

IN THE HIGH COURT OF JUDICATURE AT PATNA.

(Civil Appellate Side.)

TITLE PAGE.

PART I.



(THIS FILE MUST BE PRESERVED FOR EVER.)

APPEAL FROM A. S. No. 2430 OF 1914

Balwanth Lal Appellant,

Versus

Puro Das Respondent.

DATE OF DECISION OF HIGH COURT

18/5/16

DITTO.

OF PRIVY COUNCIL

243/1914-01

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HIGH COURT OF JUDICATURE AT PATNA.

S. APPEAL NO. 243 OF 1914.
Brahmananda Mallick Appellant
 versus
Danoo Doss Respondent

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2.	Appeal Memo. —	2-6.
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4.	Copies of Decrees. —	18-31.
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ORDER SHEET.

3 Appeal No. 243

of 1914.

Brahmananda Mahanty A.

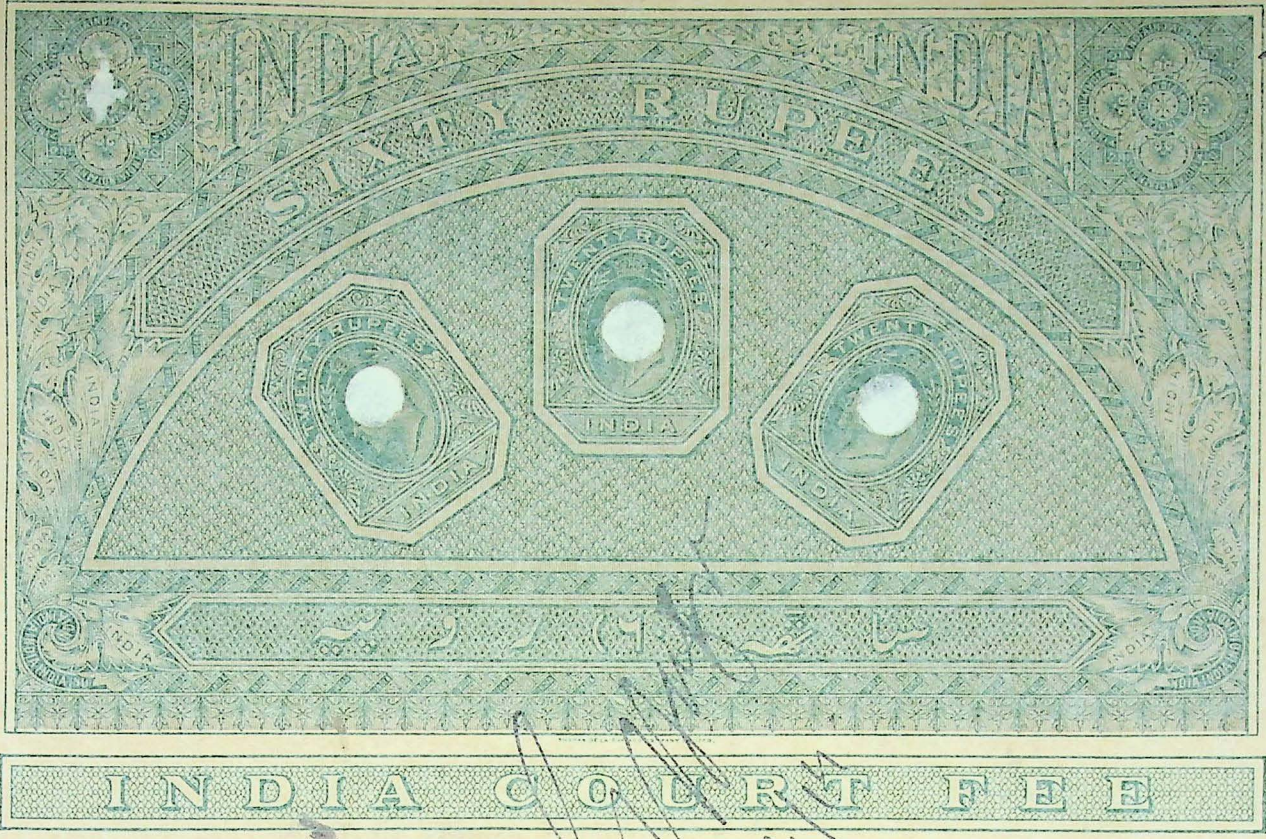
G. C. Paul

Panoo Das

R

S. C. Chakravarty

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	18.5.16	<p>Appeal heard, and set aside the order of the d. appellate Court, and remand the case to lower appellate court for finding costs abide the result.</p> <p style="text-align: right;"><i>[Signature]</i> Peshkar</p>	
	12.6.16	<p>Decree prepared & signed & sealed this day.</p> <p style="text-align: right;"><i>[Signature]</i> Peshkar</p>	



Presented
7.1.14
06

BB. M.

Group VI

Brahmananda Mahantly
through
Girish Ch. Paul
Vakil.

In the High Court of Judicature at Fort William
in Bengal.

Civil appellate jurisdiction.

Memo of Appeal from appellate Decree
No. 243/1914 Cuttack

Brahmananda Mahantly Appellant,

vs
Panu Das & others Respondents.

Appeal valued at Rs. 2100

No. 1032

Sold to Gyrieh Chandra Paul

of Wahie High Court

Calcutta

Time
The 2/1/1877

Gyrieh Chandra Paul
Treasurer

0187
M
21

[Faint, illegible handwritten text, likely bleed-through from the reverse side of the page]

20 Ask the Vakil of the Appellant to state the
amount upon which Court fee has been paid on
this appeal.

L. W. P.
Deputy Registrar
12. 1. 14.

The Vakil has now stated the amount. The
Court fee paid is insufficient.

The Hon. Secy.
22. 2. 14.

Register the appeal.

L. W. P.
Deputy Registrar
2. 2. 14.

4.

2. For that the Court of appeal below should have found that the plffs cause of action arose out of acts resulting from the fraud & collusion of the defots who combined with one another in order to deprive the plff during his minority, of his legitimate share in his ancestral properties.

