

CALCUTTA HIGH COURT

Sheikh Abdulla

Vs

Mohammad Muslim

(B Ghose, C.J. Graham, J.)

05.05.1926

JUDGMENT

B Ghose ,J.

1. The only point that arises in this appeal for consideration is whether the defendant has forfeited the tenancy by denial of the title of the plaintiff. The facts have not been given very clearly in the judgment of the lower Appellate Court which reverses the judgment of the trial Court. What we understand from the statements of the learned gentlemen appearing for the parties is this: The defendant took settlement of the land from one Nabu. After the death of Nabu, his title devolved by succession upon two persons Newar Bibi and Sabu. The title of Newar Bibi was acquired by the plaintiff at an execution Kale and the title of Sabu was purchased by the plaintiff by a kobala. The plaintiff brought a suit for rent against the defendant on the basis of the purchase and set up a kabuliyat which the defendant had executed in favour of Nabu. In that suit, the defendant denied the plaintiff's right by purchase of the landlord's interest and also denied execution of the kabuliyat in favour of Nabu but he set up the title of Sabu. On this state of facts, the plaintiff had to withdraw his suit for rent and he has brought the suit out of which the present appeal arises for ejection on the ground of forfeiture for denial of his title by the defendant. The trial Court dismissed the plaintiff's claim, for ejection on the ground that that denial did not operate as a forfeiture. The lower Appellate Court has reversed that decision and has passed a decree in favour of the plaintiff. The defendant has appealed, and he contests the decision of the Subordinate Judge. There cannot be any doubt whatsoever that the denial of the right of an assignee from the original lessor by the tenant does not work a forfeiture of the tenancy. This principle has been long settled and this cannot and is not disputed at the Bar. What the learned Advocate for the respondent says in support of the decision of the Court of Appeal below is that the defendant has denied the title of the original lessor by denying the execution of the kabuliyat in his favour and that has worked a forfeiture. This is not the view which was taken by the Subordinate Judge, and it seems that was not the point of view which was advanced in the lower Appellate Court in support of the plea of forfeiture in favour of the plaintiff. Mere denial of the execution of the kabuliyat would not be a denial of the title of the original lessor. In this case,

there is no specific denial of the title of the original lessor. What the defendant did was only to deny the right of the purchaser and set up the right of one of the heirs of the original lessor. That, as the learned Munsif has held, cannot work as a forfeiture. The plaintiff, therefore, cannot be entitled to ejection on that ground. The appeal, therefore, must be allowed and the decree of the Subordinate Judge set aside and that of the first Court dismissing only the claim of the plaintiff for ejection is restored with costs in that Court and in the lower Appellate Court.