

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.232 of 1978

(Against the judgment and decree dated 17.03.1978 passed by Subordinate Judge, Biharsharif in Title Suit No.161 of 1976).

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Kishori Sao

.... Defendant No.1-Appellant

Versus

Babu Chand Sao & Ors

.... Plaintiffs-Respondents

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Appearance :

For the Appellant/s : Mr. Jitendra Kishore Verma, Advocate

Mr. Anjani Kumar, Advocate

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 09-10-2015

1. The defendant No.1 has filed this First Appeal against the judgment and decree dated 17.03.1978 passed by the learned Subordinate Judge, Biharsharif in Title Suit No.161 of 1976 whereby the court below decreed the plaintiff-respondent's suit for declaration that the sale deed dated 31.10.1973 executed by Baso Kuer in favour of defendant-appellant is void ab initio and not binding on the plaintiffs.

2. The original sole plaintiff, Most. Barhiya Kuer claimed the aforesaid relief alleging that Somari Sao had four sons and two daughters namely Raghu Sao, Saukhi Sao, Chandeshwar Sao, Andhi Sao, Phulbaso Kuer and Jichho. Plaintiff, Barhiya was the widow of Raghu Sao whereas the defendant Kishori Sao, appellant is

son of Saukhi Sao. There had been no partition in the joint family of Somari Sao. The daughter of Somari Sao i.e. Phulbaso Kuer was married with Manjhi Sao who is brother of plaintiff, Barhiya.

3. The further case is that during 1950 to 1960, Manjhi Sao had acquired 1.14 acres of agricultural land and houses also through seven sale deeds. On 14.04.1971, Most. Phulbaso, the wife of Manjhi died because of electric shock, therefore, the health of Manjhi became weak. The plaintiff and her son served him during his illness period. Ultimately, Manjhi Sao also died in the month of October, 1973. Shradh was performed by the plaintiff and her son. Then the plaintiff came in possession of all the documents of original title deeds i.e. seven sale deeds, the Izara deed and Danpatra.

4. The further case of the plaintiff is that the defendant No.1 with a view to grab the property brought Murari Singh in his collusion and set up some woman to impersonate herself as second wife of Manjhi Sao got a sale deed dated 31.10.1973 executed by her in favour of defendant No.1. Murari Singh was attesting witness to the sale deed who also identified Baso Kuer and thereby played fraud. According to the plaintiff's case, Manjhi was not married for second time just about two months prior to his death and was not in good health condition and that he was a man of means, as such, there is no question of borrowing money and fraud was played.

At paragraph 15 of the plaint, other different facts have been pleaded in support of the allegation of fraud. The plaintiff further alleged that defendant No.1 never came in possession of the property. Accordingly, relief has been claimed as aforesaid.

5. The defendant No.1 appeared and filed a contesting written statement. Besides taking various legal and ornamental pleas, mainly the defendant No.1 contended that the father of Manjhi Sao namely Banshi Sao was married with Muneshwari Devi, daughter of Sukhu Sao, Mauja Narouli, P.S. Bhakhtiyarpur and out of the said wedlock, only one son, Manjhi Sao was born. The plaintiff is not the own daughter of Banshi Sao. In fact, after the death of Manjhi Sao's mother, Banshi Sao married with the mother of plaintiff after the death of plaintiff's father namely Mitlal Sao of Mauja Tadwa. The plaintiff came with her mother to the house of Banshi. Accordingly, the plaintiff is not the sister of Manjhi Sao and in fact, she had no relation with either Banshi Sao or Manjhi Sao, she is Angurlagga sister of Manjhi. After death of first wife, Manjhi Sao married Baso Kuer in sagai form of marriage so after death of Manjhi Sao, she inherited all the properties left by Manjhi Sao and sold the properties to defendant No.1 by registered sale deed dated 31.10.1973. After purchase, the defendant-appellant came in possession.

6. The further case of the defendant-appellant is that



although, plaintiff is not the legal heir of Manjhi Sao, she executed a sale deed in favour of Shatrughan Singh who looted the documents after committing firearm injury and kidnapped Baso Kuer. F.I.R. was lodged on 14.12.1974. In the said loot, all the documents came in the hands of Shatrughan Singh who set up the present plaintiff and got a sale deed executed from her. The sale deed executed by Baso is valid, legal and for consideration.

