

14



FR000154

634/1881

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

( Civil Appellate Side. )

TITLE PAGE. (14)

PART I.

( THIS FILE MUST BE PRESERVED FOR EVER. )

Second

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

No. 634 of 193 1881

Gangadhar Doss Appellants,

VERSUS

Lambadara Mahapatra, minor Respondents.  
by his guardian Nilakantha Mahapatra

DATE OF DECISION OF HIGH COURT 14. 1. 1882

DITTO

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

*Madras*

In the High Court of Judicature at Patna-

TABLE OF CONTENTS.

Second Appeal No. 634 of 194/881  
*Yangadhar Doss*

Appellant,

versus

*Rambodara Mahapatra, minor,  
 by his guardian Nilakantha Mahapatra*

Respondent.

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

Signature of Officer of Court. *Ben*

Compared and found correct.

Date *(18-7-41)*

*634/1881-02*

Record-keeper.

2920  
1

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Saturday, the fourteenth day of January,  
One thousand eight hundred and eighty-two.

PRESENT :—

THE HONOURABLE SIR CHARLES A. TURNER, KNIGHT, C. I. E., *Chief Justice.*  
THE HONOURABLE MR. JUSTICE INNES.

SECOND APPEAL No. 634 OF 1881.

*of* Gangadhara Doss ... .. Appellant (Plaintiff.)  
Lambodara Mahapatro, minor, by his guardian }  
Nilakantha Mahapatro. } Respondent (Defendant.)

Second Appeal against the decree of the District Court of Ganjam in Appeal Suit No. 165 of 1880, reversing the decree of the Court of the District Munsif of Aska in Original Suit No. 241 of 1880.

JUDGMENT.

The Judge refuses credit to the evidence adduced by the Appellant to establish his sole title to the Inam lands of his maternal grandfather Godadhara Doss. The Munsif found the Appellant's grandfather had made a nuncupative Will in his favour. The Judge points out this was not alleged and found it was not proved. *u/*

Though the widow of Godadhara Doss may have been entitled to make an assignment for the maintenance of the widows of her husband's brothers, yet an ultimate disposition of the properties assigned for the maintenance of those ladies may have been in excess of her powers and therefore not binding on the reversioners. However this may be, the Appellant has no present right of suit to obtain a share in the allotted lands ; for his mother who is entitled to the estate in priority to him is still alive.

This Appeal is dismissed with costs.

*cts*  
*nd*

Acting Registrar,  
Appellate Side.

Exd. N. Lakshmanarao.

Read, set down 9th Febry.  
*(M)*

634/1881-03

*Stg Ganjam*

6/92  
9.5.11/2/82

The Ch. J. + S. J.  
9-2-82

THE HIGH COURT OF JUDICATURE AT MADRAS

HIGH COURT OF JUDICATURE  
AT  
MADRAS.

JUDGMENT

IN

SECOND APPEAL 634 of 1881.  
(From Appeal Suit 165 of 1880,  
District Court, Canjam.)

Dated 14th January 1882.  
Sent 18<sup>th</sup> Feb/82

Issue of copy  
15/2  
Feb - 15/2

IN THE HIGH COURT OF JUDICATURE AT MADRAS. 2

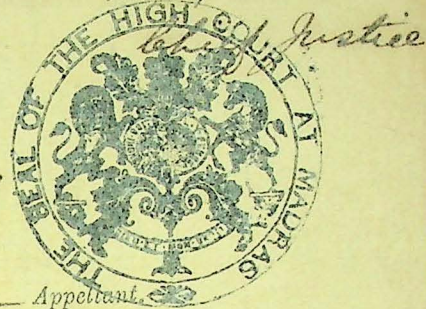
Saturday, the fourteenth — day of January  
One thousand eight hundred and eighty-two.

PRESENT:—

The Honourable Sir Charles A. Turner, Kt. C.J. & C.

and

The Honourable Mr. Justice James.



SECOND APPEAL No. 634 of 1881

Gangadhara Dass — Appellant. Plff. )

Lambodara Mahapatro, } Respondent.  
minor by his guardian, } Deft. )  
Nilakantha Mahapatro }

Second Appeal against the decree of the District — Court of  
Ganjam in Appeal Suit No. 165 of 1880. Reversing  
the decree of the Court of the District of Aska  
in Original Suit No. 241 of 1880.

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 Suit: and upon hearing the arguments of <sup>for</sup> J. V. Rungachary, Vakil — for the Appellant, and of Mr. K. Ramachandra Row Sahib, <sup>Vakil</sup> for the Respondent, this Court doth order and decree that the decree of the Lower Appellate Court be, and the same hereby is, confirmed, and this Appeal dismissed; and this Court doth further order and decree that the Appellant do pay to the Respondent Rs. 12 - 14 - 7 for his costs in opposing this Second Appeal.

Charles A. Turner  
Chief Justice.

James  
Judge.

MEMO:

634/1881-01

MEMORANDUM OF COSTS.

Respondents ( <i>Defendant</i> ) Costs.	Rs.	A.	P.
Stamp for Vakalatnamah.....	2	-	0 - 0
Vakil's fee on Rs. 133-0-0.....	6	-	9 - 7
One printed copy purchased.....	4	-	5 - 0
To be paid to the Respondent ( <i>Def.</i> ) by the Appellant ( <i>Plff.</i> )			
} 12 - 14 - 7			

Ag. Registrar,  
Appellate Side.

*Proceedings*

*Dated 14<sup>th</sup> January/82  
but 18<sup>th</sup> Feb/82*

*S. A. 634/81.*

*Am. P.  
9*

*Dismissing the appeal  
with costs.*



Memo of Valuation

15 x Rs 8-14-0 net profit } 133-2-0  
for previous year }

Stamp Rupees 10-8-0

12/8/81 19/4/82

In the District Munsiff Court of Sika C.O. 241 of 80

In the District Court of Ganjam A.S. No. 165 of 1880

In the High Court of Judicature at Madras A.S. No. 131 of 81

In the Court of 1st instance } In the Lower } In the  
of 1st instance } Appellate Court } High Ct

Godadara Dass P. P. P. Recd. Appell.