3. For that the courts below have erred in law in giving effect to the ex parte decree as against the plff in suit no 1533 of 1906 in as much as the said decree was a nullity, it having been passed against him while he was minor and he was not represented by his mother although she was held to be the proper guardian-ad-litem of the minor.

4. For that the courts below should have found that the filing of the written statement by the mother alleged to ^{be} acting for the minor & then the obtaining of an ex parte decree in suit no 1533 of 1906 against the minor represented by defot no 3 are the results of fraud committed by the defots.

5. For that the courts below should have found that the absence of an order appointing the mother as guardian-ad-litem of the minor & the passing of the ex parte decree in suit no 1533 of 1906 against the minor as represented by another person viz defot no 3 made the decree a nullity as against the plff.

6. For that the courts below have erred in law in holding that the sale in execution of the decree in suit no 1533 of 1906 could affect the property of the minor.

7. For that the bond the subject-matter of
suit

243

The appeal will be heard.
Send for the record and issue the
usual notices.

B. Giris Chandra Pal }
- for appeal }
Mar 21st April 1914.

A. A. Chatterjee
C. Benchet

3.

suit no 2796 of 1906 having been executed by defot no 3 alone + there being no finding in that suit that the minor, now the plff, was in any way benefited by the money alleged to have been borrowed under that bond. and the finding of the learned Subjudge regarding the service of notice upon the minor or his mother having been challenged in appeal + the learned District Judge not having come to any finding on that point, the decision is wrong.

8. For that even conceding but not admitting that the defot no 3 Ganeswar Mahanty was the adopted son of Upendra Mahanty the natural father of the plff, the courts below are wrong in holding that the sales in execution of the decrees in suits nos 1388 + 1529 of 1906 affected the minor share in the ancestral properties in-as-much as the minor was not made a defot in those suits.

