

In the High Court of Judicature, Bombay.

Medani day, the 16 day of November 1864.

SPECIAL APPEAL No. 81 of 1864.

Salobai Kom Mahadev
Budoe of the Solapoor District
(Original Plaintiff)

Appellant

versus

Rungo Mahadev Budoe
of the Solapoor District
(Original Defendant)

Respondent

Rs. 394 - 8 - "

The claim in the Original Suit was to recover on a promissory note $\frac{1}{3}$ of a half share in the *Budwey* worth the sum of Rs. 35-0 the sum appropriated by *Rungo Mahadev* in *Julee 1270* without assigning *Salobai* her share according to agreement.

In Appeals Nos 162 & 175 of 1862, the *Judg.* of the District of *Sholapoor* at *Sholapoor* affirmed the Decree of the *hoof at Burshee* who had decreed that *Rungo* pay to *Salobai* Rs. 51-6-0 rejecting the remainder of her claim.

A Special Appeal was preferred in the High Court on the grounds that 1) the decision of the District Judge is contrary to Law in that the Judge has failed to pass a decree affirming appellants right to the share in the *Budwey* in question.

question sued for by her on the ground that
the promissory note or deed of statement is in-
sufficiently stamped, although appellants' right
under this deed has before been affirmed by
a Court of competent jurisdiction in actions
between the parties to this suit. (2nd) in
that the ^{district} judge failed to award in appel-
lants' favor although there was con-
clusive evidence, other than the document
said to be insufficiently stamped, filed in
the case to prove appellants' title. (3rd) in
that the ^{district} judge has erroneously ruled that
the deed of statement is insufficiently stamped.

The Court confirms the
decree of the District Judge with
costs on appellants.

H. Weston
Att. Gen.

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Transcribed by
B. B. B. B.
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129

968
August 1st 1863.

Plaintiff - Saloobare Kom Mahadew
(Appellant).

Versus.

Respondent - Rungo Mahadew
(Defendant).

Original claim ^{Rs 20} 374 ^{as} 8 ^{as} 8 ^{as} 8
In appeal.

175 of

262 Appellant - Rungo Mahadew
(Defendant)

Versus

Respondent - Saloobare Kom Mahadew
(Plaintiff)

Original claim
In appeal
Plaint.

I sue on a promissory note, dated Susee 1261, Ashwin
Shood 13, to recover $\frac{1}{3}$ of $\frac{1}{2}$ share in the Budway written
the half share being that of my step-son, the Defendant,
who passed me the promissory note. I require that this
share should be allowed me in perpetuity, and also that
the sum of ^{Rs 20} 35 ^{as} 8 ^{as} 8 which, including Rashabare's share
the Defendant appropriated in 1270 Susee without
assigning me my share of it according to agreement, ^{as}
should be paid me. I have twice ~~before~~ before obtained a
decree for my share for a particular year on this promissory
note.

Statement in answer.

I deny that I ever passed the promissory note sued on.
It appears to have written on plain paper and stamped
since execution. It is only stamped moreover to the
value of 4 annas, which will only enable claimant to
sue for one year's share - (as estimated by her). She claims
too

~~66~~ ~~Handwritten text in Devanagari script~~

~~Handwritten text in Devanagari script~~

~~Multiple lines of handwritten text in Devanagari script, mostly illegible due to being crossed out.~~

Recd 23rd Sept^r

The stamp required for this copy was furnished on the 23rd September 1863

The copy was ready for delivery on the 23rd
It was delivered on the 25th idem

too more, as one year's share, than the produce of that particular year is sufficient for supposing her to have a right to the proportion stated in the plaint. In Appeal No. 26 of 1858 Claimant admitted she had no right to the share in perpetuity. Her claim for part of Radhabacci's share is barred by lapse of time, Radhabacci having died upwards of 4 years ago.

The Mooniffs's decision.

The points for decision are whether the suit is barred by limitation. If not, whether the claim is admissible.

After perusing the papers, proceedings and the evidence in the case, the Court finds that the Defendant Rungoba is the stepson of the Plaintiff Salobacci. She has no issue - and hence is the cause of present suit between the step-mother and step-son after the death of her husband. She produces exhibit No. 3 purporting to have been passed by the Defendant Rungo in support of her claim to a particular share in the religious allowance named "Budwaypun" in Barce.

The "Budwaypun watur" is divided into two shares. In one of these shares Defendant Rungo has a $\frac{1}{4}$ share. Each of these sharers enjoy the "watur" in rotation every other year, and the sub-sharers of the sharer whose turn it is, do so in proportion to their shares allotted to them during the year.

The Defendant by his share in the "watur" is entitled to enjoy a produce of 3 months in every other year. Out of this share the Defendant has agreed to make over an income of $\frac{1}{2}$ fortnights to the Plaintiff, and also $\frac{1}{2}$ a fortnights income out of Radhabacci's share (who died without issue) a relation of his and has passed an agreement to that effect exhibit

exhibit No. 3.

On the strength of this document (exhibit No. 3) the Plaintiff Saloobare formerly brought a suit to recover her share for the year Sun 1266 against Rungo. Rungo in defence denied the document. During the investigation his defence was proved groundless and a decree was passed against him which was confirmed in appeal. Rungo then preferred a special appeal which was rejected. Whereupon Saloobare the Plaintiff succeeded in executing her decree passed in her favor, and afterwards sued the Defendant to recover her share for the year Sun 1268 and gave in support of her (this) claim - the former decree. A decree was passed in her favor vide exhibit No. 15 - which was also confirmed in appeal: vide exhibit No. 14.

