

In the High Court of Judicature, Bombay.

Suit day, the 26th day of July 1864.

SPECIAL APPEAL No. 207 OF 1864.

Sidapa bin Chewapa Hum-
dekuri of the Dharwar Dis-
trict

Appellant

(Original Defendant)

versus

Madivalaya bin Chennu-
laya Honwad of the Solapur
District

Respondent

(Original Plaintiff)

Rs. 31-11-11

The claim in the Original Suit was to recover possession
of certain lands.

In Appeal No. 153 of 1862 the Acting Judge
of the District of Solapur at Dharwar confirmed
the Decree of the Judge of Mirpurg who had awarded
the claim.

A Special Appeal was preferred in the High Court on the grounds that (1) the
decision of the District Judge is
contrary to law in that the Lower Court
ought not to have deprived the appellants
possession unless the mortgage money

was paid off (but) ought to have rejected
the claim and (2) it is contrary to usage
having the force of law in that as the
land since for was ^{that} gutthooli (abandoned
by the tenant) and the apperment
thereof paid by the appellant to the
government, the transfer in the ac-
count on the name of the Respondent
made by the mortgagor Jitapa by means
of a Thazimama does not make
him Respondent a legal proprietor
and does not affect the appellants right.
The claim therefore ought not to have
been awarded Vide decision N. 3505 and that
(2) there has been a substantial error
in law in the investigation of the
case which has produced error in the
decision thereof upon its merits in
that ^{the} document which gave rise to the
dispute about mortgage was erroneously
rejected to by the District Judge because
he once admitted it in case N. 716 of the
Special appeal Register. The onus of
proof ought to have been thrown upon the
respondent because the appellant has been
in possession of the land.

The Court find that
in this case the following

Material issues have not
been determined

1st Was Gitapa the original
holder of the land?

2nd Did Gitapa at the time
he held the land and prior
to his giving the raje namals
to the Revenue ~~author~~ officer
in favor of Babaji Kowbar,
(from whom Plff derives
his right,) execute a bona
fide mortgage of it to
Shidappa, and is Shidappa
entitled under the said
mortgage to hold the land
till the ~~full~~ amount
of the mortgage debt is
liquidated.

The Court reverse the
Dist. Judge's decree and
remand the case for the
passing of a fresh decision
on the merits awarding
costs.

H. P. P. P.,
S. M. S.

MEMORANDUM OF COSTS incurred in Special Appeal No. 207.

of 1864. against the decision of the Judge of the District of Solapur and disposed of on the 25th July 1864 by remanding the same for retrial.

IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment	3	8	0	✓		
Stamp for Vukeelutnama	2	0	0	✓		
Batta for Process and Postage	1	4	0	✓		
Sectioner's Fee	"	8	9	✓		
Vukeel's Fee one-fourth	"	3	8	✓		
			7	8	5	
			Rupees	7	8	5

BY THE RESPONDENT—

Stamp for Vukeelutnama	2	0	0	✓		
Vukeel's Fee one-fourth	"	3	8	✓		
			2	3	8	
			Rupees	2	3	8



Sealer
26th day of July 1864.

Acting Registrar

Issued a certificate on Her Majesty's
Treasury Bank of Bombay for the refund
of Rupees two (2) being the value of the
Stamp used for Special appeal appeal in
this case.

26th July 1864

C. M. M.
Acting Registrar

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