

(1910) 08 CAL CK 0003

Calcutta High Court

Case No: None

Mrs. Vesta Clifton Sebastian

APPELLANT

Vs

Kuloda Prosad Deogharin and
Others

RESPONDENT

Date of Decision: Aug. 25, 1910

Acts Referred:

- Chotanagpur Tenancy Act, 1908 - Section 211

Citation: 7 Ind. Cas. 763

Hon'ble Judges: Richardson, J; Chatterjee, J

Bench: Division Bench

Judgement

1. This rule arises out of an application u/s 211 of the new Chota Nagpur Tenancy Act (VI of 1908). This Act was passed on the 11th November 1908 and at that time the District of Manbhum was not governed by it. On the 22nd December 1909,. a Government Notification was issued extending the whole of this Act to the District of Manbhum. In the meantime on the 19th August 1909, the claimant had taken a kobala of certain lands forming part of a holding. After the promulgation of the new Act in the District of Manbhum, these lands being attached in execution of a money decree, the claimant put in a claim u/s 211 of the Chota Nagpur Tenancy Act and asked for the release of the land. Her claim has been rejected on the ground that u/s 46 of Act VI of 1908, the transfer of the holding was bad and that, therefore, no title passed to her.

2. It has been contended before us that Section 46 of Act VI of 1908 has no application in bar of the claimant's title. The reason given is that Section 46 was not in force in the District of Manbhum at the time that the claimant took her kabala and that the promulgation of the Act in December 1909 could not, without any express terms, take away any rights which might be vested in her by her kobala of a prior date,

3. That certainly is the general rule of interpretation applicable to Statutes.
4. It is contended, however, that there is something peculiar in the present Act VI of 1908 and the Notification extending the whole of the Act without any exception to the District of Manbhum that takes it out of the general rule of the interpretation of Statutes herein before referred to.
5. Section 46 of the Act, which was first enacted as Section 10(b) of Act V of 1903, provided that holdings of tenants were not transferable without the consent of the landlord and so forth. That Act was passed on the 30th September 1903. It had not then any application to the District of Manbhum. Section 46 states: Nothing in this section shall affect the validity of any transfer (not otherwise invalid) of a raiyat's right in his holding or any portion thereof made bona fide before the first day of January 1903." Therefore, so far as the District governed by that Act (V of 1903) was concerned, although the Act was passed in September 1903, all bona -fide transfers before January 1903 were declared unaffected by the provisions of the section. There is in the section as enacted in Act V of 1903 and re-enacted in Section 46 of Act VI of 1908, no provision as to any transfers made between January 1903 and September 1903 when the Act was passed.
6. Be that as it may, even supposing that the whole of the Act without any exception having been extended to the District of Manbhum, clause 5 of Section 46 has full operation, we see that the section in its terms provides that bona fide transfers before the. 1st January 1903 were not to be affected.
7. There being no clause relating to any transfer after that to the date of the kobala of the claimant i.e., 19th August 1909, (as there was no law in the District of Manbhum cor-responding to Act V of 1903), we think that there is nothing in Section 46 of Act VI of 1908 which would invalidate the transfer of August 1909 in the District of Manbhum.
8. Therefore, Section 46 would not, in our opinion, stand in bar of the adjudication of the validity of the claim of the petitioner. There is, however, something more to be considered in the case. Section 211 requires .that the claimant is to prove that he was in lawful possession of the land claimed. The discussion in the Court below has been to some extent clouded by the fact of the pie u/s 46 being taken in bar and this question as to the lawfulness or otherwise of the claimant's possession has not at all been considered.
9. We think, therefore, that the proper order is to set aside the order of the lower Court, which we accordingly do, and send the case back for a consideration of the fact whether at the time of the attachment the claimant's possession was lawful possession under the law as it stood at the time of her kobala.
10. We assess the costs at one gold mohur which will abide the result.