Lombadara Ollaha  
Patrudu being minor by }  
his guardian & peela kanta } Dept. Appell. Recd.  
In the Patrudu }

The Plaintiff above named begs to prefer this appeal to the High Court at Madras against the decree of the District Court of Ganjam dated 29<sup>th</sup> March 1881 for the following reasons

1. The Plaintiff as the Ahimania Puttra and the owner of the property of the late Godadara Dass is entitled to the lands sued for
2. The Munsiff distinctly finds the Inamputra will alleged by Plaintiff in Plaintiff's favour but the District Judge gives no finding thereon but erroneously says that none was alleged. The District Judge ought to have given his finding on the question of the will
3. Godadara Dass' widow had no power to alienate the property in any way or to arrange for the enjoyment of the property by her grand children in any specified manner.

12<sup>th</sup> July 1881

634/1881-05 R. R. Narayana Rao

Vakil for appellant



see

12/7/81  
S

12/7/81

14<sup>th</sup> Jan'y 1822

Dismissed with costs

S

IN THE COURT OF THE DISTRICT MUNSIF OF ASKA.

*Original Suit No. 241 of 1880.*

*Plaintiff.*

*versus*

*Defendants.*

Gungadhara Dasu.

1. Boishnava Gaudu.
2. Krishna Doss.
3. Lambadhara Mahapatro  
being a minor, by his  
natural father Nilakantha  
Mahapatro.

10

Suit for recovery of 18 Bharanams of Inam land and rupees 26-10-0, being the profits of the years 1877-78 and 79 with costs.

This suit coming on for final hearing on 9th September 1880, before Gade Jagannadha Row Puntulu, Acting District Munsif, in the presence of plaintiff's pleaders Mr. William Mahanty and Chintakindi Appayya Puntulu, and defendant's pleaders, Bachulu Narasimhasami Puntulu and Kurrada Virarazu Puntulu, the Court doth hereby order and decree, that the defendants do deliver up to plaintiff the land in dispute and pay him rupees 26-10-0 for part profits and costs as determined by the officer of the Court.

20

(Here enter costs.)

9th September 1880.

634/1881-06

## IN THE DISTRICT MUNSIF'S COURT OF ASKA.

*The ninth day of September,**One thousand eight hundred and eighty.*

PRESENT:—J. JAGANNADHA ROW PANTULU GARU,

*Acting District Munsif.**Original Suit No. 241 of 1880.*

<i>Plaintiff.</i>	<i>versus</i>	<i>Defendants.</i>	
Gangadhara Dasu.		1. Boishnava Gavudu.	
		2. Krishna Dasu.	10
		3. Neelakantha Mahapatro, natural father of his minor son Lambadara Mahapatro.	

1. Plaintiff sues to recover 18 Bharnams of Inam land situated at Godharapuram Agraharam in Surada Taluq, and rupees 26-10-0 being mesne profits for 1877, 1878 and 1879 with costs. 20

2. Plaintiff states that plaintiff's maternal grandfather Godadhara Doss brought plaintiff up as his Abhimana Putra and died 2 years ago giving away all his property to plaintiff. The said Godadhara Doss expressed his will that plaintiff should succeed to him after his death. Plaintiff gave the plaint land to one Govridasyani widow of Godadhara Doss elder brother for maintenance. She enjoyed the plaint-land till her death. On her death 3rd defendant who is the son of another daughter of Godadhara Doss sued 1st and 2nd defendant's ryots of the plaint-land in Original Suit 408 of 78 pretending that the property was given him by the late Govridasyani through a document and got a decree. Plaintiff was not a party to it, and further the judgment in Original Suit 408 of 78 stated that plaintiff's rights should not be affected thereby. 30

3. 1st and 2nd defendants were declared *ex parte*.

4. 3rd defendant pleaded that the late Godadhara Doss having left some immoveable property to the extent of 252 Bharnams, his widow Radha succeeded to the property; that Radha gave the plaint-land of 18 Bharnams of Govridasyani (widow of Godadhara Doss' elder brother) and another piece of land 15 Baharnams in extent to

Baidossyani (widow of Godadhara Doss' younger brother) for their maintenance assigning that on their death the said lands should go to 3rd defendants and plaintiff respectively; that written documents relating to the same were naturally exchanged between the parties; that 1st and 2nd defendants having usurped the plaint-land on the death of Govri on pretence of their acquiring right through a sale deed. 3rd defendant brought a Suit, Original Suit 408 of 78 against them for the plaint-land and got a decree.

5. The following documents filed.

- 10
- A. Title deed granted to Godadhara Doss and 10 others, dated 10th July 1863.
  - B. Bundle of receipts given to plaintiff and Mahadeva Misiri by Gandadhara Doss Bhukta of Chanchara Pilli Agraharam.
  - C. Authenticated copy of judgment in Original Suit 408 of 78 this Court's file.
  - D. Do. of do. in S. C. 203 of 77 do.
  - E. Do. of sale-deed executed by Govridasyani to Bonamali Dasu, dated 22nd September 1873.
  - F. Do. of document executed by do. to Radha Dasyani, dated 7th May 1865.
  - G. Title-deed given by Inam Commissioner to Gangadhara Dasu and 3 others dated 9th July 1863.
  - H. Authenticated extract of Inam register for Fusli 1274 for Ghumsur Taluq, dated 13th November 1872.
- 20

*The following documents filed by 3rd defendant.*

- I. Authenticated extract from the English Inam register for Ghumsur Taluq, dated 20th November 1878.
6. The following issues framed.
- I. Whether the plaintiff has derived his exclusive right to the land sued for from Godadhara Dasu the maternal grandfather of the plaintiff and 3rd defendant?
  - II. Whether the plaintiff or Radha Dasyani gave to Govridasyani the plaint-land for her maintenance?
  - III. Whether the defendants have wrongfully taken possession of the plaint-land?
  - IV. In whose possession the lands have been from the time of the grant of the Inam the title deed till the death of Radha Dasyani?
- 30

V. What were the mesne profits accrued during years 1877-78 and 79.

7. The following witnesses examined.

*For Plaintiff.*

1. Dasaradhi Mahapatrudu.
2. Venkatarow Rayagurnne.
3. Brundavan Dasu.
4. Deenamoni Patnaikudu.
5. Kusunu Ganudu.

*For 3rd Defendant.*

1. Madana Mohanasuntra.
2. Naraharipatti.

JUDGMENT.

