

(1970) 01 OHC CK 0006

In the Orissa High Court

Case No : Original Suit No. 6 of 1964

Official Liquidator, Puri Bank Ltd. (In Liquidation)

APPELLANT

Vs

Titaghur Paper Mills and Others

RESPONDENT

Date of Decision : 19-01-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 54

Citation : (1970) 01 OHC CK 0006

Hon'ble Judges : B.K. Patra, J

Bench : Single Bench

Advocate : J. Rath, for the Appellant; D.P. Mohanty, B. Mohapatra, P.V. Ramdas, Additional Standing Counsel and K.M. Swain, for the Respondent

Judgement

Patra, J.—The plaintiff Puri Bank, now under liquidation has filed this suit (a) for declaration that the sale deeds dated 20-7-1959 (Ext. 7) and 31-7-1959 (Ext. A) executed by defendants 2 and 3 in favour of defendant No. 1 are invalid and inoperative against the plaintiff; (b) for partition of the suit lands measuring 32.10 acres into two equal shares and for recovery of possession of one such share; and (c) for recovery of Rs. 1280/- as past mesne profits for damages for the period commencing from 13-7-1960, the date when the plaintiff purchased the half share of the disputed property in Court auction till 20-3-1964, the date of institution of the suit in respect of 8.231/2 acres out of the disputed land with pendente lite and future mesne profits.

2. The sthitiban Khata No. 51 of mouza Sultanpur has a total area of A. 36.51 decimals. Out of the above, A. 32.10 decimals of land are the properties comprised in the present suit. The disputed properties originally belonged to one Chapala Sundari Dei from whom defendants 2 and 3 purchased the same on 11-6-1943. Defendants 2 and 3 had each an eight annas undivided interest in the suit property. It is not disputed that by notification dated 27-6-1953 issued by Government u/s 2 (c) of Orissa Act 18 of 1948 (hereinafter referred to as the Act), the project Paper Mill at Chowdwar was included in the expression

"development of Industries". Land was required for the paper mill for construction of the mill proper and for railway siding. On 19th August, 1955, Government issued a notification u/s 3 of the Act for acquisition of 541.05 acres of land for construction of the mill proper. On 11-10-55, a similar notification was issued for acquiring 17-64 acres of land for the Railway siding. Admittedly the later notification includes 4.33 acres of land forming part of the disputed land in the present suit. It is also not disputed that action u/s 4 of the Act was also taken in respect of the lands notified for acquisition. Section 5 of the Act provides that when a notification of acquisition is served or published u/s 4, the land shall vest absolutely in the Provincial Government free from all encumbrances on the date the notice is so served or published in the gazette. Satrughna Sahu defendant No. 3 thereafter filed a writ application in this Court under Article 226 of the Constitution challenging the validity of the notifications above-mentioned and a Bench, of this Court held by its judgment dated 11-4-1958 that notification dated 27-6-1953 is not only ultra vires the Constitution as offending Article 31 (2) but is also outside the scope of clause (c) of Section 2 of the Act and that all proceedings taken in pursuance of the notification are invalid (see *Satrughna Sahu Vs. The State of Orissa and Others*, . Thereafter on 8-4-1959, the Puri Bank in execution of a money decree it had obtained against defendant No. 3 *Satrughna Sahu*, attached his eight annas interest in the disputed properties measuring 32-10 acres. Three months thereafter, defendants 2 and 3 sold to defendant No. 1 the Titaghur Paper Mills 16.47 acres of land out of the disputed lands by the two Kabalas exhibit 7 dated 20-7-1959 and exhibit A dated 31-8-59, and delivered possession of the lands to defendant No. 1. It may be stated here that the 16.47 acres of land conveyed under the two Kabalas included the 4-33 acres of land already referred to which formed a portion of the properties in respect of, which land acquisition notification dated 11-10-1955 was issued under the Act. It was at this stage that Government enacted the Land Acquisition Orissa Amendment and Validation Act 19 of 1959 (hereafter referred to as the Validation Act) which received the assent of the President on 17th October, 1959 and was published in the gazette on 4-11-1959. It is unnecessary to refer at length to Section 4 of the Validation Act. It is sufficient to say that thereby the notifications which were impugned in the previous writ proceedings had been validated. In due course, the land acquisition proceedings which started with the issue of the notifications dated 19-8-1955 and 11-10-1955 culminated in the passing of an award on 18-8-1963. Meanwhile the disputed lands which had been previously attached in execution of the decree obtained by the Puri Bank against *Satrughna Sahu* were put up for sale and on 13-7-1960 the Puri Bank purchased the attached undivided half share of 16.06 acres of *Satrughna Sahu* in the properties. On 19-2-1962, the sale was confirmed and sale certificate was obtained by the plaintiff who took delivery of possession of the purchased properties through Court on 21-3-1962.

