

IN THE HIGH COURT OF BOMBAY AT GOA.

APPEAL FROM ORDER NO. 71 OF 2013

Shri Vasant Tukaram Prabhu,
major, married, r/at Nirancal,
Ponda, Goa.
(Org. Deft. No. 1)

... Appellant

Versus

1. Smt. Xalinibai Borcar
alias Smt. Shalinibai Borkar
(expired) represented by her L.R's
- 1a) Dr. Kunda Athavale,
d/o Shalini Borkar and her husband
- 1b) Dr. Jayant Balaji Athavale,

Both r/o Sion Cosmopolitan
Housing Society, Flat No. 9,
2nd Floor, Sion, Mumbai.
- 1c) Shri Jayant Shridhar Borkar,
s/o Shalinibai Borkar and
Advocate and his wife
- 1d) Mrs. Ashwini J. Borkar,
housewife

Both r/o 234/9147, Sadesh Chandra,
2nd Floor, Kannawar Nagar II,
Vikroli (East), Mumbai.
- 1e) Shri Gurunath S. Borkar,
s/o Shalinibai Borkar,
business and his wife
- 1f) Mrs. Shubhagi G. Borkar,

housewife,

Both r/o D/B7, Opp. Vishal Building,
Dr. Braganza Pereira Road, St. Inez, Panaji.

1g) Mrs. Smita S. Ramnathkar,
d/o Shalinibai Borkar,
housewife, and her husband

1h) Shri Sudhakar A. Ramnathkar,
Artist,

Both r/o Shantadurga Temple,
Kavale, Ponda, Goa.

1i) Shri Nitin @ Nitinkumar S. Borkar,
s/o Shalinibai Borkar,
business and his wife

1j) Mrs. Namrata N. Borkar,

Both r/o D/B7,
Opp. Vishal Building, Dr. Braganza
Pereira Road, Shantinez, Panaji.
(Original Plaintiffs)

2. Shri Shridhar Malsekar
alias N. Shirodkar,
major, r/at Nirancal,
Bettora, Ponda, Goa.
(Org. Deft. No. 2)

... Respondents.

Mr. J. P. Mulgaonkar, Advocate for the appellant.

Mr. Sudesh Usgaonkar and Ms. R. Pereira, Advocate for the
respondent nos. 1(a) to 1(j).

None present for respondent no. 2.

Coram:-S. B. SHUKRE, J.

Reserved on:- 12th March, 2014.

Pronounced on:-28th March, 2014.

JUDGMENT

This appeal is filed against the order of remand dated 16.7.2013 made by the District Judge-I North Goa, at Panaji in Regular Civil Appeal No. 339 of 2010 filed by the respondents nos. 1(a) to 1(j) against the judgment and decree dated 30.4.2001, passed by the Civil Judge, Junior Division, Ponda, dismissing the Special Civil Suit No. 21/1984/A filed by them against the appellant and respondent no. 2.

2. The appellant is the original defendant no.1. Respondent nos.1(a) to 1(j) are the legal representatives of original plaintiff and respondent no. 2 is the original defendant no.2.

3. Parties to the appeal are hereinafter referred to as the plaintiffs and defendants in the order they have been impleaded in the suit.

4. The original plaintiff, Smt. Shalinibai Borkar contended that she was the owner in possession of the suit property known as "Borodo Dongrachim Advona", also known as "Aforamento" situated at Nirancal in Ponda

Taluka, described in the Land Registration Office under no.4828 and in the Land Revenue Office under No.779. This property, hereinafter referred to as "suit property" and was surveyed under nos.100/1, 101/1 and 103/0 of village Nirancal and that it was originally surveyed as per the cadastral survey and included in the cadastral survey no.23 B.

5. The plaintiff claimed that the suit property was purchased by her from Cipriano Cesar Coelho do Amaral and others by a Deed dated 27.08.1958. The predecessor in title of said vendors and also the plaintiff acquired the suit property by a Deed dated 25.02.1932 and thereafter, the suit property came to be allotted to the vendors and to the plaintiff as per the Deed of Partition dated 06.08.1958.