8. It is alleged by plaintiff that Godadhara died leaving a widow, two daughters, namely, Boi and Aparna, the mothers of plaintiff and 3rd defendant respectively, and plaintiff to whom he Willed away his whole estate, and that therefore 3rd defendant has no right to the plaint-land. 3rd defendant denies plaintiff allegations about the Will and pleads that the estate passed to his widow according to law. The documentary evidence adduced on behalf of plaintiff speaks very strongly of plaintiff's case. It is clear from documents A and G, that all the lands belonging to the late Godadhara were enfranchised in the name of plaintiff. Document B comprises number of receipts all of which show that the quit-rent due on the state of Godadhara has been paid by plaintiff since the date of enfranchisement. 3rd defendant's Vakil admits that the plaint-land is a part of the Inam land enfranchised through document A. Plaintiff's witnesses stated, that during the life time of Godadhara plaintiff's brother Narahara and 3rd defendant, son of the 2nd daughter of Godadhara were not born; that Godadhara having had no male issue brought plaintiff to his house and expressed his intention that he (plaintiff) should succeed to him; that since the death of Godadhara plaintiff has been exclusively enjoying his whole estate both moveable and immoveable, giving maintenance to the widow, members of the family in accordance with the wishes of the deceased.

9. Defendant's Vakil contended, that there being no written document in support of the Will said to have been made by the late Godadhara the oral evidence is inadmissible.

10. It was held by the Madras High Court that contracts of every discretion involving both temporal and spiritual consequences may be made orally and a Hindu can therefore make a nuncupative Will of property whether moveable or immoveable (see Madras High Court R. vol. II, 37).

11. It is clear by law that the testamentary powers of a Hindu are co-extensive with his power of alienation during his lifetime. In the present case the deceased Godadhara having held no male issue could have validly alienated his property during his lifetime if he wished. Besides, he had made sufficient provision for the maintenance of his widow and the widows of his brothers. I am therefore of opinion that the nuncupative Will made by Godadhara is valid in law.

12. The only question therefore is the genuineness of the oral evidence. Plaintiff's witnesses seemed to be straightforward in giving their evidence. I am in no way dissatisfied with their demeanour. Judging their evidence in connection with the documents and other circumstances in the case, I have no reasons to doubt their truthfulness.

13. There is no reliable evidence for 3rd defendant to prove that Radha succeeded to the estate after her husband's death, and even if there is any proof with regard to her exclusive enjoyment of the property till her death, it would be contrary to documentary evidence. 3rd defendant clearly admits that with the exception of the plaint-land the whole estate belonging to the late Godadhara is in the possession of plaintiff. If the alleged nuncupative Will as pleaded by plaintiff has no foundation, there is reason that plaintiff has had possession of the whole estate and Inam puttas and quit-rent receipts in respect of the deceased's estate stood in his name.

14. For the foregoing reasons, I determined the issue in favour of plaintiff and against 3rd defendant.

15. With regard to mesne profits, defendants did not traverse plaintiff's allegation. They are therefore bound to it. 3rd defendant's Vakil states that he shall not be liable to the mesne profits, as he was not put in possession of plaint-lands under decree of Original Suit 408 of 1878.

16. A decree in favour of plaintiff for the plaint-land with mesne profits and costs against all defendants. If the 3rd defendant did

not get possession of the plaint-land under decree of Original Suit 408 of 1878, he shall not be responsible for the mesne profits.  
Pronounced in open Court on 9th September 1880.

(Signed) G. JAGANNADHA ROW,

*Acting District Munsif.*

*Decree on Appeal No. 165 of 1880.*

*Section 579 of the Code of Civil Procedure.*

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

*Appellant. versus Respondent.*

Lambadara Mahapatru, being minor, by his guardian Nilakantha Mahapatro.	Gungadhara Doss.	10
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Appeal from the decree of the Court of the District Munsif of Aska in Original Suit 241 of 1880, dated the 13th day of October 1880.

*Memorandum of Appeal.*

*Plaintiff. versus Defendants.*

Gungadhara Doss.	1.	Boishnava Gaudu.	
	2.	Krishna Doss.	
	3.	Lambadara Mahapatro, being minor, his guardian Nilakantha Mahapatro.	20

The 3rd defendant abovenamed appeals to the District Court of Ganjam at Berhampore against the decree of the District Munsif of Aska in the above suit dated the 9th day of September 1880, for the following reasons, namely :—

1. Because plaintiff did not allege that he obtained the plaint land by Will (*vide* plaint).

2. Because it is a mistake of the Lower Court to think that plaintiff obtained the plaint-land by oral Will, which is contrary to plaintiff's argument. 30

3. Because the Hindu Law does not recognize the taking of one as "Abhimana Putra."

4. Because the facts stated by plaintiff that he inherited the plaint-lands as an acknowledged son, are not credible.

5. Because it is not credible that Godadhara Doss was doing nothing leaving all the property to plaintiff during his lifetime.

6. Because there should be no reason for mentioning the names of Govridasyani and 2 others in the Inam putta marked G, if all the property of Godadhara Doss were given to plaintiff.

7. Because the name of the plaintiff has fraudulently been inserted in the document marked G.

10 8. Because there are no proofs consistent to plaintiff's argument.