3. It is the case of the plaintiff that as defendant No. 1 had purchased 16.06 acres of land out of the disputed properties measuring 32.10 acres at a time

when an eight annas share in the properties had already been attached in execution of the decree which the plaintiff had obtained against Satrughna Sahu, the sales evidenced by the two Kabalas Exts. 7 and A are not binding on the plaintiff to the extent of Satrughna's half share therein measuring 8.03 acres of land and that as from 13-7-1960, the date when the plaintiff purchased the property in Court Auction defendant No. 1 is in unlawful possession of 8.03, acres of land, the Bank is entitled to claim mesne profits from defendant No. 1. That apart, the plaintiff is entitled to get the disputed lands measuring 32.10 acres partitioned into two equal shares and to obtain possession of one such share.

4. The suit proceeds ex parte against defendants Nos. 4 and 5.

5. Defendant No. 1 contests the plaintiff's claim that there was ever any attachment of eight annas share in the disputed property at the instance of the plaintiff. Consequently defendant No. 1, being a purchaser for value of the 16.47 acres of land without notice of any attachment thereon has acquired a valid title to the properties. In any event, 4.33 acres of land out of the above, having been the subject-matter of land acquisition proceedings started in the year 1955, which has been validated with retrospective effect by the Validation Act in 1959, the plaintiff cannot claim any interest therein. It is also contended that the suit is barred by limitation and is bar for defect of parties.

6. Defendant No. 2 in his written statement did not admit that there was ever any attachment of eight annas interest of defendant No. 3 in the suit properties, that these attached properties were ever put up for sale and purchased by the plaintiff and that the latter ever got possession of the same through Court. He contended that on some of the disputed plots of land there were under-rayats who were in Khas possession thereof and as these under-rayati interests were neither attached nor sold, the plaintiff cannot be deemed to have purchased those interests. To his written statement he appended a schedule giving a list of such lands. It is contended by him that during the years 1961 and 1962, he had purchased the under-rayati interests in such lands from the sikmi tenants and claims that those plots should not form the subject-matter of partition.

7. After the written statements were filed, the plaintiff by an amendment of the plaint contended that he came to learn that defendant No. 1 having purchased an area of 16.47 acres under the Khabalas Exhibits 7 and A including 8.05 acres which were attached by the Court at the instance of the plaintiff put forth a claim for compensation before the Land Acquisition Officer in respect of the lands purchased by him (defendant No. 1) and obtained compensation. It is, therefore, prayed in the alternative by the plaintiff that if for any reason his prayer for partition and recovery of possession in respect of any portion of his share in the disputed lands is not allowed on the ground that the land has already been acquired in the land acquisition proceedings, he should be entitled to a proportionate share in the compensation received by defendant No. 1 in respect of those lands. Defendant No. 1 in the additional written statement filed by him

denied these allegations and the plaintiff's alternative claim based thereon.

8. On the pleadings aforesaid, the following issues were framed to be determined:

"1. is the suit as laid maintainable?

2. Has the plaintiff any cause of action against the defendants in view of the provisions of the Orissa Act No. 19 of 1959?

3. is the suit barred by limitation?

4. is the suit bad for defect of parties?

5. Has the plaintiff acquired the under-tenancy right in respect of A.7.87 decimals mentioned in Schedule A of the written statement of defendant No. 2?

6. is the plaintiff entitled to get Khas possession by partition of the lands mentioned in Schedule A of the written statement of defendant No. 2?

7. is the plaintiff's purchased land to the extent of eight annas share of the disputed property measuring A. 32.10 in auction sale, of Ex. C. No. 54/58 as given in schedule of the plaint valid as against the defendants Nos. 1 to 3?

