

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.339 of 1982

**Against the Judgment and Decree dated 26.04.1982 passed by 2nd
Subordinate Judge, Munger in Title Suit No.10 of 1975.**

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Ram Narayan Singh

.....Plaintiff-Appellant

Versus

Sushila Devi & Ors.

.....Defendants-Respondents

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Appearance :

For the Appellant/s : Mr. Binod Kumar Singh, Advocate
Ms. Vagisha Pragya Vacaknavi, Advocate with him.

For the Respondent No.1: Mr. Shrinandan Prasad Singh, Advocate
Mr. Manoj Kumar No.1, Advocate
Mr. Naresh Nandan, Advocate

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Dated : 4th day of July, 2017

CORAM : HON'BLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. J U D G M E N T

1. The plaintiff has filed this First Appeal against the judgment and decree dated 26.04.1982 passed by the learned 2nd Subordinate Judge, Munger in Title Suit No.10 of 1975 whereby the learned trial court dismissed the plaintiff's suit for partition.

2. The plaintiff-appellant filed the aforesaid title suit praying for a decree of partition of his 1/8th share in the suit properties mentioned in Schedule No.I, II and III. The plaintiff claimed the aforesaid relief of partition to the extent of his 1/8th share



alleging that one Maniar Mandal was the common ancestor who had two sons namely Gopal Mandal and Lakshman Mandal. The entire ancestral properties were divided between two branches. This suit is concerned with the branch of Gopal Mandal only. Gopal Mandal had three sons, Kali Mandal, Nanku Mandal and Fakir Mandal. Kali Mandal had two sons, Subodh Singh and Nevi Singh. The descendants of Subodh Singh are defendants 2nd set including Subodh Singh who is defendant No.8 whereas Nevi Singh is defendant no.1 and his wife is defendant no.7. One son, Nageshwar is defendant No.2 and the other son, Ramnarayan is plaintiff-appellant. The sons of defendant No.2 are defendant Nos.3 to 6 who are defendants 1st set. According to the plaintiff, defendant No.8, Subodh Singh became karta. However, since last 15 years, Nevi's branch is separated in mess and residence but defendant No.8, Subodh Singh still became the karta as Kali Mandal died 25 years ago. Subodh Singh, defendant No.8 acquired many landed properties in the name of different members of the joint family out of the income derived from the ancestral properties which is detailed in Schedule II of the plaint. The properties which came in the share of Gopal Mandal are described in Schedule I of the plaint.

3. The further case of the plaintiff is that there was about 188 bighas agricultural land and to escape the agricultural



income tax, the defendant No.8 got settled joint family lands in the name of different members of the family and choukidari taxes were separated and accordingly, the defendants also got separated the bungalow and bathan though the joint family properties have not been separated by metes and bounds. Since there was separation in mess between two branches i.e. branch of Subodh Singh and Nevi Singh, they started cultivating some lands separately according to convenience but the major portion of the joint family lands were cultivated jointly. Although, defendant No.8 was the karta but he never provided any expenses to the plaintiff and plaintiff by dint of his hard labour got the M.A. degree. Thereafter, he and his brother and father, Nevi Singh filed a Title Suit No.54 of 1963 for partitioning the joint family property. In that suit, defendant No.8 and his descendants filed their written statement falsely alleging that there had already been oral partition in the year 1934 during the lifetime of Kali Mandal.

4. The further case of the plaintiff is that the defendant No.8 got an agreement for appointment of punches for partitioning the joint family properties which was registered and defendant Nos.1 and 2 were compelled by him to sign it. However, there was no such panchayati ever held for partitioning the property. Subsequently, a compromise application was filed with false



allegation to the effect that there had already been partition. Defendant No.8 got the signature of defendant No.1 and 2 on the compromise application on 07.12.1964. According to the plaintiff, compromise application was not prepared in his presence. Although, the compromise application was filed in Title Suit No.54 of 1963 but it was not recorded and the suit was dismissed for default on 21.01.1965. The defendant No.8 had no other source of income, so, all the properties acquired in his own name or in the name of his descendants are acquired out of the income from joint family properties and, therefore, the properties are joint family properties.

