

(1914) 02 CAL CK 0024
In the Calcutta High Court

Nabakumar Datta

APPELLANT

Vs

Trailokya Nath Bose and Others

RESPONDENT

Date of Decision : 17-02-1914

Acts Referred:

Citation : AIR 1914 Cal 850 : 24 Ind. Cas. 354a

Hon'ble Judges : Beachcroft, J; Asutosh Mukerjee, J

Bench : Division Bench

Judgement

1. This is an appeal by the plaintiff in a suit for ejectment. On the 28th February 1899 the first defendant took a lease of the disputed property from the plaintiff, which contained the following condition : You will enjoy the profits from generation to generation by erecting houses upon the land and dwelling therein. If you fail to dwell upon the land, you will have no interest in or connection with the land." It has been found that the lessee went into occupation, built houses on the land and resided therein for ten years. In 1909 he ceased to reside in the premises. The contention of the plaintiff, is that the lease has been forfeited and that the lessee is liable to be ejected. Reliance is placed on behalf of the plaintiff, upon the provisions of Clause (g) of Section 111 of the Transfer of Property Act which provides--we need quote only so much of the section as has any application to the facts of this case-- that a lease of Immovable property determines by forfeiture, that is, in case the lessee breaks an express condition which provides that on breach thereof, lease shall become void. It is conceded that there is no clause for re-entry in the lease before us. The question for determination, consequently, is, whether there is an express condition which provides that on breach thereof the lease shall become void. Reliance is placed on behalf of the plaintiff upon the clause that the lessee was to enjoy the profits from generation to generation by erecting houses upon the land and dwelling therein. This, in our opinion, is not an express condition of the character contemplated in Section 111. The clause was inserted to indicate that the lease was of a permanent character. But even if it be conceded that there was an express condition that the lessee should reside in the premises, there is no

express condition that on breach thereof the lease would become void. As was pointed out by Justice Holroyd in the case of Doe d. Ann Lloyd v. Powell 5 B. and C. 308 : 29 R.R. 253 : 8 Dowl. & Ry. 35 : 4 L.J. K.B. 159 : 108 E.R. 115., in order to incur and enforce a forfeiture, the condition upon which it is to arise must be fully established, as forfeiture is a matter strictum jus. It is the duty of the plaintiff to establish his case strictly that there has been a forfeiture by breach of an express condition. In our opinion the statement in the lease to the effect that if the lessee fails to dwell upon the land then he shall have no interest in or connection with the land is not an express condition of this character. Apart from this we are of opinion that there is considerable force in the contention of the respondent that it was not contemplated by the parties that the lease should be forfeited if at any time during the pendency thereof, the lessee after he had entered into possession should cease to dwell upon the property. The clause is undoubtedly capable of the interpretation that the condition would be satisfied if the lessee resided for some time on the land, it does not expressly state that if the lessee at any time ceases to reside on the land the lease shall become void. We hold accordingly that no forfeiture has been established and that the plaintiff is not entitled to eject the defendant.

2. The result is that the decree of the Court below is affirmed and this appeal dismissed with costs.