8. is the transfer by sale deeds dated 20-7-59 and 31-7-59 executed by the defendants 2 and 3 in favour of the defendant No. 1 valid and binding on the plaintiff and, if so, to what extent?

9. is the plaintiff entitled to mesne profits, if any, from defendant No. 1 in respect of the area measuring more or less than A. 7.985 as noted in the schedule of the plaint?

10. is the plaintiff entitled to compensation money which is payable in respect of the plaintiff's eight annas share of a part thereof which would be found to have been acquired by the defendants Nos. 4 and 5 for defendant No. 1?

11. is the plaintiff entitled to his eight annas share partitioned of with defendants Nos. 1 to 3, the balance area of plaintiff's purchased land after deducting the area acquired for defendant No. 1 under the Land Acquisition Act?

12. Has the defendant No. 1 received on first occasion compensation money of Rs. 1507-27 paise from, defendants Nos. 4 and 5 on 21-8-63 on account of the acquisition of some of the disputed lands for the Railway siding in the Land Acquisition Case No. 1 (C) of 1954-55. If so is the plaintiff entitled to the same from defendant No. 1?

13. To what relief if any, is the plaintiff entitled?"

9. Issues 7, 8 and 11:-- These issues may be taken up together. As already indicated, out of the disputed lands measuring 32.10 acres, an extent of land measuring 4.33 acres was included in the land acquisition notification issued in the year 1955. Although these notifications were declared illegal and ultra vires the Constitution by a Bench of this Court in the case reported in Satrughna Sahu

Vs. The State of Orissa and Others, , these notifications were subsequently validated under the Validation Act. The position prima facie therefore is that the 4.33 acres of land were validly acquired in the year 1955 and the lands vested absolutely in the State Government free from all encumbrances. These 4.33 acres were no more the property of defendants 2 and 3 by April 1959 when in execution of the decree the plaintiff had obtained against Satrughna Sahu defendant No. 3 his half share in the disputed properties was sought to be attached. Assuming that the attachment and the subsequent sale were all true, it must follow that what was validly attached is not Satrughna Sahu's eight annas share in the entire disputed land of 32.10 acres but only his half share in 27.67 acres (the balance remaining after deducting 4.33 acres from 32.10 acres).

10. This leads me to a consideration of the question whether the attachment said to have been effected in execution of the decree which the plaintiff had obtained against Satrughna Sahu is true and valid. Ext. 1 is the writ of attachment and it purports to have been executed by Bhaskar Chandra Das P. W. 1, a process-server of the Civil Courts, Cuttack. He deposed that he executed the writ of attachment in respect of the lands mentioned in the schedule attached to the writ and that the lands were identified to him by one Uli Mohammad and that Kunjabehari Mangaraj P. W. 4 an employee of the plaintiff was also present at the time of execution of the writ. Ext 1/1 is his report which shows that he got the proclamation about the fact of attachment made by beat of drum, that he himself read out the writ in presence of the persons who had gathered at the spot and that he affixed a copy of the writ of attachment on a pole fixed on one of the attached plots and that subsequently he affixed a copy of the writ of attachment on the notice board of the Court. His evidence regarding attachment is corroborated by that of P. W. 4 from whom it was elicited that the pole was fixed in token of attachment on plot No. 301, which, as the schedule of attached property shows, is the biggest plot with an area of 13.85 acres. Uli Mohammed who, according to the process-server had identified the lands is dead. It was commented on behalf of the contesting defendants that neither of the two persons who signed as attesting witnesses in the writ of attachment has been examined. But I am not prepared to draw any adverse inference from such non-examination when the peon who actually executed the writ and who is a disinterested witness has stated that the writ in fact was executed. Neither of the two contesting defendants has categorically stated that the attachment is not true. All that they state is that they are not aware of any such attachment. If it is their case that the two attesting witnesses, had they been examined, would not have supported the plaintiff's case it was open to the defendants to examine those two witnesses themselves. But this has not been done. In the circumstances, I accept the plaintiff's case and hold that the writ of attachment was actually executed in the locality and that a copy of the writ of attachment was also affixed on the notice board of the Court house.

