

**IN THE COURT OF THE CIVIL JUDGE (SENIOR
DIVISION) BHANJANAGAR, GANJAM**

Present:

Mrs. Somalina Mishra, LLM
Civil Judge (Senior Division)
Bhanjanagar, Dist - Ganjam.
JO-CODE - OD-00487

CMA No. 01 of 2023
(Arising out of C.S. No. 88/2021)

Dated, the 28th day of September, 2023

Dwarika Nath Parida, aged about 40 years,
S/o late Laxmi Narayan Parida
Advocate by profession, Resident of village- Kanakuturu
PO- Sankuru, PS- Buguda, District- Ganjam, Odisha
At present residing at College Square,
Spinning Mill Road, Vill/PS- Kotinada,
District- Ganjam, Odisha.

..... **Petitioner.**

-: v e r s u s :-

1. Bipin Bihari Patra, aged about 58 years,
S/o late Udayanath Patra, business by profession,
Resident of vill/PO/PS-Buguda, District- Ganjam,
Odisha.
2. Amulya Kumar Parida, aged about 68 years,
S/o late Pandaba Parida, retired professor by
profession of OUAT, Bhubaneswar
Resident of vill-Kanakuturu, PO- Sankuru

PS- Buguda, District- Ganjam, Odisha.

At present Professor, SOA University,
Bhubaneswar, Odisha.

3. Stayabhama Parida, aged about 58 years,
W/o late Laxmi Narayan Parida,
housewife by profession.
4. Badrinath Parida @ Lal Mohan Parida,
aged about 42 years, S/o late Laxmi Narayan Parida,
business by profession, Resident of Vill- Kanakuturu,
PO- Sankuru, PS- Buguda, District- Ganjam, Odisha.
At present residing at Main Road, PO- Nuagam, PS-
Aska, District- Ganjam, Odisha.
5. Jadunath Parida, aged about 36 years,
S/o late Laxmi Narayan Parida
Employee by profession.

.....**OPs/Respondents**

Appearance:

Counsel for Petitioner : Sri L. K. Mahapatro
& Associates, Bhanjanagar

Counsel for OP No.1 : Exparte

Counsel for OPs No.
2 to 5 : Sri Ramesh Chandra Panda
& Associate, Bhanjanagar

Date of Hearing : 18.09.2023

Date of Order : 28.09.2023

ORDER

This order arises out of the petition filed by petitioner under Order-9 Rule-13 read with section 151 of CPC with a prayer to set aside the judgment and decree passed on 31.01.2023 and 08.02.2023 respectively and offer an opportunity to the petitioner to contest the suit by filing W.S. in the interest of justice.

2. Case of the petitioner in short is as follows:

The petitioner and respondents no.4 and 5 are sons of late Laxmi Narayan Parida and Satyabhama Parida (respondent no.3) of village-Kanakuturu under Buguda PS, District- Ganjam. Late Pandaba Parida had been blessed with two sons namely Amulya Kumar Parida (respondent no.2) and late Laxmi Narayan Parida and three daughters namely Prafulla Kumari Parida, Sashi Pradhan and Sumati Pradhan. Pramila Swain and her husband, who are dead now, were blessed with two daughters namely Jachana Swain and Namita Swain. The present petitioner, respondents no. 4 and 5 are the sons and Arati Khatai and Bharati Parida are the daughters of late Laxmi Narayan Parida and his Satyabhama Parida (respondent no.3). As per the legal heir certificate issued by Revenue Officer of Buguda Tahasil vide Miscellaneous Certificate Case No.E-LHC/2022/04704, the following are the legal heirs of late Pandaba Parida.

- | | |
|-------------------------|-----------------|
| 1. Amulya Kumar Parida- | Son |
| 2. Satyabhama Parida- | Daughter-in-law |

3. Badrinath Parida-	Grandson
4. Dwarikanath Parida-	Grandson
5. Jadunath Parida-	Grandson
6. Arati Khatai-	Granddaughter
7. Bharati Parida-	Granddaughter
8. Sasi Pradhan-	Daughter
9. Sumati Pradhan-	Daughter
10. Jachana Swain-	Granddaughter
11. Namita Pradhan-	Granddaughter

