

**IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT
BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
District Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 12th Sept. '14.

R.F.A. No. 67 of 2006.

[Arising out of the judgment dated 22.04.2006 & decree dated 11.05.2006 passed by the learned 2nd Addl. Civil Judge (Sr. Division), Bhubaneswar in T.S. No.102/289 of 2005/2002.]

Banaprava Nayak, aged about 61 years,
W/o. Late Brajabandhu Nayak,
At/P.O. – Rajas, P.S. – Balipatna,
Dist. – Khurda.

... **Appellant.**

-V e r s u s-

1. Ramesh Chandra Mohanty, aged about 57 years.
2. Sankar Mohanty, aged about 52 years.
Both are sons of late Banambar Mohanty.
3. Sudhakar Nayak, aged about 38 years,
S/o. Late Ghanashyam Nayak.
4. Parbati Nayak, aged about 82 years,
W/o. Late Ghanashyam Nayak.
5. Haramani Nayak, aged about 72 years,
W/o. Late Bamadev Nayak.

6. Dinakara Nayak, aged about 48 years,
S/o. Late Bamadev Nayak.
 7. Jogendranath Nayak, aged about 67 years,
S/o. Late Chakradhar Nayak.
 8. Gobinda Chandra Nayak, aged about 64 years,
S/o. Late Gouranga Nayak.
- All are residents of Vill./P.O. – Rajas,
P.S. – Balipatna, Dist. – Khurda.

... **Respondents.**

Counsel :

- For Appellant -- Shri S.N. Das & Associates.
For Res. Nos.1 & 2-- Shri A.K. Mohanty &
Associates.
For Res. Nos.3, 6 & 7 Shri A.K. Nayak & Associates.
For Res. No.8 -- Shri K. Tripathy & Associates.
For Res. Nos.4 & 5-- None (dismissed).

Date of conclusion of argument : 14.08.2014.

Date of judgment : 12.09.2014.

J U D G M E N T

The unsuccessful plaintiff has come up with this appeal against the judgment dated 22.04.2006 & decree dated 11.05.2006 passed by the learned 2nd Addl. Civil Judge (Sr. Division), Bhubaneswar in T.S. No.102/289 of 2005/2002, dismissing her suit.

2. The parties hereinafter have been referred to as they have been arrayed in the Court below for the sake of convenience and proper appreciation.

FACTS :

3. The case of the plaintiff (appellant herein) is that the suit land is the joint ancestral property of both parties in the suit. There was a common ancestor, namely, late Gadadhar Nayak. Gadadhar had three sons, namely, Giridhari, Gouranga and Chakradhar. Giridhari died leaving behind Ghanashyam as his only son, who also died leaving behind his widow (defendant No.4) and son (defendant No.3). Gouranga died leaving behind Bamadev, Brajabandhu and Gobinda (defendant No.8). Bamadev died leaving behind his widow (defendant No.5) and son (defendant No.6). Brajabandhu died leaving behind his widow (plaintiff) and Chakradhar died leaving behind his only son (defendant No.7). During life time of Ghanashyam, the entire joint family property of Gadadhar, the common ancestor, has been partitioned among the co-sharers by Registered Partition Deed dated 15.01.1972. In that Partition Deed, there was schedule 'KA' property, which remained joint, and the rest of the properties were partitioned. This suit schedule property measuring Ac.0.120 decimals, which was subsequently reduced to Ac.0.090 decimals, remained as part of this schedule 'KA' property. It is further averred in the plaint that the said property being a "Nadia Badi" remained under the joint possession of all the co-sharers and they enjoyed

usufructs thereof jointly by making expenditure therein. In the current settlement operation, the suit land has been changed to the status of "Gharabari". Under the provisions of the Partition Act, a Gharabari land of a co-sharer cannot be transferred in favour of any stranger, without offering the first sale by the co-sharer to his co-sharer. It is averred, inter alia, that defendant Nos.3 to 7 behind the back of plaintiff and defendant No.8 executed a Registered Sale Deed No.1217 dated 08.08.1994 in favour of defendant Nos.1 & 2, which is illegal as they are strangers to the family. The plaintiff being a paradanashin lady and having come from a conservative family could not know about such sale. Her husband was suffering from heart ailments, for which she was busy in attending her husband and after his death in 1996, she shifted to Bhubaneswar. On 01.03.2002, she came to know about such void Sale Deed when the defendants tried to raise forcible construction over the suit land. So, the plaintiff filed the suit for declaring the impugned Sale Deed as void one and not binding on her; in alternative to direct defendant Nos.1 & 2 to execute the return Sale Deed in favour of plaintiff and defendant No.8; and for recovery of possession of the suit land. She also prayed for permanent injunction restraining defendant Nos.1 & 2 and their Agents from changing the nature and

character of the suit land. Hence the suit.