6. The plaintiff further submitted that she was in possession and enjoyment of the suit property since the time of its purchase and prior thereto her predecessors in title were in possession of the suit property. To support her claim, the plaintiff alleged certain acts of possession by her in respect of the suit property. The plaintiff submitted that defendant no. 2 for the first time trespassed in the portion of the suit property by raising a hut in the year 1978 and when questioned about the

same, replied that he had been allowed to raise the same by one Baboi alias Ramchandra Prabhu. When the plaintiff inquired from the said Baboi alias Ramchandra Prabhu as regards the permission to raise the hut, he denied that any such permission was granted by him to defendant no. 2. Thereafter, the plaintiff served defendant no. 2 with a legal notice dated 28.11.1978 calling upon him to remove the alleged trespass. Defendant no. 2, however, denied raising of a hut being an act of encroachment and submitted that he was allowed to occupy the said structure by Vishwanath T. Prabhu. The plaintiff, therefore, sent an Advocate's letter to Vishwanth T. Prabhu asking him to demolish and remove the said structure and it was replied by said Vishwanth T. Prabhu that he did not raise any construction in the suit property.

7. The plaintiff alleged further acts of trespass by defendant no. 2 which were, amongst other, cutting of forest trees, raising of chilly crops and making plantation in the area cleared by felling forest trees in the month of July 1984 and illegally extracting granite stones from the portion of the suit property. The plaintiff submitted that defendants did not have any right, title or interest over the suit property or any portion thereof and therefore, filed a suit against the defendants initially

claiming reliefs of permanent injunction and mandatory injunction against the defendants. After dismissal of the plaintiff's application for temporary injunction, the plaint was amended by the plaintiff and plaintiff also sought relief of recovery of possession against the defendants in respect of survey nos. 100/1 and 101/1 and also claimed compensation.

8. Defendant no.1, by his written statement, categorically denied the plaintiff's claim. He submitted in the alternative that in the event it was held that the plaintiff purchased the same property in terms of the conveyance dated 28.08.1958, it be held that the piece of land bearing registration no.4828 and matríz no.799 did not correspond to or was identical with the lands surveyed under old cadastral survey no.23 B and new survey nos. 100/1, 101/0 and 103/0. He submitted that neither in the old cadastral survey nor in the new survey, the name of the property is indicated as "Borodo Dongrachim Advona", also known as "Aforamento". The defendants stated that in the cadastral survey records, the land surveyed under no.23 B was known as "Chemfegal Quelbithamum Chandry Boldem Dando", while in the recent survey, the name of the portion of the land surveyed under no.100/1 is "Quelbai Thane" and that the portion of the land

surveyed under nos.101/0 and 103/0 is "Chafegal". Defendant no.1 also stated about, amongst others, various acts of the possession exercised by him in the portion of survey Nos. 100/1, 101/1 and 103/0 such as planting of various trees, cultivating paddy crops and so on. He also submitted that there was a granite block in the portion of the suit property which was exploited by him. Defendant no.1 denied the allegations that defendant no. 2 had trespassed in the suit property in the year 1978 and that he was residing therein.

9. Defendant no.1 further stated that house wherein defendant no.2 was residing was originally a shed and was standing there for twenty years and that about 10 years prior to the suit he had engaged defendant no. 2 and allowed him to occupy the same for his residence and also allowed him to tether his cattle in the adjacent cowshed. Defendant no.1 further stated that he was not on speaking terms with his brother Vishwanth T. Prabhu when they purchased the said entire land inclusive of suit property from Shri Vishnu Porob Dessai and others by Conveyance dated 20.3.1972 and that said Vishnu T. Porob had no right, title, interest in the land bearing survey nos. 100/2 and 100/3 and the defendant no. 2 also did not have any right to the said property nor was liable to be

removed from the said structure standing in the suit property which belonged to defendant no.1.

10. Defendant no.1 further submitted that there was banana plantation in existence on the portion of the land known as "Quelbhatne" also known as "Tican Quelbitanem Cutombona" before he purchased the property. This property was in Aforamento from the Comunidade of Nirancal. He further submitted that one Venkatesh Porob @ Venkatesh Porob Dessai was in possession and enjoyment of the said portion of the land before purchase of the land by defendant no.1 and over the years the said Venkatesh and his successor in title had started enjoying and possessing the adjacent land of the local Comunidade surveyed under old Cadastral survey no. 23B and also some adjacent land on the western south west forming part of land bearing survey nos. 23A and 45. He further submitted that over 70 years before filing of the suit, the father of defendant no.1 started possessing and enjoying the entire land in the possession and enjoyment of the said Venkatesh Porob including the said Aforamento along with the said adjacent land comprising old survey no. 23B and said cadastral survey nos. 23A and 46 as lessee of the family of said Venkatesh Porob and continued in possession and enjoyment thereof until he expired

