

17

0881/558



In the High Court of Judicature at <sup>Madras</sup> Patna.

( Civil Appellate Side. )

(17)

# TITLE PAGE.

## PART I.

( THIS FILE MUST BE PRESERVED FOR EVER. )

*Second*

APPEAL FROM \_\_\_\_\_

No. 855 of 193 1880

Ankuralingina Sitamma Appellants,

VERSUS

Kudala Kamayya + another Respondents.

DATE OF DECISION OF HIGH COURT 24. 11. 1881

DITTO OF PRIVY COUNCIL \_\_\_\_\_

*Madras*

In the High Court of Judicature at Patna.

TABLE OF CONTENTS.

Second Appeal No. 855- of 194/1880

*Akharaboyina Sitamma*

*Appellant,*

*versus*

*Kundala Kamayya & another*

*Respondent.*

Serial No. of Paper.	DESCRIPTION.	Pages.
1	Order-sheet. of the H.C. of 8. 9. 1881	1
	Remand order	x
	Finding of the Lower Court upon remand	x
2	Judgment of the High Court	2
3	Decree of the High Court	3
	Memorandum of Appeal	x
	Lower Court Judgment and Decree	x
	Cross-objection	x
	Award of arbitrators or petitions of Compromise and Court's permission thereto.	x
4	Paper-books	x

*two copies with  
Auto judgment*

Signature of Officer of Court. *Devi*

Compared and found correct.

Date \_\_\_\_\_

855/1880-2

Record-keeper.

S. A. No. 855/80

The Appellant also in his answer, appealed  
to the 1st draft only as Respondent but a  
vakalet is put in by Mr. Kumpachari,  
Jr., Vakil, on behalf of the 2<sup>d</sup>, 3<sup>d</sup> & 4<sup>th</sup> drafts.  
Hence, instructions are requested as  
to whether the 2<sup>d</sup> draft should also be  
included as one of the Respondents.

16-9-81.

855/1880-2 (a)  
Yrs. I am, my  
20 Oct 81

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Thursday, the eighth day of September,  
One thousand eight hundred and eighty-one.

PRESENT:—

The Honorable Mr. Justice Innes.

The Honorable Mr. Justice Farnham.

855/1880-03

Second APPEAL No. 855 of 1880:

Ankaraboyina Sitamma — Appellant.  
(P. M.)

Ankaraboyina Lingamma,  
Kundala Kammaya,  
and  
Kundala Patamma — Respondent.  
(S. & Co. Depts)

Second Appeal against the revised Verdict of the District Court of Ganjam  
in Appeal Suit No. 156 of 1879, reversing the  
Decree of the Court of the District Munsif of  
Berhampore in Original Suit No. 333 of 1879.

Order: This Second Appeal coming on for hearing; Upon perusing the grounds  
of Appeal, the Judgments and  
Decrees of the Lower Appellate  
Court and Court of First  
Instance and the material  
papers in the Suit; and

W.  
1881

1919

Draft Order  
Proceedings 20/15

upon hearing the arguments  
of Mr. J. W. S. Brannon, Counsel  
for the Appellant and of P. V.  
Rangachary, Vakil for the  
Respondents; it is ordered  
that the District Judge  
do submit for the consideration

Dated 8 Sept 1879  
sent 28 Sept 1879

of this Court, the order passed  
by him on the  
Review Petition for review  
of his decree dated 18 August 1880  
in Appeal No. 156 of 1879.

Vide H.C. No. 11375/81.

By the Court.

S.A. No. 855/80

Sealed & signed

By Registrar  
Appellate Side

Calling for a certain  
order

Sept  
22/9

To

The Dist. Judge of  
Bangalore  
(with printed paper - also returned)

PI

Drafts Office

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Thursday, the twenty-fourth day of November,  
One thousand eight hundred and eighty-one.

PRESENT :—

THE HONOURABLE MR. JUSTICE INNES.

THE HONOURABLE MR. JUSTICE MUTTUSAMI AIYAR, C. I. P.

SECOND APPEAL No. 855 OF 1880.

Ankaraboyina Sitamma ... .. Appellant (Plaintiff.)

Ankaraboyina Lingamma,  
Kundala Kamayya, and  
Kundala Potanna.

} Respondents (2nd/3rd, & 4th Defendants.) 9

Second Appeal against the revised Decree of the District Court of Ganjam in Appeal Suit No. 156 of 1879, reversing the decree of the Court of the District Munsif of Berhampore in Original Suit No. 333 of 1879.

JUDGMENT.

We feel bound to say the review was granted upon very insufficient grounds. There seems, however, to be no appeal from an order granting a review of a decree merely upon insufficient grounds.

The application *must* have been made both after the prescribed period and without sufficient grounds to admit of an Appeal from an order such as that in question.

The other grounds of Appeal are admittedly from the findings of fact.

We must dismiss the Appeal, but without costs.

af  
af  
af  
M

Acting Registrar,  
Appellate Side.

Erd. C. Ramanjulu Chetty.

855/1880-04

*18/2/15 5/12/81*

*Handwritten notes and signature at top right.*

HIGH COURT OF JUDICATURE  
AT  
MADRAS.

JUDGMENT

IN

SECOND APPEAL 855 of 1880.

(From Appeal Suit 156 of 1879,  
District Court, Ganjam.)

Dated 24th November 1881.

Sent 10<sup>th</sup> Dec/81. *24-11/81*  
*855/80.*

*Handwritten initials or marks.*

*PI*

*Handwritten signature and date: 6-12-81*

*Handwritten signature and date: 8-11-81*

*X*



7/12/81

3

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

This day, the *twenty-fourth* day of *November*,  
One thousand eight hundred and eighty-one.



PRESENT:

Honorable *Mr. Justice James*

and

The Honorable Mr. Justice *Muttusami Sivar, C. J. C.*

SECOND APPEAL No. *855* of 1880.

*An Karabojina Titamma* Appellant,  
*An Karabojina Lingamma* Plff. }  
*Kundala Ramayya;* } Respondent,  
*and* }  
*Kundala Polamma* } ( *233 of the*  
 } *Decls.* )

Second Appeal against the <sup>revised</sup> Decrees of the *District* Court of  
*Gaujam* in Appeal Suit No. *156* of 1879 reversing  
the Decree of the Court of the *District* *Shaniff* of *Berhampore*  
in Original Suit No. *333* of 1879.

Decree:—This Second Appeal coming on for hearing: Upon perusing the  
grounds of Appeal, the Judgments and Decrees of the Lower Appellate Court  
and Court of first Instance, ~~and the material papers in the suits;~~ and upon hearing

the arguments of *Mr. J. H. J. Branson* Counsel for the Appellant,  
of *Mr. M. Ramachary* Counsel for  
and the Respondent ~~not appearing in person or by Counsel;~~ this Court doth

order and decree that the Decree of the Lower Appellate Court be, and the  
same hereby is confirmed, and this Second Appeal dismissed, and this Court  
doth further order and decree that there be no  
costs of this Second Appeal.

