

**Gopal Krishna Pradhan Vs. Japi Pradhan**

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**Court :** Orissa

**Decided On :** Aug-19-1993

**Reported in :** II(1993)DMC393

**Judge :** P.C. Misra, J.

**Acts :** Hindu Law; Code of Civil Procedure (CPC) - Sections 47; Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 - Sections 34

**Appeal No. :** C.R. No. 65 of 1991

**Appellant :** Gopal Krishna Pradhan

**Respondent :** Japi Pradhan

**Disposition :** Revision dismissed

**Judgement :**

**P.C. Misra, J.**

1. Opp. party is the wife of the petitioner. She obtained a decree for maintenance and for non-payment of the decretal amount she filed an execution case in the Court of Subordinate Judge, Bargarh. At the instance of the decree holder Ac. 2.04 decimals of laud were attached in the execution case for realisation of the decretal dues. After the attachment, the father of the judgment-debtor filed an

application under Order 21 Rule 58 C.P.C. for realisation of his share in the attached properties alleging that the said item of properties belonged to the family in which he had some interest. The Court allowed his prayer and released his interest in the attached properties. The judgment-debtor thereafter filed an application purporting to be one Under Section 47 of the C.P.C. challenging the executability of the decree by way of sale of 1/3 interest of the judgment-debtor alleging that it would lead to the fragmentation of the whole land, which is prohibited by the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (hereinafter referred to as the 'Act'). The learned Execution Court rejected the application saying that there is no prohibiting for sale of the interest of the judgment-debtor in the aforesaid Act and, therefore, the petition is without any merits. Hence the revision.

2. The learned Counsel appearing for the judgment-debtor-petitioner submits that Section 34 of the Act prohibits transfer or partition of an agricultural land after a notification Under Section 41 has been issued. It is submitted that in this case the consolidation operation has come to a close by issuance of a notification Under Section 41 of the Act and, therefore, Section 34 has its full applicability. It was further argued that since carving out of 1/3 share of the judgment-debtor is prohibited by Section 34 of the Act the sale thereof is also prohibited rendering the decree inexecutable.

3. The aforesaid argument of the learned Counsel for the petitioner does not appear to be passed on sound reasonings. The only objection taken against the executability of the decree directing payment of maintenance is the aforesaid provision contained in the Consolidation of Holdings and Prevention of Fragmentation of Land Act. Section 34 occurs in Chapter V of the Act, and the provisions of which will apply to an area in respect of which a notification Under Section 41 of the C.P.C. has been issued. Section 34 of the Act prohibits transfer or partition of agricultural land so as to create a fragment. The prohibition is not absolute in the sense that the fragment can be transferred to a land owner of a contiguous chaka and in the event the person intending to transfer a fragment is unable to transfer the fragment, because of the aforesaid restriction, he may take the help of the Tahasildar who shall do so by an auction restricting transfer to the

land owners of the contiguous chakas to purchase the same. If no purchaser is available in the said process, the Act requires that the State Government shall purchase the same on payment of the market value of the land determined by the Tahasildar. Thus, in execution of a decree for maintenance the undivided interest of husband could be sold and it may be that the purchaser will have to possess the interest purchased by him along with others without partition and without creating a fragment. In the event, joint possession is not possible, the purchaser or any of the other co-sharers may take resort to Section 34 of the Act for the purpose of sale of a fragment.

4. The aforesaid analysis is, however, on the basis the Section 34 of the Act applies to involuntary sales. This decision, however, may not be construed as one deciding the aforesaid point as it is unwarranted at the moment in this case. I would, therefore, conclude that the application of the petitioner Under Section 47 of the C.P.C. has been rightly rejected by the learned Executing Court. The revision is accordingly dismissed. No. costs.

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