

In the High Court of Judicature, Bombay.

Monday, the 9<sup>th</sup> day of January 1865

SPECIAL APPEAL No. 96 of 1864.

Suntoo wulud Yenkoo Tabile  
of the Solapoor District

Appellant

(Original Defendant)

versus

Deoji Wulud Bapoo Tabile  
of the Solapoor District

Respondent,

(Original Plaintiff)

Rs. 20 - - - -

The claim in the Original Suit was to recover possession of a share of an ancestral house wh. had been awarded to Appellant in 1830 by the Sen<sup>r</sup> Assis<sup>t</sup> Judge at Solapoor but wh. had been wrongfully taken possession of during Appellant's absence. In Appeal No. 109 of 1864 the Judge of the District of Solapoor at Solapoor in Decree of the Decree of the Sup<sup>r</sup> Judge who has thrown out 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 —  
1<sup>st</sup> In that the District Judge has awarded a claim barred by the law of limitations.

- 2<sup>nd</sup> In that the District Judge has misconstrued Appellants' answer in holding that Appellants had not pleaded that Respondents' right to the property in dispute had abated.
- 3<sup>rd</sup> In that the District Judge has misconstrued Decree Exhibit *et c.* 3 in holding that it awarded Respondent a half share in the family property in 1830.
- 4<sup>th</sup> In that the District Judge has adjudicated, <sup>decided</sup> on a claim already between the present litigants and a decree Exhibit *et c.* 4.
- 5<sup>th</sup> In that the District Judge has awarded Respondent more than what he sued for.
- 6<sup>th</sup> In that the <sup>District</sup> Judge has awarded Plaintiff a specific share in the property in question without proof that he ever was in possession of the same.
- 7<sup>th</sup> That there has been a substantial error in law in the investigation of ~~of~~ the case which has produced error in the decision. of the case on its merits in that the District Judge has failed to decide the only material issue in the case *vizt.* whether as asserted by Respondent the appellants had during Respondents' absence become <sup>surprisingly</sup> possessed of the portion of the property in question once held by Respondent and which he now sought to recover.

The Court finds that the District Judge  
has

has omitted to state in his decree the particular portion of the house which he has awarded to Plaintiff, which would appear from the Judgments dated respectively July 26<sup>th</sup> 1863 and August 12<sup>th</sup> 1864 to be the portion specified in the Pleint.

The Court therefore modifies the Judge's decree and awards the portion so described to Plaintiff.

The Court otherwise conforms the Judge's decree.

Costs throughout on Special Appellant.

Abraham Forbes.

J.P. Tucker,



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उपरोक्त.

~~पुंघर्षेदीरन्यायाधीनरीद्यतमेतान्त~~

(मु.क. मन्त्रके)

प्रतीपक्षी.

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उपरोक्त.

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(मु.क. मन्त्रके)

सप्तके २०

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J. H. P.

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True Translation

*W. J. [Signature]*

Telegraph Register

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No. 96 of 1864 special  
in the High Court of Judicature Bombay

File No.

Appeal No. 109 of 1860 of the District

700

Suntor W. Genkor Suhahitunt of Sondergaum }  
Talooka Madhe zilla Sholapur ————— } Appellants

D.S.

Dooyje W. Bapoo, Suhahitunt of Sondergaum }  
Talooka Madhe zilla Sholapur ————— } Respondent

Claim Papers 20

The grounds of objection against the decree appealed against are as follows:—

That it is contrary to law.

In that the Judge has awarded a claim barred by the law of limitations

In that the Judge has misconstrued applicant's answer in holding that applicants had not pleaded that Respondent's right to the property in dispute had abated.

In that the Judge has misconstrued Decree Exhibit No. 3 in holding that it awarded Respondent a half share in the family property in 1830

In that the Judge has adjudicated on a claim already decided between the present litigants and a decree Exhibit No. 4.

In that the Judge has awarded Respondent more than what he sued for

In that the Judge has awarded Plaintiff a specific share in the property in question, without proof that he ever was in possession of the same

That there has been a substantial error in law in the investigation of the case ~~has been made~~ which has produced error in the decision of

the case on its merits in that the Judge has failed to decide the only material

issue in the case viz— whether, as asserted by Respondent the applicants had during Respondent's absence become surreptitiously possessed

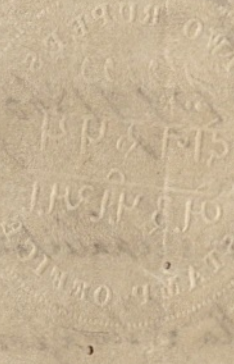
of the portion of the property in question once held by Respondent which he now sought to recover.

2 October 1863

Dhirajul Mathuradas  
Counsel for the Appl.

