

In the High Court of Judicature, Bombay.

Mon day, the 13th day of February 1865.

SPECIAL APPEAL No. 945 of 1864

Abdolabhai Noorbhai deceased his
Son and heir Goolam Alli Bohori } Appellant
of the Ahmednagar District }
(Original Defendant.)

Begum Begum bin Feymirja Hy. }
her Alli deceased her heirs her son } Respondent
Nababali and daughter Wujir Begum }
both are minors their guardian their }
father Soojat Alli Mahomed Syed Emam }
Bunder Comandar of the Ahmednagar }
District (Original Plaintiffs)

Rs. 150 — " — "

The claim in the Original Suit was to recover a share from an
ancestral property

In Appeal No. 125 of 1864 the Judge
of the District of Ahmednagar at Ahmednagar confirmed
the Decree of the P. S. M. of Duggan who had awarded the claim.

A Special Appeal was preferred in the High Court on the grounds that the decision of
the District Judge is contrary to law in that (1) he
has awarded a claim barred by the statute of
limitations; that (2) the District Judge erred in applying
the religious law of the parties to this case; that (3)
the

the District Judge has awarded Respondent more than he is entitled to; and that (H) ~~and~~ the District Judge whilst admitting that the Pedigree is not proved, has nevertheless awarded the claim. The Court finds that the Judge was in error in the reason he gave for declaring the action to be maintainable, but this error is immaterial as it is clear that the plaintiff alleged that the Plaintiffs were in possession of their share until dispossessed by the mortgagee Abdoolabhai in 1863, and the Defendant (the representative of the mortgagee) has not shown that Amnes Begum who executed the mortgage to him was in sole possession, or in possession adverse to the Plaintiffs, at the time when the mortgagee executed his decree against her.

Under these circumstances, the Court considers that the Special Appellant has not made out his plea that the suit was barred by the statute of limitation and the Court is also of opinion that the Judge has not awarded more than was claimed in the plaint. The Court therefore confirms the decree of the District Judge.

Costs on Special Appellant.

A. Kinloch Forbes.

J. P. H. Fisher

