

In the High Court of Judicature, Bombay.

Thursday, the 3 day of March 1865.

SPECIAL APPEAL No. 901 of 1864.

Jugoo Ram Fatil of the Saw-  
-Kun District (Original De-  
-fendant) } Appellant,  
V.S.

Nagoo Khund Fatil of the Saw-  
-Kun District (Original Plain-  
-tiff) } Respondent,

Special Appeal No 985 of 1864.

Raoji and Gansoo bin Hemar-  
-ji Fatil Charat of the Saw-Kun  
-District (Original Defendants) } Appellant,  
V.S.

Nagoo Khund Fatil of the Saw-  
-Kun District (Original Plain-  
-tiff) } Respondent,

Rs. 181-12-4

The claim in the Original Suit was to establish his right to half  
share of the Patil's portion of land revenue & to recover  
the fees for the ~~same~~ 1862/63.

In Appeal No. 151 of 1864 the ~~same~~ <sup>decree</sup> ~~of the~~  
of the District of the North ~~at~~ <sup>reversed</sup>  
the Decree of the ~~proceedings~~ <sup>who</sup> had thrown out the claim  
& decreed that ~~the~~ <sup>in</sup> favor of his right to half a share in  
the portion of the same claimed.

In the 1st appeal No 901 of 1864

A Special Appeal was preferred in the High Court on the grounds that (1) a substan-  
-tial error in law has occurred in the in-  
-vestigation of the case which has produced  
an error in the decision of the case on  
its merits, in that the agreement No. 3

is in effect that the Patilki Wuttun  
is common property but that as the  
parties (to it) were able to conduct  
the duties, each should hold the manage-  
ment in turn for one year and that  
when the Bhaagbunds (Kinsmen)  
are able to conduct the duties they  
all should do so. whereas the Appel-  
-lato Court misconstrued the said  
agreement in holding that the Ap-  
-pellant had admitted Nago's half  
share, that (2) the Assistant Judge  
having admitted that none of the  
descendants in Nago's family had  
held the management of the Wuttun  
so much of the claim which was  
not admitted by the Appellant in  
Exhibit N<sup>o</sup> 6 should have been held  
to have been barred by the Statute of  
Limitations and should have been  
thrown out, whereas it was not so,  
which is erroneous, that (3) half of  
the Wuttun was held by Raoji, and  
Guroo, and the other half was held  
by the Appellant who gave only half  
of the suit. The Court reversed the decree of the  
Assistant Judge & renewed the suit in 1855.

of it is one fourth of the whole to Nagao, whereas the Appellate Court awarded more than the said one fourth share, wherefore the decision of the Appellate Court is contrary to the admission in Exhibit N<sup>o</sup>. 6. -  
Court in Spl. appeal No. 901 of 1864 of Raja of Gaur

1. That the decision of the Assistant Judge is contrary to usage having the force of law in that half of the Vatan in litigation being held by the appellants, and Nagao not objecting thereto, the appellate Court went against the ruling in N<sup>o</sup>. 2550 in raising the plea of limitation.

2. As it is established that the appellants' right of half a share in the Vatan is not conferred upon the respondent by the document N<sup>o</sup>. 3, the decision passed against the appellants' right is contrary to the terms of that document.

3. It is contrary to the Shastras in upholding a collusive and unauthorized alienation of a right

right to — by Zago — © which  
the respondents' family including his  
great-grand father did not acquire —  
within the limitation allowed by law —

The Court reverse the decree of the District  
Judge & remand the suit in order that the  
District Judge may pass a new decision which  
shall include a determination of the question  
whether as against original defendants Parjee  
& Gurnoor, plaintiff has or is entitled to any & if so  
to what share of the partition in dispute.  
Costs to follow the final decision

A. Shroff & Forbes.

A. Hewitt.

Bill of Costs.

In this Court.

Costs incurred in S. D. No. 901 of 1864

By the appellant

Stamps for copies of Decree & judgment	3. . . . .	.. ..
Stamp for Vakalatnama	2. . . . .	.. ..
Batta for Process & Postage	1. 5. . . . .	.. ..
Sectioners Fee	2. . . . .	.. 6
Vakils Fee one fourth	1. 5. 9 . . . . .	.. ..
		<u>9. 11. 3</u>
		Rs. 9. 11. 3.

By the Respondent.

Stamp for Vakalatnama	2. . . . .	.. ..
Vakils Fee one fourth	1. 5. 9 . . . . .	.. ..
		<u>3. 5. 9</u>
		Rs. 3. 5. 9.

Costs incurred in S. D. No. 981 of 1864.

By

By the appellant.

Stamps for copies of Decree & Judg <sup>t</sup>	3.00	
Stamp for Vakalutuama	2.00	
Costs for Process & Postage	1.50	
Solicitor's Fee	2.10	
Vakeli's Fee one fourth	1.59	9.12.3

By the Respondent.

Stamp for Vakalutuama	2.00	
Vakeli's Fee one fourth	1.59	3.59
		Rs 3.59



West  
Registration

J. J. J. J.  
Sealer

The 2<sup>d</sup> day of March 1865

Her Majesty's  
Four <sup>new</sup> Certificates on the Treasury  
the Bank of Bombay for the refund of  
Rupees thirty two being the value of  
two stamps of sixteen Rupees each, used  
for Specials in this case

2<sup>nd</sup> March 1866

W. West  
Registrar

ed. 1868.

not in Certificate given to

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