

In the High Court of Judicature, Bombay.

Mer. day, the 22nd day of September 1868.

SPECIAL APPEAL, No. 3 of 1864.

Kumbha Mochia Patil
of the Konkan District

Appellant,

(Original Defendant.)

versus

Aba Has Mahatra de-
ceased his sons and heirs
Ramaappa and Loka-
pa of the Konkan Dis-
trict

Respondent,

(Original Plaintiff.)

Value of claim, Rs. 15-0-0

The claim in the Original Suit was to obtain a share in an estate purchased jointly by the plaintiff & defendant of one year.

The Original Suit was decided by the Principal Judge who decided that plaintiff & defendant should have equal share.

In Appeal No. 3183 of 1860 of the District file, the Acting Judge of the District of the Konkan at Panaji amended the decree of the Court of first instance by awarding one fourth to the plaintiff.

A Special Appeal ~~has been~~ admitted in the High Court from the decision of the lower Appellate Court. The grounds of objection to that decision ~~are~~ ^{were} that (1) a substantial error in law in the investigation of the case has been made which has produced error in the decision of

of the case on its merits in that the District Judge was in error in assuming that the fishing places in dispute had been set aside for the joint use of all the members at the time of the division but should have thrown the onus of proving this fact on the Respondent: that (2) it having been held that there was a previous division made between the parties and that the Respondent had got fishing places and Paurzal land in his own share the District Judge was in error in disturbing the previous division and awarding the land in dispute to the Respondent.

In Special Appeal the High Court confirmed the decree of the District Judge with costs.

A review of ^{the said} judgment having been admitted upon the ~~proceedings~~ following grounds:-

our deceased father Aba Shaikh Alhakra had instituted the original suit No 2271 of 1859 in the Court of the Paurzal Subdar Amir in which he sought to recover a fishing weir or (Boksi) and

9 and Pao Jangul and two This situated
at Banara^m Naulkhar in Mojai Agasau.
When this suit was decided by the Princi-
-pal Sudder Amier, we and the opposite
party Kurnhya Maadya Talib prefer-
-red appeals to the Judge. In the appeal
the Judge amended the decree of the Prin-
-cipal Sudder Amier, in which however
This is written by oversight for Boksi.
This is the error that has crept in. This
should have been rectified in Special
appeal which however was not done
through oversight. This may therefore be
now rectified. -

One fourth of the entire Boksi
or weir was awarded to us but the ques-
-tion as to when we are to commence
using the same has remained unde-
-cided. For this reason we commenced
using the Boksi or weir every fourth
day for fishing purposes but the Man-
-dar has fined us. The Court will
therefore be pleased to decide the question
as to when we are to use it. -

A fourth of the Panyungul
has likewise been awarded to us but
the question of its use has also re-
-mained undecided. The determina-

...tion of the point, which may be made
with reference to the using of the Boksi
or weid should be made applicable to
the case of using the Pangiful. If
this is not so done we would sustain
great loss.

The Court affirmed the decree
of the Acting Judge dated 23rd July 1863
by substituting the word "Bokshi"
for the word "Kiv" and by declaring
that the plaintiff is entitled to the
exclusive enjoyment of the Bokshi
and 'Panyal' lands mentioned
in the plaint every fourth year,
^{first time of enjoyment}
the plaintiff to commence from
^{beginning of the} the next Aung Fasi year 1278.
Costs of the Special appeal up to
the first decree of the High Court
dated 8th July 1864 to be borne by
the Special Appellant. Each party
to bear ~~his or her~~ ^{the} subsequent costs,
incurred by him subsequent to the above
said decree.

Plaintiff
The defendant

K. 1279. Ck.
by
of the
order
T.C.

Wm. Lush
J. J. J.

1864
1864

Memo: of Costs incurred in Special appl
 No 93 of 1864, against the decision of the
 Judge of the Honble and disposed of
 on the 22nd September 1868 by amending the decree
 of the Ag Judge.

By the Appellants

In the District

In the Principal Sudder Amiri's }
 Court _____

9-7-1

In the Judge's Court _____

8-13-1841

In this Court }
 Costs incurred
 As per previous decree _____

10-15-2

On review -

Stamp for Vakalatnama _____

2 u.

Vehicle fee of fourth _____

u 14-5 2-14-5

Ruppes 32-18

By the Respondents

In the District

In the Principal Sudder Amiri's }
 Court _____

8-5-2

In the Judges Court _____

5-11-6 14 u 8

In this Court

Costs incurred as per previ
 ous decree _____

2-7-2

Carried forward Ruppes 16-7-10

Brought over Rs ——— 16 7 00

on Review

Stamp for an application for } 12 " "
Review —————

Do for Vukhatutnama ——— 2 " "

Batta for Procep & Postage ——— 1 6 "

Vukhels fee one fourth ——— " 14 5

————— 16. 4 5

Rupees - 32 12 3



T. C. S. S. S.

Deputy Registrar

Sealed T. C. S. S. S.

The 22nd day of September 1868