

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.314 of 1984

Against the judgment and decree dated 30.01.1984 passed by 2nd Additional Subordinate Judge, Sasaram in Title Suit No.214 of 1973/12 of 1980

=====

Ramashankar Tiwary & Ors

.... defendant nos.1 to 3-Appellants
Versus

Smt.Mugla Devi & Ors

.... Plaintiffs-Respondents

=====

Appearance :

For the Appellants : Mr. Kamal Nayan Choubey, Sr. Advocate.
Mr. Ambuj Nayan Choubey, Advocate.
Mr. Sidharth Harsh, Advocate.
Mr. Yogendra Kumar Dwivedi, Advocate.
For the Respondents : Mr. S.S. Dwivedi, Sr. Advocate.
Mr. Ashok Kumar Pandey, Advocate.
Mr. Rajnish Kumar Dubey, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 15-12-2015

The contesting defendants have filed this First Appeal against the judgment and decree dated 30.01.1984 passed by the learned 2nd Additional Subordinate Judge, Sasaram in Title Suit No.214 of 1973/12 of 1980 whereby the court below decreed the plaintiff-respondent's suit.

2. The plaintiff-respondent no.1 Smt. Mugla Devi filed the aforesaid Title Suit No.214 of 1973/12 of 1980 for partition of her half share in suit property after setting aside adoption deed dated 13.01.1973 executed in favour of defendant no.2-appellant Rama Shankar Tiwary.

3. The plaintiff claimed the aforesaid relief alleging that her father Baliram Tiwary had two wives. The first wife, mother of plaintiff died and then Baliram Tiwary had married the defendant no.1 Smt. Bachano Kuer but from her, he had no issue. The plaintiff has got strained relationship with Bachano Kuer. Prior to death Baliram Tiwary became weak mentally and physically due to old age. His eye sight was very weak and he was hard of hearing. After death of Baliram Tiwary the plaintiff and defendant no.1 Bachano Kuer jointly inherited the properties of Baliram Tiwary. The father of the plaintiff never adopted defendant no.2 nor executed any adoption deed. The defendant nos.1 and 3 fraudulently got the deed of adoption executed. The contents thereof were never read over and explained. The witnesses and identifier are the own men of defendant nos.1 and 3. The defendant no.3 is own brother of defendant no.1 and defendant no.2 is the son of defendant no.3, therefore, the adoption deed is voidable document. The suit properties are described in Schedule A and B i.e immovable property and movable property respectively. The plaintiff has got half share in the suit property.

4. The defendant nos.1 and 3 filed joint contesting written statement. They raised various legal and ornamental pleas. Their main defence is the suit has been fled by Sri Gopi Chand Tiwary through his daughter, Mugla Devi. Baliram Tiwary had only one marriage

with defendant no.1. Baliram Tiwary had no issue and he died in April, 1973 issueless. Since they had no issue, they adopted defendant no.2 according to Hindu Customs and Shastra on 17.10.1972 and the deed of adoption was executed and registered subsequently.

5. The defence is that Gopi Chand Tiwary is gotia of Baliram Tiwary and Gopi Chand Tiwary wanted to grab the property of Baliram Tiwary so he got a gift deed executed by Baliram Tiwary in favour of deity Shiv Jee for 22 bighas of land. Subsequently when he found fraud committed by Baliram Tiwary, he cancelled the said gift deed in favour of deity. All other facts were denied by the defendants.

6. On the basis of the aforesaid pleadings of the parties the learned court below framed the following issues:-

- (i) Has the plaintiff valid cause of action for suit?
- (ii) Is the suit as framed maintainable?
- (iii) Is the suit barred by limitation?
- (iv) Is the plaintiff daughter of Late Baliram Tiwari?
- (v) Is the adoption deed dated 13.1.1973 invalid and fit to be set aside?
- (vi) Has the plaintiff unity of title and possession with respect to the suit properties with defendant no.10 and is she entitled to a decree for partition of her half share and separate possession in the suit properties as claimed?
- (vii) To what relief or reliefs, if any is the plaintiff entitled?

7. Learned senior counsel Mr. K.N. Choubey appearing on behalf of the appellants submitted that the court below has not

properly appreciated the evidences either oral or documentary and while considering the evidences the court below has applied double standard. The evidences produced by the appellants were rejected on untenable grounds. Since the subject matter of the suit is 22 bighas of land, the plaintiff is not only required to prove only relationship with Baliram Tiwary but also something more is to be proved by her as for the first time title will be conferred on her.

