

IN THE COURT OF THE ADDL. DISTRICT JUDGE –CUM- SPECIAL
JUDGE, C.B.I. COURT NO.II, BHUBANESWAR.

PRESENT:

Dr.A.K.Mishra,
Addl. District Judge –cum-
Special Judge, C.B.I. Court No.II,
Bhubaneswar.

R.F.A. No. 23 of 2015.

(Arising out of Judgment dated 16.2.2015
passed by the learned Civil Judge (Senior
Division) Bhubaneswar in C.S. No. 775 of 2013)

Benudhar Swain, aged about 55 years,
s/o. late Chintamani Swain,
Vill. Tikarpada, P.O. Kalyanpur Sasan,
P.S.Lingaraj, Dist. Khurda.

... Appellant.

Versus.

Bahudi Jena, aged about 71 years,
s/o. late Sankar Jena,
Vill. Tikarapada, P.O.Kalyanpur Sasan,
P.S. Lingaraj,Dist. Khurda.

... Respondent.

COUNSELS

For the Appellant : Sri H.N.Routray & Associates, Advs.

For the Respondent : Sri Ajaya Mohanty & Associates, Advs.

Date of hearing : 2.4.2016.

Date of Judgment : 7.4.2016.

JUDGMENT

1. The unsuccessful plaintiff has preferred this appeal challenging the judgment and decree dated 16.2.2015 in dismissing the suit for partition and permanent injunction by

learned Civil Judge (Senior Division), Bhubaneswar. The sole defendant is the respondent.

2. Defendant- respondent and his mother, Jhulla Jena, were the recorded owners in possession of suit land measuring Ac.1.942 decimals appertaining to plot no.110 under Khata No.167 corresponding consolidation chaka 75 in village Tikarapada as per ROR published in the year 1980 (Ext.1) under Orissa Consolidation of Holding and Prevention of Fragmentation of Land Act 1972 (To be referred to here in after as The Consolidation Act). Both the recorded owners sold Ac.01.002 decimals land out of the said plot to the appellant-plaintiff for consideration by executing and registering a sale deed No.8875 dated 5.10.1988 vide Ext.2 (certified copy). The plaintiff purchaser continued to own and possess the purchased land along with the venders. The mother of the defendant expired. The restriction in transferring fragment land as imposed u/s.34 of the O.C.H.P.F.L.Act was relaxed by amendment act of 2012 with effect from 8.3.2013 in respect of land covered under approved master plan published under the Orissa Town Plan and Improvement Trust Act, 1956 or under the Orissa Development Authorities Act, 1982. As per plaintiff, the suit village Tikarapada was notified to be a part of development plan by gazette notification dated 16.4.2011 of Housing and Urban Development Department (Ext.4). The refusal of defendant to give effect partition has occasioned the filing of the plaint on 13.5.2013 for the relief of partition and permanent injunction.

The defendant disputed the payment of consideration amount for the sale deed, though admits such execution and registration. It is specifically pleaded that the transfer of land under consolidated chaka being void, the plaintiff is not entitled to any relief.

3. The plaintiff examined himself as P.W.1. The impugned judgment mentioning the examination of one Bhima Jena as P.W.2 is incorrect in view of the fact that plaintiff did not press to accept his affidavit vide lower Court's order dated 18.12.2014. Defendant is not examined in this case. His son is examined as D.W.1 and through him the certified copy of R.O.R in the name of present defendant is marked Ext.A.
4. Learned lower court framed six issues including one under issue no.3 as to whether plaintiff is entitled to the relief of partition in respect of his purchased land.

On consideration of evidence on record and law, the learned lower court recorded findings that the amendment brought under sub-section 5 of section 34 of the Consolidation Act exempting the land covered under master plan is not retrospective in operation to attract the sale transaction made between the parties on 5.10.1988. On the basis of admission by plaintiff that sale deed dated 5.10.1988 was executed and registered, the learned lower court found that the balance area, left with the owner being less than one acre, has created a fragment in the chaka and being void under section 35 of the OCHPFL Act cannot be given effect notwithstanding that it is not declared void by any authority. Ergo, the suit was dismissed.

5. Learned counsel for appellant argued with eloquence referring the provisions of The Consolidation Act that in view of the definition of the word "fragment" under 2 (m) of the Act limiting the area to one acre for the suit village, the sale of Ac.1.002 decimals land to plaintiff irrespective of the area left with the defendant owner does not come under the restriction of u/s.34 of the said Act and learned lower court having not considered the said law in proper perspective, has landed in a wrong conclusion .