~~Received for the sum of~~  
by Edouard Bay  
Under of

312413  
23  
23762  
24  
244237-2844



~~Received for the sum of~~  
~~two hundred and thirty seven and 25/100~~  
~~cents~~

Presented this 23 day of  
November 1863 with copies  
of two Decrees a judgment  
a minute and a Writ Habeas Corpus

John B. Mitchell

<sup>1<sup>st</sup></sup> Assistant Registrar

~~2000~~  
1000  
by 21/1/64

Apog. Decker

Filed on  
10th Dec 1864  
H. D. D.

In the High Court of Judicature, Bombay,  
N: 96 of 1864. special

Memorandum of objections to the finding of the Dis-  
-trict Judge upon issues referred to him for trial  
by this Honorable Court.

1 In that the evidence tendered by the appel-  
-lant is not received by the Judge nor by the  
moonsiff

2 In that the Judge had no power to refer the  
case to the moonsiff for the reception of evidence

3 In that the Judge has awarded Respondent  
more than what he sued for.

Shivajul Mathur  
Counsel for the Appellant

Bombay  
10th December 1864

July 24<sup>th</sup> 1863

Appellant  
Plaintiff

Dewgee W. Bapoo

Wakeel Rughnath

Inulhar

VERSUS

Respondents

Suntoo, Govinda, Gopiala, W. Genkoo

Defendants

Wakeel Looklal Chutaram

Original claim

In appeal

Rupees 20000

This suit was remanded for retrial in this Court by the High Court under date 24<sup>th</sup> November 1862 the decree of this Court being reversed in order to a decision being given on the question whether original plaintiff was ever in possession of the property now in dispute and if so whether the same is now wrongfully withheld from him, and a new decree being passed with award of costs which were to follow the final decision.

It appears that half the "wada" was awarded in 1830 to plaintiff's father, but which part of it does not appear so that if this Court should decide that a certain share of the house is to be made over to the plaintiff it should decide also which part of the house (topographically speaking) is to be made over. (The High Court seems to have decided the question of plaintiff's present right to sue - and on that question it is not necessary to record any observation) As nothing is pleaded by defendants to shew that circumstances have arisen by which plaintiff's father's awarded right to half the wada has abated, it must be held that the plaintiff's right is now what was decreed to be his father's.

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The stamp required for this copy  
 was furnished on the 7<sup>th</sup> August 1863  
 The Copy was ready for delivery on the 9<sup>th</sup> do  
 It was delivered on the 10<sup>th</sup> August 1863

fathers - namely a right to half the "wada" as it then stood - The defendants attempt to shew that an addition has been since made to the house which addition is his (defendants') property and in support of this produce a "bukshish: putra" by virtue of which it is theirs but this right is not proved The Court holds that the wada is not shewn to be either larger or smaller than it was when plaintiffs father's right to the share was awarded in 1830 and therefore plaintiff has a right to half the "wada" as it now stands. It seemed necessary with a view to passing a decree in the case to ascertain what share is now in plaintiffs possession (for he admits that some portion was made over to him by defendants when he demanded his father's share tho not as much as he had a right to) The commissioner has taken evidence and made a report on this subject and it appears from this that plaintiff has possession of  $\frac{1}{4}$  of the "wada" only. The decree is therefore that he be put in possession of  $\frac{1}{4}$  more. It seems that the part ceded to plaintiff on demand made by him or defendant, was on the southern side of the "wada." This is admitted by both parties. The additional portion now decreed is therefore to towards the same direction there not being in the case, and seemingly not procurable, other evidence on which to decide to which side of the house (by right of seniority) he has a claim. The Moonsiff's decree is reversed.  
Costs (Defendants) Respondents.

Signed G. S. Hobart

Judge memo

Memo

As the present rule, by which execution of decrees is not to be recognised unless such execution be through the Court, was not in force in 1830 nor during the time in which execution might have been sued out (or plaintiff's father's decree) it is to be assumed that by legal (tho perhaps extra Judicial) means plaintiff's father obtained on his decree possession to half the wada.

Signed G. A. Hobart

(True Copies)

Witness

Judge

Compt.  
L. A.

1776 of 1864. In the High Court of Judicature, Bombay.

Sholapoor.  
Writ.

Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith To William Sandwith, Esquire, Acting Judge of the District of Sholapoor at Sholapoor Greeting: Upon reading the Writ issued by this Court on the 22<sup>nd</sup> day of January 1864. in the case of Suntos Wulud-yenkoo Tabile vs Deoji Wulud Bapoo Tabile and N: 305. and the return thereunto made by William Sandwith, Esquire, Acting Judge of the District of Sholapoor dated the 8<sup>th</sup> day of March 1864. N: 269. It is ordered that as the Court find that the District Judge has not clearly determined the issues of fact which he was directed to decide under the former decree of this Court he now decide the following issues viz:

1<sup>st</sup> Has Plaintiff established that he obtained possession of the half share of the house to which his right was declared by the Decree of A. D. 1830 and if so to what date did his possession extend and when was he dispossessed of any portion of the said house.

