

*Special Appeal No. 597 of 1863.*1864.  
March 27.JOTI bin NIMBA'JI and others..... *Appellants.*SOMA'JI bin BA'PUJI GURAV and others... *Respondents.**Remand—Second Trial—Evidence.*

In a suit to recover possession of *mirás* land, the court of original jurisdiction decreed for the plaintiff on the evidence, but on appeal its decision was reversed, on the ground that the claim had not been properly valued, and the plaintiff was permitted to bring a fresh action. At the trial of the second action the Munsif recorded his previous decree and some additional evidence, which the District Judge in appeal considered to be insufficient.

*Held*—That, under the peculiar circumstances of the case, the Judge, if not satisfied with the evidence taken at the second trial, should have allowed the plaintiff to give again the evidence adduced at the former trial. The lower court's decree was, therefore, reversed, and the suit remanded in order that this might be done.

THIS was a Special Appeal against the decree of the District Judge of Sátará in Appeal Suit No. 127 of 1863.

Joti and others sued Somáji and others in 1858 to recover possession of some *mirás* land, which they said they had let to the defendants to cultivate. The Munsif of Sátará, who tried the suit in the first instance, decided in favour of the plaintiffs, under date the 19th of January 1860. Against this decision an appeal was made to the Principal Šadr Amín of Sátará, who reversed the decision, and dismissed the suit, as not being laid at a proper amount, leaving the plaintiffs free to file a fresh suit at a proper valuation. The present was a fresh action instituted according to that decision, and the Munsif this time also awarded in favour of the plaintiffs. The Munsif did not take over again the evidence given on the former trial, but recorded as an exhibit his judgment, and the grounds of it, and the exhibits on which he passed it. Against this decree an appeal was made to the District Judge of Sátará, R. F. Mactier, who reversed the Munsif's decree, principally on the ground that he was not satisfied with the evidence recorded by the Munsif at the last trial. He remarked that "the decree of the Munsif is founded merely on supposition, *not* evidence; and it must now be reversed with all costs."

1864.  
 JOTI NIMBAJI  
*et al.*  
 v.  
 SOMAJI  
 RA'PUTR,  
*et al.*

The case was heard by FORBES and TUCKER, JJ.

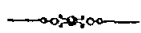
*Mádharráv Krishṇa Khárkar*, for the appellants, contended that if the appellate court were not disposed to attach any weight to exhibit No. 3, which contained the grounds in full of the Munsif's first judgment, and in which were also recorded other exhibits, showing that the land in dispute was the plaintiff's *mirás*, it should have remanded the case in order that all the evidence in the former case might be recorded in the present one.

*Vishvanáth Náráyan Mandlik*, for the respondents:—The defendants were in possession of the *mirás* land, and they could not be deprived of their property unless a better title were established by the appellants, on whom the *onus* of so doing lay. They had not done so, and ought to suffer for their neglect.

PER CURIAM:—The Court considers that, under the peculiar circumstances of this case, the Judge, not being satisfied with the evidence recorded by the Munsif at the present trial, should have allowed the plaintiffs the opportunity of putting in afresh the evidence which was recorded in the former suit on the same subject between the parties, No. 432 of 1858, in which no final decision respecting the plaintiffs' right was come to.

The Court reverses the Judge's decree, and remands the suit in order that the Judge may allow the evidence above mentioned to be recorded, and may pass a fresh decision on the merits, awarding costs.

*Decree reversed.*



*Special Appeal No. 395 of 1862.*

March 16.

KONER MANOHAR MAHA'JAN A'MBEKAR, deceased, his son and heir, Vámanáji Mahájan ..... *Appellant.*  
 NA'RO HARI DA'SPUTRE..... *Respondent.*

*Mortgage—Equity of Redemption—Power of Sale by Mortgagor—Reasonable Time—Attachment.*

Claim by a mortgagee to remove an attachment from certain property placed on it by a judgment creditor of the mortgagor, on the ground that the entire ownership of the property had passed to him at the date of the attachment. The mortgagee had never had possession of the mortgage-property, and by the stipulations of the deed the mortgagor had a power