

18

IN THE HIGH COURT OF JUDICATURE AT PATNA.

(Civil Appellate Side.)

TITLE PAGE.

PART I.



(THIS FILE MUST BE PRESERVED FOR EVER.)

H
X
ant
31-5-16

APPEAL FROM *Appellate Decree No. 2786* OF 1915.

Myal Singh

Appellant.

Versus

Birba Singh and another

Respondent.

DATE OF DECISION OF HIGH COURT

14.3.17

DITTO OF PRIVY COUNCIL

2786/1915-01

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HIGH COURT OF JUDICATURE AT PATNA.

APPEAL No. *2986* OF 1915.

Ujial Singh — Appellant.

versus

Sirbasingh Fauter, Respondent.

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2	2588 [Faint handwritten text]	
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4	[Faint handwritten text]	
5	[Faint handwritten text]	
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46	[Faint handwritten text]	
47	[Faint handwritten text]	
48	[Faint handwritten text]	
49	[Faint handwritten text]	
50	[Faint handwritten text]	

Signature of Officer of Court

[Handwritten Signature]
Date 8. 5. 17

Compared and found correct.

[Handwritten Signature]

Record Keeper.

Cuttack /

2786/1915-03

ORDER SHEET.

Second Appeal No. 2786 of 1915

Serial Number of order or proceeding.	Date of order or proceeding.	Order or other proceeding with signature of Judge or of the Peshkar under direction of the Judge.	Office note as to action taken on order (if any).
1	10/5/16	Receipt taken of filed to ...	Talabana No 31-10th filed. Kps 5.5.16 Lil
2	10/5/16	It appears that this is a case for the Cuttack Circuit Court. The above order is cancelled & this will be sent to Cuttack	Lil
3	16.5.16	Issue notice on the Appellant to appear, engage Vakils file Talabana by 5.6.16	nti on 17/5- rel. 5.6. M. Bisr.
4	6.6.16	N/A. Def served. No Vakalatnama filed. No Talabana laid. Put up for signature for order.	notice duly served. Talabana not paid. Lil 6/6/16. Lil

Vakalatnama filed
by ...
7.6.16

Serial Number of order or proceeding.	Date of order or proceeding.	Order or other proceeding with signature of Judge or of the Peshkar under direction of the Judge.	Office note as to action taken on order, (if any).
5	13.6.46 14.6.46	Talukana 28 Peshkar.	
6	14.6.46 15-7-46	Return not made yet 8/7
7	15.7.46	Respondents have entered appearance. Papers to be prepared. Issue papers for translation & report - 25.7.46	A.O.
8	30.8.46 5.9.46 A.O.	

ORDER SHEET.

Appeal No. 2786 of 1915.

Serial Number of order or proceeding.	Date of order or proceeding.	Order or other proceeding with signature of Judge or of the Peshkar under direction of the Judge.	Office note as to action taken on order (if any).
9	9 9-9-16	Translation and Copies have not been received of this appeal. Peshkar	Translation & copies have not been received of this appeal. Peshkar 5-9-16
9	5-9-16	The order will make the copy of U. 9-16 Put my order paper make on 12-9-16 P	
10	12-9-16	Copy will be taken from with paper on 14-9-16 P	Translation has been received and the copy not yet received. Peshkar 12-9-16

Serial Number of order or proceeding.	Date of order or proceeding.	Order or other proceeding with signature of Judge or of the Peshkar under direction of the Judge.	Office note as to action taken on order, (if any).
11	14.9.46	<p>Patong nita laka laka 6-9 reg.</p>	<p>Copies have not been received of this appeal. 14-9-16.</p>
12	16.9.46	<p>Report on ... in ... of ... to ... in ... found ... with ... 10.9.46.</p>	
13	18.9.46	<p>Report on ... and ... on 21.9.46 ... of</p>	<p>Twelve Copies of paper books received from press on 25-10-16, 7 copies to remain for Bench & parties and 5 copies made over to Cashier. 28.10.16</p>

ORDER SHEET.

