

In the High Court of Judicature, Bombay.

Monday, the 13th day of February 1865.

SPECIAL APPEAL No. 948 or 1864

Vishnuo son & heir of Vishwanath Bhalo ak a minor by his guardian Kashinath of the Korkun District. (Original Plaintiff.)

Appellant

versus

Sukharao son & heir of Mahadaji of the Korkun District.

Respondent

(Original Defendant)

Rs. 95-5-1.

The claim in the Original Suit was to establish a right to return possession of $\frac{1}{8}$ th of an Inam village.

In Appeal No. 157 of 1864 the Assistant Judge of the District of the Korkun at Tanna reversed the Decree of the Mr. J. Kallan who had awarded the claim.

A Special Appeal was preferred in the High Court on the grounds that (1) the decision of the Assistant Judge is contrary to Law in that he misconstrued the plaint in holding that it disclosed no cause of action.

on the face of it, and that (2) there has been a substantial error in law in the investigation of the case & which has produced error in the decision of the case on its merits in that the Lower Courts did not lay down proper issues, since they omitted to inquire, whether the appellant had been dispossessed according to Sec 22 of the Civil Procedure Code.

The Court considers that the plaintiff sufficiently alleged dispossession, and the Court of first instance, which was cognizant of the proceedings taken under the Defendant's decree against the original mortgagor, having held at the settlement of issues that there had been dispossession, this fact alone should have prevented the Lower Appellate Court from coming to the conclusion that there was no cause of action shown in the plaint.

The Court therefore reverses the decree of the Lower Appellate Court and remands the ~~cause~~ ^{and the mortgage} ~~to the Court of first instance~~ ^{cause to the Court of first instance} ~~order that the lower Court may decide, whether the mortgage to Defendant was genuine and valid, and whether he was entitled under it to dispossess Plaintiff. To enable Defendant to establish this position he should be allowed to put in his mortgage deed, and to establish, if he can, its due execution on the date which it bears!~~

Costs to be apportioned at the final decision.

Ashtulock Forbes.

Atty. Genl.

MEMORANDUM OF COSTS incurred in Special Appeal No. 948
of 1864 against the decision of the Assistant Judge of the
District of *the Province* and disposed of on the 13 February 1865
by *remanding the same for retrial*.

IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment	3	..		
Stamp for Vukeelutnama	2	..		
Batta for Process and Postage	12	..		
Sectioner's Fee	16	3		
Vukeel's Fee one-fourth	"	11	5	
				8.38
				Rupees ... 8.38

BY THE RESPONDENT—

Stamp for Vukeelutnama	2	..		
Vukeel's Fee one-fourth	"	11	5	
				2.115
				Rupees ... 2.115



W. J. ...
Sealer

W. J. ...
Registrar

The 13th Day of February 1865

W. J. ...

Issued a certificate on Her Majesty's Treasury
the Bank of Bombay for the refund of
Rs. (8) eight being the value of stamp
used for special appeal in this case

Dated the 13th February 1865.

W. West
Registrar.

B.

Certificate given to Bank