9. Because there is no evidence to show that plaintiff gave this plaint-land to Govridasyani for maintenance.

10. Because plaintiff never enjoyed the plaint land.

11. Because this suit is barred by lapse of time.

12. Because the cause of action stated by plaintiff is not correct.

13. Because the document evincing 3rd defendant's right to the plaint-land was produced and proved in Original Suit 408 of 1878 and a decree passed accordingly by the Original and Appellate Courts.

14. Because 3rd defendant was not allowed time to obtain the return of the said document from the Ganjam District and produce it in this suit.

15. Because the Lower Court passed judgment against the weight of evidence.

16. Because the presumptions of the Lower Court are wrong.

30 This appeal coming on for hearing on the 29th day of March 1881, before J. R. Daniel, Esquire, District Judge, in the presence of P. Venkanna Pantulu, Vakil for the appellant, and of N. Ramamurthy Pantulu, Vakil for the respondent, it is ordered that the decree of the Lower Court be, and the same hereby is reversed, and the original suit dismissed, and it is further ordered that plaintiff do bear all costs.



The costs of this appeal incurred by appellants amounting to rupees 23-11-8 are to be paid by respondent. The costs of the original suit are to be paid by plaintiff.

Given under my hand this 29th day of March 1881.

(Signed) J. R. DANIEL,

*District Judge.*

IN THE DISTRICT COURT OF GANJAM.

*Tuesday the twenty-ninth day of March,  
One thousand eight hundred and eighty-one.*

PRESENT:—J. R. DANIEL, Esquire, *District Judge.*

10

*Appeal Suit No. 165 of 1880.*

(3rd Dept.) Appellant.                      versus                      (Plf.) Respondent.

Lambadara Mahapatro, being minor, by his guardian Nilakantha Mahapatro.

Gungadhara Dasu.

Appeal against the Decree of the District Munsif of Aska in Original Suit No. 241 of 1880.

JUDGMENT.

Brother  
|  
Gouri (widow)

Godadhara Doss  
|  
Radha (widow)

Brother  
|  
Subadra  
Bagis (widows)

20

Bhaji (dau)      Apperna (daughter)

Gangadhara Doss      Lambadara (3rd)

plaintiff

a younger brother.

Godadhara Doss was the sole owner of certain Inam lands. He died about 22 years ago.

He left a widow and two daughters. There were also alive three widows of his two brothers who had pre-deceased him.

The plaintiff, son of his eldest daughter was then about 6 or 7 years of age. The plaintiff's younger brother and 3rd defendant the son of the 2nd daughter were not then born.

30

The land now in dispute was granted subsequent to the death of Godadhara Doss to Gouri the widow of his eldest brother for maintenance.

Gouri died about 3 years ago, and before her death it appears that she sold to 2nd defendant, the tenant, the land granted to her for maintenance.

The present 3rd defendant brought Original Suit 408 of 78, to set aside the sale and obtain the land for himself. He claimed under a deed (A in suit 408 of 1878 copy produced in the suit by plaintiff F. Original was produced in appeal). This purports to have been executed by Radha, May 7-76. In consequence of disputes regarding maintenance with the widows of her husband's brothers, it stipulates that these 15 Bharanams shall be assigned to Gouri for her maintenance, and on her death shall revert to 3rd defendant the younger daughter's son. Another 15 Bharanams granted for maintenance of another widow was to revert on her death to plaintiff, the eldest daughter's son.

The plaintiff was no party to Original Suit 408 of 1878 and a decree was given for the land in 3rd defendant's favour upon the strength of this deed executed by Radha.

The plaintiff now seeks to recover this land on the ground that he succeeded to the whole of the property belonging to Godadhara Doss.

According to the ordinary law, the plaintiff and 3rd defendant as daughter's sons are equally entitled to the property, and neither of them would have any right of succession until the death of Radha the widow and both the daughters.

The widow died about 7 years ago, the mother of 3rd defendant died a year before, the widow and the mother of plaintiff is still alive.

The plaintiff's allegations are that, Godadhara Doss a year before his death, took plaintiff, his daughter's son into his house, made him his Abhimana Putra and gave to him all his property.

The Munsif finds that the plaintiff has an exclusive right to the property upon the strength of a nuncupative Will made by Godadhara Doss but this is not in accordance with plaintiff's own statement of his claim.

The oral evidence appears to me very weak, and the reasons given by the Munsif for believing it (para 12) quite insufficient.

It merely amounts to this, that plaintiff and his mother came to live with Godadhara Doss a year or so before his death. There is nothing improbable in a daughter living with her father. To some of these witnesses Godadhara Doss is said to have expressed his intention of making plaintiff heir to his property. At that time the plaintiff

would in the natural course of law inherit the property, and there is nothing whatever to justify a finding that Godadhara Doss intended to constitute or did constitute plaintiff his sole heir to the exclusion of his widow and daughters, and any heirs who might subsequently be born.

The documentary evidence is described by the Munsif as speaking strongly in plaintiff's favour, but it is of the weakest description.

The name of the plaintiff has been entered in the Inam settlement of 1862-63, but the names of the widows of Godadhara Doss brothers are also entered. Radha's name is not entered and apparently the name of plaintiff is substituted for that of Radha. Such an entry as this can have no force at all as evidence against the 3rd defendant. The only inference to be drawn from it is, that Radha may have been willing to allow plaintiff's name to appear as owner, because she thought that he would eventually succeed to the property. On the other hand the entry of the widow's name negatives the supposition that any claim was put forward on plaintiff's behalf to succeed on any other title than that of daughter's son. This entry is of little or no value as evidence at all.

The receipts (B) from 1371 to 1879 show, that payments of quit-rent were made in plaintiff's name. The plaintiff is the Chukta of the village, and these receipts are granted by himself and Karnam and are absolutely worthless as evidence to prove the special and exclusive title set up by plaintiff.