S. Appeal No. 2786

of 1915

Serial Number of order or proceeding.	Date of order or proceeding.	Order or other proceeding with signature of Judge or of the Peshkar under direction of the Judge.	Office note as to action taken on order, (if any.)
14	4-3-17	Appeal heard & dismissed with costs. <i>J. M. Bore</i>	<p><i>Collected 15-1-16</i></p> <p>Received two copies of paper books for Report. Ratha Krishna Das for D. J. M. Bore. <i>Valcil 31/10/15</i></p> <p>Received two copies of paper books for <i>Womesh Ballabh Roy</i> <i>Valcil 1-11-16</i></p> <p>Recd. 2 copies of paper books <i>Khad</i> <i>11/11/16</i></p> <p>Memo: 445-2-1704. The record of the case together with copies of judgment and decree & one copy of book are forwarded to the Dist. Jd of Mambhain - <i>Sambhal pres</i></p>

h
J. M. Bore
26/11/17



INDIA COURT FEE

Presented
3-12-15
S. S. 20
A. S. 20

T 2786
Special appeal
No 2786 of 1915

Deval Singh - app.
Tugh
Ram Chandra
Magnum
Vakil

In the High Court of Judicature at Fort William in Bengal
Civil appellate jurisdiction

Memorandum of appeal from appellate decree
No 2786 of 1915

Chelvan 2459

Jul 3

Deval Singh - - - app.
vs.
Deval Singh & Co. - - - app.

Declaratory suit
Value of Rs 2000/-

Sold to R. G. Mahabudhan
Vakil High Court Calcutta
Rupus Lany
Order 3 Dec 1915
M. R. Chattarjee
H. G. VENDOR HIGH COURT.

P 86
4
3/12

This Appeal has been filed
in time.

Prope Court fees have been
paid

Reports of judgments & decrees
of the lower Courts have been
filed.

Company

Appl. v. D.

PHC 18.1.15

Accountant to report if
the Applicant has
deposited the cost
for preparing Paper
Book.

etc.

Appl. 9-8 reported on 3.12.15
Dm

This Appeal has been filed
in time.

Prose Court fees have been
paid

Copies of judgments & decrees
of the lower Courts have been
filed.

Compartments

Suppl. V. 2

P.H.C.

18.1.16

Accountant to report if
the Appellant has
deposited the cost
for preparing Paper
Book.

ble.

By Stephen Parvill
19.1.16

W: 9-8 reported on 3.12.16
Dm

Registers & put up before the respective Bench
for hearing under order XL-1 Rule 11 C.P.C.

ble.

By Register
Patna H.C.

29/1/16.

Dejal Singh. appellant
through
Ran-Phanda Bahuguna
Valent

For the High Court of Judicature at Fort William in Bengal
Civil appellate jurisdiction

Memorandum of appeal from Appellate Decree
No. of 1915-

Divka Singh son of Jag bandhu resident of
Kumarpuri in Kharsal Zamindari Tahasil
Bargarb Saha Sambalpoor. . . . Plaintiff
- Versus -

1. Dejal Singh Bahadur resident of Kana Khira
in Kharsal Zamindari Tahasil Bargarb (2)
Secretary of State for India in Council. - Defendants

Declaratory Suit
valued Rs 2000/-

The defendant no 1 begs to present this petition of appeal
to this Honble Court against the judgment and decree
of the District Judge of Sambalpoor passed in appeal no
84 of 1913 dated the 9th September 1915 - Confirming those of the
subordinate judge of the same place passed in suit no 8 of
1912 dated the 6th February 1913 making the above named
Plaintiff and defendant no 2 as respondents on the following
arranged other grounds:-

1. For that the Lower appellate Court is wrong in holding that the grant for maintenance was a permanent one.
2. For that the lower appellate Court should have held that the grounds upon which the grant has been held to be permanent do not raise in law any presumption of permanency.
3. For that the Lower appellate Court should have held that the grant was a mere life grant and that the

Re. Hon. Ch. Fitzgerald for Appl.

