

1869  
 Lakshuman  
 Ramji  
 v.  
 RamlalMahipati

COUCH, C. J.—It appears from the facts of this case that there was no cause of action until the defendant took possession of the land. The land was lying waste from 1850 to 1855, and the plaintiff could not then have sown any one for it, but he might himself have cultivated it at any time during that period. In the case quoted by the lower Court there was a *razinama* given by the original *mirasdar* the grandfather of the plaintiff, and, therefore, it was held that the right of the plaintiff was affected by the *razinama*, and that the cause of action as regarded the plaintiff accrued on the date of that *razinama*. In this case nothing occurred till 1855, when the land was taken up by the defendant for cultivation, and, counting the period of limitation from that time, the present claim is not barred. We must, therefore, remand the case to the Appellate Court for retrial on the merits.

WARDEN, J.—Concurred.

*Case remanded for retrial,*

March 24.

*Special Appeal No. 468 of 1868.*

Pandurang Sadashiv....	...	... Appellant.
Moro Vasudev. ....	...	... Respondent.

*Practice—Special Appeal—Fresh evidence—Dismissal  
 of Special Appeal—Review.*

Where an Appellant discovers fresh evidence after a Special Appeal has been admitted, the proper course for him to pursue is to ask to have the Special Appeal dismissed and to apply to the Lower Court for a review.

This was a special Appeal from the decision of A. Lyon, Assistant Judge at Thana, in Appeal Suit No. 46 of 1867, confirming the decree of the Munsif of Panwel.

The case was heard before COUCH, C.J., and GIBBS, J.

*Vishwanath Narayan Mandlik* for the Appellant :—In this case fresh evidence has been discovered since the admission of the Special Appeal. I, therefore, apply that the case may be remanded for retrial.

(COUCH, C. J.—If so, the only course is to dismiss this Special Appeal, leaving you to make an application to the Lower Court for a review of its judgment, without prejudice to your right to prefer another Special Appeal if your application for a review is rejected.)

1869  
Pandurang  
Sadashiv  
v.  
Moro Vasudev.

*Nanabhai Haridas* for the Respondent:—The Court can remand a case only on those grounds on which a Special Appeal lies to it. Discovery of fresh evidence is no ground for a Special Appeal and therefore the Court cannot reverse the lower Court's decree and remand the case for retrial.

COUCH, C. J.—In this case no ground for Special Appeal is shown, but, instead of confirming the lower Court's decree, we dismiss the Special Appeal with costs, in order to enable the Special Appellant to apply for a review of the lower Appellate Court's judgment. See *ex parte Bashiagarulu Nayudu (a)*.

*Special Appeal dismissed.*

NOTE by Reporter.—In Special Appeal No. 133 of 1864, decided on the 14th of September 1864, it was urged at the hearing of the Special Appeal that the appellant had discovered fresh evidence; but the Court (ARNOULD, FOBBS and WARREN, JJ) ruled that section 356 of the Code of Civil Procedure did not apply to Special Appeals. An application for a review of the judgment was then made, on the ground that the appellant discovered some further evidence after the Special appeal had been disposed of, but it was also rejected on the 15th of February 1865

(a) 1 Mad. H. C. Rep. 254.