The plaintiff claims to have been in possession from the date of enfranchisement, but the right was in Radha until her death, and I cannot find that she abandoned her rights during her life time in favour of plaintiff.

The document F produced by plaintiff (A in 408 of 1878 suggests that Radha was in possession as widow, and she appears to have treated both daughters' sons alike, providing for the reversion of the land to each of them. This document if true, is inconsistent with the acknowledged title of plaintiff to succeed to the whole property.

I consider therefore, that plaintiff has entirely failed to establish his claim to succeed to this property to the exclusion of all the other natural heirs. Being a daughter's son he could not allege adoptions because it is illegal, so in the plaint he describes himself as Abhimana Putra which is merely a phrase, conveying no legal rights. To this he adds an allegation of oral gift made a year before the death. Upon such evidence as this, it is manifestly unjust to deprive any one of their natural rights.

The Munsif finds a nuncupative Will although none was alleged. The first issue is vague and indefinite. The plaintiff was suing upon a very special title, and he should have been compelled to state it distinctly and prove it beyond all reasonable doubt.

The decree of the Munsif is therefore reversed and the original suit dismissed. All costs to be borne by plaintiff.

(Signed) J. R. DANIEL,

29th March 1881.

*District Judge.*

10

MEMORANDUM OF SECOND APPEAL.

*In the District Munsif's Court of Aska,  
Original Suit No. 241 of 1880.*

*In the District Court of Ganjam,  
Appeal Suit No. 165 of 1880.*

*In the High Court of Judicature at Madras,  
Second Appeal No. 634 of 1881.*

*In the Court of In the Lower Ap- In the High  
First Instance. pellate Court. Court.*

Gungadhara Dass ... Plaintiff. Respondent. Appellant.

20

*versus*

Lambadara Mahapatrudu, }  
being minor, by his guar- }  
dian Nilakantha Maha- }  
patrudu. } Defendant. Appellant. Respondent.

The plaintiff abovenamed begs to prefer this Second Appeal to the High Court at Madras against the decree of the District Court of Ganjam dated 29th March, for the following reasons:—

30

1. The plaintiff as the Abhinana Putra and the donee of the property of the late Godadara Doss is entitled to the lands sued for.
2. The Munsif distinctly finds the nuncupative Will alleged by plaintiff in plaintiff's favour, but the District Judge gives no finding thereon, but erroneously says that none was alleged. The District Judge ought to have given his finding on the question of the Will.
3. Godadara Doss widow, had no power to alienate the property in any way or to arrange for the enjoyment of the property by her grand children in any specified manner.

P. V. RANGA CHARIYAR,

12th July 1881.

*Vakil for Appellant.*

*Handwritten signature/initials at the top of the page.*

*Handwritten notes on the left side of the page, including the date '14.1.81' and other illegible text.*

HIGH COURT.  
SECOND APPEAL  
No. 634 of 1881.

GANJAM.  
District Court.

Appeal Suit No. 165 of 1880.

Gungadhara Doss.

(Plaintiff) Appellant.

By P. V. Ranga Chariyar.

versus

Lambadara Mahapatrudu, minor, by

his guardian Nilakantha

Mahapatro.

(Defendant) Respondent.

NATURE OF CLAIM.	} Suit for recovery of 18 Bharanams of Inam land with profits and costs.
IN THE COURT OF FIRST INSTANCE.	
IN THE LOWER APPELLATE COURT.	} Decree passed 29-3-81.
IN THE HIGH COURT.	

Enclosures four and Vakalutnamah.  
S. Appeal valued at Rupees 133-2-0.  
Stamp duty paid, Rupees, 10-8-0.

To be heard on *Thursday the 5th*  
*Am...*  
*12*

IN THE COURT OF THE DISTRICT MUNSIF OF ASKA.

*Original Suit No. 241 of 1880.*

*Plaintiff.*                      *versus*                      *Defendants.*

Gungadhara Dasu.

1. Boishnava Gaudu.
2. Krishna Doss.
3. Lambadhara Mahapatro  
being a minor, by his  
natural father Nilakantha  
Mahapatro.

10

Suit for recovery of 18 Bharanams of Inam land and rupees 26-10-0, being the profits of the years 1877-78 and 79 with costs.

This suit coming on for final hearing on 9th September 1880, before Gade Jagannadha Row Puntulu, Acting District Munsif, in the presence of plaintiff's pleaders Mr. William Mahanty and Chintakindi Appayya Puntulu, and defendant's pleaders, Bachula Narasimhasami Puntulu and Kurrada Virarazu Puntulu, the Court doth hereby order and decree, that the defendants do deliver up to plaintiff the land in dispute and pay him rupees 26-10-0 for part profits and costs as determined by the officer of the Court.

20

(Here enter costs.)

9th September 1880.

## IN THE DISTRICT MUNSIF'S COURT OF ASKA.

*The ninth day of September,**One thousand eight hundred and eighty.*

PRESENT :--J. JAGANNADHA ROW PANTULU GARU,

*Acting District Munsif.**Original Suit No. 241 of 1880.**Plaintiff.**versus**Defendants.*

Gangadhara Dasu.

1. Boishnava Gavudu.

2. Krishna Dasu.

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3. Neelakantha Mahapatro,  
natural father of his  
minor son Lambadara  
Mahapatro.

1. Plaintiff sues to recover 18 Bharnams of Inam land situated at Gadharapuram Agraharam in Surada Taluq, and rupees 26-10-0 being mesne profits for 1877, 1878 and 1879 with costs.

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2. Plaintiff states that plaintiff's maternal grandfather Godadhara Doss brought plaintiff up as his Abhimana Putra and died 2 years ago giving away all his property to plaintiff. The said Godadhara Doss expressed his will that plaintiff should succeed to him after his death. Plaintiff gave the plaint land to one Govridasyani widow of Godadhara Doss elder brother for maintenance. She enjoyed the plaint-land till her death. On her death 3rd defendant who is the son of another daughter of Godadhara Doss sued 1st and 2nd defendant's ryots of the plaint-land in Original Suit 408 of 78 pretending that the property was given him by the late Govridasyani through a document and got a decree. Plaintiff was not a party to it, and further the judgment in Original Suit 408 of 78 stated that plaintiff's rights should not be affected thereby.

