



IN THE HIGH COURT OF ORISSA AT CUTTACK
I.A. No.651 of 2025 arising out of R.S.A. No.229 of 2025

Patet @ Patetlal Pradhan & Others ***Appellant***

Represented by Adv. –
Debasish Samal

-versus-

Chhanda Charan Pradhan & Others ***Respondents***

Represented by Adv. -

CORAM:
MR. JUSTICE ANANDA CHANDRA BEHERA

ORDER
12.03.2026

Order No.

02. 1. This matter is taken up through hybrid mode.
2. This I.A. has been filed by the petitioners (appellants in R.S.A. No.229 of 2025) under Section 5 of the Indian Limitation Act, 1963 praying for condonation of delay in preferring the 2nd Appeal vide R.S.A. No.229 of 2025.
3. As per the memo vide Memo No. “C”, the name of Ms. M.P. Behera as the counsel for the petitioners be deleted from this I.A. as well as from the 2nd Appeal vide R.S.A. No.229 of 2025 henceforth, as the petitioners in this I.A. as well as in R.S.A. No.229 of 2025 have disengaged her as their counsel. Therefore, the Registry shall not reflect the name of Ms. M.P. Behera, as the counsel for the petitioners in the cause list as well as in the brief henceforth.



4. As per the noting of the Registry, the notices in this I.A. under Section 5 of the Indian Limitation Act, 1963 against the Opp. Party Nos.2,4,6,7 and 11 are made sufficient, but, none has appeared on their behalf.

5. As per the noting of the Registry, the Opp. Party Nos.1,3,9 and 10 have expired.

6. Therefore, the petitioners are directed to take steps to substitute their LRs.

7. The petitioners have filed an unnumbered I.A. supported with an affidavit praying for making the notice sufficient against the Opp. Party No.5, as the notice, which was issued to the Opp. Party No.5 through Registered Post, the said notice has been returned back with postal endorsement as ***“Left without instruction”*** applying the provisions of law envisaged in the proviso of Order 5, Rule 9 of the CPC, 1908, Section 114 of the Indian Evidence Act, 1872, Section 27 of the General Clauses Act and Section 6 of the Indian Post Office Act.

8. On this aspect, the propositions of law has already been clarified in three Judges Bench of the Apex Court between ***C.C.Alavi Haji Vrs. Palapetty Muhammed and another reported in 2007 (II) OLR (SC) 384 (at Para 14)*** that,

“when a notice is sent, the same is returned with a postal endorsement “refused” or “not available in the house” or “house locked” or “shop closed” or “addressee not in station” or addressee left without information” due service has to be



presumed because, the said addressee managed has managed to return such notice being in connivance with the postal peon.”

9. The petitioners have also made prayer in this unnumbered I.A. for making the notice sufficient against the Opp. Party No.8 as per the Proviso of Order 5, Rule 9 of the CPC, 1908, as the notice was properly addressed, pre-paid and duly stamped and the same was sent by Registered Post with A.D. to the Opp. Party No.8, but neither A.D. nor undelivered notice has been returned back.

10. So, by applying the principles of law enunciated in the ratio of the aforesaid decision coupled with proviso of Order 5, Rule 9 of the CPC, 1908, I find no justification to disallow this unnumbered I.A. filed on behalf of the Petitioners (appellants in R.S.A. No.229 of 2025).

11. As such, the unnumbered I.A. filed by the petitioners (appellants in R.S.A. No.229 of 2025) is allowed.

12. Therefore, the notices, which were issued to the Opp. Party Nos.5 and 8 are held as sufficient, but, none has appeared on their behalf.

13. As such, this unnumbered I.A. is disposed of finally.

14. Registry is directed to number this disposed of unnumbered I.A. for statistical purpose.



15. Taking the submissions of the learned counsel for the petitioners (appellants in R.S.A. No.229 of 2025) into account, liberty is given to the petitioners to file an application before the Court of learned Civil Judge, Senior Division, Bhawanipatna in the final decree proceeding of T.S. No.31/2001 praying for non-proceeding of the same on the ground of filing of the 2nd Appeal vide R.S.A. No.229/2025 challenging the Judgment and Decree passed in T.S. No.31/2001 and R.F.A. No.6/2009, from which this I.A. has arisen and in case of filing of such application, the learned Trial Court shall pass an order on the same taking the filing of R.S.A. No.229/2025 and this I.A. into account.

16. List this I.A. on 25.03.2026.

17. Urgent certified copy of this Order be granted to the petitioners on proper application.

(ANANDA CHANDRA BEHERA)
Judge

Rati Ranjan