11. Mr. B. Mohapatra, learned Advocate appearing for defendant No. 1 contended that in the absence of any evidence to show that a copy of the writ of attachment

was served on the judgment-debtor defendant No. 3, the attachment must be held to be invalid. Rule 54 of Order 21 of the CPC deals with attachment of Immovable property made in execution of a decree and it runs as follows:

"54. Attachment of Immovable property.--(1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house, and also, where the property is land paying revenue to the Government, in the the office of the Collector of the district in which the land is situate and also where the property is situate within Cantonment limits, in the office of the Local Cantonment Board and the Military Estates Officer concerned."

It would thus be seen that there is no direction in Order 21, Rule 54, C.P.C. that a copy of the prohibitory order shall be served upon the judgment-debtor. All that is enjoined is that an order should be passed by the Court prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge. After such an order is passed by the Court, the rule enjoins that it should be proclaimed and affixed in the manner prescribed in Sub-rule (2). Mr. Mohapatra relies on a decision of a learned Single Judge of Gujarat High Court in Bai Kailas Gouri Vs. Patel Shanabhai Nathabhai and Others, . The learned Judge is of opinion that the first sub-rule of Order 21, R. 54 deals with judgment-debtor and second sub-rule deals with informing the general public regarding the attachment, and while the second sub-rule deals with the mode of informing the public in general the first sub-rule requires the judgment-debtor to be prohibited. His Lordship has taken the view that the judgment-debtor cannot be prohibited unless he is informed of the order of prohibition. This decision is in direct conflict with a Bench decision of the Allahabad High Court in Karan Singh Vs. Ram Sahai and Another, , where their Lordships have expressed the view that the proposition that an attachment is not complete until the notice of the prohibitory order is served on the owner of the property is unwarranted since there is no direction in Order 21, Rule 54, Civil P. C. to that effect, and that an attachment is complete and valid when a prohibitory order is proclaimed and affixed. This view appears to me to be in accordance with the language of the rule and I would accept it in preference to the view expressed by the learned Single Judge of the Gujarat High Court. I would, therefore, hold that the eight annas share of defendant No. 3 in 27.67 acres out of the disputed lands as referred to already has been validly attached under Ext. 1.

12. P. W. 4 has deposed that the lands attached were subsequently put to auction sale and purchased by the Bank and after purchase, the sale certificate was obtained and possession was delivered to the Bank through Court. The

delivery of possession is evidenced by the writ of delivery Ext. 5/a. P. W. 5 Balaram Singh who was a process-server of the Civil Courts executed the writ and deposes that he delivered possession of the properties mentioned in the schedule attached to the writ to Kunjabihari Mangaraj P. W. 4, who is the law agent of the plaintiff. The property purchased by the Bank being an undivided share in certain properties, only symbolic possession was given. Nothing has been elicited in the cross-examination of P. W. 4 or P. W. 5 to throw any doubt on the truth of the statements made by them on this point.

13. It is not disputed before me that apart from the 4.33 acres of land out of the disputed 32.10 acres the balance 27.67 acres of land did not form the subject-matter of the land acquisition proceedings. By the time attachment took place, these 27.67 acres of land belonged to defendants 2 and 3 jointly each having an eight annas interest therein. The eight annas share of defendant No. 3 in these 27.67 acres of land had been validly attached on 8-4-1959. Thereafter, by the two sale deeds Exhibit 7 and Exhibit "A", defendant No. 1 purchased from defendants 2 and 3, 16.47 acres of land. The land so purchased included 4.33 acres of land referred to above, the title to which, as a result of the subsequent validation proceedings, must be deemed to have vested in the State in 1955 before the attachment took place. So far as the balance 12.14 acres (16.47 -- 4.33) are concerned, the purchase of defendant No. 1 is clearly subject to the prior attachment made under Exhibit 1, in respect of eight annas share therein. Since the attachment is a valid one, defendant No. 1 would not be heard to say that he is a bona fide purchaser for value without notice of attachment. These issues are accordingly answered.