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3. 1st and 2nd defendants were declared *ex parte*.

4. 3rd defendant pleaded that the late Godadhara Doss having left some immoveable property to the extent of 252 Bharnams, his widow Radha succeeded to the property; that Radha gave the plaint-land of 13 Bharnams of Govridasyani (widow of Godadhara Doss' elder brother) and another piece of land 15 Baharnams in extent to

Baidossyani (widow of Godadhara Doss' younger brother) for their maintenance assigning that on their death the said lands should go to 3rd defendants and plaintiff respectively; that written documents relating to the same were mutually exchanged between the parties; that 1st and 2nd defendants having usurped the plaint-land on the death of Govri on pretence of their acquiring right through a sale deed. 3rd defendant brought a Suit, Original Suit 408 of 78 against them for the plaint-land and got a decree.

5. The following documents filed.

- 10      A. Title deed granted to Godadhara Doss and 10 others, dated 10th July 1863.
- B. Bundle of receipts given to plaintiff and Mahadeva Misiri by Gandadhara Doss Bhukta of Chanchara Pilli Agraharam.
- C. Authenticated copy of judgment in Original Suit 408 of 78 this Court's file.
- D. Do. of do. in S. C. 203 of 77 do.
- E. Do. of sale-deed executed by Govridasyani to Bonamali Dasu, dated 22nd September 1873.
- 20      F. Do. of document executed by do. to Radha Dasyani, dated 7th May 1865.
- G. Title-deed given by Inam Commissioner to Gangadhara Dasu and 3 others dated 9th July 1863.
- H. Authenticated extract of Inam register for Fusli 1274 for Ghumsur Taluq, dated 13th November 1872.

*The following documents filed by 3rd defendant.*

- I. Authenticated extract from the English Inam register for Ghumsur Taluq, dated 20th November 1878.

6. The following issues framed.

- 30      I. Whether the plaintiff has derived his exclusive right to the land sued for from Godadhara Dasu the maternal grandfather of the plaintiff and 3rd defendant?
- II. Whether the plaintiff or Radha Dasyani gave to Govridasyani the plaint-land for her maintenance?
- III. Whether the defendants have wrongfully taken possession of the plaint-land?
- IV. In whose possession the lands have been from the time of the grant of the Inam the title deed till the death of Radha Dasyani?



V. What were the mesne profits accrued during years 1877-78 and 79.

7. The following witnesses examined.

*For Plaintiff.*

1. Dasaradhi Mahapatrudu.
2. Venkatarow Rayagurune.
3. Brundavan Dasu.
4. Deenamoni Patnaikudu.
5. Kusunu Ganudu.

*For 3rd Defendant.*

1. Madana Mohanasuntra.
2. Naraharipatti.

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JUDGMENT.

8. It is alleged by plaintiff that Godadhara died leaving a widow, two daughters, namely, Boi and Aparna, the mothers of plaintiff and 3rd defendant respectively, and plaintiff to whom he Willed away his whole estate, and that therefore 3rd defendant has no right to the plaint-land. 3rd defendant denies plaintiff allegations about the Will and pleads that the estate passed to his widow according to law. The documentary evidence adduced on behalf of plaintiff speaks very strongly of plaintiff's case. It is clear from documents A and G, that all the lands belonging to the late Godadhara were enfranchised in the name of plaintiff. Document B comprises number of receipts all of which show that the quit-rent due on the state of Godadhara has been paid by plaintiff since the date of enfranchisement. 3rd defendant's Vakil admits that the plaint-land is a part of the Inam land enfranchised through document A. Plaintiff's witnesses stated, that during the life time of Godadhara plaintiff's brother Narahara and 3rd defendant, son of the 2nd daughter of Godadhara were not born; that Godadhara having had no male issue brought plaintiff to his house and expressed his intention that he (plaintiff) should succeed to him; that since the death of Godadhara plaintiff has been exclusively enjoying his whole estate both moveable and immoveable, giving maintenance to the widow, members of the family in accordance with the wishes of the deceased.

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9. Defendant's Vakil contended, that there being no written document in support of the Will said to have been made by the late Godadhara the oral evidence is inadmissible.

10. It was held by the Madras High Court that contracts of every description involving both temporal and spiritual consequences may be made orally and a Hindu can therefore make a nuncupative Will of property whether moveable or immoveable (see Madras High Court R. vol. II, 37).

11. It is clear by law that the testamentary powers of a Hindu are co-extensive with his power of alienation during his lifetime. In the present case the deceased Godadhara having held no male issue could have validly alienated his property during his lifetime if he wished. Besides, he had made sufficient provision for the maintenance of his widow and the widows of his brothers. I am therefore of opinion that the nuncupative Will made by Godadhara is valid in law.

12. The only question therefore is the genuineness of the oral evidence. Plaintiff's witnesses seemed to be straightforward in giving their evidence. I am in no way dissatisfied with their demeanour. Judging their evidence in connection with the documents and other circumstances in the case, I have no reasons to doubt their truthfulness.

20 13. There is no reliable evidence for 3rd defendant to prove that Radha succeeded to the estate after her husband's death, and even if there is any proof with regard to her exclusive enjoyment of the property till her death, it would be contrary to documentary evidence. 3rd defendant clearly admits that with the exception of the plaint-land the whole estate belonging to the late Godadhara is in the possession of plaintiff. If the alleged nuncupative Will as pleaded by plaintiff has no foundation, there is reason that plaintiff has had possession of the whole estate and Inam puttas and quit-rent receipts in respect of the deceased's estate stood in his name.

30 14. For the foregoing reasons, I determined the issue in favour of plaintiff and against 3rd defendant.