Respondent no.-1 Bipin Bihari Patra had filed C.S. 88/2021 as plaintiff against the petitioner and other respondents seeking declaration of an unregistered agreement deed dated 28.08.1981 as a legal, valid and enforceable in the eye of law and direct the defendants in the said suit to execute a registered sale deed in respect of the suit house in his favour or on failure to pay Rs.1,10,000/- to him along with other reliefs. The petitioner and respondents no.2 to 5, who were defendants in the said suit, did not appear before the Court as they had not received any notice in respect of such suit. Respondent no.1 had mentioned wrong addresses of the petitioner and other respondents in the cause title of the plaint for which notice could not be served upon them and managed to get judgment and decree in his favour in respect of the suit house situated in Mouza- Buguda of District- Ganjam. Petitioner and respondents no.2 to 5 are residing in their native village

at Kanakuturu under the jurisdiction of Buguda Tahasil. But sometimes, they stay at a rented house in the Spinning Mill Road of College square, Kotinada, Aska. The marriage of petitioner and his two sisters were conducted in the house at Spinning Mill Road. The distance between Aska Cooperative Sugar Industries and Aska Spinning Mill is more than eight (08) kms and neither petitioner nor the other respondents are residing in front of Sugar Industries. Only with intention to harass the petitioner and respondents no.2 to 5, respondent no.1 had given wrong address in the cause title of the suit. Respondent no.2 was serving at OUAT, Bhubaneswar but after retirement, he is now serving as a Professor at SOA University, Bhubaneswar. Even though respondent no.1 was well aware about the address of respondent no.2, he did not provide it. The voter list, voter identity card, ROR in respect of property and loan availed from the service Cooperative Society shows the petitioner and respondents no.2 to 5 as residents of Kanakuturu. Respondent no.1 had never sent any notice to them. Petitioner is serving as an APP in Court of Executive Magistrate, Aska. No notice has been served upon him too through Bar Association, Aska or through the Court of Executive Magistrate, Aska. The suit house stands recorded in the name of Pandaba Parida, S/o Buddhi Parida @ Buddhia Parida pertaining to Khata No.450, Plot No.1836 measuring Ac.0.034 decimals of Buguda Mouza. Pandaba Parida expired in the year 2011 and all

his legal heirs have not been made as parties to the suit for which effective decree could not be drawn. Respondent no.4 Badrinath Parida is also popularly known as Lal Mohan Parida and this name has been mentioned in many documents. The motor vehicle which stands in the name of petitioner shows the address as village-Kanakuturu. Petitioner and respondent no.3 and 5 are residing in the house of one Jhunu Pradhan at College Square (Spinning Mill Road). Jhunu Pradhan had also made an agreement with Satyabhama Parida on 13.02.18 before Notary of Aska notarized by Shri Prasanna Kumar Bisoyi. The documents relating to house property, passbooks and other related items show the permanent address as village-Kanakuturu of petitioner and respondents no.2 to 5 and they are residing at a rented house situated at Spinning Mill Road of Kotinada, Aska. They have never resided at Nuagam in front of Aska Sugar Industries Ltd. It also appears from the orders of C.S. 88/2021 that the petitioner and respondents no.3 to 5 were not residing in front of Sugar Industries. Notice was also not served on respondent no.2 who is residing at Bhubaneswar serving as a professor in SOA University. The petitioner came to know that respondent no.1 had obtained a decree in his favour in the said suit on 28.02.2023 from one Kalu Mohanty, lessee of the suit house and was trying to interfere in the suit house. As soon as he got the information, he proceeded to Bhanjanagar and obtained certified copies of the

judgment and decree passed in C.S. 88/2021 and thereafter, filed this petition to set aside the said judgment and decree. He is having a fit case in his favour. Petitioner and other respondents had never resided in the address mentioned in the daily Odia newspaper "The Sambad" published on 05.08.2022. Respondent no.1 had played fraud by providing false addresses of the parties to the Court to obtain order in his favour. Petitioner has a chance to succeed if allowed to contest. There was no malafide intention for not attending the Court. The petition has been filed in time and is not barred by law of limitation. This Court has got jurisdiction to try this suit. Hence, he prayed to set aside the judgment and decree passed on 31.01.23 and 08.02.23 respectively and allow him to contest the suit.

3. Respondents no.2 to 5 appeared and filed counter to the petition admitting all the facts averred by petitioner in his petition. Hence, they prayed to set aside the judgment and order in the interest of justice.

Respondent no.1 has been set exparte.

4. The petitioner has examined himself as PW1 and has filed original ROR vide Khata No.321 of Mouza-Kanakuturu, original mutation ROR vide Khata No.242/128 of Mouza- Kanakuturu, original RSD vide no.10621100121 dated 24.01.2011, original death

certificate of Pandaba Parida, original death certificate of late Laxminarayan Parida, original RSD vide no.4077 of 1959, R.C. of Hero Honda Splendor motorcycle vide registration number OR 07 J 5505, his original voter Id card, original voter Id card of Jadunath Parida, internet generate copy of legal heir certificate of late Pandaba Parida, certified copy of order sheets in C.S. 88/2021 passed by this Court, certified copy of judgment and decree passed on 31.01.23 and 08.02.23, three numbers of marriage invitation cards relating to marriage of himself and two of his sisters. On the other hand, respondents had neither adduced any oral evidence nor had relied upon any documentary evidence.