5. The further case is that defendants 2nd party i.e. descendants of Subodh Singh because of ill motive with a view to grab valuable properties filed a collusive partition suit being No. 6 of 1970 on 07.01.1970. In that case, the plaintiff along with father and brother filed intervention application which was allowed and they filed written statement. However, subsequently an application was filed on 14.08.1973 praying for dismissal of the aforesaid title suit on the ground of compromise and thereafter, on the basis of the said order passed in Title Suit No.6 of 1970, the defendants filed mutation application.

6. The defendant No.1 filed written statement



supporting the case of the plaintiff. The suit was contested hotly by defendant Nos.8 to 13 and 15, the defendants 2nd party. According to these contesting defendants, there had already been previous partition between defendant No.1 and 8 and their father Kali Mandal in the month of Baisakh 1934 wherein Kali Mandal took a meager area of land sufficient for his maintenance only. After this partition, the defendant No.1 became the karta of his family and the defendant No.8 became the karta of his family. After the death of Kali Mandal, the property left by him was partitioned between the defendant No.1 and 8 by metes and bounds. The lands allotted in the share of defendant No.8 has been detailed in the written statement filed in Title Suit No.54 of 1963. The defendant No.8 after this partition acquired many lands in his own name and in the name of other descendants, out of the income of the lands allotted to him. The defendant No.1 also acquired several properties out of income of the lands allotted to him in the partition. The lands acquired by defendant No.8 after partition is described in Schedule A of written statement filed in Title Suit No.54 of 1963. The allegation that some lands are cultivated jointly by the parties is denied. Since the lands acquired by defendant No.8 were more valuable, the defendants 1st party looted the crops and criminal case was filed being G.R. No.87 of 1963. To save their skin from the criminal charge, the defendant No.1, 2 and



the plaintiff filed Title Suit No.54 of 1963 falsely alleging that the properties are still joint. These contesting defendants filed written statement stating the real fact of previous partition. The plaintiff of that suit then approached for compromise and then punches were appointed. The punches persuaded the defendant No.8 to give some more land over and above the lands given in the partition of the year 1934 and accordingly, the defendant No.8 agreed to the proposal and then new Schedules were prepared and according to the suggestion of punches, the date of partition was mentioned as 07.12.1964 only with a view to absolve the plaintiff and his father and brother from criminal liability. These defendants denied that the signature of defendant No.1 in the compromise application was obtained by giving threat and fear of harm to them. According to these defendants, the defendant No.1 signed the compromise for self and as karta of his family. The plaintiff's plea of ignorance, fraud and coercion in signing the compromise application by defendant No.1 is denied by these contesting defendants. After dismissal of Title Suit No.54 of 1963 also there is no question of remaining joint arises. There had already been partition completely in the year 1934.

7. The further case of these contesting defendants is that in the compromise application, the lands allotted in the share of defendants 2nd party are mentioned in Schedule A of the written



statement and likewise, the lands allotted in the share of plaintiff and defendants 1st party are mentioned in Schedule B of the written statement and the parties acted according to the terms and conditions of the compromise application and came in possession separately. This compromise is binding on both the parties which has fully been acted upon by the parties. After this compromise also, many properties have been acquired by these defendants and these lands have been detailed in Schedule A of the written statement. Title Suit No.6 of 1970 was filed for partition amongst the defendant No.8 and his descendants. The defendant Nos.1 and 2 filed intervention application but since there had already been compromise between the parties, the defendant withdrew the said suit.

8. On the basis of the aforesaid pleadings of the parties, the learned trial court framed the following issues:

- I. Is the suit as framed maintainable?
- II. Have the plaintiffs got a valid cause of action and right to sue?
- III. Is the suit bad for defect of parties?
- IV. Is the suit barred by law of limitation and by the principle of resjudicata, estoppel and acquiescence?
- V. Is the court fee paid sufficient?
- VI. Is there partition between the sons of Kali Mandal i.e. in



between the plaintiff and defendants 1st party in one hand and the defendants 2nd party on the other as alleged by the defendants 1st party?

VII. Are the properties shown under Schedule II of the plaint acquired in the family out of joint family income or the self-acquired properties of the respective parties?

VIII. Have the plaintiffs unity of title and possession and whether they are entitled to a decree for partition and if so, to what extent?