in the year 1964 and after the death of said Venkatesh, the family of defendant no.1 continued to be in possession and enjoyment of said entire land till the defendant no.1 purchased the same from decendants of said Venkatesh Porob by Conveyance deed dated 20.03.1972 and the said land surveyed under Nos. 100/1, 101/1 and 103/0, formed part of the said land which was in possession and enjoyment of the family of defendant no.1 as lessee of said Venkatesh Porob.

11. Defendant no.1 thus stated that said Venkatesh Porob and successor in title including defendant no.1 himself were and are in continuous and exclusive possession of the entire land including survey nos.100/1, 101/1 and 103/0 and other survey numbers for over 70 years openly as of right and adversely of others and that his predecessor and he have acquired a crytalized prescriptive title to the same. Defendant no.1 also stated that said entire land bears old cadastral survey nos.44, 23B, 23A and 46 presently bearing survey nos. 71(part), 96(part), 97, 98, 99, 100, 101, 102 and 103. Defendant no. 2, by filing the memo before the trial Court, adopted the written statement of defendant no.1.

12. The trial Court framed in all ten issues, and after

considering the evidence and arguments of the rival parties dismissed the suit by judgment and decree passed on 30.4.2001.

13. The trial Court found that plaintiff could not prove that she owned and possessed the suit property and that though ownership by title document was not clearly in favour of the defendants, there being evidence showing possession of the defendants in respect of the suit property, the defendants succeeded in proving that the suit property was part and parcel of the property "Quelbatanem" and also known as "Tican Quelbatanem Cutumbona". When the matter reached before the learned District Judge-I, Panaji in Regular Civil Appeal No. 339/2010, learned District Judge, after hearing both the sides and considering the impugned judgment and decree, framed only one point for her determination which is as under:-

"Whether an expert ought to have been appointed to identify the suit property?"

14. Learned District Judge recorded her affirmative finding to the said point holding that since the trial court was of the opinion that the identity of the suit property vis-a-vis old cadastral survey plan which had not been done by expert or by technical person with knowledge of survey, it was incumbent upon the trial Court to have appointed a commissioner to

resolve the dispute about identity of the land. Thus, allowing the appeal by her judgment and order passed on 16.7.2013, learned District Judge quashed and set aside the impugned judgment and decree and remanded back the matter to the trial Court with a direction to appoint a Head Surveyor from the Survey Department, Panaji to identify the property which the plaintiff had claimed that she had purchased. Learned District Judge also permitted the Court commissioner to carry out site inspection, if required. Aggrieved by this judgment and order, the appellant, who is original defendant no.1, is now before this Court in the present appeal.

15. I have heard Shri J. P. Mulgaonkar, learned counsel for the appellant/defendant no.1 and Shri Sudesh Usgaonkar , learned counsel for the respondent nos. 1(a) to 1(j)/plaintiffs. None appeared for respondent no. 2/defendant no.2 though duly served.

16. With their assistance, I have carefully gone through the impugned judgment and order and paper book of this appeal. The following points arise for my determination:-

1. Whether the First Appellate Court failed to follow the mandate of Order 41, Rule 31 of

C.P.C., 1908?

2. Whether the First Appellate Court committed a serious error of law in remanding the matter to the trial Court with a direction to appoint a Court Commissioner, and decide the same afresh?
3. Whether the First Appellate Court's remand of the matter to the trial Court has made cause of justice to suffer?

17. Shri Mulgaonkar, learned counsel for the appellant/defendant no.1 submits that the provisions of Rule 31 of Order 41 require that the First Appellate Court must frame all the points for determination that arise in the appeal, must record its decision in respect of each of the points and should support the conclusions by giving reasons. He further submits that the learned District Judge, in passing the impugned Judgment and order of remand, has acted completely contrary to the law and failed on all these three counts. He further submits that this was not a purely a case of boundary dispute warranting appointment of a commissioner. He submits that this was a case wherein the entire burden of proving her own case as regards ownership and possession of the suit

property lay with the plaintiff and since the trial Court found that plaintiff failed to discharge this burden, the trial Court rightly dismissed the suit.