14. Issues 5 and 6. Defendant No. 2 contends that on some of the disputed plots, there are sikmi tenants when the attachment took place and that any right which the plaintiff has acquired in respect of the eight annas share in the disputed property will be subject to the rights of the sikmi tenants. He has further averred that he has since purchased the sikmi right from some of the tenants and that consequently when effecting a partition of the disputed properties, the few plots the sikmi right in which has been purchased by defendant No. 2 should be set apart to be allotted to his share. But the plaintiff and defendant No. 1 state on the other hand that there were no sikmi tenants at any time over any portion of the disputed properties. None of the alleged Sikmi tenants has been examined by defendant No. 2, nor have the sikmi khatas been produced in Court. In support of his contention, defendant No. 2 filed only the current settlement khatian in respect of khata No. 51 which in its "remarks" column shows that some of the plots were in possession of tenants. The purchase of disputed lands by defendants 2 and 3 from Chapala Sundari Dei was long after the current settlement operations were over. Although the sale deed is not produced in Court, it is admitted by defendant No. 2 in cross-examination that it was not mentioned in the sale deed that some of the plots conveyed under that kabala were in occupation of sikmi tenants. It is admitted by defendant No. 2 that khas possession of the lands covered by land acquisition notifications was

made over to the mill and that khas possession of the lands covered by the two sale deeds Ext. 7 and Ext. A was also made over to the defendant No. 1 after execution of the kabalas. If by that time some of the disputed plots of land were in occupation of sikmi tenants, it is not understood how defendants 2 and 3 could have made over khas possession of the lands to defendant No. 1. In *Satrughna Sahu Vs. The State of Orissa and Others*, , Satrughna Sahu had filed an affidavit in Court which is now marked as Ext. 4. He had categorically stated in paragraph 3 of his affidavit that none of the lands forming the subject-matter of the writ proceedings was ever in possession of any sikmi tenant. Defendant No. 2 himself has filed Ext. G which is a certified copy of an order passed in a proceeding u/s 145, Criminal P. C. in which Anadi Swam and four others were the first party and Sidha Sahu,, the father of defendant No. 2 and others were the second party. The subject-matter of the Section 145 proceedings were certain plots of land which, in the current settlement khatian Ext. H were shown as tenanted. The first party claimed to be in khas possession of the lands and this was contested by the second party members who claim to be in khas possession themselves. The proceedings terminated in favour of the second party, that is, the predecessors-in interest of defendants 2 and 3. There is nothing on record to show that when some lands appertaining to the disputed khata were acquired under the land acquisition proceedings, any of the sikmi tenants preferred any claim for compensation on the ground that they were in possession of the same. On the other hand, the award Ext. 2 shows that no part of the compensation was paid to any of these so-called sikmi tenants. In these circumstances, I am not prepared to accept the claim of defendant No. 2 that any sikmi tenant was in possession of any of the disputed lands or had any right over the same when attachment took place. In the circumstances I must also hold that the Kabalas Ext. F series alleged to have been executed by some sikmi tenants in favour of defendant No. 2 are not valid and genuine. In view of this finding, it is unnecessary to consider the further question of whether sikmi right is at all alienable. I would, therefore, hold that the claim of the plaintiff for partition has to be decided on the footing that no sikmi tenant had ever any right over any of the disputed plots of land.

15. Issues 10 and 12.--It has already been stated that after this Court rendered its decision in *Satrughna Sahu Vs. The State of Orissa and Others*, , declaring the land acquisition notifications invalid, defendant No. 1 purchased under the kabalas Ext. 7 and Ext. A 16.47 acres of land out of the properties in dispute in the suit and that this purchase included 4.33 acres which were included in the land acquisition notifications. It is stated on the plaintiff's side that when subsequently the land acquisition notifications were validated and the land acquisition proceedings were continued, defendant No. 1 as purchaser of 16.47 acres of land claimed the compensation payable for the acquisition of these lands. On the basis of these facts, two contentions are put forward on the plaintiff's side:--

(1) So far as the 4.33 acres of land are concerned, plaintiff claims title not on the basis of the land acquisition proceedings, but on the basis of his purchase which

admittedly was subsequent to the attachment and that therefore even in respect of eight annas share in these 4.33 acres of land, the plaintiff has acquired valid title by his Court auction purchase; and

(2) even otherwise, he is entitled to recover from defendant No. 1 proportionate compensation in respect of the 4.33 acres of land.