9. For that the court of first instance should have held that there was no necessity for specifying the exact share of the minor in the ancestral properties in-as-much-as it has been definitely laid down by law what the share of the adopted son would be in proportion to that of the natural born son.

10. For that the learned District-Judge is in error in dismissing plff's suit on the ground of multipariousness as the plff sued in his own capacity and in his capacity as shewait of his family-idols, the cause of action being joint viz fraud + collusion on the part of the defots.

11. For that the court of appeal below has failed

6.
failed to come to any finding as to whether some of the
properties in suit are debatable and has also failed to come
to any finding on the ^{other} points urged in appeal.

12. For that the finding of the learned District
Judge that the defd no 1 is not interested in the alleged
purchase of defd no 2, nor is defd no 2 interested in the alleged
purchase of defd no 1 is incorrect & contrary to the pleadings
in the suit.

Certified that the grounds above set forth
are each of them good grounds of 2nd appeal

Girish Ch Paul
Vakil.
2-1-14

List of Papers.

Judgment + decree
appeals against — 2
Judgment + decree
of the Court of 1st instance — 2
Sakalatnama — 1
Memo of 2nd Appeal — 1
— 6

High Court

Dated 2nd January
1914



18

80
Ca-243/14

	Decree	in	appeal.		
(Order	is,	Rule	35	Code	of
Civil	Procedure)	District	Court	of	No
Court	of	the	District	Judge	at
C. & M.	Prakasa	Ward	Indhant	San	of
Ufendra	Indhanti	deceased	of	Magan	Pras
Hairapur					Maint.
Sehari	Manjaram	of	Sri	Madan	Indhan
Shakar	present	at	Magan	Pr	Hairapur
and	of	Sri	Parmanand	Sahi	Indhad
present	at	Magan	Indhan	Sahi	Pras
Hairapur				Appellant	vs
1. Pann	Sai	San	of	Kripasindhu	Sai
deceased	2. Pann	Sai	San	of	Pann
Sai	alias	of	Madhya	Saran	Madha
Jan	Sahi	and	3. Pann	Indhanti	Pras
San	of	Pannamali	Indhanti	deceased	of
Magan	Pr	Hairapur			Def
Respondent:-	Appeal	to	195	of	
1912	San	the	decision	of	the
Court	of	the	S	J	at
C. & M.	dated	the	20 th	day	of
March	1912	0	S	to	583/12
This	appeal	came up	on	for	hearing
on	the	6 th	day	of	Sept
					243/1914-09

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.
12/11/13	19/11/13	22 29/11/13	29.11.13	2/12/13

No. 6247

Harekrishna Das.

Sulea
→





17

1913	before	H	R	Perrot	Cogn
I	to	S	District	Judge	of
Santhak	in	the	presence	of	Babu
B.	N	Sinha	Vahile	for	his
Appellant	and	of	Rai	J	N
Bain	Bahadur	Vahile	for	the	Respondent
1	and	2	and	Respondent	to
3	did	not	appear	through	duly
sums	with	both	Shr.	his	appeal
is	dismissed	with	costs	to	the Respondent
The	Costs	of	This	appeal,	as
details	below	amounting	to	Rs 105-8-3	
(Rupees	one	hundred	and	five,	annas
Eight	and	pice	three	and,	are
to	be	paid	by	the	appellants
to	the	Respondents			
Given	under	my	hand	this	6 th
day	of	September	1913.		
	for	H	R.	Perrot.	10.9.13.
		District	Judge		
for	A.	to	Shri	Shrinadar.	
for	B.	Sh.	Sinha	Vahile	
for	J.	N.	Bain	Vahile	
	Appellant		Costs of appeal	Respondent	Amount
			Rs. 105-8-3		to pay
Stamp for	Memorandum of Appeal	for	Stamp for	for	for



Stamp for power -	8-4	Pladar's fee on Rs 2100	105-00
Service of Process	14-4-4	Carriage paper	3-
Pladar's fee on Rs 2100 -	105-00	TOTAL	105-8-3
Certified copies of the docu -	7-2		
Carriage paper	4-2-6		
TOTAL @	176-12-6		

The parties in this case are hereby
 required to take each as soon
 as the same shall have become
 final the documents produced by them
 which are exhibited in the case
 In this case to take them
 each the documents will be distributed
 at such time as the Court
 may prescribe.

