

**(1917) 02 CAL CK 0039**  
**In the Calcutta High Court**

Mohini Mohan Guha and Others

APPELLANT

Vs

Jhanda Mia Chowkidar and Others

RESPONDENT

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**Date of Decision :** 26-02-1917

**Acts Referred:**

**Citation :** 40 Ind. Cas. 596

**Hon'ble Judges :** Richardson, J;Fletcher, J

**Bench :** Division Bench

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### Judgement

Fletcher, J.—This is an appeal by the plaintiffs from a decision of the learned District Judge of Chittagong, dated the 29th July 1915, reversing the decision of the Munsif of South Raujan. The plaintiffs brought the suit to recover possession of a share in the tank. The first Court decreed the suit. The lower Appellate Court has reversed that decision and dismissed the suit.

2. Two points have been argued in this appeal. First of all, the learned Judge has found as a fact that the defendant No. 4 obtained a settlement from the Government of this tank. It is said that that was a new case and, therefore, the learned Judge of the lower Appellate Court was not entitled to find that case in favour of the defendant No. 4. I do not think that that is so. That case seems to have been set up at the outset and the statements of the Munsif in his judgment, though perhaps not so clear, go to warrant the fact.

3. The other point that has been raised is that this land forms a part of what is known as noabad land. It is said that the Government could only settle the land with the original tenure-holders, that is, that an interest in a noabad taluq is permanent and heritable and that the only thing that is liable to be varied is the amount of the revenue payable to the Government. It is admitted that the authorities show that, at any rate, with regard to uncultivated lands, that rule does not apply. In this case the land is clearly uncultivated. It was a tank which is now more or less silted up and a portion of waste land. There is nothing in the authorities to show that it is necessary for the Government to settle this uncultivated land with the tenure-holders under the noabad taluq.

4. The appeal, therefore, fails and is dismissed with costs.

Richardson, J.

5. I agree.