

(1969) 12 CAL CK 0003

Calcutta High Court

Case No: Letters Patent Appeal No. 44 of 1964

Sm. Nandarani Dassi

APPELLANT

Vs

Sm. Badibala Debi

RESPONDENT

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**Date of Decision:** Dec. 4, 1969**Acts Referred:**

- Bengal Tenancy Act, 1885 - Section 48

**Citation:** 74 CWN 922**Hon'ble Judges:** P.N. Mookerjee, J; Amiya Kumar Mookerji, J**Bench:** Division Bench**Advocate:** Apurbadhan Mukherjee and Bimal Bhusan Banerjee, for the Appellant; Madan Mohan Ghosh, for the Respondent**Final Decision:** Dismissed

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### Judgement

P.N. Mookerjee, J.

This is an appeal under Clause 15 of the Letters Patent from the judgment of our learned brother Bijayesh Mukherji, J. The appeal is by the defendant and it arises out of a suit for recovery of" possession. Shortly stated, the relevant facts lie within a short compass and are as follows:

2. The defendant appellant claims to be a purchaser from an under-raiyat. The plaintiff respondent seeks to evict her primarily on the ground that her purchase or transfer was without the plaintiff's consent and, accordingly, did not confer any title on the defendant (vide Section 48 of the Bengal Tenancy Act).

3. The defence was really a plea of protection on the ground of the defendant's having occupancy right, or, in other words, on the ground that her under-raiyati was an occupancy under-raiyati. This is the picture, which has emerged after remand by this Court for a re-hearing of the case on the footing that it is governed by the Bengal Tenancy Act after rejecting the contention that it was governed by the West Bengal Non-Agricultural Tenancy Act.

4. The lower appellate court, however, has, after remand, found that the defendant has not been able to prove that she had acquired occupancy right in the disputed land under the law and that view has been accepted by this Court (Bijayesh Mukherji, J.)

5. Before us, it is contended, in the first place, that the defendant would have occupancy right and would be protected u/s 48G. We are unable to accept this contention. There is no proof that the defendant has acquired any right of occupancy in the disputed land. For this purpose, the defendant refers to her predecessor's occupation for more than twelve years. But that was from 1932, that is, after the Bengal Tenancy (Amendment) Act, 1928, had come into operation, which recognises occupancy under-raiyati only in a case, where such right had been acquired by custom prior to the introduction of the said amendment. In the premises, neither the defendant nor her predecessor can claim any right of occupancy in the disputed land and, accordingly, the transfer in favour of the defendant or her purchase would be hit by Section 48F of the Bengal Tenancy Act, as, admittedly, there was no consent of the landlord for the said transfer. In that view, the defendant would be a trespasser and her vendor or predecessor also must be held to have no further right in the disputed land, as she must be deemed to have abandoned the same by reason of her transfer of the whole in favour of the defendant. Claim of protection, therefore, of the defendant under the above statute would be untenable. We, accordingly, dismiss this appeal and affirm the decree of eviction, passed in favour of the plaintiff respondent by our learned brother Bijayesh Mukherji, J.

There will be no order for costs in this appeal.

Amiya Kumar Mookerji, J.

I agree.