18. Learned counsel further submits that while dismissing the suit, the trial Court has not only considered the failure of the plaintiff to sufficiently establish the identity of the suit but also considered the fact that the evidence of the plaintiff which comprised oral as well as documentary evidence did not establish ownership and possession of the plaintiff in respect of suit property. Learned counsel further submits that the trial Court had also weighed the evidence of rival parties and in the facts and circumstances of the case, recorded a finding that probability of the defendants being in possession and enjoyment of the suit property was preponderant. Therefore, they had succeeded in proving that suit property was part and parcel of the property known as "Quelbatanem" and also known as "Tican Quelbatanem Cutumbona" of which they were in possession and enjoyment. He submits that it was, therefore, incumbent upon the trial Court to just not only consider the aspect of doubt about the suit property, but also the evidenciary value of other aspects of the evidence brought on record by rival parties and record her findings thereon so as

to uphold or reverse the findings of the trial Court. In support, he has placed reliance upon the law laid down by the Supreme Court in the case of H. Siddiqui(dead) by LR's Vs. A. Ramalingam, (2011)4 SCC 240.

19. On the other hand, Shri Sudesh Usgaonkar, learned Counsel for the respondent nos.1(a) to 1(j)/plaintiffs, has submitted that the First Appellate Court, having regard to the nature of the evidence adduced by the plaintiff found that there was real doubt about the identity of the suit property as the witness of the plaintiff, PW1, was not an expert or technical person in the field of survey and therefore, was not capable of identifying the suit property by mere referring to the old cadastral survey plan no. 23B. He has further submitted that even the other documentary evidence produced by the plaintiff was held by trial Court to be insufficient to show that the suit property named as "Borodo" also known as "Borodo Dongrachim Advona" was the same property figuring in old cadastral survey plan no. 23B under the name as "Chamfegall Quilbithanu, Chandrybocdam-Dando"

20. He has further submitted the trial Court also found that the boundaries of the suit property as shown in the conveyance

deed dated 20.3.1972 were the same as boundaries of the land surveyed under old cadastral survey number 23B and in the survey nos. 100/1, 101/1 and 103/0. Thus, he has further submitted, essentially the substantial reason for dismissal of the suit was the failure of the plaintiff to establish the identity of the suit property and proving the physical boundaries of the suit property as mentioned in Conveyance deed of 1972 to be showing the same property as shown in the old cadastral survey no. 23B and surveyed under No. 100/1, 101/1 and 103/0. He has further submitted that the trial Court had also made an observation that things would have been different if the identification of the suit property through the boundaries was done by an expert surveyor and, therefore, the First Appellate Court rightly remanded the case to the trial Court.

21. On perusal of the judgment of the trial Court, it is no doubt seen that although the trial Court considered the nature of the evidence of attorney of the plaintiff PW1, and his failure to properly identify the suit property, it also considered the other evidence of the plaintiff and evidence adduced by the defendants so as to arrive at a conclusion that plaintiff failed to establish her ownership and possession of the suit property and that the defendants could at least establish their possession and

enjoyment of the suit property. But, it must be noted that inspite of consideration of the other evidence by the trial Court, main plank of reasoning of the trial Court has been the inability of the plaintiff to establish the identification of physical boundaries of the suit property either by failure to examine expert or by failure to produce on record adequate and reliable documentary evidence. The trial Court has also observed that the question would have been different if the identification of the suit property vis-a-vis the boundaries on the document of conveyance was done by an expert in survey or any technical person who could have proved the identification of the suit property. The relevant portion of the observations of the trial Court as appearing on pages 17 and 18 of its judgment are reproduced as under:-

“PW1 claims that he has identified the suit property on the old cadastral survey plan which forms part of old cadastral survey no.23/B and under new survey no. it falls in survey no.100/1, 101/1 and 103/0. The cadastral survey plan has been produced at Exh.PW1/B. On the blue print of the cadastral survey plan PW1 has identified the suit property as shown under red colour. Record does not reveal that PW1 is the technical person in survey or any expert in the civil field. Therefore, one does not know on what

basis PW1 has identified the suit property under red colour on the blue print which has been marked as article 'A'. The question would have been different if the identification of the suit property vis-a-vis the boundaries on the documents of conveyance was done by any expert in survey or by any technical person who could have proved the identification by examining him before the Court. When PW1 is not certain about the factual boundaries of the suit property or there is any other documents either from the survey records under the relevant regulations (as under old cadastral survey plan name of the person holding the properties are mentioned) or any other records under the relevant regulations it is not known on what basis the plaintiff has identified the suit property corresponding to the portion shown under the red colour on Article 'A' without the base of expert cannot be believed to be a proper identification of the suit property taking into consideration the knowledge of PW1 as mentioned above."

