

In the High Court of Judicature at Patna.

(Civil Appellate Side.)

TITLE PAGE.

PART I.



(THIS FILE MUST BE PRESERVED FOR EVER.)

APPEAL FROM Appellate Bench

No. 1088 of 1901.

Rani Venkata Ramanya & ors Appellants.

versus

Behary Lal Pandit & ors Respondents.

DATE OF DECISION OF HIGH COURT 15.7.1901.

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

1088/1901-01



In the High Court of Judicature at Patna.

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*L. Appeal No. 1088 of 1901.*

*Rami Venkata Ramanya & Co* Appellant

versus

*Behary Lal Pandey & Co* Respondent

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	<i>By</i>	





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M. S. S. S.  
27.6.03  
M. S. S. S.

1901  
1-11

Prof.

1088/1901-03

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In the High Court of Judicature at Fort William in Bengal  
Civil Appellate Jurisdiction

Memo of Appeal from Appellate Decree

1088/1901-03  
27.6.03  
M. S. S. S.

(1) Rani Venkata Romanya, (2) Sobhaya  
(3) Bangaya (4) Bhadrya nos 2, 3 and 4  
are minor daughters of Sunder Melaya  
deceased by their next friend and cousin  
Raja Ram Chandra Ray — Plaintiffs, appells

versus  
(1) Beharilal Pundit (2) Rajnarain Pundit  
inhabitant of Chandak Chauri, Cuttack  
(3) Sarat Chandra Mookerjee of Telanga  
Bazar, Cuttack. These three are the executors  
to the Estate of Harikarnath Pundit de-  
ceased and (4) Raja Sukraaj of Telanga  
Bazar, Cuttack. — Defendants, Respondts

Appeal valued Rs 1087-13-5











The above named plaintiffs being dissatisfied with the decree of judgment of the District Judge of Cutch dated 14<sup>th</sup> March 1901 affirming those of the Subordinate Judge of Cutch dated 6<sup>th</sup> June 1900 begs to prefer this petition of Appeal from Appellate decree against the above named Defendants on the following grounds

B931.

Grounds.

1. For that the Court below should have held that the Registration of the idol's name under Act 411 of 1876 and the Rubakaries of the Settlement officer of 1830-1840 are prima facie evidences of title which the defendants had to rebut.
2. For that on the above view of law the Court below should have looked into the evidence of the defendant to see whether it over weighed that of the plaintiff.
3. For that the judgment is not according to law as not giving the reason upon which its opinions and findings are based.
4. For that the lower Court has misread the Rubakaries Act to 411 and should have held on a proper construction thereof that the lands in dispute are validly enclosed Rebutted lands.

1088/1901-04

List of papers.

This petition

Valued at Rs. 500/-

Decree & judgment

Both for and against

Total 50/-

I Manmohan Seth Vakil on behalf of the appellants hereby certify that in my judgment each of the grounds contained in this petition of appeal from appellate decree presented by me on behalf of the appellants is a good ground of appeal from appellate decree

Manmohan Seth



No. 78. September 24. 1777  
China

I authorize Mr. [Name] with [Name] while this

James [Name]





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Handwritten text on the left side, including the date '1907-6-21' and a signature.

Main body of handwritten text in a South Indian script, likely Kannada. The text is dense and covers most of the page. It appears to be a legal or official document. At the bottom, there is a signature and the date '20 June'.

Vertical handwritten text on the right side, possibly a note or a signature, including the phrase 'This is a duplicate'.



A/66  
116  
27/6

Received from Walter  
Murray Chestney  
accepted  
Walter Murray

*[Faint, mostly illegible handwriting covering the main body of the page, possibly representing a list or ledger entries.]*

*[Faint handwritten notes or numbers on the right side of the page.]*





In the Court of the District Judge at Cuttack

*Present*  
*1899*

Present E. M. Kanatom Esquire J.C.S. District Judge

The 14<sup>th</sup> day of March 1901

Sub Judge appeal No: 15 of 1900

Appeal from the decision of  
Baboo Behari Lal Mallik, Sub Judge  
at Cuttack in Suit No: 159 of  
1899 Dated the 6<sup>th</sup> June 1900  
Rani Venkata Ramania }  
and 2 others } - - - Appellants

VERSUS

Babu Behari Lal Pandit }  
and 2 others } Executors and } Respondents.  
Raja Sukeraj }

For Appellant - Babu Narendranath Sarcar Pleader and

Babu Haricharan Banerji Pleader

For Executors Respondents. Mr. M. S. Das Pleader.