7. The further case of the defendant-appellant is that Baso Kuer had also donated 4 ½ decimals of land in plot No.3984 to one Lakshmi Tiwari at the time of shradh of her husband and Lakshmi Tiwari came in possession of the land. Further, Baso Kuer had taken the shop of Chandeshwar Mahton on Ijara by registered deed dated 30.10.1973 and she came in possession of the shop.

8. The defendant No.3 also filed separate written statement supporting the case of the defendant No.1.

9. On the basis of the aforesaid pleadings of the parties, the learned court below framed the following issues:

- I. Is the suit, as framed, maintainable?
- II. Has the plaintiff any valid cause of action for the suit?
- III. Is Mossamat Baso Kuer second wife of Manjhi Sao?
- IV. Whether Barhiya is the full sister of Manjhi Sao?
- V. Is the plaintiff entitled to a declaration that the sale deed dated 31.10.73 is void ab initio and not binding on the plaintiff?

VI. To what other relief or reliefs, if any, is the plaintiff entitled?

10. After trial, the learned court below recorded finding that there is no satisfactory and reliable evidence to enable to hold that Most. Baso Kuer was the second wife of Manjhi Sao. The court below also recorded finding that Most. Barhiya was the full sister of Manjhi Sao, therefore, the sale deed is void ab initio and accordingly, decreed the plaintiff's suit.

11. The learned counsel, Mr. J.K.Verma for the appellant submitted that the plaintiff has approached the Court for the reliefs claimed in the plaint, therefore, the burden is on the plaintiff to prove her case that she is the sister of Manjhi Sao. According to the defendant-appellant, the father and mother of the plaintiff were different and likewise, the father and mother of Manjhi were different, therefore, the plaintiff is neither half sister nor full sister of the plaintiff. No doubt, after death of plaintiff's father, her mother was married with father of Manjhi namely Banshi Sao. On the death of mother of Manjhi, when this marriage was performed, the plaintiff came with her mother in the family of Banshi and Manjhi being the son of Banshi. There was relationship of brother and sister between plaintiff and Manjhi but legally there was no relationship. The court below without there being any satisfactory reliable evidence recorded the finding wrongly that plaintiff is full sister of Manjhi. In fact, there



is no evidence in support of the case. In the plaint also, a simple case has been pleaded that plaintiff is sister of Manjhi. Unless the plaintiff proves that she is own sister of Manji, she is not entitled to inherit the property of Manjhi even if Baso is not the second wife of Manjhi. According to the learned counsel, the plaintiff cannot be allowed to take advantage of the weakness of the defendant's case. While deciding this issue, regarding sistership of plaintiff with Manjhi, the court below presumed plaintiff to be the full sister of Manjhi as the defendant also admitted that the marriage of Barhiya and Manjhi Sao had taken in golat form. According to the learned counsel, the evidences produced by the plaintiff are only bald statements and their evidences are not admissible to prove the relationship. The learned counsel further submitted that the court below also has not discussed the statements of any of the witnesses either of the plaintiff or of the defendant and only mentioned the number of the witnesses and recorded the finding. The learned counsel submitted that the testimonies of the plaintiff's witnesses are not reliable. At the time of hearing of the First Appeal, the learned counsel placed the evidences of the witnesses of the plaintiff as well as the defendant.

12. The learned counsel further submitted that regarding the marriage of Manjhi with Baso is concerned, the defendant-appellant not only produced witnesses but also registered

documents in support of the fact that Baso is second wife of Manjhi but the court below discarded the same and recorded finding that the appellant failed to prove that Baso was the second wife of Manjhi.

13. The learned counsel further submitted that without discussing the testimonies of P.W., the court below only mentioned that the defendants admitted in evidence that marriage was held in golat form which clearly proves the fact that plaintiff was full sister of Manjhi. According to the learned counsel, this statement of the witness cannot be termed as admission of the plaintiff's case.