Per contra, Learned counsel for respondent supporting the impugned judgment submitted that the interpretation as offered by appellant is not acceptable because the area left with the land owner after sale comes below the limit of one acre and under a statutory void sale deed, the appellant cannot be said to have acquired status of a co-sharer and for that is not entitled to any relief.

6. The vital area of the conflict between the parties is the validity of registered sale deed dated 5.10.1988 (Ext.2) and both parties have confined their contentions referring the provisions of sections 2 (m), 34, 35 and 53 of The Consolidation Act, 1972. Hence arises the point for determination that-

Whether the act of defendant chaka owner to own area less than prescribed limit u/s 2(m) of the Consolidation Act as a result of transfer of more than one acre on 5.10.1988 is a contravention of Section 34 of the OCHPFL Act, 1972?

7. Facts admitted obviate debate. Defendant and his mother were recorded owners of one Chaka admeasuring

Ac.1.942 decimals. They executed a sale deed in respect of area Ac.1.002 decimals in favour of plaintiff. The deed was executed on 5.10.1988. This village comes under erstwhile Puri district and the limitation of area for a fragment is prescribed to be one acre u/s. 2(m) of the Consolidation Act. There is no dispute that if the area left i.e. Ac.0.942 decimals with land owner – defendant as a result of sale of more than one acre out of one chaka is to be considered to have effect of creating a fragment as required u/s. 34 of the Consolidation Act, 1972, the transaction of sale in favour of plaintiff under Ext.2 dated 5.10.1988 would be void u/s. 35 of the Act. This sole preempting premise needs analysis. Relevant to the point is the precedent from the decision of our Hon'ble High Court **reported in 2015 (1) OLR 394, Sutar Chemicals Pvt. Ltd and another -vrs- Collector, Balesore and others.** The following is extracted therefrom to govern the field.

"11. The Statement of Objects and Reasons given in the Bill leading to OCH & PFL Act (Act 53), reads:-

"Statement of Objects and Reasons- In the context of strategy for increasing agricultural production in the country and in pursuance thereof to give inducement and incentive to the cultivators, it is considered expedient to initiate legislation for consolidation of scattered holdings and re-arrange the holdings including fragmented holdings among various landowners to make them more compact and to provide against future fragmentation of holdings.

This will help in economic farming and application of improved implements and methods of farming which are necessary for development of agriculture and increased agricultural production."

12. [Section 34\(1\)](#) (2) and (3) and [Section 35](#) (1) and (2), which are relevant, are quoted hereunder:-

"34. Prevention of fragmentation-

(1) No agricultural land in a locality shall be transferred or partitioned so as to create a fragment.

(2) No fragment shall be transferred except to a land-owner of a contiguous Chaka.

xxx xxx xxx (3) Where a person, intending to transfer a fragment, is unable to do so owing to restrictions imposed under Sub section (2), he may apply in the prescribed manner to the Tahasildar of the locality for this purpose whereupon the Tahasildar shall, as far as practicable within forty-five days from the receipt of the application determine the market value of the fragment and sell it through an auction among the landowners of contiguous Chakas at a value not less than the market value so determined.

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35. Consequences of transfer or partition contrary to provisions of [Section 34](#).

(1) A transfer or partition in contravention of the provisions of [Section 34](#) shall be void.

(2) A person occupying or in possession of any land by virtue of a transfer or partition which is void under the provisions of this Act, may be summarily evicted by the Collector."

13. Further Sec. 53 of the Act, stipulates that a transfer made in contravention of any of the provisions of this Act shall not be valid or recognized, anything contained in any other law for the time being in force notwithstanding.

14. The object of Sec.53 of the Act is to consolidate and prevent fragmentation of holdings. The intention of the legislature is to encourage the development of agriculture and improve the agricultural products, and one way achieves the object by introducing consolidation schemes. The object of the Act is sought to be achieved by allotting a

compact area in lieu of scattered plots, as that would facilitate large-scale cultivation, which will help in economic farming and application of improved implements and methods of farming, which are necessary for development of agriculture and increased agricultural production. Fragmentation of holdings is intended to be avoided, since that will impede the development of agriculture and interfere with increasing of production of food grains. The language employed in [Section 34](#) of the Act is imperative, which provides that no agricultural land in a locality shall be transferred or partitioned so as to create a fragment except to a land owner of a contiguous Chaka. Sub-sec. of Sec.34 of the Act cast a duty on the owner of a Chaka intending to transfer a fragment may apply in prescribed manner to the Tahasildar of the locality for this purpose whereupon the Tahasildar as far as practicable within forty-five days from the receipt of the application determine the market value of the fragment and sell it through an auction among the land owners of contiguous Chakas at a value not less than the market value so determined. Sub-sec. 4 of the said Act provides that when the fragment is not sold in course of the auction, it may be transferred to the State Government and the State Government, shall, on payment of the market value determined under sub-sec.(3), purchase the same and thereupon the garment shall vest in the State Government free from all the encumbrances.