By S. A. Perera,
 Dist. Judge.

By B. H. Suman, S. J. M. Basu ✓
 By B. M. Kapadia

Copies

Received and found to be a true copy
 Stamp of the Court
 Shamsuddin Khan
 29/11/13

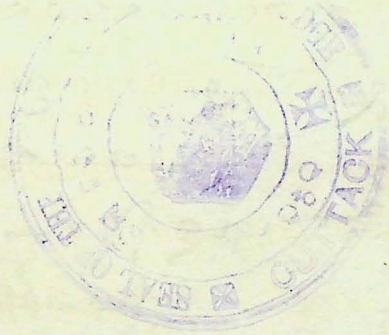
Certified true copy
 [Signature]
 27/11/13
 Authorized under Section 16 Act 1 of 1872

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.
19/3/12	20/3/12	21/3/12	25/3/12	26/3/12

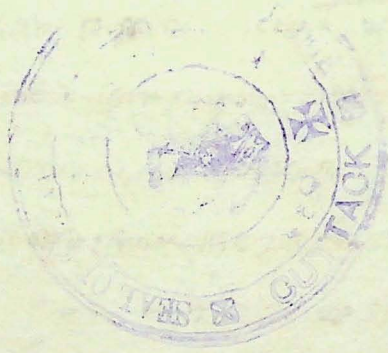
no. 1494

Harikrishna Das.

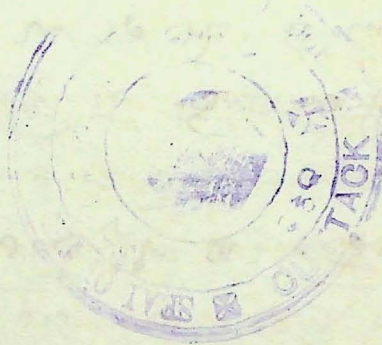
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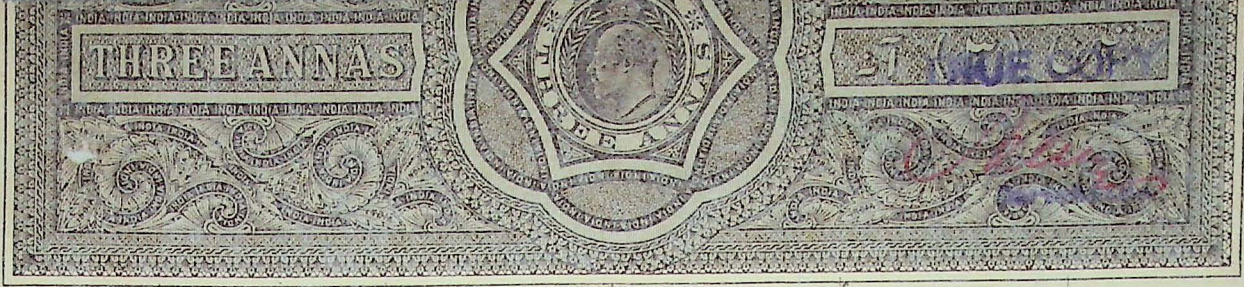


