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42 Ind. Cas. 673

Calcutta High Court

Case No: None

Annada Charan Datta

APPELLANT

Vs

Mohim Chandra Guha

RESPONDENT

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**Date of Decision:** April 27, 1917

**Acts Referred:**

Transfer of Property Act, 1882 "Section 111

**Citation:** 42 Ind. Cas. 673

**Hon'ble Judges:** Smither, J; N. R. Chatterjea, J

**Bench:** Division Bench

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### Judgement

1. Two questions have been raised in this case: the first is whether there was a forfeiture of the defendant's tenancy by reason of certain statements

made by him in a previous suit, and, secondly, whether there can be a forfeiture of a permanent tenure on the ground of disclaimer of the landlord's

title.

2. Taking the second question first, we do not see any reason why a permanent tenure should not be determined by forfeiture. Section 111 of the

Transfer of Property Act lays down that a lease of Immovable property determines in case the lessee renounces his character as such by setting up

a title in a third person or by claiming title in himself; and the lessor does some act showing his intention to determine the lease.

3. The question was raised in the case of Kally Dass Ahiri v. Monmohini Dassee 24 C. 440: 1 C. W. N. 321 : 12 I. D 961. and it was held that a

lease notwithstanding that it is permanent is liable to forfeiture under the provisions of the Transfer of Property Act, if the tenant denies the title of

the landlord. This case is referred to with approval by the Judicial Committee in the case of *Abhiram Goswami v. Shyama Charan Nandi* 4 I. C

449: 10 C. L. J. 284: 36 C. 1603: 6 A. L. J. 857: 11 B. L. R. 1234: 36 I. A. 148: 14 C. W. N. 1: 19 M. L. J. 530 (P. C.). In dealing with the

argument that a mokarari lease is tantamount to a conveyance in fee simple, their Lordships referred to the distinction between the two

transactions, ""well pointed out"" by Jenkins, J., in his judgment in *Kally Dass's* case 24 C. 440: 1 C. W. N. 321: 12 I. D (N. S.) 961. and

observed as follows: ""Because at the present day,"" says the learned Judge, a conveyance in fee simple leaves nothing in the grantor, it does not

follow that a lease in perpetuity here has any such result. The law of this country does undoubtedly allow of a lease in perpetuity.... A man who,

being owner of land, grants a lease in perpetuity carves a subordinate interest out of his own, and does not annihilate his own interest. This result is

to be inferred by the use of the word lease, which implies an interest still remaining in the lessor. He held, therefore, that, whether the Transfer of

Property Act applied or not, such a lease is forfeitable, notwithstanding that it is permanent. In this opinion their Lordships concur."" There could

thus be a forfeiture of a tenancy although it was a permanent tenure.

4. As regards the first question, it is contended before us that the statements made do not really amount to a disclaimer of the plaintiff's title. To,

constitute a disclaimer, it must be the renunciation by a party of his character as tenant by setting up a title in a third person or by claiming title in

himself. In the present case, it appears that the defendant, in his deposition in the suit for injunction for restraining him from transferring the property

in dispute, stated: I had tamadi right to the disputed land. Then Mansur Ali granted patta on behalf of the heirs of Buzruk Ali.... I did not pay rent to

anybody for the land in question.... The plaintiff did never get any rent from me.... I am not a tenant of the plaintiff in respect of the disputed basha

land. I have said that the plaintiff has no right to the basha land. I cannot say what right the plaintiff has got now. I never paid rent to the heirs of

Buzrak Ali. I only took a bandobast, I am not willing to pay rent to thorn; as I have a tamadi right to the land in question.

5. It appears to us, on reading all the statements together, that they were not merely to the effect that he did not know what the plaintiff's rights

were but that there was a clear assertion of the defendant's adverse title to the land. He starts with the statement that he had a tamadi right to the

disputed land, and that afterwards Mansur Ali granted him a patta notwithstanding which he never paid any rent to anybody; and concludes by

saying that he was not willing to pay rent because he had a tamadi right to the land.

These statements have been taken by the Courts below to be

an assertion of an adverse, titles so far as the proprietary right is concerned, and not merely an assertion of adverse possession for a limited

interest. We think that the Courts below are right in the view they have taken of the statements. We are accordingly of opinion that there was a

forfeiture of the tenancy.

6. The appeal accordingly, fails and must be dismissed with costs.