

**(1918) 04 CAL CK 0039**

**Calcutta High Court**

**Case No:** Appeal From Appellate Decree No. 1089 of 1916

Jafarruddin Shaha and Another

APPELLANT

Vs

Brindarani Chaudhdhani and  
Others

RESPONDENT

**Date of Decision:** April 12, 1918

**Final Decision:** Dismissed

**Judgement**

Fletcher, J.

This appeal must be dismissed. The finding is that the Defendants held under a jaigirdar who held his jaigir as a kotwali jaigir. It is quite clear on the authorities in this Court cited in Mr. Sen's valuable work on the Bengal Tenancy Act at page 709 that a right of occupancy cannot be acquired in a land held under a service tenure. The reasons are quite obvious; and, in the present case, when this jaigir was surrendered or given up, whatever word you like to use, the zemindar was entitled to have the land that, was given to the kotwal for the purpose of performing his duty returned to him in the same condition as was given to the kotwal apart from the rights of any other person. The complaint in this case is that the learned Judge has not determined the incidents of this particular jaigir. There is a very good reason for that and that is the course that the case took before the learned Judge. The Defendants were not alleging that there were particular incidents in this jaigir under which the tenants would obtain a right of occupancy by custom but they were setting up the case that this property was not within the limits of the jaigir at alt. Therefore, this point was not determined in the lower Appellate Court.

The appeal fails and is dismissed with costs.

Shamsul Huda, J.

I agree