

In the High Court of Judicature, Bombay.

Tues day, the 7th day of February 1865.

SPECIAL APPEAL No. 926 of 1864.

Jakhia Namaji Gaudel
of the Konkan District } Appellant

(Original Defendant)

versus

Mahadoo Chaug Mahat
tra of the Konkan District } Respondent

(Original Plaintiff)

Rs. 12-15-4.

The claim in the Original Suit was to recover possession of two fields, which Def^t had obtained possession of when Plaintiff went to live with him, and which Def^t now refuses to give up. Judge of the District of the Konkan at Tapera conferred the Decree of the Juff. Manswell who has awarded the 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 he has awarded a claim barred by the Statute of limitations. that

that (2) the District Judge erred in holding that unless Appellant could prove a sale, his enjoyment of the land could not be that of a proprietor: that (3) the onus of proof has been improperly laid on Appellant.

The Court finds that the ^{District} Judge was in error in holding that unless the Defendant could prove the sale of the land to him his possession was that of a depository. The Judge should have enquired whether the Defendant had ever assented to hold the land as a depository, and if not, when the Plaintiff was dispossessed, and ^{also} determined whether the suit was barred by Ch. 12 - Act 14, 1859.

The Court reverses the decree of the District Judge and remands the case for ^{retrial} ~~re-hearing on the merits~~.

Courts to follow final decision.

R. Couch

H. Weston

A. W. Warden

Issued a certificate on Her
Majesty's Treasury the Bank of
Bombay for the refund of Rupee
one being the value of stamps used
for special appeal in this case

25

West
Registrar

Certificate given to the

Registrar

Bank of Bombay 1863