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27. A sale deed executed in contravention of Sec.34 of the Act is not merely void, but it is invalid from nativity. No legal relations come into being from the sale deed offending the Act. "

8. In another decision reported in **1997 (2)OLR page-399 Smt. Binapani Sethi & another -vrs- Sri Bijay Kumar Sahu and others**, their Lordships have reiterated the object behind Section 34 of the Act is to prevent future fragmentation of holding, in the following words: -

"The object of stringency underlying [Section 34](#) is clearly in line with the spirit of enacting the Act. It aims to provide for

consolidation of holdings and prevention of fragmentation of land for development of agriculture in the State. Basic object is to give inducement and incentive to the cultivators, by consolidation of scattered holdings and rearrangement of holdings including fragmented holdings among various land owners; so that the holdings become compact and future fragmentation of holdings is prevented."

9. *In a decision reported in **2010 (ii) OLR-486, Rama Chandra Parida and others vs. Pramod Kumar Padhiary and another** , the definition of fragment is analysed in the following manner-*

" 7. Section 2(m) defines the expression "fragment" . It reads as follows:

"2(m) "fragment" means a compact parcel of agricultural land held by a land-owner by himself or jointly with others comprising an area which is less than

(i) one acre in the district of Cuttack, Puri, Balasore and Ganjam and in the Anandpur subdivision in the district of Keonjhar, and

(ii) two acres in the other areas of the state,"

This being the definition of fragment, as this case relates to the district of Puri any compact portion of agricultural land , which is less than one acre is considered to be a fragment."

10. The object of statute is noble and clear which is designed to prevent fragmentation. The precise words in Section 2 (m), 34, 35 and 53 are plain and unambiguous. Interpretation is an act of consummation of meaning, bigger or smaller, to the words which they behold. The words of a statute are to be first understood in their natural, ordinary or popular

sense. Phrases and sentences are to be construed accordingly.

If the object of the Odisha COHPFL Act, is to prevent fragmentation and section 34 in particular prohibits transfer so as not to create fragment, it cannot be said that the sale dated 5.10.1988 in parting more than one acre and leaving less than one acre with the land owner is not a fragment. Simply stated, the holder of a chaka land, if allows to keep a fragment i.e. less than the area prescribed by way of partition, the limitation to hold area would be redundant and the follow up provisions prescribed u/s.35 for summary eviction would be nugatory. Surely the prohibition u/s. 34 is not absolute because it is subject to certain contingencies and procedures. Such subjective conditions cannot be interpreted to nullify the very foundation of prohibited action.

The statutory interpretation is required where complicity and uncertainty arise. Ambiguity surfaces where provisions provide more than one meaning and legislature fails to cover a specific point. No such situation arises in the case at hand. The act of defendant in selling land out of his Chaka has only one consequence and that is, to own an area which is a fragment u/s 2(m) Of Odisha consolidation Act. Creation of Fragment is not the object of the Act. No meaning to its words can be attributed which is capable of frustrating the purpose for which Consolidation Act is brought. Because of the reason that the teleological method of interpretation leaves no ambiguity in the relevant provisions pressed in to service, the contention of the

learned appellant though attractive, is not hold good. Suffice to say that the act of defendant chaka-owner in creating a fragment of his chaka by sale transaction dt. 5.10.1988 is the contravention of Section 34 of OCHPFL Act and is void ab initio. On independent analysis of evidence on record, the learned lower court is found to have not committed any error to arrive at the conclusion that for the void transfer under Ext.2 the plaintiff is not entitled to any relief. Since this court concurs the view taken by learned lower court in dismissing the suit, no interference is warranted in this appeal. Hence, it is ordered.

ORDER.

The appeal stands dismissed on contest but without any cost.

Additional District Judge –cum-
Special Judge, CBI-II, Bhubaneswar.

Typed to my dictation and corrected by me.
Judgment is pronounced in the open court today
this the 7th April, 2016.

Additional District Judge, -cum-
Special Judge, CBI-II, Bhubaneswar.