

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. D.* No. *1173* OF 1915

Kheba Rouh Appellant,

Versus

Durga Prasad Senapati Respc

DATE OF DECISION OF HIGH COURT

18/5/46

DITTO.

OF PRIVY COUNCIL

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HIGH COURT OF JUDICATURE AT PATNA.

S. APPEAL No. 1173 OF 1915

Lhetra Rout Appellant,

versus

Durga prasad Senapati Respondent.
40/11

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ORDER SHEET.

2nd Appeal No. 1173

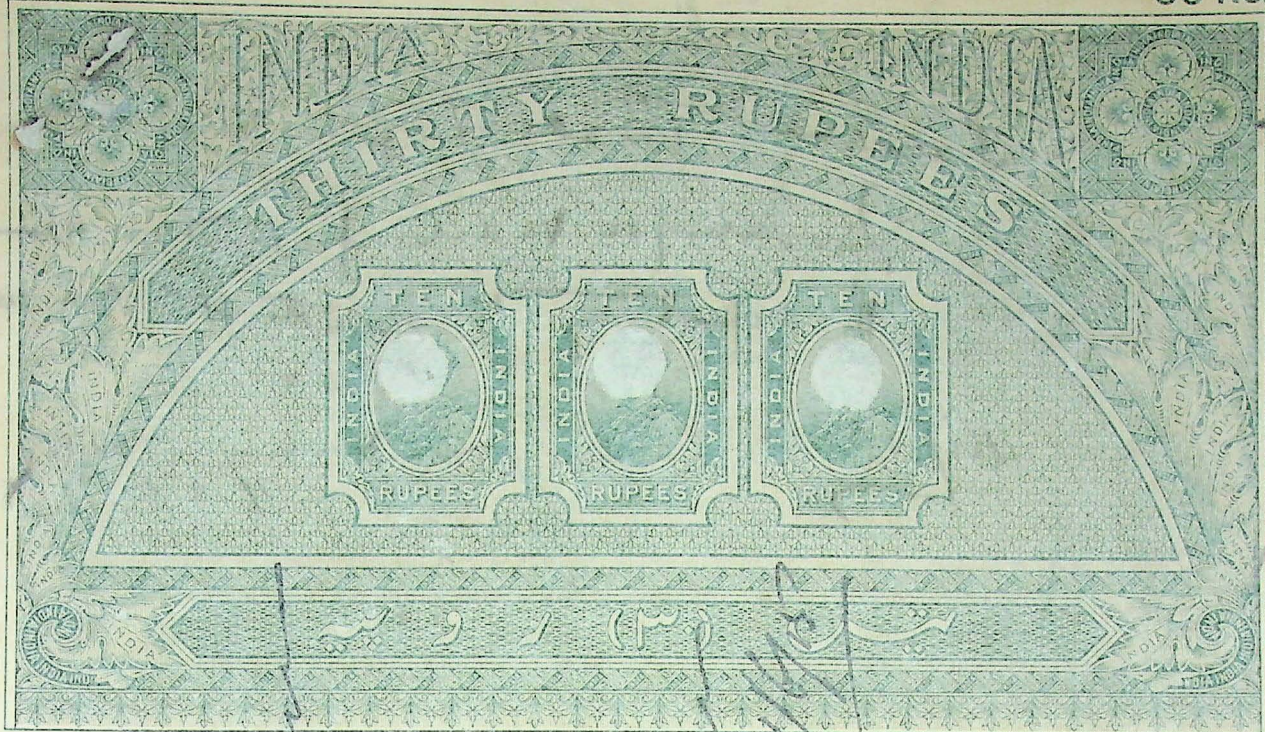
of 1915

Lhetra Rout - appellant
vs

Durga-prasad Senapati, Respondent.

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.)
	18.5.16	Appeal heard and dismissed with costs. <i>[Signature]</i> Peshkar	
	12.6.16	Order prepared & signed & sealed <i>[Signature]</i> Peshkar	

1173/1915-03



INDIA COURT FEE



Khetra Cant - Sept 22 1915

through

Jayram Nathi Shastri

Vakil.