Neither of these two contentions appears to me to be acceptable. The effect of the Validation Act is to validate the land acquisition proceedings started in 1955. When, therefore, in 1955 itself, the notified lands including the 4.33 acres of land vested in the Government free from all encumbrances, that legal position is not in any way affected if subsequently defendant No. 1 purported to purchase that very same property by a private sale. Whether in the circumstances, defendant No. 1 was at all entitled to receive any compensation from the Land Acquisition Officer is a different matter and in this case is of no consequence because Government after all were acquiring property for the mill and at the mill's expense. If, in the circumstances explained above, the plaintiff has not acquired any title to an eight annas share in 4.33 acres of land, he would not certainly be entitled to claim any proportionate share in the compensation.

16. Issues 1 to 4.-- Not pressed.

17. Issues 9 and 13.--It follows from the findings above that although in execution of the money decree which the plaintiff had obtained against defendant No. 3, attachment was effected in respect of defendant No. 3's eight annas share in the disputed lands measuring 32.10 acres, the attachment is valid only in respect of the eight annas share of defendant No. 3 in 27.67 acres of land because title in respect of the balance 4.33 acres of land had already vested in the State as a result of the land acquisition proceedings. These 4-33 acres cannot therefore be the subject-matter of partition. In the Court sale that followed, plaintiff purchased an eight annas share in the 27.67 acres of land. Therefore, the plaintiff is entitled to obtain possession of this eight annas share in 27.67 acres of land after getting the same partitioned by metes and bounds.

18. These 27.67 acres of land includes 12.14 acres which defendant No. 1, subsequent to the attachment, had purchased from defendants 3 and 4. Along with other disputed lands, these 12.14 acres would normally be partitioned into metes and bounds and possession of 6-07 acres out of this land has to be given to the plaintiff. It is not disputed before me that over the entire 16.47 acres of land which the defendant No. 1 got from defendants 1 and 2, a part through land acquisition proceedings and the rest by private sale, Railway lines have been laid and the entire land is being used as Railway siding for defendant No. 1's factory. If the decree for partition is to be enforced, the Railway lines are to be dismantled thereby causing great loss and inconvenience to defendant No. 1. The plaintiff Puri Bank is now under liquidation and it is not interested in the lands as such. Even if the Bank now gets possession of the lands, the lands in due course will have to be sold. In the circumstances, Mr. J. Rath learned Advocate

appearing for the plaintiff conceded -- and in my opinion it is a well-founded concession having regard to the circumstances stated above -- that in lieu of getting a half share out of 12.14 acres of land referred to above which is now in possession of defendant No. 1, the plaintiff is prepared to accept from defendant No. 1 the value thereof as determined in the final decree proceedings.

19. There then remains the question relating to mesne profits to which the plaintiff is entitled in respect of his share of the disputed lands from the date of his purchase till the date of the suit. Mesne profits in respect of the lands which would actually be allotted to the plaintiff in partition would be determined in the final decree proceedings. In respect of the half share of the 12.14 acres of land which is now in possession of the Company and in respect of which the plaintiff is prepared to receive its value, the mesne profits would be in the shape of interest at the rate of six per cent per annum.

20. In the result, the suit is decreed preliminarily in part on contest against defendants 1 to 3 and ex parte against defendants 4 and 5, with costs, payable by defendants 1 to 3 alone. Out of the suit properties measuring 32.10 acres, an area 4.33 acres in extent and which formed the subject-matter of land acquisition proceedings should be excluded from partition. The right of the plaintiff to get the remaining 27.67 acres of land partitioned into two equal shares and to recover possession of one such share is declared, but in view of what has been stated in paragraph No. 18 above, 12.14 acres of land out of the above which is now in possession of defendant No. 1 shall be excluded from partition, in lieu thereof, the plaintiff would recover from defendant No. 1 half of the value of these 12.14 acres of land to be determined in final decree proceedings, and compensation at six per cent per annum thereon from 19-2-1962 till the date of the institution of the suit and pendente lite compensation of 6% per annum till payment. The remaining 15.33 acres of land shall be divided by metes and bounds into two equal shares and possession of one such share shall be delivered to the plaintiff. The plaintiff shall also be entitled to mesne profits on the share so delivered to him from 19-2-1962 till delivery of possession. Let a preliminary decree be drawn up accordingly. Advocate's fee shall be on contested scale.