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(14) 1041 00-977 4m 004

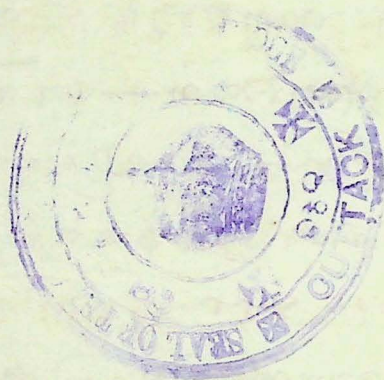
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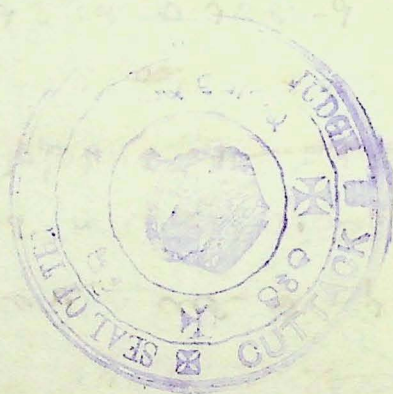
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1. 1916... $\frac{100}{100}$...

2. 1916... $\frac{100}{100}$...

3. 1916... $\frac{100}{100}$...

4. 1916... $\frac{100}{100}$...

5. 1916... $\frac{100}{100}$...

6. 1916... $\frac{100}{100}$...

7. 1916... $\frac{100}{100}$...

8. 1916... $\frac{100}{100}$...

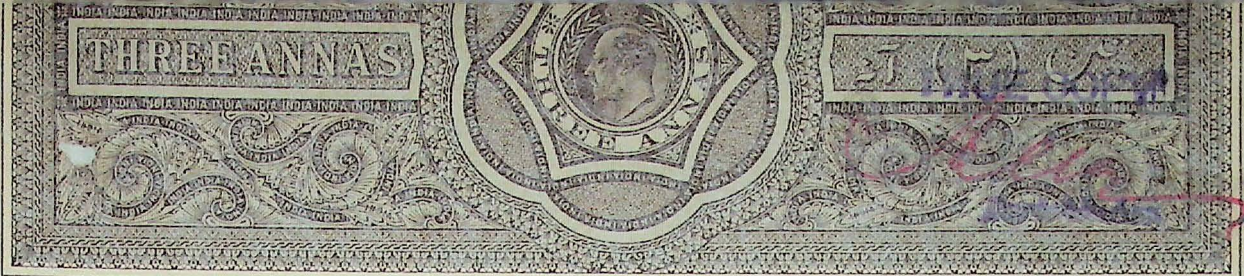
9. 1916... $\frac{100}{100}$...

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17

Handwritten text in Odia script, likely a header or introductory line.

Handwritten text in Odia script, possibly a date or reference number.

293/1914-21

Main body of handwritten text in Odia script, consisting of several lines of prose.

sd Ak Das Gupta Sd J. Roy

sd N. K. Dutt

sd Salyabari Das.

20-3-17

Bottom section of the page containing additional handwritten text, possibly a list or a signature block.

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.





37.
18

Handwritten text in Odia script, arranged in several lines. The text appears to be a list or a set of notes, with some words underlined or grouped together. The script is cursive and somewhat difficult to read due to its style and the handwriting.

sd MR Dasg. sd G. Ray. sd N. K. Dutt. sd Subyudh

Copyed by
Eger Mahomed
Copyist

checked and found to be a true copy.
app. properly paid Police charges.
witnessed
Shamsuddin Khan

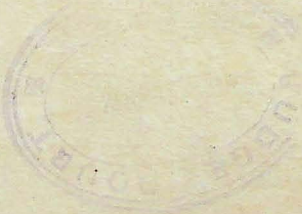
25/3/12

Certified to be a true copy
[Signature]
25/3/12
Sd/- Subyudh, J. K. S. Court's Officer
Authorized under Section 78 Act 1 of 1878

K. S.

MANUSCRIPT

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.



4/10/13

Judgment in appeal from appellate,

decree No. 243 of 1914.

*From a decision of H. R. Sarda Esq. District Judge of Calcutta.
----- dated the 6th September 1913.*

Present :-

The Hon. The Chief Justice

The Hon. Mr. Justice Sharfuddin.

Brahmananda Mahanty-Appellant

Versus

Pandoo Das and others, Respondents.