The Plaintiff Saloobare now claims a share in the share of deceased Radhabare for the year Sun 1270 and (the Plaintiff) for her own share. Both of which shares amount to one month's share in the 3 months' share for every other year. and prays that these shares in the "wutum" may be continued to her in perpetuity. The Court finds her claim to have been properly made for one month's produce of the "wutum". The Defendant admits that Radhabare is dead and therefore the Plaintiff's claim to a share in her (Radhabare's) share is an admissible one. The Defendant does not raise any question as to Radhabare's death or whether she died after the year for which the present claim is or not. The Court therefore cannot of itself raise the question.

The

The Defendant pleads that the Plaintiff has omitted some ^{portion} of his claim. But the Court is of opinion that if this a fact further claim to such a portion or portions is barred by section 7 of Act VIII of 1857. The Mother, in fact, is not competent to claim share from her son, but she can claim food and clothing. But here is an express document on the subject which cannot be superseded by the "Dhurma Shashtra". The Court therefore takes no notice of exhibit No. 12. The Court entertains no doubt as to the validity of document No. 3 and therefore it does not require any further proof to prove it.

From exhibit No. 15 showing the produce of the "Sumanek" days it appears that the whole amount of this item is Rupees 5... and consequently the Defendant is entitled to a sum of R. 1...4... and therefore Plaintiff is entitled to claim... 8... 8 and not one Rupee.

From para: 6 of the aforesaid exhibit it appears that the Defendant's share of the income derived from worshipping the "Anurna" (the surrounding Dities around the Chief Dity) amounts to R. 1...8... and thus the Plaintiff is entitled to claim... 8... as a third part of the share instead of R. 2... which is wrong. The share claimed by the Plaintiff in the Sumanek to the extent of annas 8 is proper. The Plaintiff cannot claim a share in the income derived during the leap months of the year as it is not clearly described in the plaint. The substance of the assertion made in the latter part of the para: 1 of the plaint agrees with the 1st para: of the aforesaid exhibit, and as the Defendant Ruzo receives in:

come in the "writum" for three months in every other year, Plaintiff Saloobae is entitled to a $\frac{1}{3}$ of it i.e. for one month's produce. From all the circumstances in the case, Plaintiff is to be considered entitled during the month of her share to one Rupee a day. Her prayer to continue the share of the "writum" in perpetuity cannot be complied with, as the document No. 3 is not sufficiently stamped. And, ^{as} it was executed while Regulation **XVIII** of 1827 was in force, it is affected by section **XII** clause **II** of the said Regulation.

The litigious spirit of both the parties seems to have been aroused by the witnesses of each party. This proceeding on the part of the witnesses is certainly detrimental to the parties. It would be better if the mother would leave with her son peaceably, otherwise she cannot obtain Eternal joy without a son; but she seems unwilling to do so.

The Defendant Rungo ought to have taken care of this poor old woman as she is his mother, but he seems to be careless about this. Moreover his denial of the document No. 3 for the maintenance of his mother reflects much discredit on his conduct.

The Court therefore decrees that the Defendant Rungo do pay to the Plaintiff Saloobae **No. 31. 6. 8** as laid down in the 1st para: of the plaint; the rest of her claim in this para and that made in the 2nd para is rejected.

Appeal of Saloobae.

①

I had formerly obtained a decree on the promissory note I now sue on - therefore there could be no objection to my obtaining a decree for the share in perpetuity - If the stamp were insufficient, I would have got the note additionally and sufficiently stamped - The Moonsiff ought to have observed this -

Appeal of Runge

The exhibit sued on is not stamped. Claimant has no right to any part of Radhabaee's share by the custom of the country. The sum sued for as such is larger than would be the part of the share due for if she had right to the proportion she claims, and there is no saying in general what sum of such share would be. The claim ought to have been estimated at 18 instead of 10 years value.

Decision in appeal

The question is looking to the rules for stamping promissory notes, to what extent the note sued on is valid, or the Moonsiff should have required claimant to make it valid. Whether as regards the claim on it to Radhabaee's share, (in part) it is legal contract, and whether the Moonsiff if he was right in awarding a certain proportion as claimant's share of Radhabaee's portion of the "woutun" awarded a sum of money forming that proportion -

The promissory note bears a 4 Anna stamp and is valid to the amount awarded on it by the Moonsiff; but is not valid on which to claim the perpetual cession of the sum of money stated to be one year's share due to Saloobaee. Only one year's share could be awarded on it as it is stamped now, and it was not the Moonsiff's business to require

require the note to be additionally stamped, unless the person suing on it had asked the Moon-
siff's permission to have it stamped additionally. It does not seem that such an application was made in this case. It is merely a vexatious objection to say that Salobee is prevented by the custom of the country to take a part of Radhabee's share in the "writun" when the same is sued for by virtue of an agreement between the parties, and not by right of succession as heir. The Moon-
siff estimated the proceeds of the "writun" at a certain sum in a former suit on this bond between the same parties, and there is nothing from which it can now be determined that he did not determine the proceeds to be what he found them to be on a fair average estimate. He has now merely awarded another proportion which the agreement shewed to be due, and determined a certain sum to bear that proportion to the whole proceeds on the same average. The Court affirms the Moon-
siff's decree. Each party to bear his own costs in appeal - and in the lower Court as awarded by the Moon-
siff.

(signed) G. A. Hobart
Judge

(True Copy)

G. A. Hobart

Judge.

AMP