

In the High Court of Judicature, Bombay.

Tues day, the 31 day of January 1864.

SPECIAL APPEAL No. 872 of 1864.

Ramchunder Bhaskur Date of
the Putnagiri Division of the
Konkan District (Original Plaintiff)

Appellant

versus

Narayanbhal bin Namunbhal
Mehendale of the Putnagiri Division of
the Konkan District (Original Defendant)

Respondent

Rs. 9-4-4

The claim in the Original Suit was to cause the removal of a shed
erected by karaym bhal - & the destruction of the shed
the right of way

In Appeal No. 294 of 1863 the Senior Justice
of the District of the Harbour at the detached Station of Putnagiri affirmed
the Decree of the Hoosul Rajapoor who had decreed that Ramchunder was
held concluded by the Decree in Spl. appeal No 4304 of 3 March/62.

the decision of the S. J. Judge

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

It is against

~~against~~ Law in that

- (1) The Lower Court erred in holding that the decree in Special appeal No 4371 binds the Special Appellant

The

- (2) The Lower Court did not raise the proper issues. Viz:
- 1st Whether the Plaintiff was bound by the decree against his relative in Special Appeal N-4371
 - 2nd And if not whether the Plaintiff has proved a right of way.
- (3) The decision is opposed to the admissions of the respondent in the cause
- (4) The Lower Court committed an error in law in not treating the order of remand as an estoppel on all points except those it had left open.
- (5) All the Special Appellant's evidence was not received.
- (6) The Lower Court has raised no points for decision.
- (7) The Lower Court erred in not deciding this cause on the merits.
- (8) The burden of proof has been wrongly placed.

The Court find that the Senior Justice Judge wrongly concluded that the judgment in Special Appeal No 4304 decided on the 3rd March 1867, *Karayan Shah Appellant vs Kalaja Repl.* was conclusive against *pl. Ramchundur* present *repl.* without entering upon the

the question whether the Plaintiff in
this suit was prior in blood or estate
to the Plaintiff Kalaje in the previous
suit; the Court find that the judgment
in the above mentioned appeal in reality
decided nothing in regard to Kalaje's right
of way, but merely declared that Kalaje
had not established his proprietary right
to the land.

The Court reversed the decree of the Sd.
Court and remanded the suit in order that the Sd.
Court may pass a new decree on the merits
and to follow the final decision.

Abhiloek Forbes.

H. S. G. T. S. S.

Issued a certificate on Her Majesty's Treasury
Bank of Bombay for the Refund of Rupee (Rupee)
being the value of stamp used for Special Appeal
in this case

Dated the 31st day of January 1855

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West
Registrar.

For the year 1855

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to the
31st day of January 1855