B. Girish Ch. *al for the
Appellant.

B. Suresh Ch. Chakrabarty for
the respondents.

This appeal arises out of a
suit brought by the appellant for
various reliefs in respect of proper-
ties formerly held by him in his per-
sonal capacity and also as sebaite of
three different idols in ~~three~~ three
different villages. The first court
went into the merits of the case at
length and dismissed the suit. The
defendants who are respondents here

37

pleaded at a very early stage ~~of~~ the
suit that it was bad for multifariousness.
The Subordinate Judge brushed this plea
aside with the remark that the suit was
not bad for multifariousness . On appeal
the District Judge said that it was
useless to go into the details of the
case or discuss the merits as in his
opinion the suit must fail on account
of multifariousness. He ~~therefore~~
dismissed the suit on that ground. In
second appeal it is contended that the
learned Judge was wrong in entertain-
ing this plea in appeal at all, ~~and~~
secondly that the suit is not bad for
multifariousness, and thirdly that if
the suit is open to this objection
it has not been suggested, still less
shown, that the trial of the suit has
been in any way prejudiced by the
alleged multifariousness. The case
is certainly somewhat complicated. It
has not been correctly stated in the



opening paragraph of the judgment of the learned Judge. The nature of the case appears from paragraph 13 of the plaint which contains the prayer for relief. In that paragraph the plaintiff prays that it may be declared that the debattar property specified in the schedule (Ka) was wrongly sold in execution of decrees obtained in suits Nos. 1533 and 2796 of 1906 which had been obtained by ^{the} collusion and fraudulent acts of the defendants; ~~and~~ ^{and} further that the properties specified in schedules (Kha) and (Ga) were wrongly sold in execution of those decrees. ~~The~~ The second claim for relief was that it might be declared that defendant No. 3 was not the adopted son of plaintiff's father, but even if he was, the properties specified in schedules (Gha) and (Una) had been wrongly sold in execution of decrees obtained in suits 1388 and 1529 of 1907. Para-

graph 5 of the plaint shows that the ³⁸
plaintiff charges the defendants with
having collusively and fraudulently
obtained all four decrees mentioned
above. The suggestion is that ~~it~~^{all} was
~~a~~ part and parcel of the same tran-
saction ~~and~~ the same fraud. It is true
that the plaintiff sues in no less than
four different capacities, but pro-
perty held by him personally and pro-
perty alleged by him to be debattar
and held by him as sebait of one or
other of the idols were put up for
sale together in execution of the
same decrees. It is therefore
difficult to see how the plaintiff
could have avoided suing, as he has,
both in his personal capacity and as
alleged sebait of the idols. I am not
satisfied that there was any real
multifariousness in the case, but
if there was, the Subordinate Judge
~~seems to have~~ had no difficulty in
dealing with the case on the merits.

88

grant of the writ above and the

plaintiff charges the defendant with

having committed an offence

against the law and is entitled to

the writ above. The defendant has not

shown any ground for the writ

and it is true that the defendant

has not shown any ground for the writ

and it is true that the defendant

has not shown any ground for the writ

and it is true that the defendant

has not shown any ground for the writ

and it is true that the defendant

has not shown any ground for the writ

and it is true that the defendant

has not shown any ground for the writ

and it is true that the defendant

has not shown any ground for the writ

and it is true that the defendant

has not shown any ground for the writ

and it is true that the defendant

has not shown any ground for the writ

and it is true that the defendant

has not shown any ground for the writ



The ~~refused~~ have not been presented in any way by the form of the suit -

In my opinion the District Judge ought Lyo

to have disposed of the case on the merits and not to have dismissed the suit on the ground of multifariousness.

I would allow the appeal, set aside the decree of the District Judge, and remand the case to the lower appellate court to be restored to the pending file and disposed of according to law.

I would direct that the costs of this appeal ~~should~~ be costs in the cause to abide the result.

18th May 1916.