*Muttusami Sivar*

*Muttusami Sivar*  
Judge

1881/11/26

*G. Ramalingam*

855/1880-05

7107

PROCEEDINGS.

Dated 24<sup>th</sup> Nov 81.  
Sect 10 sup/81.

Second Appeal No. 855 of 1881.

Dismissing the Second Appeal.

*with costs.*

PI

IN THE COURT OF THE DISTRICT MUNSIF OF  
BERHAMPORE.

20th November 1879.

Original Suit No. 333 of 1879.

PRESENT:—C. RANGAIYA PUNTULU, District Munsif.

Plaintiff. versus Defendants.

Ankaraboyina Sitamma. 1. Kundala Gungamma.  
2. Ankaraboyina Lingamma.  
3. Kundala Kamayya.  
4. Do. Potanna.

10

Suit for possession of plaintiff's ground valued at rupees 30 situated in Bhapuram village, and for removal of the wall thereon on which the roof of the tiled house built by defendants rests, the door ways, and recovery of rupees 3 for the costs of removing them.

20

2. This suit coming on for final hearing before Chellepille Rangaiya Puntulu, District Munsif, in the presence of plaintiff's Vakil, Gode Vencatarungayya Puntulu, and S. Surianaraina Sastri, Vakil for defendants 1, 2, 3 and 4, it is decreed that the 3rd and 4th defendants do remove the Western wall of houses Nos. 3 and 4 built on 15 inches of ground on the Western side in the spot, 3 spans wide, marked red in the plan filed by the plaintiff, the door ways therein put up, the roof resting thereon, and that the said 15 inches of land be put in plaintiff's possession. Plaintiff's claim as regards the remaining ground is dismissed and defendants 1 and 2 exonerated from this suit. Plaintiff to pay their costs rupees 3-13-3. 3rd and 4th defendants to pay plaintiff rupees 10-11-1 being her costs on rupees 18-5-4 which was allowed to her and recover from plaintiff rupees 0-13-4 for their costs on rupees 14-10-3 disallowed to plaintiff.

(Here enter costs).

30

(Signed) C. RANGAIYA,

District Munsif.

855/1880-06

IN THE COURT OF THE DISTRICT MUNSIF OF  
BERHAMPORE.

20th November 1879.

Original Suit No. 333 of 1879.

PRESENT :--CHELLEPILLI RANGAIYA,

*District Munsif.*

<i>Plaintiff.</i>	<i>versus</i>	<i>Defendants.</i>	
Ankaraboyina Sitamma.		1. Kundala Gungamma.	
		2. Ankuraboyina Lingamma.	
		3. Kundala Kamayya.	10
		4. Do. Potanna.	

1. Plaintiff sues against 1st and 2nd defendants for possession of the spot 3 spans broad marked red in the plan filed with the plaint, for removal of the wall erected thereon, the two door-ways put up therein, and the tiled roof resting thereon, and for recovery of rupees 3 from them for removing them as stated above.

2. Plaintiff urges that the house marked No. 1 in the plan filed with the plaint belong to her; the house marked No. 2 belongs to Bondiri Ram Prasad examined as the common witness of both the parties in this suit; that marked No. 3 belongs to the 1st defendant that marked No. 4 to the 2nd defendant; that the Western wall of the houses Nos. 3 and 4 used to stand behind the spot marked red in the plan, i. e. on the Eastern side; that there was also a thatched house resting on it; that it was destroyed by fire 3 years ago; and that in February 1879 the said 1st and 2nd defendants usurped the said spot and raised a wall thereon, and put up two door-frames therein, and use her ground C as back-yard coming through the said door-ways. Plaintiff also contends that all the ground embraced by the blue line belongs to her.

3. The 1st and 2nd defendants contend, that the houses Nos. 3 and 4 marked in the plan belong to 3rd and 4th defendants; that the spot marked red and the ground lying to the West of the houses Nos. 3 and 4 belong to 3rd and 4th defendants, and that they are not liable to be made parties to this suit.

4. 3rd and 4th defendants who were made parties since the suit, put in a written statement contending, that the spot marked red and the back yard to the West thereof belong to them, and that they have a right to erect a wall on the spot marked red.

5. *Issues.*

- (I.) Whether the spot marked red in the plan put in by plaintiff belongs to plaintiff or to defendants 3 and 4.
- (II.) Whether or not 3rd and 4th defendants are entitled to put up door-ways in the places marked A. and B. in the said spot.
- (III.) Whether the whole of the ground C, belongs to plaintiff or defendants 3 and 4.
- (IV.) In whose enjoyment is the ground C. and how long.

10 6. *The following witnesses were examined as common witness:--*

1. Ram Prasad.

*On Plaintiff's side.*

1. Ankaraboyina Lachaya.
2. Kundala Kamayya.
3. Perla Ramasami.
4. Jannela Gurayya.
5. Kandala Dalamma.

*On Defendant's side.*

1. Allibala Konkatarami.
2. Medam Naraina.
3. Rama Panda.
4. Kunni Subbanna.
5. Ankaraboyina Lingamma.

20 7. The 3rd defendant herein is the son of the 1st defendant and the late Vencatasami, brother of the 4th defendant. 2nd defendant is 4th defendant's sister. There had been a single thatched house on the sites of the houses Nos. 3 and 4 before 8 or 9 years when the defendants 3 and 4 became divided. When they divided it, it became divided into two houses. The first, that is to say, the house No. 3 fell to the 30 3rd defendant's share and, the second, *i. e.* the house No. 4 to the 4th defendant's share. The defendants are using the said houses as shops. The houses in which they live are quite separate. Both the parties admit this fact.

8. *1st Issue.*—The Western walls of the houses Nos. 3 and 4 run from North to South. It runs straight without bending one way or the other. As the thatched house formerly situated in this house-ground had been destroyed by fire, it was renewed about a year ago.

Plaintiff contends, that before it was so renewed, the Western wall of the houses 3 and 4 had been situated 3 spans to the East of the Western wall of the house No. 2, which (wall) is situated East of the spot marked red in the plan, and that the defendants—? her spot 3 spans wide and raised a wall thereon. Plaintiff's witnesses 1 to 5 depose, that a year ago before the houses Nos. 3 and 4 were built, the Western wall thereof had stood about a cubit behind, *i. e.*, to the East of Western wall of house No. 2, and the common witness deposes that it had stood within a cubit less by a fist. Plaintiff's witness 1 to 4 further depose, that a year ago when a dispute arose between the parties to this suit, when the houses Nos. 3 and 4 were built about the Western wall they mediated and said that the said wall should be erected a cubit to the East of the Western wall of the house No. 2, and that the spot a cubit broad belonged to plaintiff. The evidence of the said witnesses and that given by the common witness corresponds to a great extent. The common witness is the owner of the house No. 2, and the plaintiff's 5th witness is the owner of the house to the North of the house No. 4. The witnesses 1, 2, 4 and 5 are related to both the parties. The 2nd witness is also the head of the caste to which both the parties belong. Defendant's 2nd witness also admits that the said witnesses arbitrated at the time 3rd and 4th defendants entered into a division. Hence, the said witnesses are aware of the facts in dispute. I therefore see no reason to disbelieve their evidence.