14. In support of his above contentions, the learned counsel relied upon (i) 2013(3) PLJR 412(SC)(Vathsala Manickavasagam & Ors. v. N. Ganesan & Anr.) (ii) (2014) 2 Supreme Court Cases 269(Union of India and others v. Vasavi Cooperative Housing Society Limited and others) and (iii) 2013(1) PLJR 48(SC)(Union of India v. Ibrahim Uddin & Anr.). I will discuss these decisions subsequently. On the above grounds, the learned counsel submitted that the impugned judgment and decree be set aside and the plaintiff's suit be dismissed.

15. Nobody appeared on behalf of the respondents although, the appeal was heard on two consecutive dates.

16. In view of the above submission of the learned counsel for the appellant, the following points arise for consideration

in this First Appeal:

I. Whether plaintiff has been able to prove her case that she is the sister of Manjhi Sao?

II. Whether Baso Kuer is the second wife of Manjhi Sao or not?

Point No.I

17. According to the plaintiff, she is the sister of Manjhi Sao. Admittedly, the properties in suit sold by Baso in favour of defendant No.1 belonged to Manjhi Sao. The plaintiff has filed the suit alleging that on the death of Manjhi, as his wife Phulbaso has predeceased, the plaintiff inherited all the properties of Manjhi Sao. On the contrary, according to the defendants, the plaintiff is not the sister of Manjhi Sao but she is Angurlagga. Therefore, the claim of the plaintiff has been denied specifically giving the names of her father and that she came with her mother as Angurlagga to the family of Banshi i.e. father of Manjhi after the death of mother of Manjhi Sao. In view of the above controversy between the parties, the plaintiff will succeed only if she proves that in fact, she is the own sister i.e. full sister of Manjhi Sao. In support of their respective cases, on this point, the parties have adduced evidences oral and documentary. P.W.1 is the plaintiff herself. She has stated that Banshi Sao was her father and mother was Muneshar. Her father had only one marriage and the father and mother of the plaintiff and Manjhi Sao are same. She has denied the case of the defendants that



her father and mother were different persons. P.W.2 has stated that Manjhi Sao was the brother of plaintiff. The sister of Raghu Sao was married with Manjhi Sao. After death of wife, Manjhi did not marry second time. Barhiya is the own sister of Manjhi. This witness is of different village whereas Manjhi was resident of village Sikaria. The evidence of this witness regarding sistership of Barhiya with Manjhi Sao is not according to Section 50/60 of the Evidence Act. He has not disclosed any special means of knowledge.

18. P.W.3 also stated that Manjhi Sao was the brother of Barhiya and sister of Raghu Sao was married with Manjhi Sao. This witness has also not disclosed special means of knowledge about the relationship of plaintiff with Manjhi Sao. The evidence of P.W.4 to 6 are on the same line. They have only baldly stated that they know Barhiya who is sister of Manjhi. Except that, none of them have disclosed special means of knowledge regarding relationship. None of them are relation of the plaintiff. Except P.W.1, none of the witnesses even denied the case of the defendant that she is Angurlagga i.e. she came to the house of Banshi Sao with her mother.

19. From perusal of the impugned judgment, it appears that the learned court below has not discussed about the admissibility of the evidences of these witnesses under Section 50/60 of the Evidence Act. The court below only referred to the statement of



P.W.1 to 6 who have stated that Barhiya is full sister of Manjhi and held that even the defendants admitted that marriage of Barhiya and Manjhi Sao had taken place in golat form. Now, if the burden is on the plaintiff to prove her case that she is the sister of Manjhi, if the defendant stated in evidence that marriage was in golat form, can it be said that the defendant has admitted the case of the plaintiff regarding sistership of Barhiya with Manjhi Sao.