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

9. The learned trial court after hearing the parties and considering the evidences, oral and documentary, came to the conclusion that the branch of Nevi Singh is separated in all respect from the branch of Subodh Singh for a long time which can very well be said that since 1934 vide paragraph 23. Accordingly, the plaintiff's suit has been dismissed.

10. The learned counsel, Mr. Binod Kumar Singh appearing on behalf of the plaintiff-appellant submitted that the learned trial court has not properly appreciated the evidences and on surmises and conjectures and further on assumption and presumption recorded the finding that the parties are separate since after 1934 ignoring the fact that the compromise application was filed in Title Suit No.54 of 1963. The arbitration agreement, Ext. 1 executed and



registered during the Partition Suit No.54 of 1963 without the intervention of the court is illegal and void document and likewise, according to the defendants themselves, the compromise application, Ext. M which was entered into between the parties with a view to overreach the criminal case, is also a void compromise application. The learned trial court has not examined this aspect of the matter. According to the learned counsel, Ext. M is not registered and no decree has been passed on the basis of this compromise petition. It has got no legal effect but the learned trial court gave much emphasis on this compromise application.

11. The learned counsel further submitted that there was sufficient agricultural lands which formed the nucleus which was adequate enough to purchase the suit properties in the name of different members of the joint family and the defendant No.8 being the karta purchased the properties in the name of Nevi's branch also and in his name and his descendant's name but the learned court below without there being any evidence held that parties are separate since long in mess and residence and are selling the property and also acquiring the property separately therefore, presumed that there had been partition which is wrong and, therefore, this finding is liable to be set aside. Title Suit No.6 of 1970 was fraudulently filed by the defendants with a view to defeat the right of the plaintiff. The learned



counsel further submitted that the court below should have relied upon the report of the pleader commissioner who specifically reported that there is no old ridge and all the ridges found are recent ridges which clearly establish the fact that there had been no partition by metes and bounds but the trial court only referred the pleader commissioner's report in the judgment as such, the judgment of the trial court is vitiated.

12. The learned counsel further submitted that in the compromise application, Ext. M reference has been given regarding partition by punches but in fact, no such partition was effected by the punches. The plaintiff has examined the punches who have denied this fact and, therefore, the compromise application, Ext. M itself was a void document and could not have been given effect to. According to the learned counsel, all the properties acquired under Q series are joint family properties but the learned trial court wrongly held that these are the properties acquired by the defendants 2nd set and there had already been previous partition. At the time of argument, the learned counsel placed the evidences and the contents of the compromise application and submitted that the approach of the trial court is wrong as such, the judgment and decree is vitiated. He further submitted that there is no evidence at all in support of partition but the court below on assuming the fact presumed that there had already



been partition, and, therefore, the finding of the learned trial court is perverse finding not supported by evidence. On these grounds, the learned counsel for the appellants submitted that the first appeal be allowed and the impugned judgment and decree be set aside and the plaintiff's suit be decreed.

13. On the other hand, the learned counsel, Mr. Shrinandan Prasad Singh appearing for the respondents submitted that there had already been partition between two branches i.e. Nevi Singh and Subodh Singh in the year 1934 and since then the parties were living separately but the present plaintiff and his branch were never satisfied, therefore, the dispute persisted and ultimately Partition Suit No.54 of 1963 was filed by the defendant No.1, Nevi Singh and his sons. In the said partition suit, ultimately the parties compromised and compromise application was filed wherein the plaintiff and his father admitted the fact that the parties are continuing in separate and exclusive possession of the properties mentioned in respective Schedules. Therefore, in fact, the plaintiff admitted that there had already been partition between the parties. Now, therefore, once it is admitted that there had been partition then this second partition suit is not maintainable and the partition cannot be reopened. According to the learned counsel, the compromise application was filed in the year 1964 and after the compromise application, the



parties have sold the properties which were in their possession and, therefore, the partition was acted upon. Even if the partition suit was not decreed according to compromise but then the compromise application itself is agreement between the parties and in this compromise there is admission of partition.