Judgment

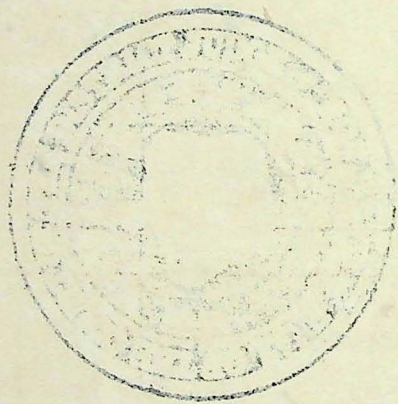
This was a Suit brought under the provisions of Section 283 of the Civil Procedure Code by the judgment-debtors who had failed to obtain a release of the property from attachment on the ground that it was debtless and therefore not



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25-3-01. appl <sup>n</sup> filed 26-3-01. Pan <sup>n</sup> paid	17/4/01. 7 sheets.	20/4/01 20/4/07 ms	22/4/07

Register No. 995 of 1901  
 Applicant - Baloo Khury Charan Banerji.

M. C. Banerji







M) not liable for their personal debts. This contention was made in the suit also, and was traversed by the defendants; and this was the only issue tried by the subordinate judge, who held that the evidence adduced by the plaintiffs was insufficient to prove their case, that evidence was of two kinds: first, a body of oral evidence to the effect that the proceeds of the property had for years past been devoted to the worship of the idol, secondly, a number of Settlement Subaris recorded under Bengal Regulations III of 1805 and III of 1820. The pleader for the appellant addressed me at some length, and laid great stress on the Subaris. They are judgments on claims, brought forward on behalf of the idol, to the exemption of the properties in question from the payment of revenue, and I agree entirely with the

1088/1901-07





the subordinate judge in holding that they are evidence merely of the fact that the properties were or were not exempted from revenue, and of nothing else. As a matter of fact, only a very small portion of the claims put forward on behalf of the idol was allowed, and only 50 mans of land near the temple were exempted ~~from~~ the ~~payment~~ <sup>of</sup> revenue. The pleader for the appellants maintained that as to the rest of the lands, the fact that they had been claimed as debtors so long ago as the years between 1830 and 1840 was a proof that they were debtors at least that is what I gathered was the maintainency of his argument. But the fact of a claim having been made, however long ago, is irrelevant to an issue to the present; and the pleader prove nothing more - and nothing more is proved.





K by the entry under Sec. 77  
 of the Land Registration Act of  
 me of the properties in question  
 in the name of "Nikhunath Roy  
 Selaat Sri Sitaram Thaker".  
 As to the real evidence,  
 it is urged on behalf of  
 the appellants, that though the evidence  
 may show that the profits of  
 the properties were not always devoted  
 to their proper use - the worship  
 of the idol - yet it does  
 not follow that that was not  
 the use to which they had  
 been dedicated, and the ruling in  
 the case Jagat Mahinee Darsee versus Lashha-  
 mani Darsee (17 W. R.) is quoted  
 to show that a trust does  
 not cease to be a trust  
 because it is abused. It is  
 further urged that this case differs  
 from that referred to by the  
 Subordinate Judge (Kormar Dooza Nath Roy  
 versus Ram Chaudar Sen and others  
 I. L. R. 2 Calcutta 341)  
 1088/1901-09 in





