

In the High Court of Judicature, Bombay.

Tues day, the 14<sup>th</sup> day of February 1865.

SPECIAL APPEAL No. 963 or 1864

Jugoo bin Sayaji of the  
Satara District

Appellant

(Original Plaintiff)

*versus*  
Dawlata bin Auto  
Puar of the Satara Dis-  
trict

Respondent

(Original Defendant)

Rs. 2-10-8.

The claim in the Original Suit was to recover possession of some  
land, held by Plaintiff's father and entrusted to  
by him to 2<sup>nd</sup> Defendant, on whose leaving the village,  
the other Defendants refused Plaintiff's claim in the land.  
In Appeal No. 189 of 1864 the Judge  
of the District of Pathera at Pathera reversed  
the Decree of the Juff. of Mysore who had awarded the claim

A Special Appeal was preferred in the High Court on the ground, that the decision  
of the District Judge is contrary to  
Law in that,  
a The District Judge considered the

admission of one Defendant to be as evidence against the other.

b. The prima facie presumption being that when a father has a share, his son should have it after him, the District Judge was wrong in holding that the fact of the father's having it was no ground for the son's claiming it.

The Court finds that the Judge was correct in holding that no statement made by the Def: Babajee was binding as an admission on his co-Defendant Downta, but it also considers that the deposition of Def: Babajee when examined as a witness in the suit was a piece of evidence which should have been weighed and considered with the other <sup>depositions</sup> evidence in the cause. As the Judge appears to have excluded this deposition entirely from his consideration and as the issues both in the lower Appellate Court and in the <sup>Plaintiff's</sup> Court do not appear to have been correctly laid down, the Court reverses the decrees of both those Courts and remands the suit to the Court of first instance, that it may decide:—

1<sup>st</sup> Has Plaintiff established that the field in dispute was held on the hiva tenure by his father or any ancestor, and that he (Plaintiff)

is entitled by ~~the~~ inheritance to any portion of it.

2<sup>nd</sup> If so, is the portion to which Plaintiff may be found to be entitled in the possession of the Dept: Doolittle.

3<sup>rd</sup> Has Defendant established any circumstances which will extinguish Plaintiff's title or operate as a bar to his right to recover possession.

And any other issues which the Court of first instance may find necessary for a correct determination of the suit.

The parties to be allowed to adduce additional proof, and costs to be apportioned at the final decision.

Attest: John Forbes.

J. P. Duke

MEMORANDUM OF COSTS incurred in Special Appeal No. 963

of 186 4 against the decision of the Judge — of the District of Satara and disposed of on the 14 February 1865 by *per manding the same for retrieval*

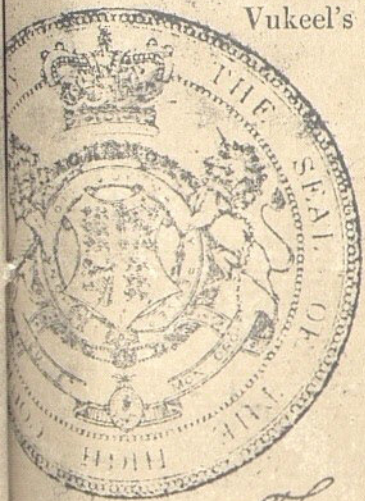
IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment .....	2	8	0
Stamp for Vukeelutnama .....	2	0	0
Batta for Process and Postage .....	"	14	0
Sectioner's Fee .....	1	12	0
Vukeel's Fee one-fourth .....	"	4	0
			7 24
Rupees....			7 24

BY THE RESPONDENT—

Stamp for Vukeelutnama .....	"	"	0
Vukeel's Fee one-fourth .....	"	"	0
			" 0 0
Rupees....			" 0 0



*W. P. S.*  
 Sealer

*R. West*  
 Registrar

The 14<sup>th</sup> day of February 1865.

*W. P. S.*

Issued a certificate on Her Majesty's Treasury  
the Bank of Bombay for the refund of Rupee  
(11 one only being the value of stamp used)  
for Special Appeal in the case.

Dated the 14<sup>th</sup> February 1865

West  
Registrar.

*(Circular stamp)*

*Handwritten text, possibly a signature or reference number.*