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9. Defendant's 2nd and 5th witnesses state, that in the spot where the present Western wall of the houses Nos. 3 and 4 stands, there was a wall formerly a year ago before they were built. Defendant's 3rd and 4th witnesses also depose, that a year ago they erected the Western wall of the said houses as Coolies, and that they found then traces of a wall having been formerly in that spot. 2nd witness is related to 4th defendant as brother-in-law, and the 5th as his sister. 3rd and 4th witnesses earn their livelihood as Coolies. The evidence of the common witness is contrary to their evidence. I therefore do not think that their evidence is credible. As the witness of both the parties is of a different caste, and is admitted by both the parties to be a trustworthy man, I am of opinion as stated by him, that the Western wall of the said houses Nos. 3 and 4 should stand a cubit less by a fist *i. e.*, 15 inches to the East of the Western wall of the house No. 2, and that out of the spot marked red in the plan, only the portion 15 inches broad belongs to the plaintiff.

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10. *2nd Issue.*—There are two door-ways put up in the places marked A and B. If the places in which they are put up belong to defendants 3 and 4, they have right to keep them, *vide* Madras High

Court Reports Vol. III page 141. As with reference to the 1st issue my finding is, that only the ground 15 inches broad out of the spot marked red in the plan belongs to plaintiff, and as the door-ways are in the spot so found to belong to plaintiff, it must be said that the defendants have no right to put them up therein.

10 11. 3rd issue.—The defendant's Pleader contends, that though it has been proved that the Western wall of the houses Nos. 4 and 3 was a year ago before they were built, situated a cubit to the East of the Western wall of house No. 2, still the defendants have right to  
 20 build it further off the spot where it stands, and that the whole of the back-yard C lying West of the said houses belong to defendants themselves. Therefore, if the spot C be proved to belong to defendants, then a doubt may arise that the spot marked red in the plan may not belong to plaintiff. It was therefore that an issue regarding the ownership of the ground C was framed. Plaintiff's witnesses depose that 10 or 12 years ago the plaintiff usufructually mortgaged the ground C to 3rd defendant's father Ven-  
 30 catasami and obtained a loan of rupees 10, and that at the time of division entered into by the 3rd and 4th defendants, the plaintiff repaid it to them. This evidence is to some extent corroborated by the common witness. The common witness further deposes, that the defendants used to use the said ground, and that the plaintiff not liking the idea used to abuse them. Plaintiff's 3rd witness deposes, that whenever the Municipal peons object to the rubbish being on the said ground, the plaintiff alone used to remove it. The sale-deed of the 5th witness Dalsamma's house situated to the North of the houses Nos. 3 and 4 was sent for and seen. But the ground C is not mentioned as one of the boundaries given therein. It cannot therefore be  
 40 determined, that the said back yard belongs to the plaintiff or defendants. Because, the evidence of the plaintiff's witnesses and that of the common witness is reliable, and the defendant's 5th witness says that the 3rd and 4th defendants did not divide the said back-yard and define the portion they got just as they divided the house, I am of opinion that the spot C belongs to plaintiff only, and that it was in defendant's enjoyment for some time as mortgagees. But plaintiff does not sue for the spot C, and unless the ownership of the ground C is determined, it will be difficult to find to whom the spot in dispute belongs. So the ownership and enjoyment of the spot C had to be incidentally inquired into in this suit.

40 12. Plaintiff on the plaint seeks to recover from defendants rupees 3 for the costs of removing the wall &c., standing on the spot marked red in the plan. But there seems no necessity for recovering the amount from them. It is enough if the 3rd and 4th defendants

be ordered to remove at their own expense the wall which they erected on spot found to belong to the plaintiff.

13. It is therefore decreed, that the Western wall of the houses Nos. 3 and 4 raised by 3rd and 4th defendants, and standing on the ground 15 inches wide on the Western side out of the spot in dispute which is 3 spans broad, the door-ways therein put up, and the roof resting thereon be removed at the expense of defendants 3 and 4, and that the plaintiff be put in possession of the said 15 inches of ground; and that the suit respecting the remaining ground be dismissed. 1st and 2nd defendants have been exonerated from the suit. Plaintiff to pay their costs, and the 3rd and 4th defendants the proportionate costs of the plaintiff on the portion of the claim allowed to her, and recover from plaintiff their costs on the portion of the claim disallowed to plaintiff. 10

(Signed) C. RANGAIYA,

20th November 1879.

District Munsif.

*Decree on Appeal No. 156 of 1879.*

*Section 579 of the Code of Civil Procedure.*

*In the Court of the District of Ganjam at Berhampore.*

*Appellant. versus Respondent. 20*

Kundala Kamayya and Ankaraboyina Sitamma.  
Potanna.

Appeal from the Decree of the Court of the District Munsif of Berhampore in Original Suit 333 of 79, dated the 20th day of November 1880.

*Memorandum of Appeal.*

*Plaintiff. versus Defendants.*

Ankaraboyina Sitamma,	1. Kundala Gungamma.	
Trader, residing at	2. Ankaraboyina Lingamma.	
Bhapuram.	3. Kundala Kamayya, and	30
	4. Potanna, Traders, residing at Bhapuram.	

The 3rd and 4th defendants abovenamed appeal to the District Court of Ganjam at Berhampore against the Decree of the District



Munsif of Berhampore in the above suit, dated the 3th day of December 1879, for the following reasons, namely:—

1. Because, it is not proved that plaintiff ever enjoyed and exercised any right over the plaint-site.
2. Because, the Lower Court is wrong in believing the evidence of those persons who are on bad terms with defendants.
3. Because, it is proved that defendants have enjoyed the plaint-site with right and title for the last 20 years.
- 10 4. Because, plaintiff would have raised dispute even at the time of houses being built over the plaint-site, if he had had any right thereto.
5. Because, the Lower Court is wrong in deciding the suit which was brought by plaintiff to wreak out malice as prayed in the plaint.
6. Because, the Lower Court is wrong in passing decree against weight of evidence.

20 This appeal coming on for hearing on the 24th day of September 1880, before John Wallace, Esquire, Acting District Judge, in the presence of P. Gopala Row Patrulu, Vakil for the appellants, and of D. V. Ramayya Pantulu, Vakil for the respondent, it is ordered that the decree of the Lower Court be, and the same hereby is confirmed and this appeal dismissed with costs.

The costs of this appeal incurred by the respondent amounting to rupees 2-2-5 are to be paid by the appellants.

The costs of the original suit are to paid by defendants.

Given under my hand, this 18th day of August 1880.

