

BOMBAY HIGH COURT

Khushaldas Gokaldas

Vs

Chimanlal Kalidas

(Viscount Sumner and Atkinson, JJ. Sinha, J Wallis and L Sanderson, JJ.)

28.11.1927

JUDGMENT

Viscount Sumner, J.

1. [The following extracts from their Lordships' judgment only are material for this report.] It is also suggested that there is error on the part of the High Court, who failed to notice this date and gave judgment, as they should not have done, to that extent in favor of the defendants....

2. Their Lordships are not obliged to allow these appeals because no one has been able to point out what was the actual admission or evidence which was before the High Court on the subject. that there was some admission or some such evidence, which justified them, is a reasonable assumption, because, first of all, if there was any slip, it was the duty of the defendants to have Called the attention of the Court to it, so that it might be corrected. Again, it was in their interest to have drawn attention Viscount to it when they applied for leave to appeal to His Majesty in council as they did some time afterwards in most voluminous and exhaustive terms, but there is no mention of this point there and when, lastly, a petition was sent to this country with instructions to apply for special leave to appeal, this point was not mentioned at all either one way or the other, and it was only by the diligence of the counsel who appeared that this discrepancy was observed and naturally made legitimate use of on the application.

3. Their Lordships will humbly advise His Majesty that these appeals should be dismissed with costs.