

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

Present:

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

C.M.A. No.449 of 2013.

(Arising out of the orders dated 10.04.2013 & 20.06.2013
passed in R.F.A. No.39 of 2011.)

Smt. Bishaka Beura, aged about 31 years, W/o.
Satyaranjan Pradhan (as a representative in interest of
the Appellant in R.F.A. No.39 of 2011) of Vill./P.O. –
Marthaur, P.S. – Balipatna, Dist. – Khurda, at present :
Plot No.1403, Fishery Lane, Laxmisagar, P.O. – Budheswari,
P.S. – Laxmisagar, Dist. – Khurda.

... **Petitioner.**

-V e r s u s-

1. Chaina Nayak, aged about 30 years, D/o. Sri Bansidhar
Nayak, Vill./P.S. – Laxmisagar, Mandap Sahi, P.O. –
Budheswari, Bhubaneswar-6, Dist. – Khurda.
2. Gurei Das, aged about 38 years, W/o. Kailash Das, D/o.
Late Sunakar Behera.
3. Smt. Kalasa Behera, aged about 53 years, W/o. Late
Sunakar Behera.

Sl. Nos.2 & 3 are residents of Vill./P.S. – Laxmisagar,
P.O. – Budheswari, Bhubaneswar-6, Dist. – Khurda.

... **Opp. Parties.**

Counsel:

For Petitioner : Shri P.M. Pratihari &
Associates.

For O.P. No.1 : Shri B. Bagh & Associates.
For O.P. Nos.2 & 3: Shri J.R. Panda.

Date of conclusion of argument : 22.10.2014.

Date of order : 28.10.2014.

O R D E R

This order relates to a petition under section 146 of the C.P.C. read with Order 41, Rule 19 and Order 22, Rule 10 of the C.P.C. praying to set aside the orders dated 10.04.2013 & 20.06.2013 passed in R.F.A. No.39 of 2011 and readmit the appeal to its original file and to allow the petitioner to continue the appeal. Another petition is also filed under section 5 of the Limitation Act praying to condone the delay.

2. Learned counsel appearing for the petitioner submitted that the petitioner being the transferee could come to know about the case only on 10.12.2013, although R.F.A. No.39 of 2011 preferred against the impugned judgment dated 27.08.2011 and decree dated 09.09.2011 passed by the learned 2nd Addl. Sr. Civil Judge, Bhubaneswar in Civil Suit No.227/424 of 2010/2007 has been dismissed for default on 10.04.2013 and finally on 20.06.2013. He further submitted that Bhaskar Chandra Parida, who is defendant No.1, sold the suit land to Pravasini Jena while the suit was pending. After disposal of the suit, the suit land was transferred to the

present petitioner Bishaka Beura. Neither in the suit nor in the appeal, Bishaka Beura has been made a party. On 10.12.2013, when the execution of decree was going to be made by delivering the symbolic possession, the present petitioner came to know about the filing of suit and R.F.A. So, it was submitted by learned counsel for the petitioner to condone the delay and admit the appeal, as the interest and right of the present petitioner is involved in deciding the right, title and interest over the suit land.

3. On the contrary, learned counsel appearing for the opposite party No.1 submitted that the petition is not maintainable even if the present petitioner is a transferee of the original plaintiff. The petitioner has not purchased the suit land directly from the original appellant, whose appeal stands dismissed for default. Since the petitioner is not the appellant in the appeal, she cannot maintain the application under section 146 of the C.P.C. read with Order 41, Rule 19 of the C.P.C. According to him, the Misc. Case is completely misconceived and she has no locus standi to file the present application. Also it was submitted by him that the present application is barred by limitation and under no stretch of imagination, delay can be condoned. So, it was submitted by learned counsel for opposite party No.1 to dismiss the petition.

4. Perused the petition, objection, impugned judgment and the record in R.F.A. No.39 of 2011. The admitted fact is that R.F.A. No.39 of 2011 was preferred by one Bhaskar Chandra Parida, who is defendant No.1 in the original suit bearing No.C.S.227/424 of 2010/2007, challenging the impugned judgment & decree passed by the learned trial Court. Opposite party No.1 herein was respondent No.1 in the appeal and plaintiff in the above suit. It is revealed from the petition that one Pravasini Jena purchased the suit property from Bhaskar Parida under Registered Sale Deed executed on 13.05.2011. The impugned judgment passed on 27.08.2011 in C.S. No.227/424 of 2010/2007 does not array her as a party to the suit, although the Sale Deed was executed prior to passing of judgment and decree in the said suit. It is further revealed from the petition that the present petitioner purchased the suit land from Pravasini Jena under Registered Sale Deed dated 10.08.2012 and she also got the possession thereof from the latter. The record in R.F.A. No.39 of 2011 available in this record shows that the appeal was preferred by original defendant No.1 Bhaskar Parida and in that appeal Pravasini Jena was not made a party. So, in such circumstances, neither Pravasini nor the present petitioner is a party to the suit and the appeal preferred against the judgment

and decree passed in the said suit. The petition filed with affidavit shows that the present petitioner came to know about the aforesaid litigation only on 10.12.2013. It is not found why Bhaskar Parida did not make them party. But, the fact remains that they being the transferee are bound by the judgment and decree passed against their vendor because of the principles of *lis pendens*.

