

poona

In the High Court of Judicature, Bombay.

Mon day, the 6th day of February 1865.

SPECIAL APPEAL No. 889 OF 1864

Sheik Muhammed Noosen
Muled Sheik Mulik of the Poona
District _____ } Appellant

(Original Defendant)

versus

Sheik Inasoodin Muled Muhammed
Hafizuddin of the Poona District _____ } Respondent

(Original Plaintiff)

Rs. 160/-

The claim in the Original Suit was to recover one deed of gift.
The amount thereby conveyed to the Plaintiff.

In Appeal No. 45 of 1864 the Act. Assis^t. Judge
of the District of Poona at Poona, amended
the Decree of the P. M. of Poona who had thrown out the claim
by awarding Rs. 160 of the sum claimed.

A Special Appeal was preferred in the High Court on the grounds that the decision
of the Acting Assistant Judge is contrary to usage having
the force of law, in that it was not competent to the deceased
Kantiya to pass the deed of gift No 3, since her former husband
_____ had
having

having mortgaged the house in dispute she had no right to it so long as she did not pay off the debt - and the Appellant having after his marriage with Katya paid the debt and redeemed the house then enlarged it, she had no proprietary right to the said house whereas the deed of gift was upheld and the claim was awarded contrary to law and the Mohomedan Law.

2. That the Principal Sudur Amion having been satisfied that the Appellant had redeemed the house by payment of the mortgage debt he did not examine the whole of the evidence tendered by the Appellant - and therefore the Appellate Court should not have passed the decision without examining the said evidence - whereas it did so, which was contrary to law.

3. That the property mentioned in the deed of gift No 3 not having gone into the Respondent's possession, the deed of gift was not valid according to the Mohomedan Law, whereas the claim was awarded contrary to the Mohomedan Law.

4. That it is set forth in the deed of gift No 3 that the Appellant's property is separate - and it was for the Respt. to shew which property was meant and where it was - and the claim should not have been awarded unless he had shewed the same.

5. That even if the deed of gift be upheld, still the house should not have been awarded ~~to~~ to the Respt unless he had paid to the Appellant the mortgage money
and

MEMORANDUM OF COSTS incurred in Special Appeal No. 889

of 186 *A* against the decision of the *Asst. Judge* of the District of *Poona* — and disposed of on the *6 February 1865* by *reversing the same with costs and conferring them on Mr. S. Amin* *costs*

BY THE APPELLANT—

IN THE DISTRICT.

In the *P. S. Amin's Court*

14	2	7	✓
In the <i>Assistant Judge's Court</i>	5	15	7
		21	" 2 ✓

IN THIS COURT.

Stamp for Memorandum of Special Appeal

16	"	"	✓
Stamps for copies of Decree and Judgment	3	"	" ✓
Stamp for <i>Wakalatnama</i>	4	"	" ✓
Stamp of an application to enter the name of the Appellant's heir	"	"	"
Batta for Process and Postage	"	15	" ✓
Sectioner's Fee	1	3	8 ✓
Vukeel's Fee	4	12	10
		29	15
		6	✓

Rupees.... *50 15 8* ✓

BY THE RESPONDENT—

IN THE DISTRICT.

In the *P. S. Amin's Court*

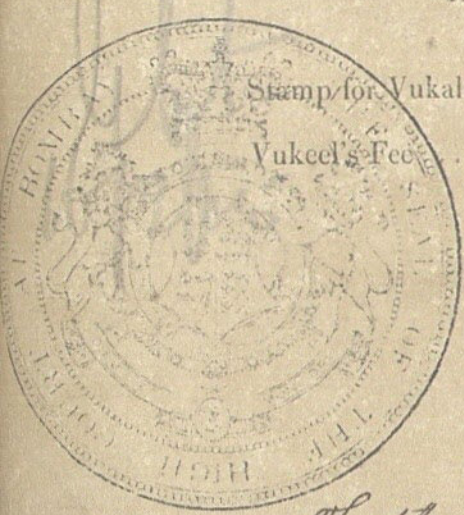
25	5	7	✓
In the <i>Assistant Judge's Court</i>	24	3	4
		49	14
		11	✓

IN THIS COURT.

Stamp for *Wakalatnama*

2	"	"	✓
Vukeel's Fee	4	12	10
		6	18
		10	✓

Rupees.... *56 11 9* ✓



[Signature]
Sealer

[Signature]
Registrar

The 6th day of February 1865.

and the sum expended by him in repairing and enlarging the house together with interest where the decision is contrary to law.

The Court reverse the decree of the Actt. Commrs. Judge, and confirm that of the Privy Council, throwing out the claim.

Cost on Special Respondent throughout.

R. Couch

H. Newton.

J. W. Mason