The appeal will be heard.
Let the record be sent for and the
usual notices issue. J. Murphy
W. Turner

24.2.16 }

6.

grounds upon which the presumption of life grant has been ~~held~~ ^{held} ~~to~~ ^{to} have been rebutted are wrong in law.

4. For that the lower appellate court should have held that the regrant of the estate after confiscation by Government put an end to whatever right the plaintiff ancestors had and that the subsequent possession of the plaintiff's ancestors was merely permissive one and did not create any permanent right.

5. For that the lower appellate court is wrong in law in holding that the position of the plaintiff after regrant was that the plaintiff merely slipped back into his former position without any fresh grant.

6. For that the lower appellate court was wrong in the interpretation put upon Ex 2 and in the meaning it put upon the words *Shikadar Gauntia*.

7. For that the lower appellate court was wrong in referring to and relying upon the subsequent behaviour of the parties in connection with the point in dispute where as it should have held that the said evidence is not admissible in law.

8. For that the lower appellate court should have held that Ex 2, 4 and 5 do not in law negative the presumption of law ^{that} ^{the} maintenance grant was for life and is wrong in the construction it put upon the said documents.

9. For that the lower appellate court should have relied upon the *Wafiz* - who was and should have held that the plaintiff is bound by the same.

10. For that the lower appellate court should have at least found that the plaintiff is a "*Shikadar* - *Gauntia* or farmer" within the meaning of section 65 A of the Central Provinces Land Revenue Act and that the grounds upon which the lower appellate court finds the contrary are wholly wrong in law.

11. For that the lower appellate court should have

held that the status of the plaintiffs as found by the deputy commissioner in the protection certificate is conclusive in the present suit and that the civil court has no jurisdiction to set it aside.

12. For that the Lower Appellate Court should have held that the suit is barred by limitation.

13. For that the Lower Appellate Court is wrong in holding that the order of enhancement by the deputy Commissioner is a nullity and that it should have held that the civil courts have no jurisdiction to make such a declaration.

Set of Papers

1. The memorandum

2. The certificate

3. The order of Deccan

6/—

I solemnly certify that every
part of the above set forth
above is a good ground of
appeal from appellate
decree.

Rameshwar Majumdar

Valuel

2786/1915-09

I am the only person who has been

Harvey



Decree in appeal.

(Order 41, Rule 35, Code of Civil Procedure.)
District Manbhum, Sambalpur.

In the Court of the District
Judge at Purulia.
Lejal Singh Bamundar Son of
Maha Singh Caste Raj Gond, age 30 years
Occupation Bamundari Resident of
Kumickura in Kharsal Bamundari Tehsil
Bargosh. Defendant no. 1. Appellant.
Versus.

1. Birka Singh Son of Jagabandh Caste
Raj Gond, age 55 years Occupation
Mundari Resident of Kucupuri in
Kharsal Bamundari, Tehsil Bargosh.

2. Secretary of State for India in Council
... Respondents.

Title appeal no. 84 of 1913, from the
decision of the Court of Sub-judge
of Sambalpur, dated the 6th day of
February 1913. - Suit no. 8 of 1912.

This appeal coming on for hearing
on the 12th and 15th day of July 1915
before S. B. Shrivastava Esq. D. C. S., in
the presence of Babu Bamundar

2786/1915-10



Chatterji Vakil for the Appellant and
 of Babu Jagindra Nath Sen Vakil
 and Prasanna Nath Sen pleader for the
 Respondent No. 1. and Babu Ram
 Narain Misra, pleader for the
 Respondent no. 2, it is ordered that
 the appeal be dismissed. Appellant
 will pay the plaintiff respondent
 his costs; the Secretary of State
 respondent, must bear his own costs.

The costs of this appeal, as
 detailed below amounting to Rs 100-8-0
 Rupees one hundred and annas eight
 only are to be paid by the
 Appellant to the plaintiff respondent
 no. 1. The costs of the original
 suit are to be paid as
~~ordered~~^{ordered} by the Lower Court.

Given under my hand, this
 3rd day of September 1915.