20. Now, let us consider the evidence of D.Ws. D.W.1 is the defendant No.1-appellant, Kishori Sao. In his examination-in-chief, he has proved the genealogy of Banshi Sao. He has clearly stated that plaintiff is daughter of Mitlal Sao and also denied the case of the plaintiff that she is the daughter of Banshi Sao. According to this witness, after death of mother of Manjhi Sao, Banshi Sao had married in sagai form with the mother of plaintiff. This defendant No.1-appellant has nowhere in his evidence admitted the case of the plaintiff that she is the full sister of Manjhi and that the marriage was held in golat form. The other witnesses, D.W.3 to 6, 8 and 9 have all stated that Barhiya was not the full sister of Manjhi Sao rather she came to house of father of Manjhi as Angurlagga. D.W.9 who is mother of defendant No.1 has stated that Barhiya is her gotani and marriage was held in golat form. The court below has given much emphasis on this statement of D.W.9 and held that the defendants



have even admitted that Barhiya was the full sister of Manjhi. So far this observation of the court below is concerned, it may be mentioned here that almost all the witnesses of the defendants, stated above, have denied that Barhiya is the full sister of Manjhi Sao. It is settled principles of law that the person who asserts positive has to prove the same by adducing cogent and reliable evidence. Here, the defendants denied the case of the plaintiff. Therefore, it was the plaintiff who should have proved her case by adducing reliable evidence but as discussed above, except her, none of the other witnesses have even denied the case of Angurlagga or marriage of her mother in sagai form with Banshi Sao. On the contrary, the court below disbelieved the evidence of the defendants on the ground that they have not seen the plaintiff coming with her mother as Angurlagga. Therefore, how they came to know this fact is not clear and accordingly, did not accept the statements of the witnesses. Now applying this analogy in the case of the evidences of plaintiff's witnesses, it can be said that except the bald statement, as discussed above, no evidence has been produced regarding special means of knowledge and/or how they came to know the relationship.

21. The Hon'ble Supreme Court in the case of **Vathsala Manickavasagam & Ors. v. N. Ganesan & Anr., 2013(3) PLJR 412(SC)** relied upon by the learned counsel for the appellant



has held that “it is needless to state that an admission in order to be complete and to have the value and effect referred to therein, should be clear, certain and definite, without any ambiguity, vagueness or confusion.” The Hon’ble Supreme Court relied upon the earlier decisions of the Supreme Court. Here, so far the observation of the Court regarding admission of D.W.9 is concerned, it cannot be termed as admission of the defendant. She has only stated that marriage was in golat form. So far this golat form is concerned, it may be mentioned that if sister of one is married with second man and the sister of second man is married with the first person then the marriage is called golat form. Here, according to the defendant’s case also, the plaintiff came with her mother to the house of Banshi who married with the plaintiff’s mother in sagai form after the death of mother of Manjhi Sao. Therefore, admittedly, Manjhi Sao and the plaintiff were residing with Banshi and his second wife i.e. mother of plaintiff as brother and sister. But in fact, they were not brother and sister either half or full. In such situation, if anyone will say that Manjhi’s sister was married with Raghu and Raghu’s sister was married with Manjhi, can it be said that it is admission of the plaintiff’s case. Here, the so called admission as observed by the learned court below is neither clear, certain nor definite and it is full of ambiguity, vagueness and creates confusion. In my opinion, therefore, the court below has



wrongly held that the defendants have admitted that plaintiff was full sister of Manjhi. The court below also wrongly held that the witnesses of the plaintiff are competent without considering that none of the witnesses have disclosed their special means of knowledge nor any of the evidence except P.W.1 have ever denied the case of the defendant regarding the parentage and genealogy of plaintiff and Banshi Sao.

22. The Hon'ble Supreme Court in the case of **Union of India and others v. Vasavi Cooperative Housing Society Limited and others (supra)** has held that “in a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. Even if the title set up by the defendants is found against them, in the absence of establishment of the plaintiff's own title, the plaintiff must be non-suited.” Here, therefore, only on the bald statements of the witnesses, P.W.1 to 6, the court below has decreed the plaintiff's suit.



It may be mentioned here that unless the plaintiff proves her title to the property i.e. she is the own sister of Manjhi Sao, she will not be entitled to the decree for declaration with respect to the sale deed in question. In the written statement, the defendants clearly denied the title of the plaintiff but even after the denial of her title by the defendants, the plaintiff never sought for declaration of her title. The only relief claimed is for declaration with respect to the sale deed dated 31.10.1973. Unless her title is declared, she is not entitled to any relief in relation to the sale deed covering the suit property.