14. The learned counsel further submitted that the aforesaid Title Suit No.54 of 1963 was filed by the father of the present plaintiff and plaintiff claiming partition. If there had been no partition then why the father of the plaintiff and this plaintiff did not pursue the said suit and the present partition suit has been filed in the year 1975. The compromise application is a voidable document. Nevi Singh never challenged the contents thereof on any ground within the prescribed period. Now, that compromise arrived at between the parties has become final and in the present case, no relief has been claimed for setting aside the compromise between the parties and moreover, the plaintiff cannot challenge the contents of the compromise application, Ext. M on the ground that his father was compelled to sign the compromise application as for any declaration with regard to document, the period prescribed under the Limitation Act is only three years. In view of the above facts, now after more than 11 years, the present plaintiff cannot be allowed to say that Subodh Singh forced Nevi Singh to sign the compromise application



particularly when Nevi Singh is not challenging Ext. M on this ground.

15. The learned counsel further submitted that the branch of defendant No.8, Subodh Singh have also partitioned between them. Had there been no partition between Nevi Singh and Subodh Singh, how the branch of Subodh Singh partitioned their lands. According to the learned counsel, all the properties acquired by Ext. Q series ranging from 1957 to 1969 are in the name of the branch of defendant No.8. In the compromise application, although, these properties were the subject matter of the suit, the plaintiff i.e. father of the present plaintiff, namely, Nevi Singh admitted that these properties are the properties of defendants and, therefore, it was not partitioned between the parties which is clearly mentioned in Ext. M. Now again, this question is raised in this present partition suit by the plaintiff claiming share in these properties covered under Ext. Q series. On these grounds, the learned counsel for the respondents submitted that the First Appeal be dismissed with cost.

16. In view of the above contentions of the parties, the following points arise for consideration in this First Appeal:

- (i) Whether there had already been partition between the parties in the year 1934 claimed by the defendants 2nd party i.e. branch of Subodh Singh or whether there is still unity of



title and unity of possession between the parties?

- (ii) Whether Ext. M, the compromise application is void or voidable document and whether it binds the plaintiff-appellant wherein it is mentioned regarding self-acquisition of properties by both parties respectively?

Point No.(i)

17. The specific case pleaded by the plaintiff is that the parties are still joint and there had been no partition whereas according to the contesting defendants 2nd party, there had been partition in the year 1934. In support of their respective cases, both the parties have adduced evidences. It will not be out of place to mention here that in partition suit the defendant if say that there had been previous partition then it is for him to prove that there had been partition as according to Hindu law, the family is always presumed to be joint unless the contrary is proved.

18. It is admitted fact that Title Suit No.54 of 1963 was filed by Nevi Singh and his son claiming partition of the suit properties. In the said suit, the defendants 2nd party filed written statement which has been marked as Ext. 'O' in the present case wherein also the same defence was taken i.e. regarding previous partition between Kali Mandal and his two sons. So far this plea is concerned, the present plaintiff was knowing since the written



statement filed in Title Suit No.54 of 1963. The plaintiff's father Nevi Singh was plaintiff No.1. The said suit was not contested and ultimately compromise application was filed wherein it was admitted that the parties are separate and are in exclusive possession of the properties mentioned in Schedules respectively. In the compromise application, there is no assertion that there had been no partition earlier and for the first time, during this Partition Suit No.54 of 1963, parties compromised and partition was arrived at. From plain reading of the compromise application, Ext. M, it would be evident that it is mentioned therein that Schedule I land of Ext. M has been coming in separate and exclusive possession of Nevi Singh and others since 07.12.1964 and those lands have been allotted in exclusive patti of the plaintiff. Therefore, in view of this terms and admission, the properties which were coming in separate possession were allotted in the share of plaintiff.

19. The plaintiff or his father never challenged this compromise arrived at between the parties within three years as provided under Article 58 and 59 of the Limitation Act. The Hon'ble Supreme Court in the case of **Md. Noorul Hoda v. Bibi Raifunnisa & Ors., (1996) 7 supreme court cases 767** has held that "when the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as



an insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded.” In the present case, as stated above, there is no challenge to the compromise application. Compromise application is nothing but agreement and admission of the parties. In this compromise application, Exhibit M, Nevi Singh clearly admitted that the parties are in exclusive possession of the properties allotted them in the share mentioned in Exhibit M. As stated above, in Exhibit ‘O’, the stand of Subodh Singh was that there had already been partition in the year 1934 between defendant No.1 and defendant No.8 and Kali Singh. The compromise application was signed by Nevi Singh and Subodh Singh on 18.12.1964. Nevi Singh clearly admitted that the parties were in exclusive possession since 07.12.1964. It is not the case of the plaintiff that he was not knowing the defence of Subodh Singh in Exhibit ‘O’ and the admission of his father in Exhibit M but then he remained silent and for the first time, in the year 1975, this partition suit has been filed.