Saf. Durjodhan Mahanti Saf. S. B. Dhowle.
 O. Clerk. Saf. J. A. Sen District Judge
 Vakil for Respt. no. 1
 Saf. Prau. K. Roy Saf. B. P. Chatterji 9. 9. 15.
 Vakil
 Sarishtadar
 9. 9. 15-
 Saf. R. C. Misra
 P. Clerk.
 2786/1915-11

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Date of application for the copy.	Date of notifying the requisite number of folios and stamps.	Date of delivery of the requisite stamps and folios.	Date on which the copy was ready for delivery.	Date of making over the copy to the applicant.
18-9-15	20-9-15	18-9-15	24-9-15 <i>[Signature]</i>	28/9/15 <i>[Signature]</i>

CERTIFIED TO BE A TRUE COPY.
[Signature]
24-9-15
Sariastadan,
Dist: Judge's Court, Manbhum-Sambalpur.
Authorized under Section 70, Act I of 1872





Decree in original suit
(Section 205 and 206 of the Code
of Civil Procedure).

District Mautam, Sambalpur.

In the Court of the Subordinate
Judge at Sambalpur
Suit no. $\frac{147}{8}$ of 1907
 $\frac{8}{8}$ of 1912

Dideh Singh son of Jagbandhu Caste
Raj Gaud age 55 years, occupation
Mansabdar, Resident of Kusumpuri in
Kharsal Bamindari, Tehsil Bargarh. Plaintiff
against

1. Bijal Singh Bamindar, son of Moha
Singh, Caste Raj Gaud, age 30 years
occupation Bamindari Resident of Kankhina
in Kharsal Bamindari, Tehsil Bargarh.
2. Secretary of state in council for
India. Defendants.

Claims for declaration that plaintiff
is the maintenance grant holder in
perpetuity of mau Bah Kusumpuri in
Bamindari Kharsal in Tehsil Bargarh
by paying Rs 15/- a year to the
Bamindar and for correction of the

Handwritten signature



16-

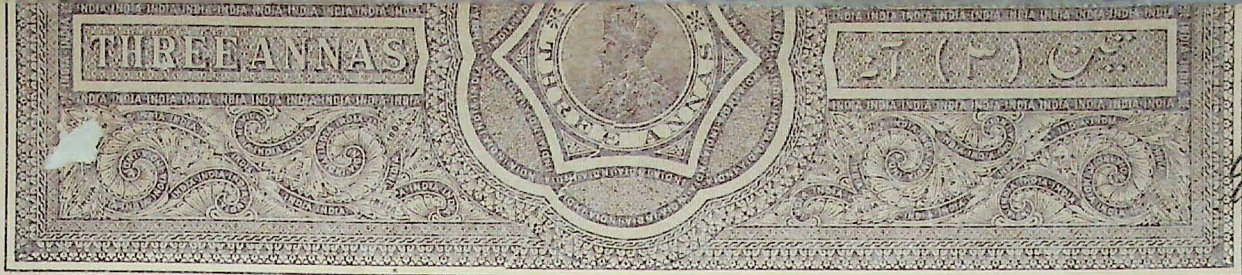
Dewar's Settlement papers.

Valued at Rs 2000/-

This cause coming on on the 15th to 18th days of January, 13 and 6 days February 1913 for final disposal before Babu Prokha Chandra Saha M. A., B.L. Sub-judge of Sambalpur in the presence of Babu Jogindra Nath Sui Vakil and Babu Braja Nath Das pleader on the part of plaintiff and of Babu Barnapada Chatterjee Vakil on the part of the Defendant No. 1 and of Babu Ram Karain Misra, pleader on the part of the Defendant No. 2 it is ordered that the case be decreed against the defendant No. 1 only with costs and interest at 6. P. C. P. a. and it is declared that the plaintiff holds the disputed mouza as a maintenance grant at Rs 15/- a year. The suit is dismissed against the Defendant No. 2, who will

By order

2786/1915-14



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not in any way, be affected by the decision. The Defendants shall bear their costs, and that the sum of Rupees Four hundred Thirty eight and annas four and pice six only be paid by the Defendant No. 1 to the Plaintiff on account of the costs of this suit, with interest thereon at the rate of 6 per cent per annum from this date to date of realisation.