8. The learned senior counsel further submitted that in the gift deed executed by Baliram Tiwary in favour of deity Shiv Jee it has clearly been recited that he had no issue. The evidences produced by the plaintiff are not in accordance with Section 50 of the Evidence Act. The registered deed of adoption was produced by the defendants, Ext.G but the court erroneously held that it is invalid. In support of the adoption the defendants also adduced evidences but the court below applying double standard did not place reliance on the witnesses and rejected them. Likewise the learned court below has also wrongly interpreted the cancellation deed dated 16.12.1970 Ext.E and the trust deed i.e. gift deed dated 17.09.1970, Ext.R. The learned senior counsel further submitted that according to the defendants' case Mogla Devi, the plaintiff, is daughter of Gopi Chand and her mother is still alive and in support of that also evidences were produced but the learned court below



rejected the same. At the time of hearing the learned senior counsel placed the evidences of each and every witness examined by the parties and submitted that the learned court below should have dismissed the plaintiff's suit. In support of his contentions the learned senior counsel relied upon on **A.I.R. 1934 Calcutta 68 and A.I.R. 1936 Allahabad 875** on the question that the plaintiff is not only to prove the parentage but something more than that. The learned senior counsel placed reliance on the decision of the Supreme Court, **A.I.R. 1996 SC 591** and submitted that for proving adoption all persons who were present at the time of adoption ceremony i.e. giving and taking ceremony are not required to be examined. According to the learned senior counsel even if no presumption under Section 16 of the Hindu Adoption Act is available but then the adoption deed can be admitted for collateral purpose to show that the defendant is coming in possession of the property. Moreover, this adoption deed is a registered deed of adoption. On these grounds the learned senior counsel submitted that the first appeal be allowed and the impugned judgment and decree be set aside.

9. The learned senior counsel Mr. Choubey relied upon the decision of the Supreme Court in the case of **Most. Deu and others V. Laxmi Narayan and others, (1998) 8 SCC 701** and



submitted that in this simple suit for partition the factum of adoption could not have been disproved by the plaintiff. So far this submission is concerned, it may be mentioned that from perusal of the decision it appears that in that case on the death of the plaintiff, a substitution application has been filed for substitution on the basis of adoption and registered adoption deed was produced. In the present case the suit has been filed for cancellation of adoption and then partition. Therefore, this decision is not helpful to the appellants.

10. On the other hand, the learned senior counsel Mr. S.S. Dwivedi for the respondents submitted that cogent and reliable evidences have been produced by the plaintiff in support of her case that she is the daughter of Baliram Tiwary. After appreciation of oral evidences the court below has recorded the finding of fact that plaintiff is the daughter of Baliram Tiwary. Therefore, in view of decision of the Supreme Court, **A.I.R. 1951 SC 120 (Sarju Pershad Ramdeo Sahu Vs. Jwaleshwari Pratap Narain Singh and others)**, **A.I.R. 1983 SC 114 (Madhusudan Das Vs. Smt. Narayani Bai and others)** the finding of fact recorded purely on the basis of appreciation of oral evidences should not be interfered with lightly by the first appellate court. In support of relationship the plaintiff examined the relations, villagers and neighbours who have supported the case of the plaintiff. To rebut the case of the plaintiff



the defendants came with a specific case that plaintiff is the daughter of Gopi Chand Tiwary but no reliable evidence has been produced in support of this fact. So far the case that Baliram Tiwary admitted that she had no issue in Ext.E is concerned, according to the learned senior counsel, Baliram Tiwary had specifically stated that fraud was played on him and without knowing the contents of the deed he executed the same. Therefore, according to the learned senior counsel the statement made therein was not the statement of Baliram Tiwary. Since the defendants came with a positive case, it is for the defendants to prove that the plaintiff was the daughter of Gopi Chand Tiwary. Here, the plaintiff came with one case and the defendants came with another case, therefore, the burden to prove the parentage of plaintiff with Baliram Tiwary is on the plaintiff whereas the other case is to be proved by the defendants. The learned senior counsel also at the time of hearing placed the evidences of both the parties with comments thereon. According to the learned senior counsel, the decisions relied upon by the appellants is not applicable in the present case.