5. From the arguments advanced and from the petition, it is revealed that after grant of permanent injunction against the defendants, Pravasini Jena sold the suit land to the present petitioner and the petitioner also got the Sale Deed executed by Pravasini Jena. Thus, violating the order of injunction, which has not been set aside as yet, defendant No.1 sold the suit land to the present petitioner. Now, the question arises what would happen to the petitioner. Both parties have relied upon a catena of decisions of the Hon'ble Apex Court and the Hon'ble High Courts on the provisions of law. In the case of ***Raj Kumar Vs. Sardari Lal and Ors. [2004 SAR (Civil) 181]*** Their Lordships of the Hon'ble Apex Court have been pleased to observe at paragraphs 14 & 15 in the following manner :

“14. Incidentally, we may observe that in *Surjit Singh & Ors. vs. Harbans Singh & Ors. (1995) 6 SCC 50*, the assignees pendente lite were refused by this Court to be

brought on record as they had purchased the suit property after the passing of the preliminary decree and in clear defiance of the restraint order passed by the Court injunction any alienation/assignment. It was a case of exercising discretion not to grant leave under Order 22 Rule 10 of the CPC, in the circumstance of the case, as in the opinion of this court permitting impleadment and recognizing the alienation /assignment would amount to defeating the ends of justice and the prevalent public policy. That case is clearly distinguishable.

15. We hold that a lis pendens transferee, though not brought on record under Order 22 Rule 10 of the CPC, is entitled to move an application under Order 9 Rule 13 to set aside the decree passed against his transferor - the defendant in the suit”.

With due respect to the said decision, I find that the lis pendens transferee under Order 22, Rule 10 of the C.P.C. can move an application under Order 9, Rule 13 to set aside the decree passed against the transferor in that suit.

6. In the decision reported in **(2013) 5 Supreme Court Cases 397 [Thomson Press (India) Limited Vs. Nanak Builders and Investors Private Limited and Others]**, Their Lordships have been pleased to observe in para-53 that :

“There is, therefore, little room for any doubt that the transfer of the suit property pendente lite is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent court, we do not see any reason why

the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent court may issue in the suit against the vendor”.

With due respect to the said decision, I find in the present case the party committing breach may incur the liability to be punished for defendant No.1, but the sale by itself will remain valid between the parties to the transactions subject to any direction which the competent Court may issue in the suit against the vendor.

7. In the instant case, it is admitted fact that during pendency of the suit the sale was effected, but Pravasini Jena was not made party. She being a *lis pendens* transferee is bound by the judgment and decree passed against Bhaskar Parida, who is defendant No.1 in the suit. Against said Bhaskar Parida, there was permanent injunction passed in the impugned judgment by the learned Court below. Violating that order, Pravasini Jena sold the suit land to the present petitioner. Even if Pravasini Jena is not made party, she is bound by the judgment and decree passed against Bhaskar Parida by virtue of section 146 of the C.P.C. read with section 52 of the T.P. Act. So, when the permanent injunction is effective, she sold

the suit land to the present petitioner and, as such, necessary law will take its course against the so-called transaction. But, the present petitioner being in shoe of her vendor and Bhaskar Parida can maintain the petition in view of the above decision under Order 22, Rule 10 of the C.P.C., as the sale remains valid as long as it is not set aside. Thus, the judgment and decree passed in the original suit is still binding on the present petitioner. When the right of the present petitioner over the suit land is affected by virtue of the said decree passed against the original vendor Bhaskar Parida, there lies cause of action for the present petitioner to bring this application. Of course, she is not a party to R.F.A. No.39 of 2011, which has been preferred against the impugned judgment and decree passed in C.S. No.227/424 of 2010/2007, and the said appeal has been dismissed for default on 20.06.2013. She came to know this fact only on 10.12.2013, which is not disputed by the opposite parties. In such circumstances, since the present petitioner being in the shoe of her vendor's vendor can run the appeal to set aside the impugned judgment and decree, leave is to be granted to her to sue in representative capacity and prefer this petition to readmit the appeal under Order 41, Rule 19 of the C.P.C. For the same reason, the delay is to be condoned resulting in admission of the appeal. Hence ordered :

O R D E R

The C.M.A. is allowed on contest against the opposite parties. Delay is condoned and the appeal is readmitted to file. Leave is granted to the present petitioner to be impleaded as appellant in R.F.A. No.39 of 2011. No cost.

**District Judge, Khurda
at Bhubaneswar.**

28.10.2014.

Dictated, corrected by me and pronounced in the open Court this day the 28th October, 2014.

**District Judge, Khurda
at Bhubaneswar.**

28.10.2014.