

In the High Court of Judicature, Bombay.

Monday, the 29 day of August 1864

SPECIAL APPEAL No. 393 OF 1864

Govind Patil bin Ram  
Patil Raot of the Kankar

Appellant

District (Original Plaintiff)

versus

Ram Patil bin Sud  
Patil Raot of the  
Kankar District

Respondent

(Original Defendant)

Rs. 16 -- --

The claim in the Original Suit was to secure an *order* *in* *favor* *of* *the* *plaintiff* *allowance* *alleging* *that* *he* *himself* *had* *a* *right* *to* *it* *every* *fourth* *year*.

In Appeal No. 277 of 1863 the *Assistant Judge* of the District of *the Kankar* at *Samal* reversed the Decree of the *Magistrate* who *had* *awarded* *the* *claim* *of* *the* *plaintiff* *and* *threw* *out* *the* *claim* *with* *costs* *in* *favor* *of* *the* *defendant*.

A Special Appeal was preferred in the High Court on the grounds that (1) there has been a substantial error in law in the investigation of the case which has produced an error in the decision of

the case on its merits in that the Assis-  
- tant Judge did not frame proper  
- issues in as much as the Respondent  
having been authorised under a *Mookh-*  
- *tyarpatra* to do service and the claim  
having been brought for the purpose  
of recovering the money (allowance) re-  
- ceived contrary to the agreement, the  
point "whether the Respondent had  
or had not received any money con-  
- trary to the agreement" was not  
cleared, which was an error; that (2)  
if the Assistant Judge had reason  
to believe that there were other persons  
who had also a claim to the allowance  
of the year in question, he ought to  
have fixed a day for their appearance  
and summoned them accordingly.  
This he did not do and ~~he passed~~ a decision  
- sion, which was wrong; and that  
(3) if the Assistant Judge had  
required more evidence from the  
Government records, he ought to  
have allowed the Appellant a reason-  
- able period to produce the same  
or taken measures himself to send  
for it. He did neither of these which  
was an error.

The Court are of opinion that the assump-  
tion of the Judge was not justified in awarding a  
writ of habeas corpus on the ground stated  
by him. He appears to have assumed  
that a certain document, the existence  
of which he considered the Plaintiff  
to have admitted, was the best evidence  
of Plaintiff's asserted right, but the  
Court do not find in the case any  
warrant for this assumption &  
consider that under the circumstances  
the Plaintiff should have been  
allowed time to obtain the papers  
<sup>in question</sup> if the results judge deemed the  
production essential. The Court  
therefore, reverse the lower Court's  
decrees & direct that Plaintiff be al-  
lowed to produce the document  
alluded to if any such document exists,  
& that a new decree be passed on  
the merits according to law.

H. G. Tucker

A. M. Anderson

MEMORANDUM OF COSTS incurred in Special Appeal No. 393.

of 186 4 against the decision of the *M<sup>rs</sup> Judge* of the District of *The Mookun* and disposed of on the *29 Aug<sup>th</sup> 1864* by *remanding the same for retrial.*

IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment .....	3	"	"		
Stamp for Vukeelutnama .....	2	"	"		
Batta for Process and Postage .....	1	"	"		
Sectioner's Fee .....	"	14	9		
Vukeel's Fee one-fourth .....	"	11	0		
				Rupees	7 18

BY THE RESPONDENT—

Stamp for Vukeelutnama .....	2	"	"		
Vukeel's Fee one-fourth .....	"	11	0		
				Rupees	2 11



*Madras*  
For Seal

*Madras*  
For Reg. Registrar

*29<sup>th</sup> August 1864*