4. Defendant Nos.3 to 7 were set ex parte. Defendant Nos.1 & 2 filed written statement, stating that the suit is not maintainable in law, the plaintiff has no locus standi to file the suit, there is no cause of action to file the suit and the suit is barred by law of limitation. They refuted the allegations made in the plaint. According to these defendants, there was mutual oral partition and, accordingly, defendant Nos.3 to 7 transferred their shares from the suit plot to these defendants and gave delivery of possession to them and the partition has no application to the suit land, as there was no dwelling house thereon. Plaintiff and defendant No.8 were well aware of the same at the time of execution of the Sale Deed. It is further averred that the Sale Deed was executed to the knowledge of the husband of the plaintiff. Accordingly, the matter was agitated before the Consolidation Authority and the Consolidation Authority recorded the suit plot with an area of Ac.0.007 decimals, which is the share of defendant Nos.3 to 7, in favour of defendant Nos.1 & 2 basing on valid Sale Deed executed in favour of defendant Nos.1 & 2 by defendant Nos.3 to 7. It is further averred that when Consolidation Authority has already declared right, title and interest of defendant Nos.1 & 2 over Ac.0.007 decimals out of the suit plot, the suit is

defective being barred by *res judicata*. Since the Sale Deed was executed to the knowledge of the plaintiff and her husband since 1994, the suit is barred by law of limitation. As defendant Nos.1 & 2 have got valid right, title, interest and possession over Ac.0.007 decimals out of the suit plot, plaintiff's suit is liable to be dismissed against such extent of land.

5. Defendant No.8 filed written statement, supporting the averments of the plaintiff. According to him, defendant Nos.3 to 7 have no definite share over the suit property, for which the Sale Deed is void. So, he prayed to decree the suit in favour of the plaintiff.

6. Basing on the pleadings of both parties, the learned trial Court framed the following issues.

- i) Whether the suit is maintainable ?
- ii) Whether the suit is barred by limitation ?
- iii) Whether the suit is hit by principles of *res judicata* under section 11 of the C.P.C. ?
- iv) Whether this Court lacks jurisdiction to entertain the suit in view of the provision contemplated under section 51 of OCH & PFL Act ?
- v) Whether the sale deed executed by defendant Nos.3 to 7 in favour of defendant Nos.1 & 2 vide Registered Sale Deed No.1217 dated 08.08.1994 can be declared void ?
- vi) Whether plaintiff and defendant No.8 are entitled to get protection as per the provision laid down under section 22 of Hindu Succession Act and, accordingly, defendant Nos.1 & 2 to be directed to

execute the return Sale Deed and possession of the suit land to them ?

- vii) Whether a permanent injunction can be granted against defendant Nos.1 & 2, their Agents or Servants in respect of the suit schedule land ?
- viii) What other relief, is the plaintiff entitled ?

7. The learned trial Court took up issue Nos.(v) & (vi) and arrived at a conclusion that the impugned Sale Deed cannot be declared as void and there cannot be return Sale Deed to be executed by defendant Nos.1 & 2 in favour of the plaintiff. He decided all the issues against the plaintiff. However, the learned trial Court has answered issue Nos.(ii), (iii), (iv), (vii) & (viii) in favour of the plaintiff; but answered issue No.(i) in the negative against the plaintiff. Finally, the learned Court below dismissed the suit of the plaintiff.