11. In view of the above rival contentions of the parties the point arises for consideration in this First Appeal is as to whether the plaintiff has been able to prove that she is the daughter of Baliram Tiwary and that defendant no.2 is not the adopted son of Baliram

and defendant no.1 and whether the defendants have been able to prove adoption and that plaintiff is not the daughter of Baliram Tiwary rather she is daughter of Gopi Chand?

12. The specific case of the plaintiff is that she is the daughter of Baliram Tiwary and defendant no.1 is the second wife of Baliram Tiwary. Defendant nos.1 and 2 are claiming that defendant no.2 is adopted son of Baliram Tiwary and defendant no.1 and plaintiff is the daughter of Gopi Chand Tiwary. Now in view of the above controversy between the parties the position will be if defendant no.2 is held to be adopted son, the plaintiff will get 1/3rd share and if it is held that defendant no.2 is not the adopted son, the plaintiff will get ½ share. If it will be found that she is the daughter of Gopi Chand then she has no right to challenge the adoption by defendant no.1 and Baliram Tiwary adopting defendant no.2. Accordingly, the main question for determination is whether she is daughter of Baliram Tiwary or not? If it is answered against the plaintiff-respondent, the other questions are not relevant for deciding the controversies. In support of the respective cases the parties have adduced the evidences. Let us examine oral evidences first.

13. P.W.3 claimed himself to be of village Sonebarsha but he has stated that he was in visiting term with Baliram Tiwary. He had gone to Sasural of Baliram also at village Nadas. P.W.4 is the

relation of Baliram Tiwary as he is the son of fua of Baliram. In other words, he is the brother of Baliram who is his maternal uncle's son. Both these witnesses have stated that Baliram had two marriages and from his first wife Mogla was born. P.W.4 specifically stated that plaintiff was addressing Baliram as father and Bachano defendant no.1 as mother and both of them were addressing Mogla Devi as Bachia. P.W.4 also specifically stated that Kanyadan was performed by Baliram.

14. P.W.5 is the Purohit of Baliram Tiwary. It is admitted that because of the fact that this witness is Purohit, Baliram had given him 20 decimals of land. The deed by which 20 decimals was given to his witness has been marked as Ext.3. Being the Purohit he has stated about two marriage of Baliram Tiwary. He has also clearly stated that Baliram had a daughter Mogla from his first wife. According to this witness also Mogla Devi was calling Baliram as father and Bachano Kuer as mother and they were calling her bachia. Again he has stated that he had participated in the marriage of Mogla Devi and that kanyadan was performed by Baliram.

15. The learned senior counsel Mr. Choubey placed the entire evidence of this witness and submitted that in the cross-examination he expressed ignorance about knowledge of Sanskrit, Sanskrit asloks etc. and therefore he cannot be said to be a reliable

witness. In my opinion on this ground as submitted by the appellants the evidence cannot be discarded particularly when it is admitted fact that he is Purohit and for doing purhitgiri one is not required to have deep knowledge in Sanskrit or Sanskrit asloks. It is admitted fact that 20 decimals land has been given to this witness. Moreover he has disclosed his special means of knowledge regarding the relationship of Baliram with the plaintiff.

16. PW.8 is nephew of Baliram Tiwary. He has also supported the two marriage of Baliram and daughtership of Mogla Devi. He is also of the same village i.e. village of Baliram Tiwary. P.W.11 is of Paisra village and this witness is the brother-in-law of Baliram Tiwary i.e. maternal uncle of Mogla Devi. He has also specifically stated about marriage of his sister with Baliram and they had a daughter Mogla Devi. P.W.12 is Mogla Devi herself, the plaintiff and P.W.13 is Raj Balam Choubey who has also supported the plaintiff's case.

17. From the above discussion of the evidences, it appears that the plaintiff has produced the co-villager, the relations and the witness of her nanihal and the statements of these witnesses are admissible under section 50 of the Evidence Act as they have got special means of knowledge. Some witnesses are relation and some are co-villagers. The Purohit by his conduct has also disclosed the

special means of knowledge that he participated in the marriage of the plaintiff etc.