7 in that there is here ~~any~~ proof  
that a priest was kept, and  
in that the temple here in  
question is a public temple of  
ancient standing and reputation; where as  
in that case the alleged endowment  
was merely a family endowment, and  
there was no proof that priests  
were appointed. Further it was contended  
that the ruling in another case  
referred to by the lower court  
( Himaya Chereen Antekandee vs Jagendra Nath  
Banerjee and another 21 W. R  
page 366 ) did not apply to  
this case because in that case  
it was found that the lands  
in question had been held entirely  
by the plaintiffs to their own  
use, and were consequently not deducted;  
whereas in this case there is  
no such proof that the plaintiffs  
took all the profits for their  
own use. But these arguments do not  
touch the point. See for details





of proving that the lands had been dedicated and that the profits of them were intended for the worship of the idol, was in the plaintiffs and they have, as I hold with the Subordinate Judge, and for the reasons he has given, failed to discharge it. Had the plaintiffs given adequate proof of these allegations, and had the defendants sought to rebut that proof the arguments that I have above summarized might have applied; but in the existing state of things they do not apply. The plaintiffs have failed to prove a dedication of the properties in question to the worship of the idol; they have failed to prove a long-continued appropriation to that purpose of the profits of the properties, from which an original dedication might have been inferred, and they have therefore failed to prove that the properties were exempt from

1088/1901-11





from liability for their present debts.  
Their suit must fail.  
The Appeal is dismissed with  
costs and interest thereon at 6 per  
cent per annum.

By E. M. Kaustam  
O. J. J.

14-3-01

compared by  
M. S. G. G.  
P. P. P.

Intention to be a true copy.  
M. S. G. G.  
20/4/07  
Sheristadary, District Court, Cuttack.  
Authorized under Section 10 of Act 1 of 1972.



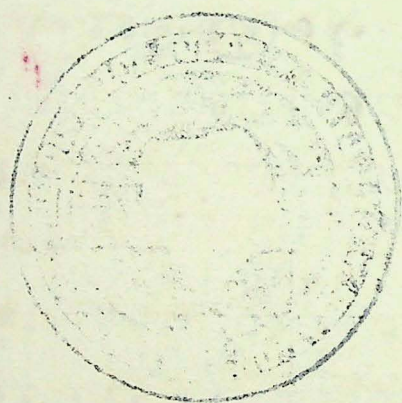




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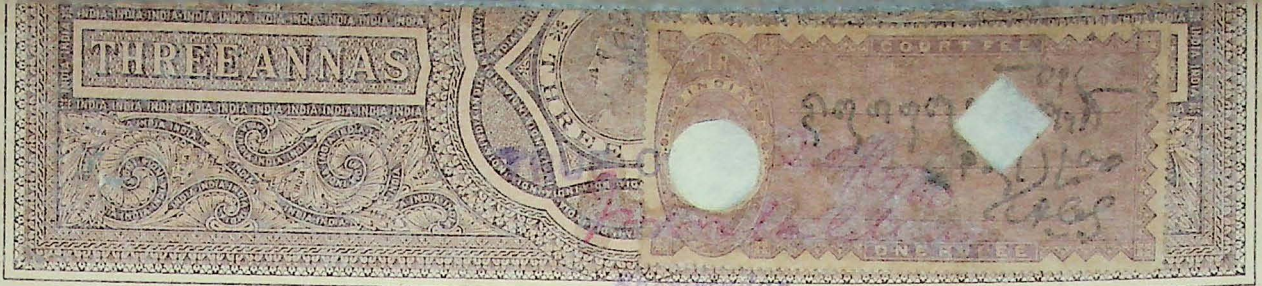


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no 58

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decree in original text (copy) 1088/1901-15  
The Government of Madras  
No. 58

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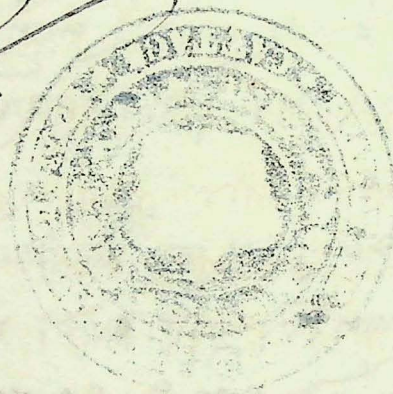