Given under my hand and the seal of the Court, this the 6th day of February 1913.

ref. B. B. Phadkar
 ref. Broj n. Das. ^{incharge} ref. J. N. Singh Judge
 ref. R. N. Misra ^{Christman} ref. B. P. Chatterjee 14.2.13.

Plader. Costs of Suit.

Plaintiff	Amount	Defendant	Amount	Deft. no. 2
		No. 1.		Ann 6.
1. Stamp for plaint	...	Stamp for Power	...	0-8-0
2. Do. for Power	...	Do. for plaint	1-0-0	3-8-0
3. Do. for Exhibits	...	Plader's fee	...	
4. Plader's fee on Rs 2000/-	100-0-0	on Rs 2000/-	100-0-0	100-0-0

BB Phadkar

2786/1915-15



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5. Subsistence for	Subsistence	2786/1915-16
witness of attendance ...	7-3-0 for witnesses ...	9-3-0
6. Commissioner's fee ...	Service of	
7. Service of process ...	process ...	4-0-0
8. Petition ...	Commissioner's	
9. Cartridge papers ...	fee ...	
10. Costs of original	Stamp for	
11. Costs of 1 st appellate court	Exhibits ...	8-15-
12. Costs of 2 nd appellate court	Cartridge paper ...	1-0-0
	Costs of	
<u>Total 438-5-6.</u>	original court	132-9-9
	Costs of 1 st	
	appellate court	121-8-0
	Costs of 2 nd	
	appellate court	114-4-0
	<u>Total 482-9-9</u>	113-1-0

Notice to take back documents.

The parties in this case are hereby required to take back as soon as this decree shall have become final, the documents produced by them which are Exhibits in the case. If they fail to take them back the documents will be destroyed, either when they are destroyed or on the expiry of one year from the date of this becoming final. (Rule 35, 35A & 35B. Order of P.C. Sindh III P. 81 of High Courts' general rules & order in case).

Dated _____
 Signed by _____
 Lalit _____
 Signature of the undersigned officer of the Court.

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9

Date of application for the copy.	Date of notifying the requisite number of folios and stamps.	Date of delivery of the requisite stamps and folios.	Date on which the copy was ready for delivery.	Date of making over the copy to the applicant.
18-9-15	20-9-15	18-9-15	24-9-15 24/9/15	28/9/15 <i>[Signature]</i>

CERTIFIED TO BE A TRUE COPY.
[Signature]
Sarisadan,
Dist: Judge's Court, Manbhumi-Sambalpur.
Authorized under Section 78, Act I of 1972

24-9-15

h
23/4

HIGH COURT.

DEPARTMENT.

Collection No.

File No. of

SUBJECT.

Notes and Orders.

Deputy Registrar

*

(A) In this case, the Hon'ble Mr. -- Justice Roe and the Hon'ble Mr. Justice Jwala Prashad have allowed cost to the Principal Defendant, while dismissing the appeal.

*
S.A.No.2786 of
1915

It seems that the Defendant No.1 was the appellant and the plaintiff was the Respondent while the Defendant No.2 (Secretary of State) was also impleaded as a Respondent.

Their Lordships probably meant Respondent for Defendant. But there would be one difficulty, viz., that the Plaintiff is not described in the Memo of appeal as Principal Respondent and Defendant 2 as as proforma Respondent. So the word -----
be
"Principal Defendant" may perhaps/changed into "Respondent No.1 i.e. the Plaintiff".

(B) As to the last lines of the judgment may I take it that their Lordships do not award any cost to the Respondent No.2 --- (Secretary of State) ? If however their Lordships mean to award costs to him as

well

well though not a separate set, the word "Principal Defendant" in the second line of the last para will have to be changed to "the Respondents". Orders may be ---- obtained from their Lordships on this -- point as well.

The original Judgment and a copy of the paper book are herewith forwarded.

Please put up this note before their Lordships and send back this note with the orders thereon.

A. S. Chatterjee

Assistant Registrar.

16/4/17

Hon. J. R.