22. The trial Court has further observed on page 21 of its judgment, that considering the failure of the plaintiff to establish the identity of the cardinal boundary of the suit property defined under the conveyance, the old cadastral survey

plan Article A (blue print) cannot be held to have proved the identification of the suit property as claimed by the plaintiff in the suit. The trial Court, no doubt has also found that no material was produced on record by the plaintiff as to when survey in old survey plan was conducted and that if there was any survey under old cadastral plan after the grant of the suit property to Dadu Devu Gaonkar or its sale by him to Cipriano Cesar Coelho Do Amaral, the name of the original owner, Comunidade of Nirancal appearing in cadastral survey plan Exh. PW1/D would have been deleted and the name of the purchaser would have been reflected, which however, was not the case as seen from the cadastral survey plan. But, this observation is only by way of an additional reason for rejecting the claim of the plaintiff as trial Court had found that the plaintiff had failed to establish the identity of the suit property by failure to examine some expert to establish the identity and boundary of the suit property. Failure of the plaintiff to explain absence of name of predecessor in title in the old survey plan was seen by the trial Court as only deepening the doubt about identification of the suit property. There have been also other reasons given by the trial Court which are only in addition to and not as alternatives to the failure of the plaintiff to establish physical boundaries and identity of the suit property. Thus, I find great

substance in the argument of learned counsel for the plaintiff that the whole emphasis of the reasoning given by the trial Court in dismissing the suit is that it is the duty of the plaintiff to establish the identity and boundary of the suit property and one of the ways in which this duty could have been better performed by the plaintiff, in the opinion of the trial Court, was by examining some expert in the field as witness of the plaintiff.

23. The reasoning adopted by trial Court, in my opinion, would make the suit as the one involving dispute about identity and boundaries of the suit property. Law is now fairly well settled that whenever controversy in the suit revolves around the identity and boundaries of the suit property, the law would require the Court to suo motu exercise its power under order XXVI Rule 9 of the CPC, 1908 by appointing Commissioner for making local investigation for the purpose of elucidating the identity and boundaries of the suit property, so as to sub-serve the cause of justice. The First Appellate Court has, therefore, rightly caught the nerve centre of the controversy involved in the suit by rightly relying upon the law laid down in the cases of Kashinath s/o Ramkrishna Chopade V/s Purushottam Tulshriram Tekade, 2005(4) Mh. L.J. 471 and also in the case of

Girish Vasantrao Bhoyar V/s Nimbaji Warluji Bandal , 2009 (4) Mh. L. J. 371, and rightly remanded the matter back to the trial Court with a direction to appoint a commissioner to identify the suit property purchased by the plaintiff and to ascertain whether it corresponds to survey nos. 100/1, 101/1 and 103/0.

24. The First Appellate Court, after having realised the real nature of the controversy involved in this suit and the need to have on record the evidence of an expert in the field, so as to make an attempt to get the suit property properly identified and verified, only framed one point and answered it in the affirmative and remanded the matter back to the trial Court with a direction as stated earlier. Such an approach of the First Appellate Court, I do not think, is erroneous or absolutely against interests of justice, rather it must be said, that such an approach was necessary to do justice between the parties to avoid further rounds of litigation and worsening of the dispute between the parties.

25. Learned counsel for the appellant/defendant no. 1 has submitted that there has been other evidence also brought on record by the parties which clearly establishes the fact that the plaintiffs could not prove ownership and possession of the

suit property and therefore, the First Appellate Court committed a grave error of law in not considering this evidence by framing appropriate points for determination and giving her conclusions thereon. I am not inclined to accept this argument for the reason that the other evidence considered by the trial Court only resulted in a conclusion that the doubt arising from failure of the plaintiff to establish the identity and boundaries of the suit property by not examining the expert in the field of survey, has been further deepened and that in the opinion of trial Court things would have been different, had some expert been examined by the plaintiff to establish the identity of the suit property. Such reasoning of the trial Court itself underlines the fact that doubt was possibly capable of removal through the evidence of any expert in the field.

