 5" | | |
| | | | 2 5.. |
| | | Rupees..... | 10 7.. |



Dist
Sealer

Dist
Registrar

The 22nd day of December 1864.