Curt

I agree

L. Thompson

101576

293/1914-27

W
The applicant has not been furnished with a copy of the writ and he has not been notified of the date of the hearing.

to have disposed of the case on the
basis that he had not been furnished the
writ on the ground of non-residence.
I would allow the writ, set aside
the order of the District Judge, and
refer the case to the lower court for
it to be referred to the hearing
and disposed of according to law.
I will direct that the costs of this
application be borne in the order to

Writ

1 page

01/21/10



41

In the High Court of Judicature at Patna.

(APPELLATE CIVIL JURISDICTION.)

Appeal from Appellate Decree No. 243 of 1914.

Appeal preferred on the 2nd of January
1914, against the decree of H. R. Perrott Esq District

Judge of Zillah Cuttack dated the
6th of September 1913, Confirming the
decree of Baboo Narendra Krishna Beutta Subordinate Judge
of Cuttack.

the 9th of March 1914 dated

Brahmananda Mahanty for self and as shikait of the idol
Madan Mahantjee and of the idol Paramhansarath Mahadev
and Jatheswar Mahadev

Plaintiff

Appellant,

versus

1 Pann Bas, 2 Radhu Bas, 3 Ganeswar Mahanty,

Defendants

Respondents.

243/1914-28

Appeal valued, for purposes of jurisdiction, at Rupees 21.00-0-0
Ditto. for purposes of Court-fee, at Rupees 8.00-0-0

Coming on

Upon the hearing of this Appeal in a Division Bench before

The Hon'ble

*Sir, Edward Maynard des Champs Chamier Kt., the
Chief Justice*

and

The Hon'ble

*Mr. Justice
A. Sarafuddin*

One of the Judges of this Court,

on the

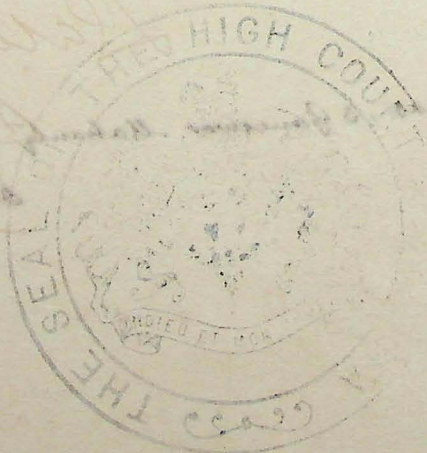
12th

day of

May

1916.

IT IS ORDERED and DECREED that *this appeal be and the*
same is hereby allowed and ~~sent to~~ ^{but} the decree of the lower appellate
court and ^{is set aside} ~~removed~~ the case to ^{is remanded} that court to be restored
to the pending file and disposed of according to law. and ^{it is} ~~further ordered~~ that the costs of this appeal be costs in the case
to abide the result.



And

And it is further ORDERED and DECREED that the

42

do pay to the

(as per details at foot),

being the amount of costs incurred by _____ in this Court with interest thereon at the rate of six per cent. per annum, from this date until realization: And it is further ORDERED and DECREED that the

do pay to the

the costs incurred by _____ in the Lower Court, with interest thereon at the rate aforesaid from the date of the decree of the said Lower Court until realization.

Dated this 18th day of *May* in the year of Our Lord One Thousand Nine Hundred and *sixteen*.

Mookhtear's costs *Appellant's costs*

	Rs.	a.	p.			
Drawing grounds of appeal ...	128					
Hearing fee ...	32	0	0	32	0	0
Mookhtear's fee ...	0	0	0	0	0	0
Court-fee for Memo. of appeal...	60	0	0	60	0	0
" for Vakalatnama ...	2	0	0	2	0	0
" for Mookhtearnama ...	0	0	0	0	0	0
" for Tullubana ...	3	0	0	3	0	0
" for copy of decree ...	10	0	0	0	0	0
Costs of preparation of Paper-Book ...	7	8	0	4	0	0
" of former hearing ...	0	0	0	7	8	0
TOTAL ...	112	8	0	145	8	0

Lalant

1064 Brij Mohan

12.6.44

Compromised
10/6/44