23. In view of my above discussion, I find that the plaintiff has failed to prove her title to the suit property as she failed to prove that she is the own sister of Manjhi Sao. In fact, she has not prayed for declaration of her title. The finding of the court below on this point is, therefore, reversed.

Point No.II

24. The defendant No.1 has purchased the property from Baso Kuer. According to the defendant No.1, Baso Kuer is the second wife of Manjhi Sao. The registered sale deed dated 31.10.1973 has been produced by the defendant No.1. In this registered sale deed, Exhibit A, it is specifically recited that she is the wife of Manjhi Sao. It is settled principles of law that there is presumption of genuineness of registered sale deed and further, the



presumption is that the sale deed has been validly executed according to law unless the person who challenges the sale deed proves the same to be otherwise. Here, both the parties have adduced evidences on this point also. According to the plaintiff witnesses, negative evidence has been produced to the effect that Manjhi Sao did not marry second wife. There was no second wife named Baso Kuer. According to the pleading and evidences of the plaintiff, it appears that the plaintiff raised two grounds. Firstly, there was no woman named Baso Kuer in existence and secondly, that Manjhi Sao did not marry second wife. So far P.W.2 to 6 are concerned, they have only stated that after death of Phulbasiya, Manjhi Sao never married second time. They are not denying the existence of any Baso Kuer. Only the plaintiff, P.W.1 has denied the existence.

25. As stated above, the plaintiff has only sought for a decree for declaration with respect to the registered sale deed, Exhibit A. Here, the defendant-appellant No.1 has produced a Rehan deed dated 31.10.1973, Exhibit C. This Rehannama is executed by Chandeshwar Mahton in favour of Baso Kuer. In this Rehannama also, Baso Kuer is described as wife of Manjhi Sao. It indicates that the other persons i.e. the villagers or the others were recognizing Baso Kuer as wife of Manjhi Sao and, therefore, there were transactions with her. The defendant-appellant has also produced chaukidari



receipts in the name of Baso Devi of the year 1972-73, Exhibit E/3 dated 31.03.1973. Exhibit A/1 and Exhibit A/2 are other deeds wherein also, she has been described as wife of Manjhi Sao. The defendant-appellant has also produced Exhibit G, the ordersheets of mutation proceeding. It appears that on the basis of the registered sale deed, mutation proceeding was initiated. Report was called for from Halka Karamchari who reported that the wife of Manjhi namely Baso Kuer had sold the property to the applicant. The Circle Officer personally went to the spot and found that the disputed house is in possession of the appellant wherein he is running a general store shop. From perusal of the impugned judgment, it appears that the court below observed/did not rely on the recital in the registered sale deed and Rehan deed on the ground that the sale deed is under challenge and the Rehan deed is of the same date. It may be mentioned that so far Rehan deed is concerned, it is not under challenge. The court below doubted this Rehan deed only on the ground that it is of the same date. These deeds at least show that one Baso Kuer was in existence.

26. It is the case of the plaintiff that no woman named as Baso Kuer is in existence. Therefore, now this part of the plaintiff's case is falsified. Except the pleading in the plaint and the evidence of P.W.1 which are in negative form, no reliable evidence



has been produced. A vague case has been made to the effect that some woman was set up as Baso Kuer, wife of Manjhi Sao. On the contrary, the defendant-appellant has produced the deed itself through which he purchased the property, the Rehan deed, wherein also, she has been recognized as wife of Manjhi. The chaukidari receipts standing in the name of Baso Kuer. In Exhibit G, the mutation proceeding, the report of the Karamchari and also Anchal Adhikari, wherein also, they supported the existence of Baso Kuer.

27. The next question is whether Baso Kuer was wife of Manjhi. So far this question is concerned, the defendants have adduced evidences who have also only stated that Baso Kuer was married with Manjhi Sao after death of Phulbaso Kuer. On the contrary, the witnesses of the plaintiff have stated that Manjhi did not marry second time. These are the evidences which are oral versus oral. On the basis of this oral evidence, no conclusive finding can be recorded in either way. However, since this is a civil case, therefore, on the basis of preponderance of probabilities, the controversy between the parties has to be decided.

