

In the High Court of Judicature, Bombay.

Fri day, the 16<sup>th</sup> day of September 1864.

SPECIAL APPEAL No. 472 of 1864.

Huri Wassadev Rajwade  
Seth of the  
Putnagiri Collectorate  
= rates — (Original Plaintiff)

Appellant

VERSUS

Mahadaji Apaji Rajwade  
of the Putnagiri  
Collectorate

Respondent

(Original Defendant)

Rs. 46-5-8

The claim in the Original Suit was to recover one year's produce of half the share of village, made over to Plaintiff under a decree of the late Sudder Dewannee Adchut.

In Appeal No. 81 of 1864 the <sup>Geting Collector</sup> of the District of <sup>Putnagerry</sup> at <sup>Putnagerry</sup> confirmed the Decree of the <sup>members of Putnagerry</sup> <sup>Shroets</sup> <sup>thrown out</sup> the claim.

A Special Appeal was preferred in the High Court on the grounds that a substantial error in law has occurred in the investigation of the case & which

which has produced an error in the decision of the case upon its merits in that when the Court decided an proprietary right it was not necessary to see whether (the Appellant even) had possession but the Collector should have awarded the mesne profits, and that (2) the onus of proving why no assessment should be paid on the Government land should have been thrown on the Respondent.

The Court considers that the Collector, in giving Judgment against the Plaintiff, on the ground that "he had failed to prove that it was ever customary for the co-sharers of the village to pay 'thull' to each other", has laid the onus wrongly!

The Court therefore reverses the decree of the Collector and remands the case, that the Collector, after enquiry, may determine the following issues:—

1. <sup>by the sharers of a village</sup> Is 'thull' claimable generally from those who cultivate land within his share.

2. <sup>nd</sup> Does Defendant succeed in establishing an exceptional case as regards co-sharers, by showing that it is customary for them to cultivate each other's land without payment of 'thull'.

The Court directs that a new judgment shall be given.

Costs to follow final decision.

H. Weston.

A. M. Warden

MEMORANDUM OF COSTS incurred in Special Appeal No. 472

of 186 4 against the decision of the Acting Collector of the District of Putuagin and disposed of on the 16<sup>th</sup> Sept. 1864 by remanding the same for retrial.

IN THIS COURT.

BY THE APPELLANT—

Stamps for copies of Decree and Judgment .....	2	8	0	
Stamp for Vukeelutnama .....	2	0	0	
Batta for Process and Postage .....	11	0	0	
Sectioner's Fee .....	9	3	0	
Vukeel's Fee one-fourth .....	5	7	0	
			6	1
			10	0
Rupees .....	6	1	10	

BY THE RESPONDENT—

Stamp for Vukeelutnama .....	2	0	0	
Vukeel's Fee one-fourth .....	5	7	0	
			2	5
			7	0
Rupees .....	2	5	7	



*[Signature]*

For Dealer

The 16 day of Sep

*[Signature]*

For Acting Registrar