Rs 468. Why

*Memorandum of Appeal
from Appellate Decece.
No 1173 of 1915*

*Khetra Cant. Sept 22 - Appellate
do*

*Durga Prasad Senapati & another vs Peps
and Magan Senapati - Sept 22 1915 } Reported*

*Appeal valued
at Rs 618/4*

*Challan
No 957.*

*1182
1.6.15
Dated
11.6.15*

from

Saleh Babu Jeyendran

Murugan Vakil for the same

P²⁸
R²⁸
1/6

Rs. 30/- only of Rs. 31st May 1915.

Alip²⁸

Shri H. S. S. S.
31. 5. 15.

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

Memorandum of Appeal
from appellate Decree.

Khetra Raut of Sergod, Pergannah Khejuri, P.S.
Balasore District Cuttack. - (Dep't. No. 2) Appellant

Versus.

1. Durga Prosad Senapaty
2. Damodar Prosad Senapaty
of Patna Sergod, Pergannah
Khejuri, P.S. Balasore, -
District Cuttack } (Plffs.) Respondents

3. Maghni Senapaty alias
Maghni Raut of Sergod
Pergannah Khejuri, P.S.
Balasore, District Cuttack } (Dep't. No. 1) Respondent

424/13
appeal valued at
Rs. 618/-

The Defendant No. 2 abovenamed being dissatisfied
with the Judgment and Decree passed by the District
Judge of Cuttack dated 3rd March 1915, reversing
those of the Munsiff 1st Court of Balasore dated
10th September 1913, begs to prefer this appeal to
this Hon'ble Court making the Plaintiffs and Dep't.
No. 1 abovenamed Respondents on the following grounds

Grounds

1173/1915-05

Benjamin (not taken for
Benjamin in my life — brother

The appeal was heard. as
the record in suit for and the record
shows mine.

The 2^d April }
1815 }

E. E. Fletcher

Attorney.

4.
Jeji-m
Ant
1915

Grounds.

1. For that the judgment of the Lower Appellate Court should have stated the points for determination and the decision thereon.
2. For that the learned District Judge should have held that as the mortgagor had no title to the land he could not give any valid mortgage in favor of the Plaintiff.
3. For that the lower appellate Court should have held that the deed of release in favour of Lakshmi did not create title for the first time but supported it.
4. For that the learned District Judge was wrong in holding that the Defendant No. 2 derived his title from the deed of release and was therefore estopped from denying the title of Magany who executed the deed of release in his favour.
5. For that the learned District Judge should have held that the Plaintiff could not enforce his mortgage against Defendant No. 2 who was in peaceful possession of property, for considerable length of time.
6. For that the Lower appellate Court was wrong in decreeing the suit without finding that the mortgagee after taking reasonable care to ascertain that the mortgagor had power to create the mortgage and had acted in good faith.
7. For that in view of the fact that the mortgage bond itself showed that neither Magany nor Lakshmi had any title the lower appellate Court

Court should have held that the onus of proving the validity of the mortgage lay heavily upon the mortgagee.

6. Further that the Courts below should have held the suit to have been barred by limitation asked with the permission of the Court on 2/9/15.
Shankar Vakil

List of Papers.

This means: of appeal. 1
Vidhavalambam 1
Judges & Devises of } 4
both the L. Cts. }
6.

Certified that the grounds mentioned above are good grounds of 2nd appeal.

Jagdish Nath Mukherjee
Vakil.

A. B.

Mortgage deed dated 8-9-99 to be inserted in the paper book on behalf of the appellants in the above appeal.

Jagdish Nath Mukherjee
Vakil.

Mr. 7-8

8

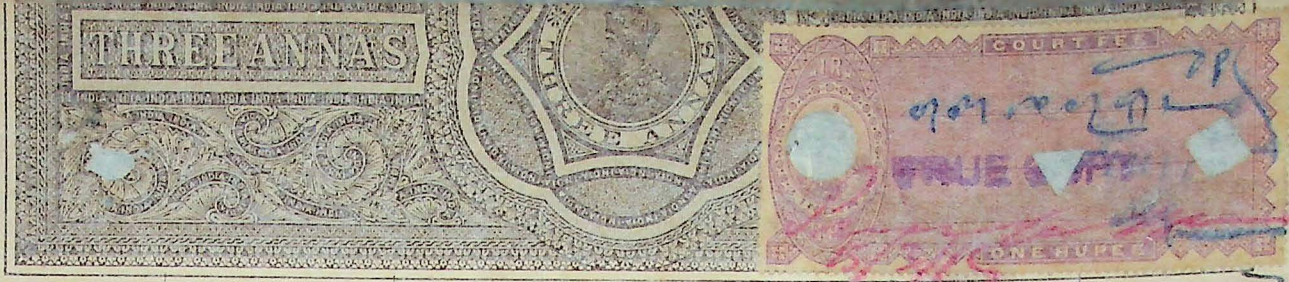
Leicester

mi.

for

6.