(Signed) JOHN WALLACE,

*Ag. District Judge.*

855/1880-09

## IN THE DISTRICT COURT OF GANJAM.

*Wednesday, the eighteenth day of August,**One thousand eight hundred and eighty.*PRESENT :--JOHN WALLACE, ESQUIRE, *Acting District Judge.**Appeal Suit No. 156 of 1879.**2nd and 4th Defts. (Appts.) versus Plff. (Respt.)*

- |                         |                     |
|-------------------------|---------------------|
| 1. Kundala Kamayya, and | Ankaraboyina Sitam- |
| 2. Potanna.             | ma.                 |

Appeal against the decree of the District Munsif of Berhampore  
in Original Suit No. 333 of 1879. 10

## JUDGMENT.

This was a suit for the recovery of a strip of land, three spans broad, and to compel the defendants to remove a wall built by them in February 1879 standing thereon.

The plaintiff alleged a mortgage of the land to the defendants some ten years ago, but that it was redeemed.

The Lower Court gave judgment for plaintiff.

From the plan it appears that the wall A, B is in the back-yards of the houses occupied by the defendants, or adjoins them. There was no documentary proof of mortgage it being for rupees 10 only, but the Lower Court found the mortgage to have existed. 20

It appears that the adjoining land on the other side of the wall belongs to the plaintiff.

The appellant's Vakil takes objection to the proof of the mortgage in the Lower Court, namely, that the 3rd witness, the 1st witness to the fact, only heard of it, and that the 4th and 5th witnesses are not worthy of credit, having given evidence in a Magisterial case against the defendants.

But it appears that 1st witness for plaintiff also speaks to the mortgage, and that the 3rd witness speaks to the re-payment of the loan. 30

I am unable to take a different view of the evidence from that taken by the Lower Court, and dismiss this appeal with costs.

18th August 1880.

(Signed) JOHN WALLACE,

*Acting District Judge.*

*Revised decree on Review.*

*Decree on Appeal No. 156 of 1879.*

*Section 579 of the Code of Civil Procedure.*

*In the Court of the District of Ganjam at Berhampore.*

*Appellants. versus Respondent.*

- |                         |                       |
|-------------------------|-----------------------|
| 1. Kundala Kamayya, and | Ankaraboyina Sitamma. |
| 2. Potanna.             |                       |

10 Appeal from the decree of the Court of the District Munsif of Berhampore in Original Suit No. 333 of 1879, dated the 20th day of November 1880.

*Memorandum of Appeal.*

*Plaintiff. versus Defendants.*

- |  |  |
|--|--|
| Ankaraboyina Sitamma,<br>Trader, residing at Bhapuram. | 1. Kundala Gungamma.<br>2. Ankaraboyina Lingamma.<br>3. Kundala Kamayya,<br>and<br>4. Potanna, Traders residing at Bhapuram. |
|--|--|

20 The 3rd and 4th defendants abovenamed appeal to the District Court of Ganjam at Berhampore against the decree of the District Munsif of Berhampore in the above suit, dated the 8th day of December 1879, for the following reasons, namely:—

1. Because, it is not proved that plaintiff ever enjoyed and exercised any right over the plaint-site.

2. Because, the Lower Court is wrong in believing the evidence of those persons who are on bad terms with defendants.

3. Because, it is proved that defendants have enjoyed the plaint-site with right and title for the last 20 years.

30 4. Because, plaintiff would have raised dispute even at the time of house being built over the plaint-site, if he had any right thereto.

5. Because, the Lower Court is wrong in deciding the suit which was brought by plaintiff to wreak out malice, as prayed in the plaint,

6. Because, the Lower Court is wrong in passing decree against the weight of evidence,

855/1880-10

This appeal coming on for hearing on the 8th day of August 1880 before John Wallace, Esquire, Acting District Judge, in the presence of Viswanadha Aiyar, Vakil for the appellants, and of D. V. Ramayya Pantulu, Vakil for the respondent, it is ordered that the decree of the Lower Court be, and the same hereby is reversed with costs.

The costs of this appeal incurred by the respondent amounting to rupees 9-15-0 are to be paid by respondent.

The costs of the original suit are to be paid by plaintiff.

Given under my hand, this 24th September 1880.

10

(Signed) JOHN WALLACE,

*Ag. District Judge.*

IN THE DISTRICT COURT OF GANJAM.

*Friday, the twenty-fourth day of September,  
One thousand eight hundred and eighty.*

PRESENT:—JOHN WALLACE, Esquire, *Acting District Judge.*

*Appeal Suit No. 156 of 1879.*

*(3rd and 4th Defts.) Appts. versus (Plaintiff) Respondent.*

1. Kundala Kamayya and Ankaraboyina Sitamma.

20

2. Potanna.

Appeal against the decree of the District Munsif of Berhampore in Original Suit No. 333 of 1879.

JUDGMENT ON REVIEW.

I was strongly of opinion at the hearing of this case, that the main fact of the mortgage had not been satisfactorily proved.

But the Vakil for the defendant Gopala Naidu with a degree of ignorance and negligence highly culpable, ignored the importance of this fact.

The land is manifestly the back-yard of the 3rd and 4th defendants, and it is highly improbable that the plaintiff ever had any thing to do with it since her house is at some distance from it, and the proof of mortgage is of the most flimsy description.

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Then again, there was no assertion of written notice not to build. And mere verbal notice must be taken with caution in this country

were it is so common, and therefore so easy to get false evidence for such an isolated event.

In *Ramsdon vs. Dyeon* (L. R. I. H. Lds. 140) Lord Cranworth says, if a stranger begins to build on my land, supposing it to be his own, and I perceiving his mistake abstain from setting him right, and leave him to persevere in his error, a Court of Equity will not allow me afterwards to assert my title to the land on which he had expended money on the supposition that the land was his own. It considers that when I saw the mistake into which he had fallen, it was my duty to be active, and to state my adverse title, and that it would be dishonest in me to remain wilfully passive on such an occasion in order afterwards to profit by the mistake which I might have prevented. And Turner, L. J. in *Johnson vs. Wyatt*, held that the effect of acquiescence of this nature, is not only to disentitle the plaintiff to an injunction, but to prohibit him from suing at law.

Thus, on the point of want of notice alone, the suit must be dismissed.

It appears further, that a deed of sale of the premises North of the houses IV and III (Exhibit D) describes the Southern boundary as the houses of 3rd and 4th defendants (IV and III.)

This boundary must have included the disputed ground as part of the houses IV and III (formerly one house) because part of the back-yard.

This document (Exhibit D) was produced by the 5th witness for the plaintiff and proved by her, and it had existence before the present suit, namely, in 1870.

The decree of Lower Court is reversed with costs.

(Signed) JOHN WALLACE,

14th September 1880.

Acting District Judge.