CONTENTIONS :

8. Challenging the findings of the learned trial Court, the appellant preferred this appeal mainly on the ground that there is no proper appreciation of evidence, both oral and documentary, made by the learned Court below resulting dismissal of the suit. Learned counsel appearing for the appellant submitted that when the learned trial Court has held that the Sale Deed in question is a voidable document, yet gave finding on issue Nos.(v) & (vi) against the plaintiff. He

submitted that the judgment and decree passed by the learned trial Court are bad, illegal and without weight of the evidence on record. The learned trial Court has committed error by not analysing the contents of the Sale Deed and decided issue Nos.(v) & (vi) in favour of respondent Nos.1 & 2. The learned trial Court has erred in law by not appreciating that the impugned Sale Deed was executed by some of co-sharers without taking consent from appellant and respondent No.8 and other co-sharers when such property covered under the Sale Deed was kept in joint and Consolidation Record of Right was published accordingly. According to learned counsel for the appellant, the impugned Sale Deed is a voidable document, as it hits section 44 of the Transfer of Property Act, 1882. He further submitted that under section 22 of the Hindu Succession Act, 1956 appellant and respondent No.8 are eligible to purchase the suit land for which the finding of the learned trial Court that section 22 of the said Act is not available to the present plaintiff is not correct. Since issue Nos.(v) & (vi) have been settled without application of judicial mind by the learned trial Court, as submitted by learned counsel for the appellant, it was urged by him for setting aside the judgment and decree of the learned Court below by allowing the appeal.

9. Learned counsel appearing for respondent Nos.1 & 2 submitted that after due amicable partition between the parties, defendant Nos.3 to 7 have rightly transferred Ac.0.007 decimals out of the suit land to defendant Nos.1 & 2. He further submitted that section 22 of the Hindu Succession Act is not available to the plaintiff. He challenged the findings of the learned trial Court on other issues decided against defendant Nos.1 & 2 by taking cue from Order 41, Rule 22 of the C.P.C. According to him, the suit is barred by limitation because it is the evidence of plaintiff and defendants that the plaintiff and her husband were aware of the execution of the Sale Deed at the time of its execution. He further stated that the plaintiff was not looking after but her son was looking after the property. The plaintiff being not a coparcener cannot be allowed to challenge the impugned Sale Deed. He further stated that the suit is barred by *res judicata*, as the Consolidation Authority has decided the matter and section 51 of the Consolidation Act bars the jurisdiction of the Civil Court. So, he submitted that the learned Court below should have decided issues Nos.(ii), (iii), (iv), (vii) & (viii) in favour of respondent Nos.1 & 2. However, he supported the judgment of the learned trial Court on issue Nos. (i), (v) & (vi) and finally submitted for dismissal of the appeal.

DISCUSSION :

10. Being the Appellate Court, this Court has to go through the entire materials on record, including the evidence, as the first appeal is in continuation of the suit in the appeal and the procedural aspect has to be gone through. The First Appellate Court has got its duty to see whether justice has been meted out with proper perspective by the learned Court below. Accordingly, this Court has got enormous duty to award even justice.

11. It is the cardinal principles of *onus probandi* that if neither of the parties will adduce evidence, the suit of the plaintiff will fail. On the other hand, it is always the duty of the plaintiff to discharge onus by leading evidence.

12. In this case, the learned trial Court has, first of all, taken issue Nos.(v) & (vi) jointly for discussion. So, let me find out whether the findings of the learned trial Court on these two issues are correct or not. The plaintiff has averred about partition of the joint family property on 15.01.1972 wherein the present suit land was kept joint and other properties were distributed according to their shares. On the other hand, in the written statement filed by defendant Nos.1 & 2, the plea has been taken that the suit land has not been kept joint and the same has been partitioned pursuant to which defendant

Nos.3 to 7 have got 7/9th share over the suit land and, accordingly, they have transferred their share to defendant Nos.1 & 2 on execution of a valid Sale Deed. When there is partition, it is for the plaintiff, first of all, to prove that in spite of such partition, the said suit land was kept joint. The plaintiff, in order to discharge her onus, has examined three witnesses and adduced documentary evidence. They have produced the certified copy of registered partition deed dated 15.01.1972 vide Ext.2. On going through Ext.2, it is found that schedule 'KA' land was allotted to the husband of the plaintiff and his co-sharers and the same was kept in jointness. This 'KA' schedule land consists of several plots, including the suit land appertaining to sabik khata No.946, sabik plot No.4225, area Ac.0.012 decimals. It also appears from Ext.2 that schedule 'KHA' land has been allotted to Ghanashyam Nayak; schedule 'GA' land has been allotted to Haramani Bewa (defendant No.5), who is the widow of one Bamadev Nayak, who is none other than uterine brother of plaintiff's husband, and her minor son; schedule 'GHA' land has been allotted to plaintiff's husband and his another co-sharer; and schedule 'UAN' has been allotted to defendant No.7. It further appears from the Registered Deed of Partition that all the legal heirs of Giridhari Nayak have been made party to the same. So, Ext.2