13)



7.

Decree in appeal 75
 Order 41, Rule 35, Code of
 Civil Procedure, District Court,
 In the Court of the District
 Judge at Latak
 1. Danga Prasad Senapathy
 2. Lakhmidhar Prasad Senapathy & } of
 after his death his heirs } Patne
 appellants nos 1 & 3 were substituted in } Sengod
 this place on 30.11.14. } Ph:
 3. Damodar Prasad Senapathy } Kherjuri
 } Plffs
 appellants.

(Versus)
 1. Maguni Senapathy alias Maguni } of Sengod
 2. Khetra Prasad } Ph:
 Kherjuri Defdts Respds.

This appeal is valued at Rs 618-4-0.
 Sumiff appeal No: 424 of 1913,
 from the decision of the Court
 of the Sumiff 1st Court Balasore
 dated the 10th day of September
 1913. Co. S. no 1683 of 1912.

Description of the mortgaged property.
 1. Sub-Registry office & Police Station Balasore.
 Ph: Kherjuri in Dangi pada Insurga

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.
15-3-15	15-3-15	15-3-15	15-3-15	15-3-15

1621

Genowarins

[Signature]





28.

3 Acres - 24 decimals of

Lands recorded in the name of
 Dept. no. 1 in the Provincial Settlement
 of which jama is Rs 5/2/4.
 No: 156 - 3 Kittas H. - 73. No: 297 - 1 Kitta - H. - 08
 No: 299 - 1 do: H. - 08. No: 301 - 1 do - H. - 003
 No: 379 - 4 do: H. - 68. No: 295 - 1 do - H. - 10
 No: 298 - 1 do: H. - 12. No: 300 - 1 do: H. - 50.
 No: 391 - 1 do: H. - 92. Total - - - - H 3 - 24 decimals

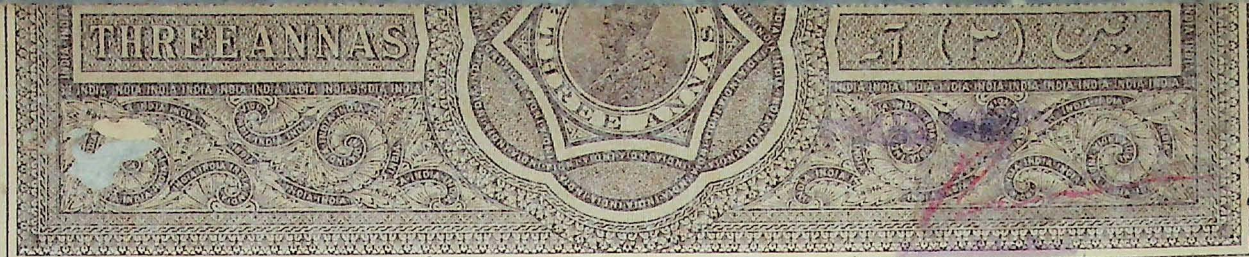
2. Sub Registrar office and Police Station
 Balasore Mohal Pargana in Patitanki Samil
 Uthuli Mouza H. 1 - 24 decimals of lands
 recorded in the name of Dept.
 no. 1 in the Settlement; of which
 jama is Rs 1-6-0.

No: 580 - 9 Kittas - H. 1 - 24 decimals.

3. Sub Registrar office and Police
 Station Balasore No: 735 - Pargana: Khejuri Mahal
 Panchagol Samil in the Mouza Panchagol
 H. - 74 decimals of land recorded in
 the Settlement in the name of
 Sarda Dibya Mother of the Dept.
 no. 1; of which the jama is
 No 1-4-6. No: 608 - 3 Kittas - H. - 74 decimals.