2<sup>nd</sup> What are the dimensions of the portion of the house of which Plaintiff has been dispossessed and has he claimed or been awarded by the Decree of the District Judge any thing in excess of that portion.

and certify to this Court his finding on these issues together with the evidence, within one month from this date.

Witness Sir Joseph Arnould Knight Acting Chief Justice of Bombay aforesaid. This fourth day of July one thousand eight hundred and sixty four.

By the Court.

E. G. M. C.  
Acting Registrar.

E. G. M. C.

Sealer.

The 4<sup>th</sup> day of July 1864.

8 July 1864

M. M. A.



No 898 of 1864

It is hereby certified to the High Court of Judicature that the execution of the within Writ has been carried into effect by deciding the issues specified therein.

Given under my hand and the seal of the District Court of Sholapur this 13<sup>th</sup> day of August 1864.

W. S. S. S.

As Judge



Civil Court of the District

Singapore - ~~Sept~~: 10<sup>th</sup>  
1864

Appeal }  
No. 96 of 1864.

1<sup>st</sup> ind: Gueloo App. -  
(Original Deft.)

2<sup>nd</sup> ind: Wapoo - App.  
(Original Plff.)

No. 20.

Reference from Her Majesty's  
High Court of Judicature

at Bombay - No. 1778 of

received on the 11<sup>th</sup> July 1864 -  
1864, - directing this

Court to certify the evidence  
together with its finding  
on the following issues, viz:

1<sup>st</sup> Has Plff established that he obtained possession  
of the half share of the house to which his right was  
declared by the decree of A.D. 1830, and if so, on what  
date did his possession extend, and when was he  
dispossessed of any portion of the said house?

2<sup>nd</sup> What are the dimensions of the portion of the  
house to which Plff. has been dispossessed,  
and has he claimed or been awarded by the  
decree of the District Judge any thing in respect  
of that portion?

The Munsiff of Malacca to whom the papers  
were referred, reports that the parties, though  
duly ~~summoned~~ warned, did not ~~appear~~ <sup>come</sup> for any further

evidence, and therefore it will be necessary to decide the issues upon the evidence previously recorded.

(The pleadings <sup>is</sup> heard for either party.) —

(Decision)

By the Decree of A.D. 1830 Bupor, the father of Desai was awarded half the "wada" and house, and it is in the highest degree improbable that Bupor, a Brahmin, would have failed to execute the decree.

The exhibits 44, 45, 46, and 47 show that Bupor obtained possession of half the property — that he subsequently left the place, <sup>with his family,</sup> and did not return till 10 or 12 years ago, when he again obtained possession of what he had had before, minus a portion, which the Deft. Mutor had taken by breaking down the wall in Bupor's absence and this led to the suit instituted in 1859.

The evidence of the witnesses for the Deft. (nos. 49, 50, 51, 52, 53, and 54) agrees as to the right of Desai to a half share, but at the same time it is inconsistently alleged that Mutor has a right to a larger share owing to the death of

alleged  
or third share, one currency. In the previous  
papers however, this person's name was never  
mentioned - and it therefore appears to be  
~~the pretense to support~~ ~~the~~ right claimed  
as a pretense to support the alleged right  
of Sauto & the father of which George has  
been unlawfully dispossessed.

(1<sup>st</sup> Part) Considering therefore the evidence, there  
appears to be no doubt that George's father  
Napoo obtained possession of the half of the  
premises awarded in 1830 - that the said  
Napoo subsequently (but at what date is  
uncertain) left, with a view to abandon  
his rights - that Napoo returned about  
10 or 12 years ago, and again <sup>obtained</sup> possession, but  
found that, during his absence, his half  
share had been encroached upon by  
Sauto -

(2<sup>nd</sup> Part -) There is nothing in explanation  
of the particular proportions of the

encroachment except what is stated in  
the planit - namely 18 feet by 5 feet - but  
these measurements have not been questioned  
by Quator, on whose side it is <sup>indeed</sup> admitted  
that he (Quator) holds a larger share than  
Devere and ~~that is~~ <sup>it is attempted to support this</sup> by the  
improbable story about an alleged  
third share, deceased. Finally,

it does not appear that Devere has  
claimed or been awarded by the  
District Judge anything in excess  
of "that portion", or more than he was  
entitled to by the decree of 1830.

The papers to be returned to the  
High Court - W. H. A. Smith  
A. J. J.