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11-7-00			

नगरीय मंडल  
 वायव्य मंडल

धार्मिक सेवा  
 कार्यालय

Received  
 for  
 1.6.01

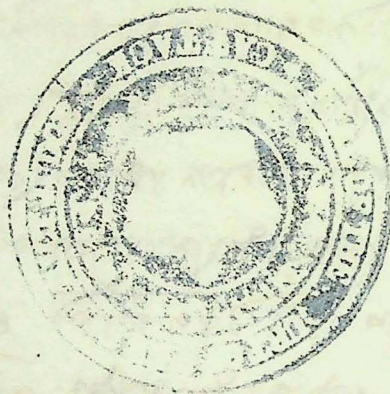








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*Sheristadar.*

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Handwritten text in a script, likely Telugu, arranged in approximately 5 horizontal lines. This section seems to contain more detailed information or a continuation of the list from the previous section.

1088/1901-20

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*Sheriff's Office*

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12/6/1900

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1088/1901-23  
21

Heading of decision in original suit  
District Cutch

In the Court of the Subordinate Judge at Cutch  
the 5<sup>th</sup> day of June 1900

Suit No: 159 of 1899.

Rani Venkataromania and others - - - - - Plffs

against  
Hari Har Nath Paudel & another - - - - - Defds.

In execution of a decree  
obtained against the plff the properties  
in suit were attached and sold.  
Before sale the plffs, the then  
Judgment debtors, had filed an objection  
stating that the properties were not  
liable to sale being Debttas. The  
objection was disallowed and the properties  
were ordered to be sold. The  
plffs thereupon brought this suit to  
have it declared that these properties  
are Debttas and as such were  
not liable to be sold for  
their personal debts.  
The plffs urged that these  
were not real Debttas properties.  
The following issues were laid down

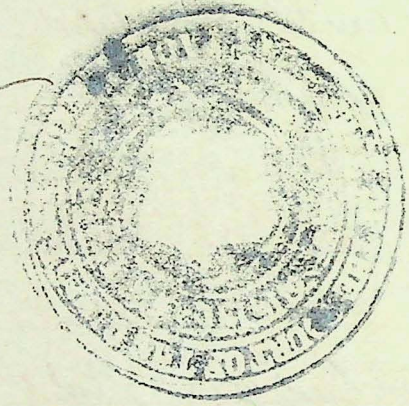


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13-6-00. Jav Jind		20/6/00	20/6/00

No. 2196 of 1900  
 Applicant: Shree Chann Banerjee.

Magistrate Datto  
 Couberoy

Relinquished  
 1.6.01.







*Sheristadar.*

M. down for determination  
 (1) Is the plaint sufficiently stamped?  
 (2) Is the property in suit  
 real Debittas and as such not  
 liable to sale?  
 (3) Is Jayganath Naj entitled to  
 maintain this suit? on behalf of  
 p. 1/2 Nos 2 and 3?  
 (4) Have P. 1/2 Nos 2 and  
 3 any cause of action?  
 (5) Is the allegation in para  
 7 of the plaint true? If  
 not is the suit maintainable?  
 (6) Can the case be set  
 aside?  
 The Dept argued but issue  
 No. 2. The other issues were not  
 even touched by him. The court  
 therefore infers that he has abandoned  
 the other points raised by him  
 in his defence and therefore I  
 confine my attention to issue no. 2  
 only. There was not an iota  
 of direct evidence oral or documentary





M to show that these properties had  
 been dedicated to the Hakoor mentioned  
 in the plaint. Evidence was adduced  
 to prove that the income of  
 these properties had been used towards  
 the defrayal of the expenses of  
 the Hakoor whether the evidence so  
 adduced did or not prove that  
 fact I shall consider later on.  
 Assuming that it did prove that  
 I am of opinion that that  
 fact is not sufficient to prove  
 the debent character of the property  
 ( 2 D. L. R. Cal. page  
 241.) So if the evidence is  
 fully believed it is not sufficient  
 to prove the hypo case. Then  
 let us consider what the nature  
 of that evidence is, I begin  
 with the palm-leaf accounts. These  
 were produced at the best stage  
 of the case. They were in  
 the custody of the hypo, but  
 unfortunately a man quite unconnected with  
 the Hakoor and his temple produced  
 them.





