

In the High Court of Judicature, Bombay.

Tuesday, the 8 day of July 1864

SPECIAL APPEAL No. 91 of 1864

Mahadoo bin yesji Guvankar  
and Gunesch Krishn Futourdhan  
of the Putnagiri Division of the Kon-  
kan District (Original Defendants)

Appellants.

versus

Deoji bin Mahadji Guvankar  
of the Putnagiri Division of  
the Konkun District  
(Original Plaintiff.)

Respondent

Rs. 40 - 8 -

The claim in the Original Suit was to obtain possession of 1/4 share of a Kumbhawa which belonged to Deoji's Grandfather Dhurroja.

In Appeal No. 167 of 1862 the Acty Sr. Judge

of the District of the Nollan

the Decree of the

was claimed but four

to be given to Deoji

the third share of the Kumbhawa

to the heirs, but that he pay

to the heirs.

the detached Station of Kumbhawa who had recorded that all the fields which were to tally with the boundaries of the Kumbhawa were in possession of Deoji's Grandfather. Deceased Loolajel the sum of Rupees 100. (which)

A Special Appeal was preferred in the High Court on the grounds that (1) the

decision of the acting senior assistant judge is contrary to law in that the acting senior assistant judge has erroneously ruled the first

first point laid down in his minute in  
Respondent Devjee's favor simply because  
the Acting Senior assistant judge found  
that a separation had taken place between  
the branches of the family represented by  
Toolaje, appellant Mahadjee and Respondent  
Devjee such separation in no wise affecting  
the status of Toolaje's heirs; that (2) appellant  
Mahadjee being by Hindoo Law, irrespective  
of any special bequest in his favor as much  
Toolaje's heir as respondent the acting senior  
assistant judge was in error in deciding  
absolutely in Respondent's favor; that (3) the  
acting Senior assistant judge has awarded  
plaintiff's claim, although he admits Respondent  
Devjee cannot show that the lands sued  
for formed a share of the Koonbawa of Too-  
laje from whom Respondent claims to  
be entitled to them that (4) the Acting Senior  
assistant judge has adjudicated as to the pro-  
prietary right to the property in dispute,  
although the same had already been adju-  
dicated on in a suit between appellants  
and a party claiming through Respondent  
Devjee. See Decree N. 45; that (5) the acting  
Senior assistant judge has awarded possession

of

of the property in dispute without providing for appellant Krishna's lien as mortgage thereon that (6) there has been a substantial error in law in the investigation of the case ~~the case~~ which has produced error in the decision of the case on its merits in that the acting Senior Assistant Judge has failed to decide whether appellant Mahadjee had or not paid off the debts of deceased Toolajee and also provided for his funeral expenses, so as to give him a Special lien against the property in dispute; that (7) the acting Senior Assistant Judge has failed to decide whether deceased Toolajee did or did not make Special gift of his share to appellants which would exclude Respondent from any participation thereon; and that (8) the acting Senior Assistant Judge has awarded possession to Respondent of the third share "of the Koonbawa mortgaged by deceased Toolajee to the Maleems" without deciding what that share actually was, the acting Senior Assistant Judge in another part of his decree admitting there was no reliable evidence to show what the

the property mortgaged really was.

Recd  
to be  
trans

~~The Court says in the decree  
of the both facts.~~

The judge not having found  
of how many of what shares the  
3<sup>d</sup> share mortgaged by Looker to  
habliss insists; the Court reverse  
the decree of the <sup>pl.</sup> & remand the  
the suit in ord<sup>r</sup>. that they  
may find explicitly on this point  
& award accordingly - costs  
to follow the final decision

Just Amald  
Hewson

MEMORANDUM OF COSTS incurred in Special Appeal No. 91.

of 1864 against the decision of the *Actg. J. J. J.* Judge of the District of the *Konkan* and disposed of on the 8<sup>th</sup> July 1864 by *remanding the same for retrial.*

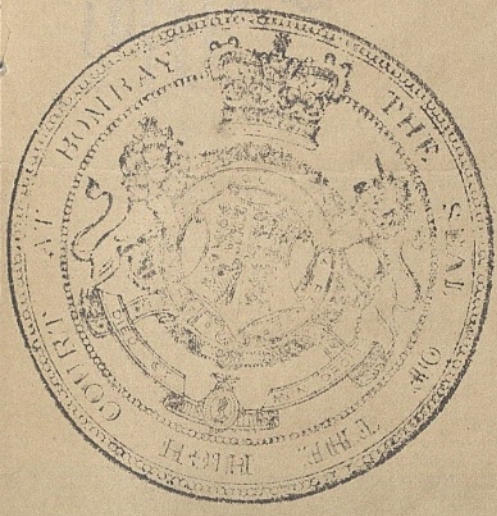
IN THIS COURT.

BY THE APPELLANT

Stamps for copies of Decree and Judgment .....	3	8	0
<i>Stamp for an application to stay &amp; set aside</i> .....	2	0	0
Stamp for Vukeelutnama <i>stamps</i> .....	4	0	0
Batta for Process and Postage .....	1	8	0
Sectioner's Fee .....	5	0	3
Vukeel's Fee one-fourth .....	"	4	0
		16	5
Rupees .....	16	5	1

BY THE RESPONDENT—

Stamp for Vukeelutnama .....	2	0	0
Vukeel's Fee one-fourth .....	"	4	0
		2	4
Rupees .....	2	4	0



*Lyons*  
Sealer

*Lyons*  
Acting Registrar

The 5<sup>th</sup> day of July 1864

Issued a certificate on Her Majesty's  
Treasury Bank of Bombay for the  
refund of Rupees four (4) being the  
value of the Stamp used in Special  
Appeal in this case.

8<sup>th</sup> August 1864

*[Signature]*

Acting Registrar

*[Signature]*

Acting Registrar

