
(1925) 05 PAT CK 0013
In the Patna High Court

Maharaja Pratap Udai Nath Sahi Deo

APPELLANT

Vs

Mahabir Sahu and Others

RESPONDENT

Date of Decision : 13-05-1925

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 10(b), 73

Citation : AIR 1925 Patna 741

Hon'ble Judges : Kulwant Sahay, J

Bench : Division Bench

Judgement

Kulwant Sahay, J.—This is an appeal by the Defendants 1 and 5 and arises out of a suit brought by the plaintiffs for a declaration of their title to, and recovery of, possession of certain plots of land. It appears that one Jaglam had a holding in Mouza Okhar Garha, of which the Defendant No. 5, the Maharaja of Chota Nagpur, is the proprietor. On the 7th May, 1903 Jaglam executed two deeds in favour of Mt. Mango. One of these deeds was a zarpeshgi deed for Rs. 159 in respect of a portion of the holding, and the other was a rehan deed for Rs. 57 in respect of another portion of the same holding. Mt. Mango took possession of the lands given to her under the zarpeshgi and the rehan. The Plaintiffs 1 to 3 purchased the interest of Mt. Mango under a deed of sale dated the 13th December 1916. They were, however, dispossessed by Defendant No. 1 who claimed the holding of Jaglam under a settlement from the Defendant No. 5 on the allegation that Jaglam had abandoned the holding and the Maharaja had taken direct possession of the land and settled the same with the Defendant No. 1 in November 1917. There was a criminal case which was decided against the plaintiffs in May 1919 and the plaintiffs stated that they were dispossessed as the result of this criminal case. The suit was brought by the Plaintiffs 1 to 3 who are the purchasers of the interest of Mt. Mango, and by the Plaintiffs 4 and 5 who are the sons of Jaglam. The suit was contested by the Maharaja, the Defendant No. 5, and by the Defendant No. 1, and their case was that the original tenant Jaglam had abandoned the holding and that the Maharaja had taken possession thereof. It was further alleged that the transfer by Jaglam to Mt. Mango was

invalid under the provisions of the Chota Nagpur Tenancy Act. After the filing of the plaint, and before the filing of the written statement, the Plaintiffs 4 and 5 filed a petition on 6th May 1920, in which they alleged that certain proceedings taken by the Defendant No. 5 u/s 73 of the Chota Nagpur Tenancy Act were correct and legal and they admitted that their father Jaglam had ceased to have any right to the disputed land and that these plaintiffs, namely, Nos. 4 and 5, had no claim to the land, and they asked that their claim might be dismissed and they might be exonerated from the liability of paying costs. The Munsif who tried the suit held that there was no abandonment and that the transfer to the Plaintiffs 1 to 3 was not invalid under the provisions of the Chota Nagpur Tenancy Act. He refused to give effect to the application of the Plaintiffs 4 and 5 and made a decree in favour of Plaintiffs 1 to 3. On appeal by the Defendants 1 and 5 the learned Judicial Commissioner has affirmed the decree of the Munsif.

2. The principal question for decision in the present case is whether the transfer by Jaglam to Mt. Mango under the two deeds of the 7th May 1903 was valid having regard to the provisions of the Chota Nagpur Tenancy Act. The Act in force at the time the transfer was made was the Act of 1879 as amended by Bengal Act V of 1903. By Section 5 of Act V of 1903, Section 10(b) was inserted in the Act of 1879. This Section 10(b) has been re-enacted in Act VI of 1908 and is now Section 46 in the latter Act. Act V of 1903 came into operation on the 4th November 1903. Section 10(b), which was enacted by Section 5 of Act V of 1903, provided that no transfer by a raiyat of his right in his holding or any portion thereof by mortgage or lease, for any period exceeding five years, or by sale, gift or any other contract or agreement, shall be invalid to any extent. Clause 5 of this section provided that 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 1st day of January 1903. The transfer in the present case took place on the 7th May 1903, that is, after the 1st of January 1903, and before the 4th of November 1903. The question is as to whether a transfer of a raiyati holding effected between these two dates comes within the mischief of the section. It has been held by the learned Judicial Commissioner that Section 10.(b) had no retrospective effect and that, although the transfer in question in the present case was made after the 1st of January, yet inasmuch as it was before the 4th November 1909, when the Act came into operation, the transfer was valid. Now, in order to put this interpretation upon the wording of the section the learned Judicial Commissioner had to introduce certain words into the section. He was of opinion that the words "made after this Act comes into operation" have to be added to Clause 1 of Section 10(b). In other words, he was of opinion that it is only transfers made after the Act came into operation that would be invalid under the provisions of this section. I am however, of opinion that it is not permissible to add words to the section in order to construe it. We must construe the section as it stands, and having regard to the language used, it is clear that all transfers, whether made before the Act came into operation or not, provided they were made after the 1st of January