20. From perusal of Exhibit M, it further appears that both the parties admitted that the lands described in separate schedules are the self-acquired properties of the parties. But, now again, those properties have been included in this partition suit after 11 years. The



father of the plaintiff i.e. Nevi Singh only stated in the written statement that pressure was given on him to sign the compromise. If this is the fact then what prevented him from challenging the compromise application, Exhibit M. He never challenged Exhibit M on that ground and remained silent. In this partition suit for the defence sake this plea is taken by Nevi Singh.

21. So far oral evidences are concerned, D.W.4 is the most important witness who is fufera brother of Nevi Singh and Subodh Singh both. He clearly stated in his evidence that there had been partition by metes and bounds between both the brothers in the year of earthquake. The natural calamity i.e. earthquake in Bihar occurred in 1934. The other witnesses who are villagers i.e. D.W.3, 5 to 10, 14, 15 and 17 all have stated that the parties are separate since 1942-43. From perusal of the cross-examination portion of these witnesses, it appears that except minor contradictions, which are not vital, there is nothing to discredit them. The other important document is Exhibit I, the registered deed of appointment of punches dated 07.09.1964.

22. The learned counsel for the appellant submitted that the compromise application is not signed by the present plaintiff and, therefore, the admission made by Nevi Singh is not binding on him nor the compromise application is binding on him. So far this submission of the learned counsel for the appellant is concerned, it



may be mentioned here that it is not the case of the present plaintiff-appellant that any prejudice has been caused or that no share has been given to his father. The plaintiff is entitled to his share from the share of his father. The question is there had been partition between Subodh Singh and Nevi Singh and, therefore, whenever the plaintiff will pray for partition, he will be entitled to a share in the property of his father and not in the share of Subodh Singh. Whether there had been partition between Subodh Singh and Nevi Singh or not Nevi Singh is the best person to say. Nevi Singh had signed the compromise and he admitted that properties mentioned in Schedule are self-acquired properties and the properties mentioned in one Schedule is the ancestral properties and both the parties are coming in exclusive possession of the properties. Nevi Singh never challenged this admission. How can his son be allowed to say that there had been no partition and that Nevi Singh signed on pressure that too after three years which is the period prescribed for challenging.

23. Exhibit 'Q' series i.e. Exhibit 'Q' to 'Q/14' are sale deeds which are in the name of sons and grandsons of Subodh Singh ranging from the year 1957 to 1969. Therefore, when in Exhibit M, the father of the plaintiff admitted the lands which are acquired by Subodh Singh or his sons or grandsons prior to 1964 are their self-acquired properties, as such, not subjected to partition, how the



property acquired thereafter i.e. from 1965 to 1969 became the joint family property. There is no explanation at all. Earlier the partition suit was filed in the year 1963 by Nevi Singh and his sons including the present plaintiff. The defence of the defendants was the same that there had been partition. In compromise admission is that the parties have acquired separate properties then how the property acquired thereafter were acquired out of joint family fund. Because the parties were separate, there is no question of joint family fund or nucleus arises.

24. The learned counsel for the appellant gave much emphasis on the point that the ancestral property was sufficient enough to acquire other properties and Subodh Singh was the karta so he acquired all these properties in the name of his sons or grandsons. Except this pleading, nothing has been brought on record. The evidences discussed above shows the contrary fact.

25. Further admitted fact is that in the year 1970, the sons of Subodh Singh inter se filed partition suit. The plaintiff knew this fact but then also the present partition suit has been filed in the year 1975. The plaintiff remained silent since the filing of Exhibit M and also filing of partition suit in the year 1970 and then after 11 years, this present suit has been filed. These circumstances are against the plaintiff.