855/1880 - 11

## MEMORANDUM OF SECOND APPEAL.

*Before the District Munsif's Court of Berhampore,*

*Original Suit No. 333 of 1879.*

*Before the District Court of Ganjam,*

*Appeal Suit No. 156 of 1879.*

*Before the High Court of Judicature at Madras,*

*Second Appeal No. 855 of 1880.*

<i>In the Court of</i>	<i>In the Lower</i>	<i>In the High</i>
<i>First Instance.</i>	<i>Court.</i>	<i>Court.</i>

Ankaraboyna Sitamma.	<i>Plaintiff.</i>	<i>Respondent.</i>	<i>Appellant.</i>	10
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*versus*

1. Kundala Kamayya	}	<i>3rd and 4th</i>	<i>Defendants.</i>	<i>Appellants.</i>	<i>Respondents.</i>
2. Potaana.					

The abovenamed appellant appeals to the High Court of Judicature at Madras, against the decree of the District Court of Ganjam dated 24th day of September 1880, on the following grounds :—

1. The Lower Appellate Court erred in reviewing its decision, as no ground for such Review under Section 623 of the Code of Civil Procedure is even alleged. 20

2. The cases cited by the Lower Appellate Court are wholly inapplicable to the present case.

3. In this case there was no acquiescence, or standing by on the part of the plaintiff.

4. There was no necessity for any notice by the plaintiff to the defendants, that the land on which they were building belonged to the plaintiff. That fact was well known to the defendants, who deliberately committed a trespass.

5: On the merits of the case, the Lower Appellate Court has substituted speculation for proof in the Review-judgment. The evidence was properly *dealt* with in the first judgment pronounced by the said Court. 30

MADRAS,  
20th December 1880.

J. H. SPRING BRANSON,  
*Counsel for Appellant.*

24 Nov/81

*S. J. ...*

*W.D.*

he feel bound to pay the revised amount  
of the sum of ~~...~~ pounds.  
There being ~~...~~ no

appeal from an order  
granting a review of  
a decree made upon  
insufficient grounds

of the applicant <sup>must</sup>  
have been  
made upon the prescribed

period and without sufficient  
grounds to admit

of an appeal from an  
order such as that in  
question.

Had the grounds of appeal  
been more adequately  
shown the finding of  
fact.

we must dismiss the  
appeal ~~with costs~~

W.D.

HIGH COURT.  
SECOND APPEAL  
No. 855 of 1880.

GANJAM.

Ankaraboyina Sitamma.  
(Plaintiff) Appellant.  
By Mr. J. H. S. Branson.

versus

Kundala Kamayya and another.  
3rd and 4th (Defendants) Respondents.  
Presented 20th December 1880.  
with six Enclosures.

IN COURT OF } Plaintiff filed,  
FIRST INSTANCE. } Decree passed

IN LOWER } Appeal filed  
APPELLATE COURT. } Decree passed

IN HIGH COURT. Appeal filed

NATURE }  
OF CLAIM. }

To be heard on *Thursday the 24th Nov 1881*  
*at 11 o'clock*  
*at the High Court*

855/1880-12

*P.V.*

IN THE COURT OF THE DISTRICT MUNSIF OF  
BERHAMPORE.

20th November 1879.

Original Suit No. 333 of 1879.

PRESENT :—C. RANGAIYA PUNTULU, *District Munsif.*

*Plaintiff.*                      *versus*                      *Defendants.*

Ankaraboyina Sitamma.

1. Kundala Gungamma.

2. Ankaraboyina Lingamma.

3. Kundala Kamayya.

4. Do. Potanna.

10

Suit for possession of plaintiff's ground valued at rupees 30 situated in Bhapuram village, and for removal of the wall thereon on which the roof of the tiled house built by defendants rests, the door ways, and recovery of rupees 3 for the costs of removing them.

20

2. This suit coming on for final hearing before Chellepille Rangaiya Puntulu, District Munsif, in the presence of plaintiff's Vakil, Gode Vencatarungayya Puntulu, and S. Surianaraina Sastri, Vakil for defendants 1, 2, 3 and 4, it is decreed that the 3rd and 4th defendants do remove the Western wall of houses Nos. 3 and 4 built on 15 inches of ground on the Western side in the spot, 3 spans wide, marked red in the plan filed by the plaintiff, the door ways therein put up, the roof resting thereon, and that the said 15 inches of land be put in plaintiff's possession. Plaintiff's claim as regards the remaining ground is dismissed and defendants 1 and 2 exonerated from this suit. Plaintiff to pay their costs rupees 3-13-3. 3rd and 4th defendants to pay plaintiff rupees 10-11-1 being her costs on rupees 13-5-4 which was allowed to her and recover from plaintiff rupees 0-13-4 for their costs on rupees 14-10-8 disallowed to plaintiff.

(Here enter costs).

30

(Signed) C. RANGAIYA,

*District Munsif.*

855/1880-13



IN THE COURT OF THE DISTRICT MUNSIF OF  
BERHAMPORE.

20th November 1879.

Original Suit No. 333 of 1879.

PRESENT :—CHELLEPILLI RANGAIYA,

District Munsif.

<i>Plaintiff.</i>	<i>versus</i>	<i>Defendants.</i>	
Ankaraboyina Sitamma.		1. Kundala Gungamma.	
		2. Ankuraboyina Lingamma.	
		3. Kundala Kamayya.	10
		4. Do. Potanna.	

1. Plaintiff sues against 1st and 2nd defendants for possession of the spot 3 spans broad marked red in the plan filed with the plaint, for removal of the wall erected thereon, the two door-ways put up therein, and the tiled roof resting thereon, and for recovery of rupees 3 from them for removing them as stated above.

2. Plaintiff urges that the house marked No. 1 in the plan filed with the plaint belong to her; the house marked No. 2 belongs to Bondiri Ram Prasad examined as the common witness of both the parties in this suit; that marked No. 3 belongs to the 1st defendant that marked No. 4 to the 2nd defendant; that the Western wall of the houses Nos. 3 and 4 used to stand behind the spot marked red in the plan, *i. e.* on the Eastern side; that there was also a thatched house resting on it; that it was destroyed by fire 3 years ago; and that in February 1879 the said 1st and 2nd defendants usurped the said spot and raised a wall thereon, and put up two door-frames therein, and use her ground C as back-yard coming through the said door-ways. Plaintiff also contends that all the ground embraced by the blue line belongs to her.

3. The 1st and 2nd defendants contend, that the houses Nos. 3 and 4 marked in the plan belong to 3rd and 4th defendants; that the spot marked red and the ground lying to the West of the houses Nos. 3 and 4 belong to 3rd and 4th defendants, and that they are not liable to be made parties to this suit.

4. 3rd and 4th defendants who were made parties since the suit, put in a written statement contending, that the spot marked red and the back yard to the West thereof belong to them, and that they have a right to erect a wall on the spot marked red.

5. *Issues.*

- (I.) Whether the spot marked red in the plan put in by plaintiff belongs to plaintiff or to defendants 3 and 4.
- (II.) Whether or not 3rd and 4th defendants are entitled to put up door-ways in the places marked A. and B. in the said spot.
- (III.) Whether the whole of the ground C, belongs to plaintiff or defendants 3 and 4.
- (IV.) In whose enjoyment is the ground C. and how long.