4. Sub Registrar office Pargana: Khejuri

1173/1915-09



3
9

Mahal Panchagad Samil in the Muzra
 Panchagad 3 Acres - 13 decimals Rayati Lands
 recorded in the settlement in the
 name of Lakhi Sehya : of which
 the jama is Rs. 4-4-
 No: 320 khasana - 34 kites $\frac{4-8}{2-99}$
 No: 322 do 2 do $\frac{4-14}{3 \text{ Acres} - 13 \text{ decimals}}$
 Total
 This appeal coming on for hearing
 on the 2nd day of February
 1915, before H. L. L. Thomson
 Esq: J. C. S. District Judge
 Cuttack in the presence of Balu
 Biswanathi Singh Vakul for the appellant
 and of Balu Braikuntha malla Patil
 Vakul for Respondent no 2 and Respondent
 no 1 does not appear, it is
 ordered: that the appeal is allowed
 and it is further ordered that
 the Plaintiff's suit be decreed with
 costs in both parts and interest
 on the principal at the bond
 rate from 7.9.1912 to the
 end of the period of grace.
 The decretal amount to be paid

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.





9
10.

within 6 months from this date.
In default interest will run on
the entire decretal amount at Rs 6/-
P. C. P. a from the
expiry of the date of grace
till realization and the mortgaged property
be sold and the sale proceeds
be applied towards the satisfaction
of the decretal amount.
The costs of this appeal, as
detailed below, amounting to Rs 85-7-0,
are to be paid by the
respondents to the appellants.
The costs of the original suit
Rs 106-14-0 are to be paid by
the defendants to the plaintiff:
appellants.

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

Of A.C.S. Es. W. H. Allanson.

W. B. Singh. V. S. 3. 15 District Judge.

Costs of appeal.

Appellant - - - - - amount

1. Stamp for memorandum of appeal Rs 46-8-0.
2. Stamp for Power Rs 0-8-0.

1173/1915-11



5

11

3. Service of Process	- - - - -	Rs 2-4-
4. Pleader's fees on Rs 618/-	- - - - -	Rs 30-14-3
Copies of judgment and decree	- - - - -	Rs 3-15-
Petition and affidavit	- - - - -	Rs 1-8-6
Cartridge paper	- - - - -	Rs 0-1-3
Total		Rs 85-7-7

Respondent no 2	- - - - -	amount
Stamp for Power	- - - - -	Rs 0-8-
Pleader's fees on Rs 618/-	- - - - -	Rs 30-14-3
Cartridge paper	- - - - -	Rs 0-0-3
Total		Rs 31-6-6

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 exhibited in the case. If they fail to take them back, the document will be destroyed at such time as the High Court may prescribe.

By B. N. Singh. By H. Allmar.

Dated: Judge

1173/1915-12

Stamp
Copies properly paid
Folio number

Certified to be a true copy

[Signature]

15/3/15

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.



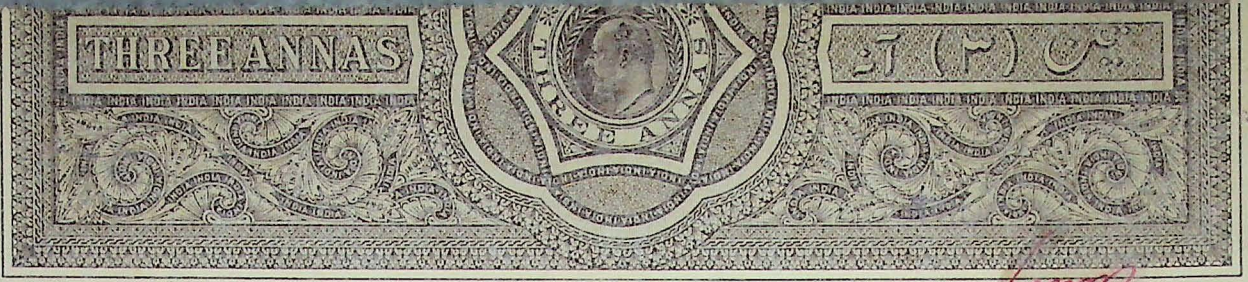
Ry no 1551.

⁶
Sorada Posad Nov.

