

ALLAHABAD HIGH COURT

Prag Narain

Vs

Kadir Baksh

(H Richards and Banerjee, JJ.)

04.01.1913

JUDGMENT

H Richards and Banerjee, JJ.

1. This appeal arises out of a suit in which the plaintiffs sought to recover certain household property situate in the city of Agra. The plaintiffs based their claim on an alleged forfeiture. The acts, which the plaintiffs contended constituted a forfeiture, were first, non-payment of rent and secondly, a denial of the plaintiffs' title. So far as non-payment of rent is concerned, the Court below has held, and we think rightly, that mere non-payment of rent is not in itself sufficient to work as a forfeiture of a tenant's interest. The other act was the making of two mortgages. In one of these mortgages, the house without the land is mortgaged. In the other mortgage, the house as well as the land is mortgaged. The mortgagor states in the mortgage that he mortgages the house together with the land, which belongs to him, without the participation of any other sharers. No farther evidence of acts by the lessees denying the plaintiffs' title has been given, nor has it been shown that the lessors, prior to the institution of the suit, did any act showing their intention to determine the tenancy as the result of the alleged denial of their title by the tenants. It may well be doubted whether the mere making of the mortgages, in more or less ambiguous terms, amounted in fact to a denial of the plaintiffs' title at all. They were acts which might very well have been explained by the tenants, had they been allowed an opportunity of doing so. The denial, in our opinion, ought to be an unequivocal and unambiguous denial of the plaintiffs' title. The learned Judge of this Court, however, accepted the contention that the making of the mortgage, in which the land as well as the house was mortgaged, did amount to a denial of the plaintiffs' title. But he held that the plaintiffs had no right to institute the present suit until they had complied with the provisions of Section 111 of the Transfer of Property Act, which provides that where the lessee has denied his landlord's title, the lessor must do some act showing his intention to determine the lease. It was contended at the first hearing in this Court, as also in this present Letters Patent Appeal, that the institution of the suit was sufficient compliance with the section. In our opinion, the learned Judge of this Court was right in holding that the institution of the suit was not a sufficient compliance. In our judgment, the act showing the intention to

determine the lease must have been done before the suit was instituted. We accordingly dismiss the appeal with costs.