18. Now let us consider the evidences produced by the defendants. D.Ws.6 and 10 had stated that Baliram had not married twice. Such is the evidence of D.W.11 and 12. All these witnesses have given negative evidence. In the present case it is the case of the plaintiff that she is the daughter of Baliram Tiwary. Therefore, once the defendants denied the parentage, it is for the plaintiff to prove her parentage/daughtership of Baliram and for that she has adduced admissible positive evidences. Therefore, the witnesses examined as stated above on behalf of the defendants have deposed negatively. Negative needs no proof and denial is sufficient. D.W.8 is on the question of adoption. D.W.17 has only stated that Baijnath Tiwary has two sisters who were married in village Maniari and Ghosia and his sister was married to Gulab Chand Tiwary. D.W.19 is the defendant no.1 Bachano Kuer. D.W.29 has stated that Baliram had only one marriage.

19. The defendants-appellants have produced Ext.R which is the trust deed executed by Baliram Tiwary in favour of Ram Janki Jee, Hanuman Jee and Shiv Jee, the deities. The learned senior counsel Mr.Choubey placed the recital in this deed wherein it is mentioned that Baliram has no issue either male or female.



According to the learned senior counsel, Baliram himself has admitted this fact, therefore, on this score alone the case of the plaintiff is to be thrown. Ext.E has also been produced by the defendants. This Ext.E is a registered cancellation deed whereby Ext.R has been cancelled by Baliram Tiwary. Placing the recitals in this cancellation deed, the learned senior counsel submitted that Baliram specifically named Gopi Chand Tiwary and others that they had intention to grab the property of Baliram Tiwary. On these grounds the learned senior counsel submitted that when Ext.R was cancelled by Ext.E, Gopi Chand Tiwary with a view to grab the property got this suit instituted by his daughter plaintiff Mugla Devi. According to the learned senior counsel, Gopi Chand Tiwary is playing main role but had no knowledge about the recital made by Baliram that he had no issue either male or female.

20. So far the above submission is concerned, it may be mentioned here that admittedly neither Ext.R is under challenge in this suit nor Ext.E is under challenge in the suit. Both are the registered deeds executed by Baliram Tiwary. From perusal of Ext.E i.e. cancellation deed, it appears that Baliram Tiwary has specifically mentioned in this deed that Ext.R was obtained fraudulently and the particular of fraud has been mentioned in various paragraphs wherein it is also stated that the contents of the deed Ext.R was



never read over nor he was allowed to read it. When he doubted he obtained a copy of the Ext.R and got it read over by a person then he came to know that his desire is not mentioned in the trust deed rather without his knowledge it was scribed and Gopi Chand Tiwary and others got his signature fraudulently. In view of this recital now it becomes clear that whatever statements made in Ext.R cannot be said to be the statement of Baliram Tiwary.

21. Exts.A and A/1 are copies of school registers. It appears that original register was called for and after marking exhibit to the relevant entry, the register was returned after substituting by certified copy. These exhibit series have been produced to show that the two sons of the plaintiff were reading in the school and in these school registers one son is under guardianship of Anand Kumar Tiwary and the other son is under the guardianship of Gopi Chand Tiwary. The learned senior counsel placing reliance on these two documents submitted that if at all plaintiff is the daughter of Baliram Tiwary then how Gopi and son of Gopi Chand are made the guardian in the school which clearly indicate that plaintiff is the daughter of Gopi Chand Tiwary. So far this submission is concerned, it may be mentioned here that there cannot be any such presumption that because they are made guardian of sons of plaintiff, the plaintiff is the daughter of Gopi

Chand. It is admitted that there was good relation between Baliram and Gopi Chand. Further there is no reason as to why in this same school for two children there were two guardians. These Exts.A and A/1 only prove that Gopi and his son were the local guardian of the two sons of the plaintiff and by no means on the basis of this entry finding can be recorded that plaintiff was the daughter of Gopi Chand Tiwary.