21

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.
20. 9. 13.	22. 9. 13.	24. 9. 13.	27. 9. 13.	12. 11. 13.

S. M. M. M.



Handwritten text in Odia script, written on a grid-lined paper. The text is arranged in approximately 20 horizontal lines. The script is cursive and appears to be a personal or official letter. The paper has a grid pattern of small squares. The text is written in dark ink. The overall appearance is that of a historical document or a page from a manuscript.



of A-C-Butt trip 13-9-13.

for Kati Prasad Roy & for Binulal Ramani
for H. C. Desai for In Box etc

3200 — 9800 9800 — 9800 9800
 9800 9800 — 9800 9800 — 9800 9800
 9800 9800 — 9800 9800 — 9800 9800
 9800 9800 — 9800 9800 — 9800 9800

on my own



28/10

mp 1 of 2 pages

.....

дог авов ам

John W. Moore

6 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040 1041 1042 1043 1044 1045 1046 1047 1048 1049 10

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Remembrance of the

Chrysomelidae

2 miles e. road

Lawrence & Mount

2) Bei Komponenten & Modulen
Entscheidungen über die

17th May 1894

[Handwritten scribbles]

gongkong 010

you only $\rightarrow 2398$

$\frac{1}{2} \times 100 = 50$

So the more we know

$\frac{1}{\sqrt{2}} \begin{pmatrix} 1 & i \\ 0 & 1 \end{pmatrix}$

5/10/21 — 10/10/21

1000

2007

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Let the same be written in the margin of the 9th page

172/10

1173/1915-15



18.

33926-16

In the High Court of Judicature at Patna.

Second appeal No 1173 of 1915.

Khetra Rout -----Appellant.

Versus

1. Durga Prasad Senapati,
2. Danodar Senapati ----- Respondents.

Petition No 2
27.4.16

The humble petition of the
above-named Respondents.

[Red ink scribble]
27.4.16. *[Signature]*
[Red ink scribble]

Most respectfully sheweth:-

That the above-named respondents
filed a Vakalatnamah along with Lambodar Senapati.

The Recorder is herewith
sent No. *[Signature]*
28/4/16.

That the said Lambodar was a party
in the Court of the first instance and in the lower
appellate Court.

That the said Lambodar has not
been made a party in the second appeal.

That the Vakalatnamah filed by
the petitioners contains the name of the said Lambodar

That the insertion of the name of

1173/1915-17

the

Count Peter's support.

L. P.
Don
28/1-13/11

Vide also note on the relation of Lumbard
Simpson.

L. P. Mait
A O
28/1-13/11

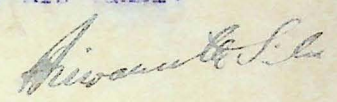
See also in the paper

L
29/4

the said Lambodar has been made through inadvertance.

Under the above circumstances
the petitioners pray that the
name of the said Lambodar be
struck off from the Vakulatnamaiah.

By his Vakil.



Cuttack.)

The 20th April)

1916.)



20.

4327264-16

Pekin Post 0726-4-16

In the High Court of Judicature at Patna.

Second Appeal No 1173 of 1915.

Khetra Rout - - - - - Appellant

Versus

1. Durga Prasad Senapati,

2. Damodar Senapati- - - - - Respondents.

The humble petition of

Lambodar Senapati of Patna

Seragarh, Pergana Khajuri,

District, Balasore.

Most respectfully sheweth:-

That the above-named petitioner
filed a Vakalatnamah along with the said respondents.

That the petitioner was a party
in the Court of the first instance and in the lower
appellate court.

That the petitioner has not been
made a party in the second appeal.

That the Vakalatnamah filed by
the respondents contains the name of the petitioner.

That

1173/1915-19

Amherst exp. it.

L. P. ...

25 142
27-4-58
28

Amherst
25

Lamberton Senapati is not going to
his usual appeal but he is going
in the C. T. of P. ... in the
Lower Appellate Court. He however
along with the ~~other~~ ^{to - 102-5} respondents but. ^{Allowed}
in a joint Vakalatnama. He now ^{is clear}
that his pleader ~~wants to~~ ^{to} appeal to ^{the} ^{29/4/58}
with some his names from the Vakalatnama.
He himself is not appearing before the court, the
did not answer any appeal. The mistake
however seems like a blunder. under ch II
x (vi) not with ch xxv + 6 (b) this may be explained.
The report to 102 with whom this Vakalatnama has been
given has also appeared in the other Vakalatnama

Amherst-
wishes for
v. ch II
x-13
(xvi)
28

the name

of the petitioner has been made through inadvertence.

