

In the High Court of Judicature, Bombay.

Thursday, the 2<sup>d</sup> day of February 1865.

SPECIAL APPEAL No. 870 of 1864.

Naro Dhundes Marudik  
of the Ratnagiri Divi-  
-sion of the Konkan Dis-  
-trict (Original Plaintiff)

Appellant

versus

Parashram Narayan &  
Barve of the Ratnagiri  
Division of the Konkan  
District (Original Defendants)

Respondent

Rs. 2248-13-00

The claim in the Original Suit was to recover possession of plots, & Bajait Thicken, with dwelling houses &c, given in Daman to Plaintiff's ancestors, and which Plaintiff alleged he had received from his mother, but had subsequently been ejected from by application of the illegitimate son of the said Bajait Thicken at the direction of the Ratnagiri Commissioner. In Appeal No. of the District of the Decree of the J. Mag. J. Dupode who had thrown out the claim.

A Special Appeal was preferred in the High Court on the grounds that the decision of the Senior Assistant Judge is contrary to law in that,  
(1) The Senior Assistant Judge was wrong

wrong in admitting secondary evidence of the alleged grant the proper foundations for the admission of such evidence not having been laid, or proved.

(2) That assuming the foundation to have been laid for the admission of secondary evidence - there was no legally admissible secondary evidence to prove the alleged grant, its terms and execution.

(3) That there is no legally admissible evidence in the case to prove the alleged grant - its terms and execution.

(4) That no evidence has been adduced to prove either the genuineness or validity of the Sanad N<sup>o</sup> 18, but on the contrary, the usage of the country, which requires confirmatory sanads to be issued by the authorities which made the original grants has been overlooked by the Court below. Though shown by exhibit N<sup>o</sup> 237 produced by the defendant.

(5) The reasons assigned for the non-registry of the Sanads is not based on any evidence recorded in the case the lower Court therefore (although unsworn) testified in its person to the said alleged fact.

That

(6) That assuming the grant to have been made it was invalid according to Hindu Law, it being held proved in the case that there was no delivery, but that the grantor continued in possession up to the time of his death.

(7) That the subject of the grant being ancestral property, the grant was invalid as the grantor had no power of disposing of the same he having a son alive at the time.

(8) That the subject of the grant being ancestral property, the grant was invalid as against the adopted son of the grantor.

## II

That there have been substantial errors, or defects in law in the procedure, or investigation of the case which have produced errors or defects in the decision of the case upon the merits.

(1) That the Senior Assistant Judge was wrong in excluding from his consideration without assigning any reason the evidence adduced by the Plaintiffs in exhibits N<sup>o</sup>. 12 of the appeal suit, and exhibits N<sup>o</sup>. 103, 105, 106, and 107 of the original suit which were illegally condemned.

condemned by the Munsiff.

(2) That the Senior Assistant Judge has erroneously assumed that exhibit No. 72 produced by the Plaintiff was executed 30 years after the alleged grant.

(3) That the Senior Assistant Judge has misread exhibit No. 129.

(4) The Senior Assistant Judge ought not without notice to the Appellant to have disposed of the case before the day to which it was adjourned thereby preventing Appellant from producing evidence neutralizing the effect of the exhibits No. 18 relied upon by the other party.

The Court passes a decree in accordance with the terms of a compromise agreed upon between the parties, as follows:—

(1) Special Respondent (Orig. Defendant) Parashram Narayan is to make over, from the date of this decree, to Sp. Appellant (Orig. Plaintiff) Hans Thundde Dunsalk the 5 (five) Chunderas of the Bedhe Jeto area for which have remained in his (Respondent's) possession, Respondent relinquishing all interest whatever in them.

(2) Special Respondent Parashram Narayan is to continue to manage the Gram Tinkur

known as the Rahalkus's, with its bound-  
aries, together with the buildings and  
houses in it, which has remained, with <sup>as an issue</sup>  
the said Parashram Varsayan; Special  
Appellant Navo Dhundees Mandlik dis-  
missing all claim or interest in the same.  
(3). Each party to bear his own costs.

R. Couch

A. Newm.

A. Marden