Kindly peruse the note above. Evidently Resp. No 1 has been allowed his costs and the necessary correction may be made. It seems that no costs were meant to be given to the Secy. of State. In both the Courts below he was directed to bear his own costs (vide paper book)

Amund

DR

20.4.17

Asst Reg: Cuttack Circuit

The correction has been made. No costs to Secy. of State, the file is returned.

Amund

20.4.17

The Hon'ble Mr Justice Roe.

The Hon'ble Mr Justice Jwala Prasad.

Appeal from Appellate Decree No. 2786

of 1915.

Ujal Singh.....Appellant.

versus

Dirbar Singh and another....Respondents.

The facts of this case are that

the plaintiff is a younger member of the *Kharal* Kanukbir family. His ancestors were

before the mutiny in possession of Mouzah

Kusunpuri in lieu of maintenance. At the

time of the mutiny the plaintiff's father

~~and grand-father were executed~~ *and the*

defendant's father was ~~also~~ *grand* *son* executed for

complicity in the mutiny, and the Kanukh-

Kharal

~~his~~ estate was confiscated. After the

mutiny the defendants' father was re-

stored to ~~the~~ possession of the property

and allowed the plaintiff to again enter

upon the Kusunpuri village. In 1895 the

2786/1915-18

defendant's father obtained permission from the Deputy Commissioner to increase the jamma of the village but upon a protest by the plaintiff he swore never to avail himself of that permission. At a later settlement the defendant himself admitted to the ~~settlement~~ Assistant Settlement Officer that the plaintiff had been given the village in lieu of maintenance. In spite of that the Settlement officer recorded the plaintiff as a thincadar whose rents were liable to enhancement under section 65(A) of the Central Provinces Land Revenue Act. The plaintiff therefore brought the present suit for a declaration that he held a maintenance grant upon which a rent of Rs 15 per annum was fixed in perpetuity. He also applied for correction of the finally published record-of-rights ~~of~~ the ~~settlement~~. But when it appeared that it was necessary that Government should be represented and ^{would} ~~should~~ contest ~~the suit~~ ^{the prayer for the alteration of the record} upon that prayer he withdrew it. The

2786/1915-19

Lower Courts have concurred in findings of fact as we have stated them and have made a declaration that the plaintiff as a maintenance grant upon which the rent is fixed at Rs 15 per annum. Against this decree the defendant, the present head of the Kharsal family appeals and the ground taken in appeal is that the estate having lapsed at the time of the mutiny there can be no continuation to the plaintiff of the grant under which his ancestors held the village prior to the mutiny. We are unable to see that this is a ~~grant~~^{ground} upon which the decree made by the Courts below can be assailed. There is no suggestion in the judgment of the learned Subordinate Judge that the plaintiff's right to hold the village at Rs 15 per annum is a permanent or heritable right. The words "in perpetuity" are used in the judgment of the learned District Judge but no decree has been made upon the

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judgment of the learned District
 Judge. The decree made is merely
 that the appeal is dismissed. What
 may be rights of the parties on the
 death of the present plaintiff are not
 in issue in the case before us. ~~We~~⁴
 are satisfied ~~upon the facts found~~
~~namely~~ that when the head of the Khars-
 al family was reinstated as pro-
 prietor of the whole zemandari he made
 a grant to the present plaintiff in
 lieu of maintenance, and we are
 further satisfied that the former
 head of the family undertook never
 to enhance the plaintiff's rents, and
 we are also satisfied that the present
 head of the family has admitted the
 plaintiff's right to hold the village
 in lieu of maintenance. It cannot in
 our view be said that the plaintiff
 is a lessee whose rents are liable to
 be enhanced under section 65(A), nor
 can we see ~~any~~ that there is anything

~~to which the plaintiff can take except~~
affidavit upon the
fact found & take

2786/1915-21

ception in the decree framed by the
learned Subordinate Judge.

The appeal is dismissed
costs to the p
not necessary to
costs in favour of the Secretary of
State.

D/- 14th March 1917.

7/10
Jwal Kano

O.W.F.

14/3.