amply proves that in the partition, there was severance of joint status and the partition took place; but schedule 'KA' property was kept joint. Not only this, but also the plaintiff has proved the certified copy of Consolidation Record of Right vide Ext.6, which shows that the same being published in 1994 has recorded hal suit khata No.1526 and hal suit plot No.2730 with an area of Ac.0.009 decimals of status 'Gharabari' (homestead). There are other plots also in the said hal khata. It stands recorded jointly in favour of plaintiff and defendant Nos.3 to 8. Of course, the plaintiff has not proved the plot index to show that sabik khata and plot, as mentioned in Ext.2, correspond to hal suit khata and hal suit plot numbers; but the identity of the land has not been challenged by the contesting defendants. So, the schedule of land, as mentioned in the plaint, is taken as correct. It is revealed from the evidence of P.W.1 that Ac.0.012 decimals of suit plot has been reduced to Ac.0.009 decimals. According to P.W.1, Bamadev Nayak, who is one of the co-sharers, has purchased the suit land under Registered Sale Deed; but such Sale Deed is not found in the record. Ext.2 shows that whatever be the joint family property and the property purchased by individual co-sharers all have been left in the partition to reckon the same as coparcenary property of the joint family. Under the provisions

of law, there is no bar for leaving the individual purchased property during jointness to keep it as joint family property. So, even if the suit land has been purchased by Bamadev, but it appears from Ext.2 that the said property has also been thrown to the jointness, for which such property has become the subject matter of the partition deed. At the same time, it is revealed from the evidence of P.W.1 that Gadadhar died since long leaving behind Giridhari, Gauranga & Chakradhar, who are also dead. When he had three sons, obviously every branch of his sons must have got $1/3^{\text{rd}}$ share and that is also reflected in Ext.2. But, it appears from the evidence of P.W.1 that Ac.002 decimals out of Ac.0.009 decimals has not been sold by defendant Nos.3 to 7 to defendant Nos.1 & 2. He has proved the certified copy of the impugned Registered Sale Deed vide Ext.3. On going through the same, it appears that Ac.0.007 decimals out of Ac.0.009 decimals of the hal suit plot has been sold for consideration. When Ac.0.007 decimals out of the joint suit property has been sold away leaving Ac.0.002 decimals and defendant Nos.1 & 2 have taken the plea that the property is not joint whereas Exts.2 & 6 show that it was joint, it appears that the plaintiff has discharged her initial onus. Now, the burden of proof shifts to defendant Nos.1 & 2 to prove that after mutual partition only, this property was sold to them by

defendant Nos.3 to 7.

13. Defendant Nos.1 & 2, in order to discharge their onus, have examined two witnesses, including defendant No.1, and produced the documents. They have proved the original Registered Sale Deed dated 08.08.1994. On going through the same, it appears that defendant Nos.3 to 7 have sold Ac.0.007 decimals out of the suit land to defendant Nos.1 & 2 on payment of consideration. In that document, it has been mentioned that plaintiff's husband and other co-sharers have got land to the east of the said plot. It is further revealed from such document that even if Chakabandi plot has been recorded jointly, but on mutual partition, this Ac.0.007 decimals allotted to their share has been sold for legal necessity. Not only this, but also it is revealed from the evidence of D.W.1 that they have filed an application before the Director, Consolidation, to correct the Record of Right vide R.P. Case No.3742 of 1994 to record the land separately. He has proved the certified copy of revision petition filed before the Director of Consolidation under section 37(2) of the Orissa Consolidation of Holdings & Prevention of Fragmentation of Lands Act, 1972 ("the Act", for short) vide Ext.C. He has also proved the certified copy of the order of the Director vide Ext.D, which shows that he has remanded the case to the Consolidation Officer, Nimapara for

