

In the High Court of Judicature, Bombay.

Monday, the 9th day of July 1866.

SPECIAL APPEAL No. 893 OF 1864.

Venayak Anunt Bendray of
the Konkan District

Appellant

(Original Plaintiff.)

versus

Bhiva bin Amrota of the
Konkan District

Respondent

(Original Defendant)

Rs. 8-3-9

The claim in the Original Suit was to redeem certain
mortgaged lands

In Appeal No: 264 of 1864 the Judge
of the District of Konkan at Tauna confirmed
the Decree of the Jmt of Penw who had rejected the
claim

A Special Appeal was preferred in the High Court on the grounds that the decision
of the District Judge is contrary to law (1) in that
he erred in not allowing appellant to redeem -
mangre the fact that the judge holds there
was

was a clause in the deed of mortgage providing for the foreclosure thereof if the amount was not paid in three years that (2) the District Judge erred in holding that appellant should have put the first mortgage in issue by his plaint or pleadings that (3) the Moonsiff having erroneously declined to go into the question of the redemption of the first mortgage the Dist^{ct} Judge should either have evidence on that point himself or referred the issue for trial to the Court below and that (4) there is no legal proof in this case of the loss of the mortgage deed as to admit secondary evidence of its contents.

The Court, in conformity with the *de. accion ni Ranji vs. Chaito* (No. 299 of 1864) ^{S.P. 299 of 1864} hold that the Plaintiff in this suit has not lost his right to redeem, and therefore reverse the decrees of both the Lower Courts and remand the suit to the Court of First Instance, that it may take an account of the principal sum due under the mortgage of 4th April 1857 and also of interest for six years at the rate and on the sum agreed on, and further of interest at the same rate on the whole of the principal sum, from the date of filing the suit to that of taking the account, and that an account may be taken of rents and profits from the date of filing the suit to that of taking the account; and the amount deducted from the total sum which may be found due on account of principal and interest.

The Court of original jurisdiction to pass
a decree for redemption on payment of
the balance within six months from
date of decree, with interest at 9 per
cent per annum.

The Plff unless he pay within the time
specified to be foreclosed from redem.
ning.

Costs in all Courts to be borne by the
Special appellant.

9/7/08.

R. Crouch

H. P. 14. Tucker

MEMORANDUM OF COSTS incurred in Special Appeal No. 893

of 1864 against the decision of the Judge _____ of the District of *the Konkan* and disposed of on the 9th July 1866.

by reversing the decrees of both the Lower Courts & remanding the suit to the Court of First Instance for retrial
IN THIS COURT.

BY THE APPELLANT—

	Rs.	A.	P.	Rs.	A.	P.
Stamps for copies of Decree and Judgment	2	8				
Stamp for Vukeelutnama	2					
Batta for Progress and Postage	1					
Sectioner's Fee	1	10	3			
Vukeel's Fee, one-fourth		1	0			
				7	3	3
				Rupees....	7	33

BY THE RESPONDENT—

Stamp for Vukeelutnama	2					
Vukeel's Fee, one-fourth		1				
				2	1	
				Rupees....	2	1



Wm. W. W. W. W.
Acting Registrar.

J. W. Campbell

The 9th day of July 1866
Sealer.

Issued a certificate on the Treasury
of the Collector of Tanina for a
refund of Rs. 1 (one) being the value
of the stamp used for the Memo
of Special Appeal in this case

9th July 1866-

K. M. M. M.
Acting Registrar

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