10 6. *The following witnesses were examined as common witness:—*

1. Ram Prasad.

*On Plaintiff's side.*

1. Ankaraboyina Lachaya.
2. Kundala Kamayya.
3. Perla Ramasami.
4. Jannela Gurayya.
5. Kandala Dalamma.

*On Defendant's side.*

1. Allibala Kenkatarami.
2. Medam Naraina.
3. Rama Panda.
4. Kunni Subbanna.
5. Ankaraboyina Lingamma.

20 7. The 3rd defendant herein is the son of the 1st defendant and the late Vencatasami, brother of the 4th defendant. 2nd defendant is 4th defendant's sister. There had been a single thatched house on the sites of the houses Nos. 3 and 4 before 3 or 9 years when the defendants 3 and 4 became divided. When they divided it, it became divided into two houses. The first, that is to say, the house No. 3 fell to the 3rd defendant's share and, the second, *i. e.* the house No. 4 to the 4th defendant's share. The defendants are using the said houses as shops. The houses in which they live are quite separate. Both the parties admit this fact.

30 8. *1st Issue.*—The Western walls of the houses Nos. 3 and 4 run from North to South. It runs straight without bending one way or the other. As the thatched house formerly situated in this house-ground had been destroyed by fire, it was renewed about a year ago.

855/1880-14

Plaintiff contends, that before it was so renewed, the Western wall of the houses 3 and 4 had been situated 3 spans to the East of the Western wall of the house No. 2, which (wall) is situated East of the spot marked red in the plan, and that the defendants—? her spot 3 spans wide and raised a wall thereon. Plaintiff's witnesses 1 to 5 depose, that a year ago before the houses Nos. 3 and 4 were built, the Western wall thereof had stood about a cubit behind, i. e., to the East of Western wall of house No. 2, and the common witness deposes that it had stood within a cubit less by a fist. Plaintiff's witness 1 to 4 further depose, that a year ago when a dispute arose between the parties to this suit, when the houses Nos. 3 and 4 were built about the Western wall they mediated and said that the said wall should be erected a cubit to the East of the Western wall of the house No. 2, and that the spot a cubit broad belonged to plaintiff. The evidence of the said witnesses and that given by the common witness corresponds to a great extent. The common witness is the owner of the house No. 2, and the plaintiff's 5th witness is the owner of the house to the North of the house No. 4. The witnesses 1, 2, 4 and 5 are related to both the parties. The 2nd witness is also the head of the caste to which both the parties belong. Defendant's 2nd witness also admits that the said witnesses arbitrated at the time 3rd and 4th defendants entered into a division. Hence, the said witnesses are aware of the facts in dispute. I therefore see no reason to disbelieve their evidence.

10

20

9. Defendant's 2nd and 5th witnesses state, that in the spot where the present Western wall of the houses Nos. 3 and 4 stands, there was a wall formerly a year ago before they were built. Defendant's 3rd and 4th witnesses also depose, that a year ago they erected the Western wall of the said houses as Coolies, and that they found then traces of a wall having been formerly in that spot. 2nd witness is related to 4th defendant as brother-in-law, and the 5th as his sister. 3rd and 4th witnesses earn their livelihood as Coolies. The evidence of the common witness is contrary to their evidence. I therefore do not think that their evidence is credible. As the witness of both the parties is of a different caste, and is admitted by both the parties to be a trustworthy man, I am of opinion as stated by him, that the Western wall of the said houses Nos. 3 and 4 should stand a cubit less by a fist *i. e.,* 15 inches to the East of the Western wall of the house No. 2, and that out of the spot marked red in the plan, only the portion 15 inches broad belongs to the plaintiff.

30

40

10. *2nd Issue*.—There are two door-ways put up in the places marked A and B. If the places in which they are put up belong to defendants 3 and 4, they have right to keep them, *vide* Madras High

Court Reports Vol. III page 141. As with reference to the 1st issue my finding is, that only the ground 15 inches broad out of the spot marked red in the plan belongs to plaintiff, and as the door-ways are in the spot so found to belong to plaintiff, it must be said that the defendants have no right to put them up therein.

10 11. 3rd issue.—The defendant's Pleader contends, that though it has been proved that the Western wall of the houses Nos. 4 and 3 was a year ago before they were built, situated a cubit to the East of the Western wall of house No. 2, still the defendants have right to  
 20 build it further off the spot where it stands, and that the whole of the back-yard C lying West of the said houses belong to defendants themselves. Therefore, if the spot C be proved to belong to defendants, then a doubt may arise that the spot marked red in the plan may not belong to plaintiff. It was therefore that an issue regarding the ownership of the ground C was framed. Plaintiff's witnesses depose that 10 or 12 years ago the plaintiff usufructually mortgaged the ground C to 3rd defendant's father Ven-  
 30 catasami and obtained a loan of rupees 10, and that at the time of division entered into by the 3rd and 4th defendants, the plaintiff repaid it to them. This evidence is to some extent corroborated by the common witness. The common witness further deposes, that the defendants used to use the said ground, and that the plaintiff not liking the idea used to abuse them. Plaintiff's 3rd witness deposes, that whenever the Municipal peons object to the rubbish being on the said ground, the plaintiff alone used to remove it. The sale-deed of the 5th witness Dalsamma's house situated to the North of the houses Nos. 3 and 4 was sent for and seen. But the ground C is not mentioned as one of the boundaries given therein. It cannot therefore be  
 30 determined, that the said back-yard belongs to the plaintiff or defendants. Because, the evidence of the plaintiff's witnesses and that of the common witness is reliable, and the defendant's 5th witness says that the 3rd and 4th defendants did not divide the said back-yard and define the portion they got just as they divided the house, I am of opinion that the spot C belongs to plaintiff only, and that it was in defendant's enjoyment for some time as mortgagees. But plaintiff does not sue for the spot C, and unless the ownership of the ground C is determined, it will be difficult to find to whom the spot in dispute belongs. So the ownership and enjoyment of the spot C had to be incidentally inquired into in this suit.

40 12. Plaintiff on the plaint seeks to recover from defendants rupees 3 for the costs of removing the wall &c., standing on the spot marked red in the plan. But there seems no necessity for recovering the amount from them. It is enough if the 3rd and 4th defendants

be ordered to remove at their own expense the wall which they erected on spot found to belong to the plaintiff.

13. It is therefore decreed, that the Western wall of the houses Nos. 3 and 4 raised by 3rd and 4th defendants, and standing on the ground 15 inches wide on the Western side out of the spot in dispute which is 3 spans broad, the door-ways therein put up, and the roof resting thereon be removed at the expense of defendants 3 and 4, and that the plaintiff be put in possession of the said 15 inches of ground; and that the suit respecting the remaining ground be dismissed. 1st and 2nd defendants have been exonerated from the suit. Plaintiff to pay their costs, and the 3rd and 4th defendants the proportionate costs of the plaintiff on the portion of the claim allowed to her, and recover from plaintiff their costs on the portion of the claim disallowed to plaintiff. 10

(Signed) C. RANGAIYA,

20th November 1879.

District Munsif.