26. The plaintiff adduced evidence to show that on coercion, his father and his brother joined in signing the compromise application, Exhibit M. P.W.12 is the plaintiff himself. He has stated that on intimidation his father signed the punchnama, Exhibit I. P.W.11 stated that Nevi Singh signed on a blank paper which is not the case of the plaintiff. According to the plaintiff, his father Nevi Singh told him that threatening was given by Subodh Singh. Therefore, these evidences are not admissible particularly when Nevi Singh never challenged either Exhibit I or Exhibit M within the period prescribed.

27. The plaintiff examined the punches whose names have been mentioned in the compromise application who all have participated in the family arrangement Exhibit M. So far these witnesses i.e. punches i.e. D.W.4, 12 and 17 are concerned, are neither here nor there because we are not examining the validity or otherwise of Exhibit M. The plaintiff never sought for any declaration with regard to Exhibit M and Exhibit I. The period prescribed for challenging the documents is provided under Article 58 and 59 of the Limitation Act. Now therefore, after such a long period i.e. after 11 years, the validity or otherwise of the said documents cannot be examined that too without seeking any declaration for the same.

28. The learned counsel, Mr. Binod Kumar Singh for the



appellant further submitted that the pleader commissioner was appointed who submitted his report to the effect that there is no ridges in between the lands and this report, Exhibit 'W' clearly shows that there had been no partition by metes and bounds. So far this submission is concerned, no finding can be recorded that because there is no ridge, there is no partition by metes and bounds. Moreover, from perusal of Exhibit W, the report, it appears that some ridges were found by the pleader commissioner. It further appears that the parties pointed out to the pleader commissioner regarding which land belonged to which party which clearly indicates that the parties are conscious about separate and exclusive possession. It is not the case of the plaintiff that the report submitted by pleader commissioner is wrong. Therefore, when the parties pointed out to the pleader commissioner that which land belonged to plaintiff's party and which land belonged to defendants 2nd party indirectly support the case of the defendant.

29. The learned counsel, Mr. Binod Kumar Singh for the appellant submitted that the plaintiff has not signed the compromise application, therefore, the compromise application is not binding on him. So far this submission is concerned, it may be mentioned here that the point to be answered is whether there had been partition between the parties or not. Moreover, the plaintiff has been examined



as P.W.12 who in his cross-examination at paragraph 29 clearly admitted that the date of partition mentioned in Exhibit M, compromise application is correct. Therefore, in his evidence, he admitted that there had been partition and the date mentioned in the compromise is correct date. There is no explanation about this admission. Now, if there had been partition, let us say even in the year 1964, then how this second partition is maintainable with respect to the whole property including the property of Subodh Singh and/or his sons and grandsons also.

30. In view of my above discussion, I find that the defendants have been able to prove that there had been partition between the parties in the year 1934. In Exhibit M, the plaintiff's father and brothers also admitted the partition and separate exclusive possession since 1964, as such, there is no unity of title and possession between the parties. Accordingly, point no.(i) is answered against the appellant.

Point No.(ii)

31. In Exhibit M, the father of the plaintiff and his brothers admitted the fact that the properties described in different Schedules i.e. Schedule III of Exhibit M are the lands of plaintiff, hence are not subject matter of partition and likewise, lands detailed in Schedule IV are the lands of defendants and are not subject matter



of partition at the instance of the well wishers. This document, Exhibit M is not a void document. Even if this admission is not binding on the plaintiff but then his father and brothers have admitted regarding self-acquisition by the plaintiff of 1963 suit and the defendants also. It is not the case of the present plaintiff that these admissions are wrong admissions or that the fact is not true rather all the properties are joint family properties. Moreover, the parties who admitted this fact i.e. Nevi Singh never challenged the admission. How can his son be allowed to challenge the admission made by his father to be wrong that too after the expiry of limitation period in presence of his father. In my opinion, therefore, the admission made by Nevi Singh regarding self-acquisition is binding on the present plaintiff and Exhibit M is not a void document. Accordingly, point no.(ii) is also answered against the appellant.

32. In the result, I find no merit in this First Appeal and accordingly, this First Appeal is dismissed. The parties shall bear their own costs.

(Mungeshwar Sahoo, J)

Saurabh/-

AFR/NAFR	NAFR
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