correction of records as per the Registered Sale Deed. There, plaintiff's husband was a party and it appears that he was present before the Director as per order-sheet dated 20.09.1994. Further, he has proved the certified copy of the order passed by the Consolidation Officer on such revision petition vide Ext.E. It is revealed from the certified copy of order-sheet dated 27.10.1995 passed by the Consolidation Officer, Nimapara that the Director remanded the case and he recorded Ac.0.007 decimals in favour of defendant Nos.1 & 2 relying upon the Sale Deed; but plaintiff's husband and Govinda Chandra Nayak (defendant No.8) were allowed to get rest Ac.0.002 decimals of land. It has also been observed by the Consolidation Officer vide order dated 27.10.1995 (Ext.E) that out of four shares, three shares have been sold against the suit plot. Of course, in such proceeding, plaintiff's husband was a party; but they remained absent. He has proved all the consolidation enquiry reports, etc. vide Ext.F. It is revealed from Ext.B and Ext.3 that there was mutual partition and, accordingly, Ac.0.007 decimals out of Ac.0.009 decimals, as available to the shares of defendant Nos.3 to 7, has been sold away. It is further to be found whether the suit property left in jointness has been effected by mutual partition. It is well settled law that in civil cases burden can be discharged by the

principles of preponderance of probability. It is revealed from D.W.1 that he has no knowledge as to when amicable partition took place between the co-sharers of defendant Nos.3 to 7. But, it is revealed from his cross-examination that Govinda Chandra Nayak and Brajabandhu Nayak had not consented to Ext.B, as they were in separate possession. It is revealed from the evidence of D.W.2 that he has seen the separate possession of defendant Nos.3 to 7 over Ac.0.007 decimals of land for the last 20 to 25 years and separate possession of Ac.0.002 decimals of land by Brajabandhu, husband of the plaintiff, and Govinda (defendant No.8). There is no fruitful cross-examination to this witness. He has proved separate possession of the parties, including plaintiff's husband, of their respective shares over the suit plot. Apart from this, defendant Nos.1 & 2 have also cross-examined P.Ws.1, 2 & 3. It is revealed from para-16 of the cross-examination of P.W.1 that defendant Nos.3 to 7 have sold the suit land to defendant Nos.1 & 2 and their shares of Ac.0.002 decimals is lying separately. She has further stated that other share-holders are dealing with their property separately and they alienate according to their need. Similarly, P.W.2, who is none other than the son of P.W.1, at para-12 of his cross-examination has stated that their share is Ac.0.003 decimals; but they are not

in possession of the entire extent and defendant Nos.1 & 2 are possessing Ac.0.007 decimals of their purchased area and balance Ac.0.002 decimals of the suit land lies to the east, which is now lying vacant. Thus, it appears from his evidence that they have already got share over this Ac.0.002 decimals. Similarly, P.W.3 at para-13 of his cross-examination has admitted that Subrat Nayak and Govinda Nayak are possessing the vacant portion of the suit land. It is clear that this vacant land is Ac.0.002 decimals, which is not sold under Ext.3. Therefore, it is proved through the cross-examination of P.Ws. by defendant Nos.1 & 2 that plaintiff's husband and defendant No.8 have already been possessing Ac.0.002 decimals out of Ac.0.009 decimals of the suit land. When the property stands jointly recorded and the parties have been possessing their respective shares since long as per mutual partition, the partition of the suit land between the parties has to be held because to prove the previous partition, the conduct of the parties and the records are also relevant. When the Consolidation Authorities have agreed to separate the khata basing on possession of the parties, the parties have also admitted to have dealt their respective share separately and there is already severance status when the original partition took place on 15.01.1972, it is found that mutual partition of

the suit land between the parties has taken place and, accordingly, defendant Nos.3 to 7 have sold their shares of Ac.0.007 decimals to defendant Nos.1 & 2. Thus, defendant Nos.1 & 2 have discharged their onus.

14. Their Lordships in the case of ***Ramdas Vs. Sitabai & Ors. (AIR 2009 SC 2735)*** have been pleased to observe at para-17 that :

“In view of the aforesaid position, there could be no dispute with regard to the fact that an undivided share of co-sharer may be a subject-matter of sale, but possession cannot be handed over to the vendee unless the property is partitioned by metes and bounds amicably and through mutual settlement or by a decree of the Court”.