*Decree on Appeal No. 156 of 1879.*

*Section 579 of the Code of Civil Procedure.*

*In the Court of the District of Ganjam at Berhampore.*

*Appellant. versus Respondent. 20*

Kundala Kamayya and Ankaraboyina Sitamma.  
Potanna.

Appeal from the Decree of the Court of the District Munsif of Berhampore in Original Suit 333 of 79, dated the 20th day of November 1880.

*Memorandum of Appeal.*

*Plaintiff. versus Defendants.*

Ankaraboyina Sitamma, Trader, residing at Bhapuram.	1. Kundala Gungamma. 2. Ankaraboyina Lingamma. 3. Kundala Kamayya, and 4. Potanna, Traders, residing at Bhapuram.	30
---	---	----

The 3rd and 4th defendants abovenamed appeal to the District Court of Ganjam at Berhampore against the Decree of the District

Munsif of Berhampore in the above suit, dated the 8th day of December 1879, for the following reasons, namely:--

1. Because, it is not proved that plaintiff ever enjoyed and exercised any right over the plaint-site.
2. Because, the Lower Court is wrong in believing the evidence of those persons who are on bad terms with defendants.
3. Because, it is proved that defendants have enjoyed the plaint-site with right and title for the last 20 years.
- 10 4. Because, plaintiff would have raised dispute even at the time of houses being built over the plaint-site, if he had had any right thereto.
5. Because, the Lower Court is wrong in deciding the suit which was brought by plaintiff to wreak out malice as prayed in the plaint.
6. Because, the Lower Court is wrong in passing decree against weight of evidence.

20 This appeal coming on for hearing on the 24th day of September 1880, before John Wallace, Esquire, Acting District Judge, in the presence of P. Gopala Row Patrulu, Vakil for the appellants, and of D. V. Ramayya Pantulu, Vakil for the respondent, it is ordered that the decree of the Lower Court be, and the same hereby is confirmed and this appeal dismissed with costs.

The costs of this appeal incurred by the respondent amounting to rupees 2-2-5 are to be paid by the appellants.

The costs of the original suit are to paid by defendants.

Given under my hand, this 18th day of August 1880.

(Signed) JOHN WALLACE,

*Ag. District Judge.*

855/1880-16

## IN THE DISTRICT COURT OF GANJAM.

*Wednesday, the eighteenth day of August,**One thousand eight hundred and eighty.*PRESENT :--JOHN WALLACE, ESQUIRE, *Acting District Judge.**Appeal Suit No. 156 of 1879.**2nd and 4th Defts. (Appts.)          versus          Plff. (Respt.)*

- |                         |                     |
|-------------------------|---------------------|
| 1. Kundala Kamayya, and | Ankaraboyina Sitam- |
| 2. Potanna.             | ma.                 |

Appeal against the decree of the District Munsif of Berhampore  
in Original Suit No. 333 of 1879.

10

## JUDGMENT.

This was a suit for the recovery of a strip of land, three spans broad, and to compel the defendants to remove a wall built by them in February 1879 standing thereon.

The plaintiff alleged a mortgage of the land to the defendants some ten years ago, but that it was redeemed.

The Lower Court gave judgment for plaintiff.

From the plan it appears that the wall A, B is in the back-yards of the houses occupied by the defendants, or adjoins them. There was no documentary proof of mortgage it being for rupees 10 only, but the Lower Court found the mortgage to have existed.

20

It appears that the adjoining land on the other side of the wall belongs to the plaintiff.

The appellant's Vakil takes objection to the proof of the mortgage in the Lower Court, namely, that the 3rd witness, the 1st witness to the fact, only heard of it, and that the 4th and 5th witnesses are not worthy of credit, having given evidence in a Magisterial case against the defendants.

But it appears that 1st witness for plaintiff also speaks to the mortgage, and that the 3rd witness speaks to the re-payment of the loan.

30

I am unable to take a different view of the evidence from that taken by the Lower Court, and dismiss this appeal with costs.

18th August 1880.

(Signed) JOHN WALLACE,

*Acting District Judge.*

*Revised decree on Review.**Decree on Appeal No. 156 of 1879.**Section 579 of the Code of Civil Procedure.**In the Court of the District of Ganjam at Berhampore.**Appellants. versus Respondent.*

- |                         |                       |
|-------------------------|-----------------------|
| 1. Kundala Kamayya, and | Ankaraboyina Sitamma. |
| 2. Potanna.             |                       |

10 Appeal from the decree of the Court of the District Munsif of Berhampore in Original Suit No. 333 of 1879, dated the 20th day of November 1880.

*Memorandum of Appeal.*

<i>Plaintiff.</i>	<i>versus</i>	<i>Defendants.</i>
Ankaraboyina Sitamma, Trader, residing at Bhapuram.		1. Kundala Gungamma. 2. Ankaraboyina Lingamma. 3. Kundala Kamayya, and 4. Potanna, Traders residing at Bhapuram.

20 The 3rd and 4th defendants abovenamed appeal to the District Court of Ganjam at Berhampore against the decree of the District Munsif of Berhampore in the above suit, dated the 8th day of December 1879, for the following reasons, namely :—

1. Because, it is not proved that plaintiff ever enjoyed and exercised any right over the plaint-site.

2. Because, the Lower Court is wrong in believing the evidence of those persons who are on bad terms with defendants.

3. Because, it is proved that defendants have enjoyed the plaint-site with right and title for the last 20 years.

30 4. Because, plaintiff would have raised dispute even at the time of house being built over the plaint-site, if he had any right thereto.

5. Because, the Lower Court is wrong in deciding the suit which was brought by plaintiff to wreak out malice, as prayed in the plaint.

6. Because, the Lower Court is wrong in passing decree against the weight of evidence.

855/1880-17



This appeal coming on for hearing on the 8th day of August 1880 before John Wallace, Esquire, Acting District Judge, in the presence of Viswanadha Aiyar, Vakil for the appellants, and of D. V. Ramayya Pantulu, Vakil for the respondent, it is ordered that the decree of the Lower Court be, and the same hereby is reversed with costs.

The costs of this appeal incurred by the respondent amounting to rupees 9-15-0 are to be paid by respondent.

The costs of the original suit are to be paid by plaintiff.

Given under my hand, this 24th September 1880.

10

(Signed) JOHN WALLACE,

*Ag. District Judge.*

IN THE DISTRICT COURT OF GANJAM.

*Friday, the twenty-fourth day of September,*

*One thousand eight hundred and eighty.*

PRESENT :—JOHN WALLACE, ESQUIRE, *Acting District Judge.*

*Appeal Suit No. 156 of 1879.*

*(3rd and 4th Defts.) Appts. versus (Plaintiff) Respondent.*

1. Kundala Kamayya and Ankaraboyina Sitamma. 20
2. Potanna.

Appeal against the decree of the District Munsif of Berhampore in Original Suit No. 333 of 1879.

JUDGMENT ON REVIEW.

I was strongly of opinion at the hearing of this case, that the main fact of the mortgage had not been satisfactorily proved.

But the Vakil for the defendant Gopala Naidu with a degree of ignorance and negligence highly culpable, ignored the importance of this fact.

