

In the High Court of Judicature, Bombay.

Thursday, the 13th day of April, 1865.

SPECIAL APPEAL No. 917 OF 1864.

Fatma bibi, ^{deceased} Fatma bibi widow
of Miya alias Haji Ismael Wulud
Ibrahimawa Mahantior of the
Konkan District (Original Plaintiff) } Appellant,

versus

Mohideen Wulud Dada Moolna
of the Konkan District and Dawood
Wulud Dada Moolna of Sauree
but at present residing in Bombay } Respondents,
Rayathooni — (Original Defendants)

Rs. 800-0-0

The claim in the Original Suit was to prevent execution of a decree against a house and some immovable property in Plaintiff's possession.

In Appeal No. 208 of 1862 the Judge of the District of the Konkan at Sauree annulled the Decree of the P. C. of Sauree who had awarded $\frac{1}{3}$ share of the house only, by throwing out the whole claim.

A Special Appeal was preferred in the High Court on the grounds that (1) the decision of the District Judge is contrary to law in that all was sold at the instance of Respondent Mohideen and purchased by Respondent Dawood being the right title and interest of Miya the District

District Judge erred in confirming the sale to a larger extent than the said right title and interest: that (2) the District Judge has negated Appellant's right though she has acquired a prescriptive title by 35 years possession: that (3) the District Judge misconstrued Appellant's plaint in holding that it was one to prevent execution of a decree, it being simply to establish Appellant's right: that (4) the District Judge erred in referring Appellant to other property of her husband for her $\frac{1}{8}$ share in her husband's estate: that (5) there was no proof before the District Judge to show that the residence of Appellant's husband's property was sufficient to provide for Appellant's $\frac{1}{8}$ share: that (6) the District Judge in making his award disregarded presumption of law or fact which is that every Mohammedan woman must on marriage have some dowry assigned to her: that (7) the District Judge proceeded to judgment without first recording all the evidence tendered by Appellant in the Court of first instance: that (8) the District Judge erred in holding that Appellant had not done all in her power to have the best evidence respecting her dower produced: that (9) the District Judge failed to ascertain and determine the extent of the right title and interest of the judgment debtor in the property in question & that (10) the District Judge erred in laying all
the

the costs on Appellant the attaching
creditor having voluntarily withdrawn
his attachment from a portion of the
property sued for.

The Court reverses the decree of the District ^{Judge} and
remands the suit in order that the Judge
may decide whether Fatma Beebe has ac-
quired the right to be considered the owner
of the property in dispute by having had un-
interrupted possession of it for more than
30 years, and if ~~this~~ issue be decided in
the negative, that all the heirs of Mirza or
Hajie Tamsel may be made defendants in the suit,
and that the Judge may determine what
the value of the said Mirza's property is, and
may assign Fatma Beebe her share thereof,
and may pass a new decision on the merits
awarding costs.

William Forbes.

H. C. M.

MEMORANDUM OF COSTS incurred in Special Appeal No. 9/7

of 1864 against the decision of the District Judge of the District of the Konkan and disposed of on the 13th April 1865 by remanding the same for retrial.

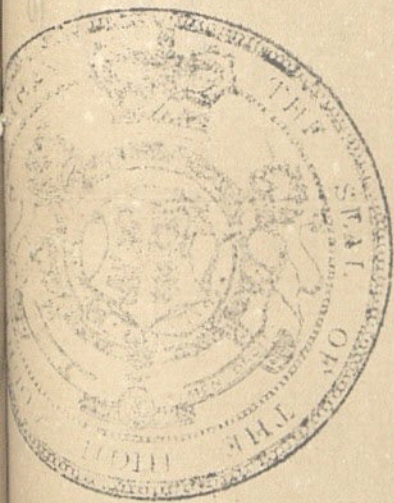
IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment	3.	..	..	✓
Stamp for Vukeelutnama	2.	..	..	✓
Batta for Process and Postage	2.	14.	..	✓
Sectioner's Fee	3.	2.	9.	✓
<i>Sheriff and clerk's fee</i>	3.	..	..	✓
Vukeel's Fee one-fourth	6.	..	..	✓
			20.	9
			Rupees ...	20.
				9

BY THE RESPONDENT—

Stamp for Vukeelutnama	2.	..	..	✓
Vukeel's Fee one-fourth	6.	..	..	✓
			8.	..
			Rupees....	8.
				..



R West
Registrar

R West
For Sealer.
The 13th day of April 1865

Issued a certificate on the Treasury of the
Collector of Tanna for the refund of Rupees
thirty-two (32) only being the value of stamp
used for Special Appeal in this case.

Dated 13th April 1865

West
Registrar.

21/10/65

Certificate of refund

West
Registrar

13/4/65