*Sheristadar*

Then this man might be the  
 son of the late Tehsildar; but  
 why should he be summoned to  
 produce documents which have all along  
 been in his custody? In fact  
 the plaintiff injured this case by  
 calling upon a third party to  
 produce documents which had never been  
 in his custody. These are extremely suspicious documents.

Then I come to witnesses.  
 Witness No 1 proes nothing. He says  
 "Padma Singh supplied me with things  
 and therefore I say that the  
 income of the disputed lands were  
 applied to Hakoor's worship."

Witness No: 2 said that he  
 collected rent of some of the  
 disputed lands and remitted the amounts  
 collected to one Padma Singh at  
 Cuttack. This man paid in a  
 place 30 miles from the Hakoor's temple  
 and so he could not and  
 did not proes that the Hakoor's  
 worship was carried on by Padma



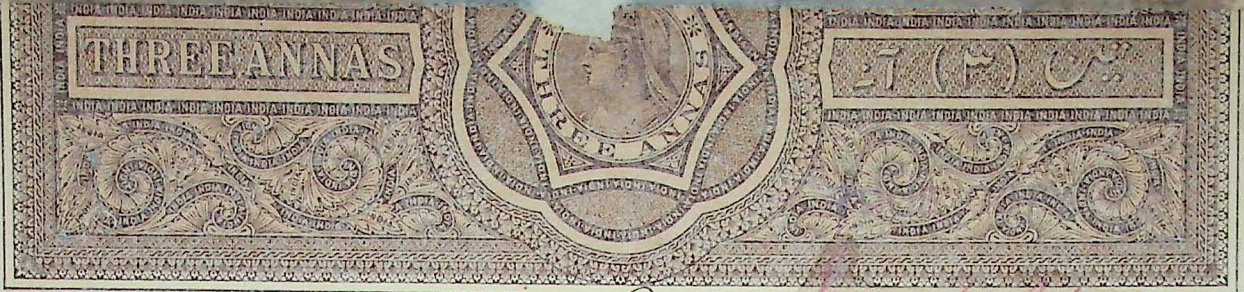


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3

Mingle with the money remitted.  
 Witness No. 6 Darrow the deposed to  
 the same effect. He simply remitted  
 his collections to Padma Singh; but  
 he could not swear that the  
 worship was carried on with that  
 money.  
 Witness No. 6 Jagadul Mahanti is  
 an important witness. His evidence and  
 other goes against the plffs case.  
 He says "before 150 years one Janardan  
 son used to defray all the  
 expenses of the Thakoor's worship."  
 Now if the Thakoor expenses  
 were met by Janardan son, the  
 properties stated in the plaint could  
 not have been used for that  
 purpose. They might have been acquired  
 by the plffs ancestors in the  
 Thakoor's name but that would not  
 make them debentary when we find  
 that their income was not applied  
 to Thakoor's use and when the  
 expenses of the worship were defrayed  
 by a man other than the  
 plffs





*Sheristadar*

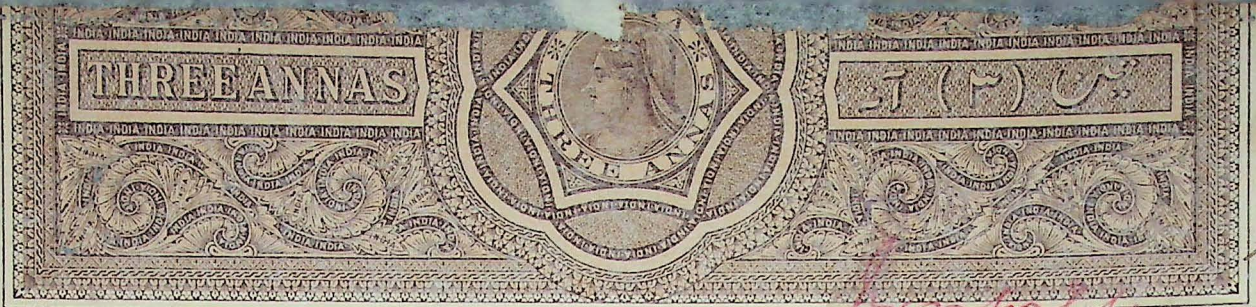
pp 11/10 or their predecessor  
 Witness no: 7 simply used to  
 purchase things with money supplied by  
 Upendra Das; but he did not  
 prove that that the money given  
 was the income of the disputed  
 properties -