1093, would come within the provisions of this section. Clause 5 of the Act clearly says "transfers made bona fide before the 1st day of January 1903." That shows the intention of the Legislature. That is, it is clear from Clause 5 of the section that but for this exception all transfers even of a period prior to the 1st day of January 1903 would have come within the operation of this section; and the Legislature has deliberately saved transfers made bona fide before the 1st day of January 1903, otherwise there appears to be no object in enacting Clause 5 of the section. The learned Judicial Commissioner says that unless some such words, as he intends to add to the section, are added, the meaning of the first clause of the section would become absurd. In my opinion there is no absurdity in the section. Clause 1 provides that no transfer shall be valid if it purports to create any interest for a period exceeding five years and Clause 3 of the section provides that no transfer in contravention of Sub-section (1) shall be registered or shall be in any way recognized as valid by any Court, whether in the exercise of civil, criminal or revenue jurisdiction. On reading the different clauses of this section I am of opinion that it was clearly intended by the Legislature to provide that all transfers for the period exceeding five years of raiyati holding would be invalid and the Courts were enjoined to refuse to recognize such transfers as valid. By Clause 5 bona fide transfers and not all transfers were saved if made before the 1st day of January 1903. The section is no doubt silent as regards the fate of the transfers between the 1st day of January and 4th November 1903, but the meaning, to my mind, is plain, and such transfers would come within the operation of the section.

3. Reliance has been placed upon certain decisions of this Court and of the Calcutta High Court. The case of *Mrs. Vesta Clifton Sebastian v. Kuloda Prasad Deogharia* 15 C.W.N. 43 referred to a case in Manbhum. The Chota Nagpur Tenancy Act was introduced in Manbhum by a notification of the Government dated the 22nd December 1909. In that case a deed of sale had been taken by the petitioner to the High Court on the 19th August 1909, that is before the Act was extended to Manbhum, and it was held that the deed of sale which was taken before the Act was extended to Manbhum, did not come within the operation of Section 46 of the present Act which corresponds to Section 10(b) of the Act of 1879 as amended by Act V of 1903. This case was followed by a Division Bench of this Court in *Braja Lal Dutta v. Kenaram Pal* (1919) 4 Pat. L.J. 411. That was a case from Ranchi in Chota Nagpur where the Act came into operation in November 1903. In *Ganpat Mahto v. Chotan Ram* (1917) 2 P.L.W. 149 the question related to the effect of Section 47 of the present Chota Nagpur Tenancy Act. In that case a sale of a holding had been ordered by the Court before the Act came into operation and their Lordships held that the Act did not apply to an order already passed by a Court. The present case is distinguishable from all these cases; and upon a plain reading of the section itself I am of opinion that the transfer by the original tenant Jaglam to Mt. Mango by the deeds of 7th May 1903 was invalid, and by the purchase of the 13th December 1916 the Plaintiffs 1 to 3 acquired no valid interest in the holding. The transfer of Mt.

Mango and to the Plaintiffs 1 to 3 being invalid, the title would remain in the heirs of the original tenant, namely, Plaintiffs 4 and 5. The Plaintiffs 4 and 5 by their petition expressly asked the Court to dismiss the claim so far as they were concerned. Having regard to the petition filed by these two plaintiffs, it is clear that the Court could not make a decree in their favour. The claim therefore of the plaintiffs must be dismissed.

4. In this view of the case the other questions referred to in the judgment of the learned Judicial Commissioner and argued by the learned advocates on both sides do not arise. As regards the effect of the application filed by the Plaintiffs 4 and 5 it was contended that it amounted to a surrender. The learned Judicial Commissioner relied upon the decision of the Calcutta High Court in Syed Mohsenuddin Vs. Bhagaban Chandra Sutradhar and Others, which held that a tenant having created an encumbrance could not by any act of surrender derogate from the encumbrance created by him. This decision of the Calcutta High Court has been expressly dissented from by a Full Bench of this Court in Mt. Sheoraji Kuer Vs. Dhani Mian and Maharani Janki Kuer, .

5. As regards the finding of the learned Judicial Commissioner that the evidence on the record showed that there was no abandonment by the original tenant, that is a finding on a question of fact which it is not open to us to interfere with in the second appeal. But as I have said this question does not properly arise in view of the interpretation placed on Section 10(b) of the Chota Nagpur Tenancy Act of 1879 and upon that interpretation, the plaintiffs are not entitled to a decree.

6. The result is that the appeal will be allowed and the suit dismissed with costs.