

In the High Court of Judicature, Bombay.

Five day, the 5<sup>th</sup> day of September 1865.

SPECIAL APPEAL No. 935 — or 1864

Warner ~~of~~ Trimbuck Deshpande deceased his son & heir Kanaji a minor by his mother & guardian Khabai of the Ahmednagar District  
(Original Plaintiff)

Appellant

versus

Laxman Wulud Mahad Patel & Dhanoo Wulud Luktumun Patel Nagray of whom Laxman deceased his son & heir Dhanoo Wulud Luktumun of the Ahmednagar District  
(Original Defendants)

Respondents

Rs. 17-7-8

The claim in the Original Suit was to recover possession of a plot and to obtain an injunction to prevent the respondents from taking possession of the same by a Court's decree.

In Appeal No. 151 of 1864 the District of Ahmednagar at Ahmednagar comprised the Decree of the JUDGE who had thrown out 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 appellant having been put in possession by the sheriff's officers, the injunction prayed for

for should have been granted as a matter of  
course, Respondent being left to follow the  
course laid down in section 230 of the Code  
that (2) the judge erred in not finding for  
appellant it being sufficiently clear from  
the admitted facts of the case that appellants  
judgment debtor Sall was entitled to the  
share of the land claimed by appellant that  
(3) the judge erred in requiring formal proof  
of obstruction having been offered by Respondent  
this sufficiently appearing from Respondent's  
line of defence that (4) the judge's decree is  
inconsistent with itself for in one part he  
holds that Respondent had possession of  
part of the field in question, the other part  
being held <sup>by one whom from whom Sall derives & in another</sup> part thereof he holds that Sall  
never had possession that (5) the judge  
erred in holding that appellant could not  
succeed unless he could show that Sall  
had been in possession, the issue for  
determination being rather whether Sall  
had or had not a share in the land to the  
extent

extent claimed by appellant or any share what-  
-soever therein that (6) the judge erred in  
holding appellant bound by the terms of  
the warrant issued for execution of appellants  
decree against Sall that (7) the judge erred  
in holding that the evidence rejected by the  
Monsiff was not material to the issues for  
determination in this case and that (8) the  
judge erred in not decreeing against  
Respondent, he having rendered himself liable  
to the provisions of section 170 of act VIII of 1859.

The Court finds, that the judge in this case  
has given judgment against the Plaintiff because  
he failed to prove that Sall was in possession of  
the land attached and made over to the Plaintiff.  
But it would have been sufficient that the  
Plaintiff should establish Sall's right to the  
land, though she might not have been in  
possession, and on this point the judge has  
recorded no finding. The judge states that there  
is no evidence of obstruction by Lukshun, but he  
appears to have admitted obstruction, which he  
justified on the ground that he, and not Sall, was  
entitled by inheritance to the land.

The Court reverses the decree of the District Judge  
and remands the case for the determination of the  
above point and a new decree.

Costs to follow final decision. H. Weston.

A. W. Ward.

MEMORANDUM OF COSTS incurred in Special Appeal No. 935

of 1864 against the decision of the Judge of the District of Ahmednagar and disposed of on the 5<sup>th</sup> September 1865 by remanding the same for retrial

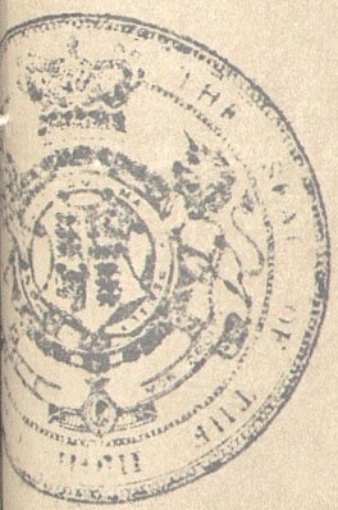
IN THIS COURT.

By THE APPELLANT—

Stamps for copies of Decree and Judgment .....	2	8	"
Stamp for an application to enter the name of the heir .....	2	"	"
Stamps for 2 Vukeelutnamas .....	4	"	"
Batta for Process and Postage .....	2	10	"
Sectioner's Fee .....	1	11	9
Vukeel's Fee one fourth .....	"	2	2
			12 15 11
			Rupees.... 12 15 11

By THE RESPONDENT

Stamps for 2 Vukeelutnamas .....	4	"	"
Vukeel's Fee one-fourth .....	"	2	2
			4 2 2
			Rupees.... 4 2 2



*[Handwritten Signature]*  
Sealer

*[Handwritten Signature]*  
Registrar

5<sup>th</sup> day of September 1865

Issued a Certificate on the Treasury of  
the Collector of the Ahmednugur District for the  
refund of Rupees two (Rs 2-00) being the value  
value of stamp used for Special appeal No 935

Dated this 5<sup>th</sup> day of September 1865

R. West  
Registrar

dd 9/9/65