15. With regard to mesne profits, defendants did not traverse plaintiff's allegation. They are therefore bound to it. 3rd defendant's Vakil states that he shall not be liable to the mesne profits, as he was not put in possession of plaint-lands under decree of Original Suit 408 of 1878.

16. A decree in favour of plaintiff for the plaint-land with mesne profits and costs against all defendants. If the 3rd defendant did

not get possession of the plaint-land under decree of Original Suit 408 of 1878, he shall not be responsible for the mesne profits.  
Pronounced in open Court on 9th September 1880.

(Signed) G. JAGANNADHA ROW,

*Acting District Munsif.*

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*Decree on Appeal No. 165 of 1880.*

*Section 579 of the Code of Civil Procedure.*

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

*Appellant. versus Respondent.*

Lambadara Mahapatrudu, being minor, by his guardian Nilakantha Mahapatro.	<i>versus</i>	Gungadhara Doss.	10
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Appeal from the decree of the Court of the District Munsif of Aska in Original Suit 241 of 1880, dated the 13th day of October 1880.

*Memorandum of Appeal.*

*Plaintiff. versus Defendants.*

Gungadhara Doss.	<i>versus</i>	1. Boishnava Gaudu. 2. Krishna Doss. 3. Lambadara Mahapatro, being minor, his guardian Nilakantha Mahapatro.	20
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The 3rd defendant abovenamed appeals to the District Court of Ganjam at Berhampore against the decree of the District Munsif of Aska in the above suit dated the 9th day of September 1880, for the following reasons, namely :—

1. Because plaintiff did not allege that he obtained the plaint land by Will (*vide* plaint).
2. Because it is a mistake of the Lower Court to think that plaintiff obtained the plaint-land by oral Will, which is contrary to plaintiff's argument. 30
3. Because the Hindu Law does not recognize the taking of one as "Abhimana Putra."

4. Because the facts stated by plaintiff that he inherited the plaint-lands as an acknowledged son, are not credible.

5. Because it is not credible that GodadharaDoss was doing nothing leaving all the property to plaintiff during his lifetime.

6. Because there should be no reason for mentioning the names of Govridasyani and 2 others in the Inam putta marked G if all the property of Godadhara Doss were given to plaintiff.

7. Because the name of the plaintiff has fraudulently been inserted in the document marked G.

10 8. Because there are no proofs consistent to plaintiff's argument.

9. Because there is no evidence to show that plaintiff gave this plaint-land to Govridasyani for maintenance.

10. Because plaintiff never enjoyed the plaint land.

11. Because this suit is barred by lapse of time.

12. Because the cause of action stated by plaintiff is not correct.

20 13. Because the document evincing 3rd defendant's right to the plaint-land was produced and proved in Original Suit 408 of 1878 and a decree passed accordingly by the Original and Appellate Courts.

14. Because 3rd defendant was not allowed time to obtain the return of the said document from the Ganjam District and produce it in this suit.

15. Because the Lower Court passed judgment against the weight of evidence.

16. Because the presumptions of the Lower Court are wrong.

30 This appeal coming on for hearing on the 29th day of March 1881, before J. R. Daniel, Esquire, District Judge, in the presence of P. Venkanna Pantulu, Vakil for the appellant, and of N. Ramamurthy Pantulu, Vakil for the respondent, it is ordered that the decree of the Lower Court be, and the same hereby is reversed, and the original suit dismissed, and it is further ordered that plaintiff do bear all costs.

The costs of this appeal incurred by appellants amounting to rupees 23-11-8 are to be paid by respondent. The costs of the original suit are to be paid by plaintiff.

Given under my hand this 29th day of March 1881.

(Signed) J. R. DANIEL,

*District Judge.*

IN THE DISTRICT COURT OF GANJAM.

*Tuesday the twenty-ninth day of March,  
One thousand eight hundred and eighty-one.*

PRESENT:—J. R. DANIEL, Esquire, *District Judge.*

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*Appeal Suit No. 165 of 1880.*

(3rd Deft.) Appellant.                      versus                      (Plff.) Respondent.

Lambadara Mahapatro, being minor, by his guardian Nilakantha Mahapatro.

Gungadhara Dasu.

Appeal against the Decree of the District Munsif of Aska in Original Suit No. 241 of 1880.

JUDGMENT.

Brother  
|  
Gouri (widow)

Godadhara Doss  
|  
Radha (widow)

Brother  
|  
Subadra  
Bagis (widows)

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|                      |  
Bhaji (dan)      Apperna (daughter)

|                      |  
Gangadhara Doss      Lambadara (3rd)

plaintiff

a younger brother.

Godadhara Doss was the sole owner of certain Inam lands. He died about 22 years ago.

He left a widow and two daughters. There were also alive three widows of his two brothers who had pre-deceased him.

The plaintiff, son of his eldest daughter was then about 6 or 7 years of age. The plaintiff's younger brother and 3rd defendant the son of the 2nd daughter were not then born.

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The land now in dispute was granted subsequent to the death of Godadhara Doss to Gouri the widow of his eldest brother for maintenance.

Gouri died about 3 years ago, and before her death it appears that she sold to 2nd defendant, the tenant, the land granted to her for maintenance.

The present 3rd defendant brought Original Suit 408 of 78 to set aside the sale and obtain the land for himself. He claimed under a deed (A in suit 408 of 1878 copy produced in the suit by plaintiff F. Original was produced in appeal). This purports to have been executed by Radha, May 7-76. In consequence of disputes regarding maintenance with the widows of her husband's brothers, it stipulates that these 15 Bharanams shall be assigned to Gouri for her maintenance, and on her death shall revert to 3rd defendant the younger daughter's son. Another 15 Bharanams granted for maintenance of another widow was to revert on her death to plaintiff, the eldest daughter's son.

The plaintiff was no party to Original Suit 408 of 1878 and a decree was given for the land in 3rd defendant's favour upon the strength of this deed executed by Radha.

