

I.A No. 940/2013
(Arising out of C.S No. 99/2013)

Binapani Nayak, aged about 41 years,
W/o Chaitan Charan Jena
D/o Kailash Nayak, of Vill-Khandagiri Bari,
Plot No. 1076/1529, PO/PS-Khandagiri
Bhubaneswar, Dist-Khordha.

..... Petitioner

- Versus -

Mrs. Suprava Rath, aged about 54 years
W/o Surendranath Rath
At/Po/Ps-Balipatna, Dist-Khordha
represented through her power of
Attorney holder Jiban Kumar Nayak, aged about 30 yrs,
S/o late Sudhansusekhar Nayak, At-AE-26,
Archana Enclave, Panchasakha Nagar, Dumuduma,
P.S-Khandagiri, Bhubaneswar, Dist-Khurda.

..... O.P

19.09.2014 This is an application U/s.151 of C.P. Code filed by the petitioner to recall the order dt. 19.11.2013 passed in I.A No. 64/2013 U/o.39 Rule-1 & 2 read with Section-151 CPC.

2. The case of the petitioner in brief is that he being the O.P in I.A No. 64/2013, the said I.A has been allowed vide order dt. 19.11.2013 in favour of the plaintiff-petitioner in absence of the present petitioner who were the O.P in that I.A and in that I.A, the present petitioner has been restrained from entering upon the suit land and from raising any construction over the same till disposal of C.S No. 99/2013. It is the case of the petitioner that she could not file the objection and participated in the hearing of the I.A No. 64/2013 as she could not collect the relevant papers. It is her further case that in Misc. Case No. 16/1981 U/s.22 of the OLR Act, permission was accorded to the deft.no.2 Kedar Sethi to transfer the suit land to Kailash Bhuyan. But the present O.P by manipulating the said order changed the name from Kailash Bhuyan to Krutibas Bhuyan and accordingly the sale deed was executed in favour of Krutibas from whom the O.P has purchased the suit land. It is the specific case of the petitioner that the O.P has forged the documents and has demolished the house of this petitioner standing over the suit land forcibly. With these pleas, the petitioner prays to recall the order dt. 19.11.2013 passed in I.A No. 64/2013.

3. The O.P appeared and filed her objection challenging all the assertions and

allegations made in the petition. She has also taken the plea that both the petitioner and her husband are practising advocates at Bhubaneswar and both of them were well aware about the fact of hearing of the I.A No. 64/2013 and they willfully and intentionally remained absent at the time of hearing. The O.P also denied the allegation against her as to the demolition of the house and damage caused as against her. With these pleas, she prays to dismiss the I.A.

4. Heard the learned counsels for the parties. Perused the case record and found that vide order dt. 03.05.2013 passed in I.A No. 64/2013 while dealing with a petition U/o.39 Rule-3 CPC, this Court had directed both the parties to maintain the status quo of the suit land. The O.P appeared and sought for time on several occasions and as the O.P was found absent on 31.10.2013 when the matter was called for hearing, the matter was heard *ex parte* and finally the I.A No. 64/2013 has been disposed of vide order dt. 19.11.2013 of this Court restraining the O.Ps from entering into the suit land and from raising the construction so also from creating any third party interest over the same in any manner till disposal of the suit. Though the petitioner has taken the plea that she has filed a *hazira* on the date of hearing, but the order sheet of the case record does not reveal that the O.P or her learned counsel was present on the said date of hearing. There is no sufficient ground or reason to recall the said order even otherwise if the present petition is treated as a petition U/o.39 Rule-4 of CPC, since the only dispute is whether the permission U/s.22 of the OLR Act was accorded in the name of Kailash Bhuyan or Krutibas Bhuyan or whether the same has been manipulated is the subject matter of the suit, but at this stage it is found that the deft.no.2 Kedar Sethi has transferred the suit land to one Krutibas Bhuyan who ultimately sold the same to the O.P vide RSD dt. 02.02.1983. The order sheet of the mutation case no. 1491/85 also reveals that the suit land has been allowed to be mutated in the name of the petitioner. On the other hand, it is found that Kedar Sethi transferred the suit land to the petitioner by RSD dt. 30.08.2012. Considering the aforesaid facts even on merit, this Court finds no reasonable and sustainable ground to recall the order dt. 19.11.2013 passed in I.A No. 64/2013.

Hence ordered;

ORDER

The I.A be and the same is hereby dismissed on contest against the O.P., under the circumstances without any cost.

**Civil Judge(Sr. Divn.)
Bhubaneswar**

The order of the I.A is typed to my dictation by the Stenographer attached to this Court directly on the Computer provided under e-court project, corrected and pronounced by me in the open court today i.e. the 19th day of November, 2013 under my signature below.

**Civil Judge(Sr. Divn.)
Bhubaneswar.**