26. Besides, if the First Appellate Court, after having concluded about the pressing need for appointment of Court commissioner had considered other points arising from pleadings and the evidence of the rival parties, it may have caused prejudice to the case of the plaintiff and may be even to the case of the defendants and ultimate sufferer would have been the cause of justice. Therefore, I am of the view that the First Appellate Court has rightly considered only one point and

has rightly avoided to record its findings on other points, which were only rooted in and had an intimate nexus with need for clearing the doubt about identification of the suit property.

27. Viewed in this manner, I find that, the First Appellate Court has considered the basic aspect that arose for its determination in the appeal, recorded its decision thereon together with the reasons and in order to advance the cause of justice, avoided to frame the other points for determination, keeping all the questions open for their adjudication by the trial Court.

28. In the case of G. Amalorpavam and others Vs. R. C. Diocese of Madurai, (2006) 3 SCC 224, the Hon'ble Apex Court had held that whether in a particular case there has been substantial compliance with the provisions of Order 41, Rule 31 CPC has to be determined on the nature of the judgment delivered in each case. It is further held that non-compliance with the provisions may not vitiate the judgment and make it wholly void and may be ignored if there is substantial compliance with it and that justice thereby not suffered. In the peculiar facts of this case, applying this ratio, I am of the view that the nature of the controversy involved in the present case

required the First Appellate Court to first determine, if any expert ought to have been appointed to identify the suit property and the First Appellate Court did find it necessary and having found so, it became necessary for it to keep open the remaining questions for their appropriate adjudication by the trial Court in the light of the additional evidence of the report of the Commissioner. If it had framed other points for determination and answered them, same would have resulted in miscarriage of justice. Since the remaining points have been kept open, both the parties will have equal opportunity to establish and prove their respective cases in the light of additional evidence, which may not have been possible if the First Appellate Court had recorded its findings on other aspects. Therefore, I am of the view that there has been substantial compliance with the provisions of Order 41, Rule 31 of C.P.C. which has not resulted in making the justice suffer.

29. In the case of H. Siddiqui (supra) relied upon by the learned counsel for the appellant/defendant no.1, facts were that in the first appeal preferred before the High Court against the judgment and decree of the trial Court granting specific performance of contract, High Court had framed two issues, one related to doubt about the power of attorney having been

allegedly executed by the defendant in favour of his brother enabling him to alienate his share in the property and the other related to non exercise of power by the trial Court in refusing specific performance of the contract by resorting to Sub-Section 2 of Section 20 of the Specific Relief Act requiring the High Court to remand the case to the trial Court after setting aside its judgment and decree. In this background, the Hon'ble Supreme Court held that once the issue of the alleged power of attorney was also raised as is evident from first point formulated by the High Court, the High Court should not have proceeded to second point of remand without dealing with the relevant issues involved in the case. These facts distinguish themselves from the facts of the instant case in which only one point was framed and the facts of the case were such that after having found that remand of the case was necessary, framing of other points and recording findings thereon without there being adequate evidence in the nature of report of local investigation on record would have resulted in failure of justice. Therefore, in my humble opinion, the ratio of the said case of H. Siddiqui(supra) which is that, there is substantial compliance with the provisions of Order 41 Rule 31 CPC when the appellate Court's judgment is based on the independent assessment of the relevant evidence, is to be taken as followed by the First

Appellate Court in this case, when it also independently concluded about inadequacy of evidence to identify the suit property and the need for remand of the case for appointment of a commissioner under Order 26 Rule 9 of CPC.

30. In the circumstances, I find that in this case there is a substantial compliance with the requirements of Order 41 Rule 31 of CPC and remand of the case has been necessitated by the need for settling the controversy between the parties once and for all. That was only with a view to avoid further rounds of litigation and advance the cause of justice. The First Appellate Court has rightly remanded the matter after quashing and setting aside the judgment of the trial Court with a direction as stated earlier.

31. In the result, point nos. 1 to 3 are answered as in the negative. There is no merit in the appeal. The appeal stands dismissed. Parties to bear their own costs.

S. B. SHUKRE, J.

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