The plaintiff now seeks to recover this land on the ground that he succeeded to the whole of the property belonging to Godadhara Doss.

According to the ordinary law, the plaintiff and 3rd defendant as daughter's sons are equally entitled to the property, and neither of them would have any right of succession until the death of Radha the widow and both the daughters.

The widow died about 7 years ago, the mother of 3rd defendant died a year before, the widow and the mother of plaintiff is still alive.

The plaintiff's allegations are that, Godadhara Doss a year before his death, took plaintiff, his daughter's son into his house, made him his Abhimana Putra and gave to him all his property.

The Munsif finds that the plaintiff has an exclusive right to the property upon the strength of a nuncupative Will made by Godadhara Doss but this is not in accordance with plaintiff's own statement of his claim.

The oral evidence appears to me very weak, and the reasons given by the Munsif for believing it (para 12) quite insufficient.

It merely amounts to this, that plaintiff and his mother came to live with Godadhara Doss a year or so before his death. There is nothing improbable in a daughter living with her father. To some of these witnesses Godadhara Doss is said to have expressed his intention of making plaintiff heir to his property. At that time the plaintiff

would in the natural course of law inherit the property, and there is nothing whatever to justify a finding that Godadhara Doss intended to constitute or did constitute plaintiff his sole heir to the exclusion of his widow and daughters, and any heirs who might subsequently be born.

The documentary evidence is described by the Munsif as speaking strongly in plaintiff's favour, but it is of the weakest description.

The name of the plaintiff has been entered in the Inam settlement of 1862-63, but the names of the widows of Godadhara Doss brothers are also entered. Radha's name is not entered and apparently the name of plaintiff is substituted for that of Radha. Such an entry as this can have no force at all as evidence against the 3rd defendant. The only inference to be drawn from it is, that Radha may have been willing to allow plaintiff's name to appear as owner, because she thought that he would eventually succeed to the property. On the other hand the entry of the widow's name negatives the supposition that any claim was put forward on plaintiff's behalf to succeed on any other title than that of daughter's son. This entry is of little or no value as evidence at all.

The receipts (B) from 1371 to 1879 show, that payments of quit-rent were made in plaintiff's name. The plaintiff is the Chukta of the village, and these receipts are granted by himself and Karnam and are absolutely worthless as evidence to prove the special and exclusive title set up by plaintiff.

The plaintiff claims to have been in possession from the date of enfranchisement, but the right was in Radha until her death, and I cannot find that she abandoned her rights during her life time in favour of plaintiff.

The document F produced by plaintiff (A in 408 of 1878 suggests that Radha was in possession as widow, and she appears to have treated both daughters' sons alike, providing for the reversion of the land to each of them. This document if true, is inconsistent with the acknowledged title of plaintiff to succeed to the whole property.

I consider therefore, that plaintiff has entirely failed to establish his claim to succeed to this property to the exclusion of all the other natural heirs. Being a daughter's son he could not allege adoptions because it is illegal, so in the plaint he describes himself as Abhimana Putra which is merely a phrase, conveying no legal rights. To this he adds an allegation of oral gift made a year before the death. Upon such evidence as this, it is manifestly unjust to deprive any one of their natural rights.

The Munsif finds a nuncupative Will although none was alleged. The first issue is vague and indefinite. The plaintiff was suing upon a very special title, and he should have been compelled to state it distinctly and prove it beyond all reasonable doubt.

The decree of the Munsif is therefore reversed and the original suit dismissed. All costs to be borne by plaintiff.

(Signed) J. R. DANIEL,

29th March 1881.

District Judge.

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MEMORANDUM OF SECOND APPEAL.

*In the District Munsif's Court of Aska,  
Original Suit No. 241 of 1880.*

*In the District Court of Ganjam,  
Appeal Suit No. 165 of 1880.*

*In the High Court of Judicature at Madras,  
Second Appeal No. 634 of 1881.*

*In the Court of In the Lower Ap- In the High  
First Instance. pellate Court. Court.*

Gungadhara Dass ... .. Plaintiff. Respondent. Appellant.

20

versus

Lambadara Mahapatrudu, }  
being minor, by his guar- } Defendant. Appellant. Respondent.  
dian Nilakantha Maha- }  
patrudu. }

The plaintiff abovenamed begs to prefer this Secoud Appeal to the High Court at Madras against the decree of the District Court of Ganjam dated 29th March, for the following reasons:—

1. The plaintiff as the Abhinana Putra and the donee of the property of the late Godadara Doss is entitled to the lands sued for.
- 30 2. The Munsif distinctly finds the nuncupative Will alleged by plaintiff in plaintiff's favour, but the District Judge gives no finding thereon, but erroneously says that none was alleged. The District Judge ought to have given his finding on the question of the Will.
3. Godadara Doss widow, had no power to alienate the property in any way or to arrange for the enjoyment of the property by her grand children in any specified manner.

P. V. RANGA CHARIYAR,

12th July 1881.

Vakil for Appellant.

634/1881-17



*M. V. R.*

HIGH COURT.  
SECOND APPEAL  
No. 634 of 1881.

GANJAM.  
District Court.

Appeal Suit No. 165 of 1880.

Gungadhara Doss.

(Plaintiff) Appellant.

By P. V. Ranga Chariyar.

*versus*

Lambadara Mahapatrudu, minor, by  
his guardian Nilakantha

Mahapatro.

(Defendant) Respondent.

NATURE OF CLAIM.	}	<i>Suit for recovery of 18 Bharanams of Inam land with profits and costs.</i>
IN THE COURT OF FIRST INSTANCE.		}
IN THE LOWER APPELLATE COURT.	}	
IN THE HIGH COURT.		}

Enclosures four and Vakalutnamah.

S. Appeal valued at Rupees 133-2-0.

Stamp duty paid, Rupees, 10-8-0.

To be heard on *Thursday 2nd*

*5th August 1881*  
*On Saturday the 11th Aug 1881*  
*B*