Thus the oral evidence adduced  
 was not up to mark on  
 the contrary the evidence of witness  
 no. 5 went in a certain way  
 to disprove the pp 11 case -

The finding is that the  
 oral evidence did not prove that  
 the income of the disputed properties  
 had been applied towards the defrayal  
 of the Shakhoo's expenses.

Hence remains the Settlement ruleakar's  
 Exs IV to VII. These documents  
 only prove that the owners had  
 no right to enjoy these properties  
 revenue free. Beyond this they are  
 of no value. See High Court  
 in 21 W. R. p. 365 ruled  
 that the mere fact of lease





27  
P2

having been released (in this case resumed) on the ground of its being appropriated to the services of an idol does not impose on it the character of a religious endowment, so as to exempt it from being attached and sold in satisfaction of decrees against a person who holds it.

Thus these *reshakaris* do not show that there are endowed properties. Now let us consider the conduct of the *plffs* and their predecessors.

The evidence in this case shows that the alleged *Shelack's* mortgaged some *dehuttar* properties. The deceased *Hendra Das* the *tehsildar* deposed that the *Shelack's* mortgaged the *dehuttar* properties and appropriated the proceeds.

This shows that the properties were not really *dehuttar*.

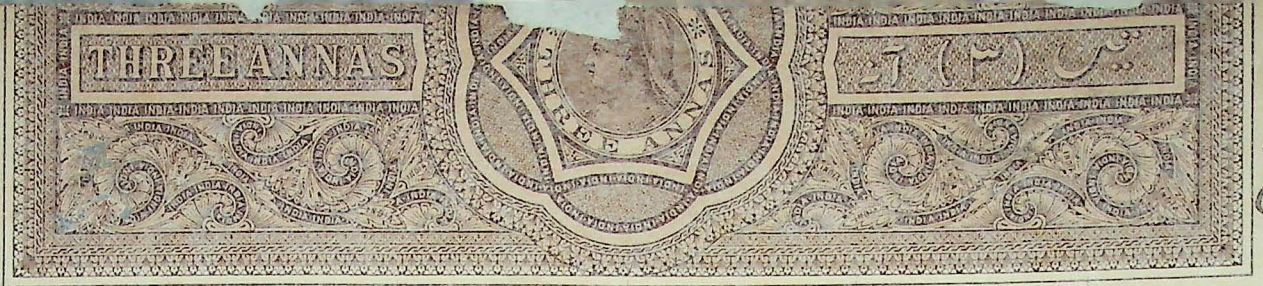
Again one of the disputed properties was adjudged to be not *dehuttar* in a previous *Decree* (vide





Ms. No. 10. c and E.)  
The finding of the Court  
may be thus summed up—  
(1) That there is no direct  
evidence oral or documentary to prove  
that these properties had been endowed  
to this Math.  
(2) That the evidence adduced did  
not prove that the income of  
these properties had been applied towards  
the depraival of the Math's worship.  
(3) That if the evidence did  
prove it that fact is not  
sufficient to prove that the properties  
are debutter (2 I. L. R.  
Cal. p. 341).  
(4) That the Babakaran's Nos IV  
to VII do not prove that  
the properties were endowed for religious  
purposes (21 W. R. p. 364).  
(5) The conduct of the parties  
disproves the Math's case.  
The result is that the  
disputed properties are not real debutter  
properties.





29  
1900

Suit dismissed with costs and  
interest at 6 per cent per annum -  
by Mahary Lal Mallik  
6-6-1900 L.J

compared by  
Mans  
Camp  
D. Mallick

Certified to be a true copy.  
20/6/00  
Sheristadar,  
Authorized under Act 1 of 1872.



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*1911*  
*10/19*

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