

Poona

In the High Court of Judicature, Bombay.

Wednesday day, the 8th day of February 1865.

SPECIAL APPEAL No. 931 of 1864.

Abaji bin Appaji Ghorow of the Poona District

Appellant

(Original Plaintiff.)

versus

Dolutram Rajaram Marwadi and Rowji bin Mulharsett Sonat of the Poona District

Respondents.

(Original Defendants)

Rs. 32 - " - "

The claim in the Original Suit was to recover a mortgage right over a house

In Appeal No. 335 of 1863 the District Judge of Poona reversed the Decree of the Principal Magistrate who had awarded the claim.

A Special Appeal was preferred in the High Court on the grounds that (1) a substantial error in law has occurred in the investigation of the case, which has produced an error in the decision of the case on its merits

merits, in that the Respondent having taken the property admitting the mortgage lien thereon he was responsible for the appellants' mortgage, whereas the claim was erroneously thrown out and that (2) the debtor having admitted the mortgage and having raised no objection to it and the mortgage bond having been proved under the decree N. there was no necessity to include the debtor amongst Defendants, whereas the appellate court threw out the claim on the ground (that the debtor was not made a defendant)

The Court find that the ^{Dist. Judge} overlooked the decree recorded N. 17 in this case which the P. W. Abaji obtained against the mortgagee Laxman on the 25th October 1861.

The Court reverses the decree of the ^{Dist. Judge} District Judge and remands the case in order that the judge may determine how far the case against the present Defendant is affected by the above-mentioned decree; and may pass a new decision on the merits awarding costs.

Whitlock Forbes.

J. C. W. M.

MEMORANDUM OF COSTS incurred in Special Appeal No. 931

of 186 4 against the decision of the *Acting Judge* of the District of *Poona* and disposed of on the 8th February 1865 by remanding the same for retrial.

IN THIS COURT.

By THE APPELLANT—

Stamps for copies of Decree and Judgment	2	8	"			
Stamp for Vukeelutnama	2	"	"			
Batta for Process and Postage	1	2	"			
Sectioner's Fee	"	12	6			
Vukeel's Fee one-fourth	"	3	10			
					6	10 4
				Rupees....	6	10 4

By THE RESPONDENT—

Stamp for Vukeelutnama	"	"	"			
Vukeel's Fee one-fourth	"	"	"			
					"	" 5
				Rupees....	"	" 5



W. J. ...
Sealer

W. J. ...
Registrar

The 8th day of February 1865.

Issued a certificate
on 4th ~~18~~ Treasury of the
Collector of Poona for the
refund of Rs 127 two being
the value of stamp used
for S. Appeal in this case

W. H. B. M. S.
Registered