Under the above circumstances

the petitioner prays that his

name be struck off from the

Vakalutn mah.

cutback.

The 20th April 1916.

By his Vakil.

Prima L. C.

Appeal from appellate decree.

No 1173 of 1915

From a decision of H. Allanson Esq., District Judge of Cuttack
dated the 3rd March 1915.

Khetra Rout.....Defendant No 2 Appellant.

versus

Durga Prosad Senaputy and another

Plaintiffs

Respon
dents

Maguni Senaputy Defendant No 1

Vakil for the Appellant

Babu Jogendra Nath Mukharji

Vakil for the Respondent

Babu Biswanath Sinha.

There appears to be no substance in this appeal. The appellant was impleaded because he was in possession of the mortgaged property and this possession he appears to have obtained under or in consequence of a deed of release executed in his favour by one Maguni. Maguni was one of the mortgagors. The suit out of which this appeal has arisen was brought to enforce the mortgage. It is quite clear that the appellant cannot prevent a decree from being passed in favour of the mortgagee on the mortgage. This appeal is dismissed with costs.

Cuttack, the 18th May 1916

Ante
S. Chandra

1173/1915-21

In the High Court at Patna.

(APPELLATE CIVIL JURISDICTION.)

Appeal from Appellate Decree No. 1173 of 1915.

Appeal preferred on the 1st of June

1915, against the decree of H. H. L. Allanson Esq District

Judge of Zillah Cuttack

dated the

3rd of March

1915, reversing

the

decree of Baboo Anil Chandra Dutta Plaintiff of Bolsonie
dated

the 10th of September 1913.

Khetra Raub ————— Defendant No. 2.

Appellant,

versus

1. Durga Prasad Senapati, 2 Damodar Prasad Senapati & others.
3. Maguni Senapati alias Maguni Raub — Defendant No. 1.

Respondents

1173/1915-22

the heart

vs. Sir, Edward Maynard Des Champs Chamier, Kt, the

Chief Justice

and

S. Sarafuddin

One of the Judges of this Court,

18 年

May

1916.

IT IS ORDERED and DECREED that *this appeal be and the same is*
hereby dismissed with costs.



And

And it is further ORDERED and DECREED that the *Defendant Appellant* do pay to the *Plaintiffs & defendant respondents who appeared the* ^{over} *sum of rupees forty ~~and~~ annas eight only*

(as per details at foot),

being the amount of costs incurred by *them* in this Court,

with interest thereon at the rate of six per cent. per annum, from this date

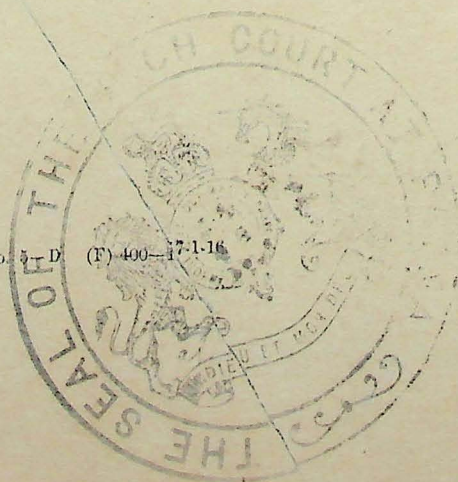
until realization.

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

	Rs.	a.	p.
Drawing grounds of appeal			
Hearing fee	32	0	0
Mookhtear's fee	0	0	0
Court-fee for Memo. of appeal	0	0	0
" for Vakalatnama	2	0	0
" for Mookhtearnama	0	0	0
" for Tullubana	0	0	0
" for copy of decree	4	0	0
Costs of preparation of paper-book	7	8	0
" of former hearing			
TOTAL	45	8	0

(Rupees forty annas eight only)

P. L. P.—No. 3-D (F) 490—17-1-16



L. Lakshmi
Att. Pleader
12-6-16

1173/1915-23