22. So far the submission of the learned senior counsel Mr. Choubey that the plaintiff has not only to prove parentage but something more is concerned, in the present case the only question is to be decided is whether the plaintiff is daughter of Gopi Chand or not. Therefore, once she is able to prove her case she is not required to prove anything more. So far the decisions relied upon by the learned senior counsel for the appellants i.e. **A.I.R. 1934 Cal 68 and A.I.R.1936 All 875** are concerned, I find the facts of those cases are entirely different. It appears that in one of the cases the suit was filed for declaration of relationship itself. I, therefore, find that the aforesaid decisions are not applicable in the facts and circumstances of this present case. It appears that in the present case Exts.Q and Q/1 i.e. voter lists have been produced which are of the year 1975 and 1981. The learned senior counsel submitted that the plaintiff has not been shown to be the daughter of Baliram in this voter list. So



far these evidences are concerned, it can be said that Mogla Devi might not have registered her name as a voter but there cannot be any presumption that because her name is not in the voter list she is not the daughter of Baliram Tiwary. Ext.H series have been filed to show that the letters were written by Ballabh Jee to Anand Jee. Balabh Jee is the husband of Mogla Devi whereas Anand is the son of Gopi Chand. These letters were produced to show that husband of plaintiff was writing letters to son of Gopi Chand. On the basis of this it is submitted that if there was no relation of plaintiff with Gopi Chand, there would not have been any communication by letter. So far this submission is concerned, it may be mentioned that from perusal of Ext.H series i.e. letters, it appears that there is no date mentioned in any letter. There is no explanation how the letters came in possession of the defendants-appellants. Further all the letters are nothing but true copy of each other i.e. the recitals in all the letters are same. The husband of plaintiff wrote a letter to son of Gopi Chand. The appellants are not related with Gopi Chand then how they obtained the letter and from whom and for what purpose it is not clear, therefore, is not safe to rely on these letters.

23. In view of my above discussion I find that the plaintiff has been able to prove that she is the daughter of Baliram Tiwary. The defendants failed to prove that the plaintiff is daughter of Gopi

Chand. Accordingly, the finding of the court below on this question is hereby confirmed.

24. The defendant nos.1, 2 and 3 claimed that defendant no.2 is the adopted son of Baliram Tiwary. Admittedly a registered deed of adoption has been produced dated 13.01.1973, Ext.G. The deed is not signed by the natural parent of defendant no.2. Therefore, there cannot be any presumption under section 16 of the Hindu Adoption and Maintenance Act. The case of the defendants-appellants is that actual adoption took place on 17.10.1972. However in this deed there is no mention about giving and taking ceremony alleged to have been taken place on the said date. Now therefore, the defendants have to prove by adducing cogent evidence in support of the factum of giving and taking ceremony as required by law. D.W.19, the defendant no.1 has stated that she and her husband adopted the defendant no.2. Jagarnath Shukul was pandit. Sarjug Tiwary gave his son in her lap. D.W.29 is also on this point of adoption. After six months of adoption ceremony Baliram died. In the cross-examination he is unable to say even the year of adoption. D.W.11 is brother of Jagarnath Shukul. He stated that Sarjug Tiwary and his wife gave the boy Rama Shankar in to the lap of Baliram and his wife. D.W.10 and D.W.8 (defendant no.3) have also supported the giving and taking ceremony but even the defendant no.3 is

unable to give the day and date or month of adoption. The evidence of D.W.6 is to the effect that one barber had gone to call him and then he went there where adoption took places. Baliram Tiwary told Sarjug Tiwary to give his son and then he will make him his son. These are the evidences produced by the defendants in support of adoption. The trial court considering the oral evidences of the defendants disbelieved the evidences and held that there is doubt about the fact of adoption.

25. It will not be out of place to mention here that it is settled principals of law as has been held by the Supreme Court in the case of **Madhusudan Das Vs. Smt. Narayani Bai and others, A.I.R. 1983 SC 114 = (1983) 1 SCC 35** that a person who seeks to **displace the natural succession to property by alleging an adoption must discharge the burden that lies upon him by proof of the factum of adoption and its validity. The evidence in proof of the adoption should be free from all suspicion of fraud and so consistent and probable as to give no occasion for doubting its truth.** In the present case at our hand the witnesses examined by the defendants have merely stated that there was giving and taking ceremony. They are not able to say the day and date of the adoption. We have found above that Baliram had a daughter. No doubt there is no bar for adopting a son but there must be cogent and reliable



evidence. As stated above the giving and taking ceremony took place according to the appellants much earlier but why the said fact was not recited in the registered deed of adoption which was executed and registered subsequently. There is no explanation at all. Why the deed was not signed by the natural parents? A probable doubt is created that in fact only this document was executed and registered hastily and there is no mention about the adoption which has been subsequently developed by way of defence in this case.