15. With due respect to the said decision, I find in the instant case, as discussed earlier, there has been amicable partition for which respective share-holders, including the plaintiff, are in possession of their share of the suit land and, accordingly, defendant Nos.3 to 7 have sold Ac.0.007 decimals to the extent of their share to defendant Nos.1 & 2 and delivered possession thereof. Moreover, the share of Ac.0.002 decimals of plaintiff and defendant No.8 has been set apart. In such circumstances, the impugned Sale Deed dated 08.08.1994 showing mutual partition basing on their possession of their respective shares cannot be said to be invalid and void,

although Record of Right was joint, which was separately prepared subsequently. Of course, the reasons for arriving at such conclusion by the learned trial Court is not correct, as he has given finding on issue No.(v) basing on the finding on issue No.(vi). However, the finding of the learned trial Court that the impugned Sale Deed is not void is concurred with for the reasons discussed above.

16. So far as issue No.(vi) is concerned, section 22 of the Hindu Succession Act states that “an interest in any immovable property or an intestate, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred”. In the instant case, on mutual partition, Ac.0.007 decimals has been occupied by defendant Nos.3 to 7 to their shares and Ac.0.002 decimals of the suit land has been enjoyed by plaintiff and defendant No.8. Since there is mutual settlement and the Sale Deed itself is valid, it cannot be said that the undivided share of plaintiff and defendant No.8 in the suit land has been alienated by defendant Nos.3 to 7 to defendant Nos.1 & 2. Moreover, there is no pleading of application of section 22 of

the Hindu Succession Act in the plaint by the plaintiff. Hence, the question of application of section 22 of the Hindu Succession Act does not arise. So, this issue has been answered in the negative against the plaintiff. I also concur with the finding of the learned trial Court on this issue.

17. I have gone through the findings of the learned trial Court on other issues. Though the learned Court below has not individually decided the issues, but has given findings on all issues in two paragraphs. The most important issue is whether section 51 of the Act is a bar to bring this suit ? In fact, it is well settled law that such jurisdiction of the Civil Court is curtailed as to the extent of jurisdiction the Consolidation Authority exercises. In the case at hand, the Consolidation Authorities have only allowed the mutation in favour of defendant Nos.1 & 2 about portion of their land purchased. When it has been held that the Sale Deed is valid and, accordingly, Mutation Record of Right has been issued by the Consolidation Authorities, it is not necessary for application of section 51 of the Act. Similarly, the question of application under section 11 of the C.P.C. does not arise when the Consolidation Authorities have not delved upon the validity of the Registered Sale Deed and given their finding. It is well settled law that the Civil Court can decide about the

validity of a Sale Deed in respect of the homestead land whereas the Consolidation Authorities cannot declare a Sale Deed as void or cancel the same. So, the question of application of section 11 of the C.P.C. in this case does not arise. Moreover, in this case, since the Sale Deed has already been found valid and the Mutation Record of Right has been issued, the principles of *res judicata* does not exist. So, the findings on these issues, as arrived at by the learned trial Court, are concurred herewith.

18. As a matter of fact, there is no proof that the plaintiff was aware of the execution of the Sale Deed earlier to 01.03.2002. There is no evidence adduced by the defendants in this regard. Thus, the question of her knowledge before 01.03.2002 about such execution of the Sale Deed remained far from proof. So, issue No.(ii) as to whether the suit is barred by limitation is not proved. I concur with the finding of the learned trial Court on this issue.

19. When defendant Nos.1 & 2 are already in possession of the suit land to the extent they have purchased under valid Sale Deed, permanent injunction cannot be granted against them. So, issue No.(vi) has been answered in the negative against the plaintiff and I concur with the finding of the learned trial Court on this issue. In view of finding in the

above issues, the suit is not maintainable otherwise. I concur with the views of the learned trial Court so far as issue No.(i) is concerned.

20. Considering all such aspects, no relief can be granted to the plaintiff except the fact that she would continue to enjoy her share of Ac.0.002 decimals out of the suit land with defendant No.8. Hence ordered :

O R D E R

The appeal fails and the same is dismissed without cost. The judgment dated 22.04.2006 & decree dated 11.05.2006 passed by the learned 2nd Addl. Civil Judge (Sr. Division), Bhubaneswar in T.S. No.102/289 of 2005/2002 are hereby confirmed.

**District Judge, Khurda
at Bhubaneswar.**

12.09.2014.

Dictated, corrected by me and pronounced in the open Court this day the 12th September, 2014.

**District Judge, Khurda
at Bhubaneswar.**

12.09.2014.