

(1867) 05 CAL CK 0009

Calcutta High Court

Case No: Special Appeal No. 2609 of 1866

Mussamut
Emambandee Begum

APPELLANT

Vs

Ajoodhia Persad

RESPONDENT

Date of Decision: May 31, 1867

Judgement

Sir Barnes Peacock, Kt., C.J.

As we understand the proposition for which the vakeel for the special appellant has contended, it is this, that if a jote, which, so long as no right of occupancy existed in it, was not transferable, be held for twelve years, and a right of occupancy be acquired in it under s. 6, Act X of 1859, that which was a non-transferable tenure becomes a transferable one; in other words, that every tenure in which a right of occupancy is acquired under Act X is a transferable tenure. It appears to me that there is nothing in s. 6, Act X of 1859, which shows that it was the intention of the Legislature to alter the nature of a jote, and to convert a non-transferable jote into a transferable one, merely because a ryot who held it for twelve years had thereby gained a right of occupancy under Act X of 1859.

2. None of the cases which have been cited go to that extent. The only case which can bear an interpretation such as that now contended for, is the case referred to by the Judges who have referred this question to us--Mussamut Taramonee Dossee v. Birressur Mozoomdar 1 W.R., 86. There the Judges say: "The question then arises,--"Is a right of occupancy a transferable tenure?" We think that it is so transferable. A right of occupancy is after all a perpetual lease, the holder of which cannot be ejected so long as he pays a fair and equitable rent. There are many similar rights, common in different parts of Bengal, such as the jotes of Rungpore and the howlas and neem-howlas of Backergunge, which are in effect in no respect higher than that of a right of occupancy, inasmuch as they are mere personal rights which are, and have always been held to be, transferable as well as heritable." But even supposing that the Judges in that case thought that a jote which was not transferable became transferable merely by reason of the tenants having held it for twelve years, and gained a right of occupancy in it under s. 6, Act X of 1859, it

appears to us that their construction of that section was not correct.

3. The case will go back to the Division Bench which referred it, in order that they may decide it.

4. Speaking for myself, I am not at all sure that a right of occupancy gained under s. 6, Act X of 1859, is necessarily heritable.