The land is manifestly the back-yard of the 3rd and 4th defendants, and it is highly improbable that the plaintiff ever had any thing to do with it since her house is at some distance from it, and the proof of mortgage is of the most flimsy description. 30

Then again, there was no assertion of written notice not to build. And mere verbal notice must be taken with caution in this country

were it is so common, and therefore so easy to get false evidence for such an isolated event.

In *Ramsdon vs. Dyeon* (L. R. I. H. Lds. 140) Lord Cranworth says, if a stranger begins to build on my land, supposing it to be his own, and I perceiving his mistake abstain from setting him right, and leave him to persevere in his error, a Court of Equity will not allow me afterwards to assert my title to the land on which he had expended money on the supposition that the land was his own. It considers that when I saw the mistake into which he had fallen, it was my duty to be active, and to state my adverse title, and that it would be dishonest in me to remain wilfully passive on such an occasion in order afterwards to profit by the mistake which I might have prevented. And Turner, L. J. in *Johnson vs. Wyatt*, held that the effect of acquiescence of this nature, is not only to disentitle the plaintiff to an injunction, but to prohibit him from suing at law.

Thus, on the point of want of notice alone, the suit must be dismissed.

It appears further, that a deed of sale of the premises North of the houses IV and III (Exhibit D) describes the Southern boundary as the houses of 3rd and 4th defendants (IV and III.)

This boundary must have included the disputed ground as part of the houses IV and III (formerly one house) because part of the back-yard.

This document (Exhibit D) was produced by the 5th witness for the plaintiff and proved by her, and it had existence before the present suit, namely, in 1870.

The decree of Lower Court is reversed with costs.

(Signed) JOHN WALLACE,

14th September 1880.

Acting District Judge.

853/1880-18

## MEMORANDUM OF SECOND APPEAL.

Before the District Munsif's Court of Berhampore,

Original Suit No. 333 of 1879.

Before the District Court of Ganjam,

Appeal Suit No. 156 of 1879.

Before the High Court of Judicature at Madras,

Second Appeal No. 855 of 1880.

In the Court of First Instance.	In the Lower Court.	In the High Court.	
------------------------------------	------------------------	-----------------------	--

Ankaraboyna Sitamma.	Plaintiff.	Respondent.	Appellant.	10
<i>versus</i>				

1. Kundala Kamayya	} 3rd and 4th Defendants.	Appellants.	Respondents.	
2. Potanna.				

The abovenamed appellant appeals to the High Court of Judicature at Madras, against the decree of the District Court of Ganjam dated 24th day of September 1880, on the following grounds:—

1. The Lower Appellate Court erred in reviewing its decision, as no ground for such Review under Section 623 of the Code of Civil Procedure is even alleged.

2. The cases cited by the Lower Appellate Court are wholly inapplicable to the present case.

3. In this case there was no acquiescence, or standing by on the part of the plaintiff.

4. There was no necessity for any notice by the plaintiff to the defendants, that the land on which they were building belonged to the plaintiff. That fact was well known to the defendants, who deliberately committed a trespass.

5. On the merits of the case, the Lower Appellate Court has substituted speculation for proof in the Review-judgment. The evidence was properly dealt with in the first judgment pronounced by the said Court.

MADRAS,  
20th December 1880.

J. H. SPRING BRANSON,  
Counsel for Appellant.

623 does not apply.  
Same rule as 623  
other usual cases  
see 623 C.

A p<sup>th</sup> case on the ground that the  
 work marked by belonged to him  
 but the L. D. C found against  
 that that allegation. In summary  
 the Judge referred to ex<sup>h</sup> Q, to the  
 absence of the book which to some extent  
 would ~~be~~ <sup>was</sup> ~~not~~ <sup>in</sup> ~~the~~ <sup>the</sup>  
 of the M<sup>o</sup> alleged by the p<sup>th</sup> App<sup>ts</sup>. a  
 to the p<sup>th</sup> of the case, and ~~was~~ <sup>to</sup> ~~the~~  
 of it although the p<sup>th</sup> of a review,  
 he ~~is~~ <sup>is</sup> ~~not~~ <sup>not</sup> ~~in~~ <sup>in</sup> ~~the~~ <sup>the</sup>  
~~the~~ <sup>the</sup> ~~case~~ <sup>case</sup> ~~is~~ <sup>is</sup> ~~not~~ <sup>not</sup> ~~in~~ <sup>in</sup> ~~the~~ <sup>the</sup>  
 the M<sup>o</sup> set up by the p<sup>th</sup> in relation to  
 the case taken in this suit, and  
 he think it prob<sup>le</sup> that he ~~is~~ <sup>is</sup> ~~not~~ <sup>not</sup> ~~in~~ <sup>in</sup> ~~the~~ <sup>the</sup>  
 a review has ~~not~~ <sup>not</sup> ~~been~~ <sup>been</sup> ~~made~~ <sup>made</sup>  
 course. The ~~new~~ <sup>new</sup> ~~book~~ <sup>book</sup> ~~is~~ <sup>is</sup> ~~not~~ <sup>not</sup> ~~in~~ <sup>in</sup> ~~the~~ <sup>the</sup>  
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 a M<sup>o</sup> of such in case as to go upon  
 which a p<sup>th</sup> may review the M<sup>o</sup>  
 J<sup>th</sup>, and unless the review was  
 after the ~~the~~ <sup>the</sup> ~~the~~ <sup>the</sup> ~~the~~ <sup>the</sup> ~~the~~ <sup>the</sup> ~~the~~ <sup>the</sup>  
 it, then the ~~the~~ <sup>the</sup> ~~the~~ <sup>the</sup> ~~the~~ <sup>the</sup> ~~the~~ <sup>the</sup> ~~the~~ <sup>the</sup>

Key  
 No 12

HIGH COURT.  
 SECOND APPEAL  
 No. 855 of 1880.

GANJAM.

Ankaraboyina Sitamma.  
 (Plaintiff) Appellant.  
 By Mr. J. H. S. Branson.

versus

Kundala Kamayya and another.  
 3rd and 4th (Defendants) Respondents.  
 Presented 20th December 1880.  
 with six Enclosures.

IN COURT OF	}	Plaint filed.
FIRST INSTANCE.		Decree passed
IN LOWER	}	Appeal filed.
APPELLATE COURT.		Decree passed
IN HIGH COURT.		Appeal filed
NATURE	}	
OF CLAIM.		

To be heard on ~~Monday~~ <sup>Thursday</sup> ~~the 24th~~ <sup>the 24th</sup> ~~Nov~~ <sup>Nov</sup> / 80

855/1880-19 71

Second appeal no. 855/1880

- 1) Docketed in S. A. 855/1880
- 2) Docketed in case for Admission  
no. 1956/1880
- 3) Indise
- 4) E. High Court order of 8-9-1881
- 5) High Court judgment of 24-11-81
- 6) High Court decree of 24-11-81
- 7) 2 Sides of H's PW

CO

855/1880-20

S. A. 855 / 1880