5. Heard from both the sides. Petitioner (hereinafter to be referred as PW1) has stated that respondent no.-2 is his paternal uncle, respondent no.3 is his mother and respondent 4 and 5 are his brothers whereas respondent no.1 is a stranger to him. PW1 and his family members belong to village-Kanakuturu under Buguda police station and late Pandaba Parida was his grandfather and the house situated at Buguda stands recorded in his name. His father Laxmi Narayan Parida is now dead who was blessed with three sons i.e. PW1, respondents no. 4 and 5 and two daughters namely Arati Khatai and Bharati Parida. Respondent no.1 Bipin Bihari Patra had filed a civil suit vide C.S.88/2021 against them for declaration of an unregistered sale deed dated 28.08.1981 as legal valid

and enforceable in the eye of law and had also prayed to direct PW1 and other respondents to execute a registered sale deed in respect of the suit house in his favour or to direct them to pay Rs.1,10,000/- to him in case they fail to execute such deed. But PW1 and other respondents had not received any summon or notice relating to the said suit for which they could not attend before the Court. Respondent no.1 had provided false addresses of the parties in the cause title of the said suit for which he cunningly managed to obtain judgment and decree in his favour in respect of the suit house situated under Mouza-Buguda. PW1 and other respondents had been residing at Kanakuturu which is their native village and seldom they reside at a rented house at Spinning Mill Road of College Square, Aska. The marriages of both his sisters as well as his marriage was held in the rented house in the said address. They had never resided at Aska Sugar Industry as claimed by respondent no.1 which is more than eight kilometers from Spinning Mill Road, Aska. Respondent no.2 was serving in OUAT, Bhubaneswar and after his retirement, he is now serving as a professor at SOA University. Respondent no.1 was also well aware of the address of respondent no.2 but did not provide it to send notice to him. He had also not sent any notice to Kanakuturu or Spinning Mill Road. It can be ascertained from the voter list, voter identity card, ROR in respect of their property that they were residing at Kanakuturu. But respondent no.1 chose not to send any notice to the said

address. PW1 is serving as an APP in Court of Executive Magistrate, Aska, but no notice was also served upon him either through Bar Association or through the said Court. The suit house situated in Buguda Mouza as mentioned in C.S. 88/2021 stands recorded in the name of his grandfather late Pandaba Parida who expired on 2011. But all the legal representatives of late Pandaba Parida had not been made party to the suit. His brother Badrinath Parida is also known as Lal Mohan Parida. On 28.02.2023, PW1 came to know from one Kalu Mohanty that respondent no.1 had obtained judgment and decree in his favour. After getting such information, he had obtained certified copies of the said judgment and decree and came up with this petition to set aside the orders. Perused the case record. PW1 is the defendant no.4 and the respondents are the defendants in CS 88/2021. It was filed for declaration of the unregistered agreement for sale as valid and specific performance of contract, recovery of money and permanent injunction of the suit house. Respondents no.1, 4, 3 were set exparte on 19.01.22, 18.05.22, 11.07.22 respectively and respondents no.2 and 5 were set exparte on 22.08.22 as there were found absent on repeated calls. The documents filed by PW1 reflects the address as averred by him in his petition. Law is well settled that the Court to decide the dispute between the parties on merit rather to dispose of it on technical grounds. On going through the evidence produced by PW1, the Court observes that PW1 and

respondents were prevented from sufficient causes not to appear in the Court on the dates fixed. No objection has been raised from the side of respondent no.1. On the other hand, respondents no.2 to 5 have supported the PW1's pleadings. So, the petition filed by him deserves to be allowed. Hence ordered.

ORDER

The CMA be and the same is allowed on contest against the Respondents No.2 to 5 and Ex-parte against Respondent No.1 and under the circumstance without any cost. The judgment and decree passed in Civil Suit No. 88/2021 is hereby set aside. The parties are directed to take necessary steps in CS 88/2021 on 16.10.2023.

Sd/- Smt. S. Mishra

CJ (SD), Bhanjanagar

The CMA order is typed out to the dictation and pronounced by me in the open Court today this the 28th day of September, 2023 given under my hand and seal of the Court.

Sd/- Smt. S. Mishra

CJ (SD), Bhanjanagar