26. The Hon'ble Supreme Court in the case of **Rahasa Pandiani and others Vs. Gokulananda Panda and others, A.I.R. 1987 SC 962=(1987) 2 SCC 338** has held that the absence of registered document is very important circumstance to disprove the alleged adoption. At paragraph 4 it has been held as follows:-

“When the plaintiff relies on oral evidence in support of the claim that he was adopted by the adoptive father in accordance with the Hindu rites, and it is not supported by any registered document to establish that such an adoption had really and as a matter of fact taken place. The Court has to act with a great deal of caution and circumspection. Be it realized that setting up a spurious adoption is not less frequent than concocting a spurious will, and equally, if not more difficult to unmask. And the Court has to be extremely alert and vigilant to guard against being ensnared by schemers who indulge in unscrupulous practices out of their lust for property. If there are any suspicious circumstances, just as the propounder of the will is obliged to dispel the cloud of suspicion, the burden is on one who claims to have been adopted to dispel the same beyond reasonable doubt. In the case of an adoption which is not



supported by a registered document or any other evidence of a clinching nature if there exist suspicious circumstances, the same must be explained to the satisfaction of the conscience of the Court by the party contending that there was such an adoption. Such is the position as an adoption would divert the normal and natural course of succession. Experience of life shows that just as there have been spurious claims about execution of a will, there have been spurious claims about adoption having taken place. And the Court has therefore to be aware of the risk involved in upholding the claim of adoption if there are circumstances which arouse the suspicion of the Court and the conscience of the Court is not satisfied that the evidence preferred to support such an adoption is beyond reproach.”

27. In view of the above discussion I find that the defendants-appellants failed to prove the adoption of defendant no.2-appellant no.2 Rama Shankar Tiwary by Baliram Tiwary and his wife, therefore, Rama Shankar Tiwary is not the adopted son of Late Baliram Tiwary. The finding of the court below on this point is thus hereby confirmed. It appears that during the pendency of this appeal defendant no.1-appellant no.1 Bachano Kuer has died and her name has been expunged, therefore, on her death the property of Baliram will be inherited by the plaintiff only. The defendant no.2-appellant is not entitled to inherit the same. Accordingly, the point formulated is answered against the appellants and in favour of the plaintiff-respondent.

28. It appears that in this case an application has been filed



under Section 4(c) of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 on 10.02.1986. This application was directed to be heard at the time hearing. It is placed at Flag-1. The learned senior counsel Mr. Choubey submitted that still there is no denotification under Section 26 of the aforesaid Act therefore, the appeal should abate. In the present case, it may be mentioned here that the appellants are challenging the parentage of Mugla Devi, therefore, this is not a simpliciter partition suit. Partition can be granted only after declaration of parentage which the authorities under the Consolidation Act have no jurisdiction. Only the Civil Court can declare the parentage. In such circumstances this application is not maintainable and accordingly it is rejected.

29. The other interlocutory application at Flag-X is an application under Order 41 Rule 5 C.P.C. praying for stay of final decree proceeding. Since the appeal itself has been decided, there is no question of stay of final decree proceeding arises. Accordingly, this application is also dismissed. The other interlocutory application i.e. I.A. No.6877 of 2015 is again an application under section 4(b) 4(c) of the Consolidation Act. As stated above, the Civil court has only the jurisdiction to declare the parentage, the appeal will not abate under the Consolidation Act. The other interlocutory

application at Flag-J being I.A. No.6105 of 2012 is for vacating the stay order. Since the appeal itself has been dismissed, therefore, the impugned decree of the trial court has been confirmed. Accordingly, the interim order, if any, automatically stands vacated. No separate order is necessary. Thus this application is disposed of. Likewise I.A. No.789 of 2013 at Flag -A is concerned, it is also stay vacating application. As stated above, the appeal has been dismissed and the trial court judgment and decree has been confirmed, this application is also disposed of.

30. In the result, I find no merit in this First Appeal. Accordingly, this First Appeal is dismissed with costs of Rs.10,000/- to be paid by the defendants-appellants to the plaintiff within two months failing which the plaintiff shall be at liberty to realise the same through process of Court.

Harish/-

U		T	
---	--	---	--

(Mungeshwar Sahoo, J)