

In the High Court of Judicature, Bombay.

Tues day, the 26<sup>th</sup> day of July 1864.

SPECIAL APPEAL No. 209 of 1864.

Shidapa bin Rewapa Hoondekuri  
of the Dharwar District

Appellant

(Original Defendant)

versus

Mudvulya bin Chemmulya Hona  
of the Solapoor District

Respondent

(Original Plaintiff)

Rs. 32 — " — "

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

In Appeal No. 154 of 1862 the <sup>Act.</sup> Judge of the District of Solapoor at Solapoor confirmed the Decree of the <sup>Act.</sup> ~~Distt~~ <sup>Judge</sup> of ~~Solapoor~~ <sup>Solapoor</sup> 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 mortgaged money was

was paid off [but] ought to have rejected the claim:  
that (2) it is contrary to the usage having the force of  
law in that the land sued for was Gathulee  
[abandoned by the tenant] and the assessment  
thereof paid by the Appellant to the Government  
the transfer in the account in the name of the  
Respondent made by the mortgagor Jitapa by means  
of a Razeenama does not make him [Respondent] a  
legal proprietor and does not affect the Appellant's  
right. The claim therefore ought not to have been  
awarded. Vide decision No. 35-05. That (3) there  
has been a substantial error in law in the in-  
vestigation of the case which has produced error  
in the decision thereof, upon its merits in that

1<sup>st</sup> The document which gave rise to the dispute  
about mortgage was erroneously objected to  
by the District Judge because he once ad-  
mitted it in case No. 716 of the Special  
Appeal Register.

2<sup>nd</sup> 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.

- 1<sup>st</sup> Was Jitapa the original holder of the land?
- 2<sup>d</sup> Did Jitapa at the time he held the land and prior to his giving to the Revenue Officer the Rajeswami in favor of Sundralapa (Plff) execute a bona fide mortgage of it to Shidappa, and is Shidappa entitled under the tenet mortgage to hold the land till the amount of the mortgage debt is liquidated.

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

Appy. Subbar

*[Signature]*