28. We have seen above that one woman named Baso Kuer was there in whose name, the chaukidari receipts are issued. In her name, third person has executed Rehannama describing her as wife of Manjhi Sao. The Karamchari and Anchal Adhikari after



making enquiry found Baso Kuer has sold the property to defendant No.1, Kishori Sao. These are documentary evidences. The defendant No.1 himself, who is member of the family of plaintiff, admitted Baso Kuer to be wife of Manjhi and purchased the property and likewise, the other persons were also recognizing Baso Kuer to be wife of Manjhi. Unless there is sufficient rebuttable evidence is adduced by the other side, these statements made in the registered deeds cannot be wiped out by saying that the sale deed is under challenge and that Rehannama deed is doubtful deed. So far chaukidari receipts are concerned, the court below observed that it is manufactured. All these are the grounds raised by the plaintiff only and no evidence has been produced. How the chaukidari receipts were manufactured and why third person will recognize Baso Kuer as wife of Manjhi. There is no explanation at all. It is very easy to say that the documents are doubtful. Here, on behalf of the plaintiff, nothing has been produced except the denial evidence. The documentary evidences, discussed above, at least indicate that one Baso Kuer was in existence and she was recognized as wife of Manjhi Sao. In such circumstances, even if it is held that the oral evidences of the defendants are not admissible under Section 50 of the Evidence Act, the documentary evidences at least suggests that she was treated as wife of Manjhi Sao. There is no relief claimed in the plaint that she is not the legally wedded wife of



Manjhi Sao. At paragraph 14 of the plaint, it is pleaded that the executant, Baso Kuer was identified by Murari Singh and Murari Singh is one of the attesting witness. As discussed above, we have seen that one Baso Kuer was there. The sale deed is executed by Baso Kuer in favour of defendant No.1 but in the plaint although, relief has been claimed with respect to the sale deed but the vendor i.e. Baso Kuer is not made party in the plaint. The question as to whether Baso Kuer was married to Manjhi Sao or not, cannot be decided in absence of Baso Kuer and likewise, the question whether she inherited the property of Manjhi Sao after his death or not, is a question which is to be decided in presence of Baso Kuer. Admittedly, vague statement has been made in the plaint to the effect that a fake lady executed sale deed disclosing her name as Baso Kuer. At paragraph 17 of the written statement, it is the specific case of the defendants that after death of Phulbaso, Manjhi Sao married Baso Kuer in sagai form and after death of Manjhi, she came in possession of the property of Manjhi Sao. This is the consistent evidence of D.W.1, D.W.3, D.W.4, D.W.5, D.W.9 and D.W.11. It appears that D.W.9, Parwatia is Bhabhi of Phulbasia, the first wife of Manjhi Sao. She had also stated that after death of Phulbasia, her Nandosi i.e. Manjhi Sao married in sagai form within one year of death and at the time of marriage in sagai form, she was present there. She has disclosed the name of the



lady as Baso Kuer. D.W.2 is of village Sikaria who is father of the defendant, Krishna Chandra Prasad. Krishna Chandra Prasad has purchased 55 decimals land from defendant No.1-appellant and according to this witness, they are in possession of the property. He has stated about the possession of Kishori Sao, the appellant on the house of Manjhi Sao. According to this witness also, he claimed title through Kishori Sao and as such, he is confirming the title of Kishori Sao who has purchased the property from Baso Kuer. This witness is also stranger to the family but he is also recognizing Baso Kuer as wife of Manjhi otherwise he would not have purchased the land from Kishori Sao.

29. In view of my above discussion, I find that the defendants have produced evidences oral as well as documentary in support of the fact that Manjhi Sao married second time in sagai form and Baso Kuer was in existence with whom Manjhi Sao married in sagai form. The finding of the court below on this point is hereby reversed.

30. In view of my above findings, it can safely be concluded that plaintiff has got no title, interest and possession over the property of Manjhi Sao as she is not the full sister of Manjhi Sao and further, she failed to prove that the sale deed was executed by a fake lady and that Manjhi Sao did not marry second time in sagai

form.

31. In the result, this First Appeal is allowed, the impugned judgment and decree are set aside and the plaintiff-respondent’s suit is hereby dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

(Mungeshwar Sahoo, J)

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