

*Before Mr. Justice Norman and Mr. Justice E. Jackson.*

1869  
May 7.

RAGHUBAR CHOWDHRY (ONE OF THE DEFENDANTS) v. BHAIK.  
DHARI SING (PLAINTIFF)\*

*Declaratory Suit—Cause of Action.*

The defendant had unsuccessfully intervened in a suit between landlord and tenant setting up a lease as middleman, *held*, that the landlord was entitled to sue in the Civil Court to have such lease declared fictitious.

Mr G. A. Twidale for appellant.

Baboo Ram Chandra Banerjee and Nilmadhab Sen for respondent.

The plaintiff as ticcadar of a certain share of an estate brought a suit for rent in the Collector's Court against a ryot. Defendant intervened declaring that he had a kutkina lease of the property from plaintiff, and was in actual receipt of the rents. That case was compromised, but the Collector charged the intervenor's costs upon plaintiff. Plaintiff on this brought the present suit to have it declared that the kutkina lease was fictitious, and to establish his right to collect rents from the ryots direct. He got a decree on both the lower Courts. The only ground of special appeal was that there was no sufficient cause of action.

NORMAN, J.—It seems to us that the objection taken in this case that there is no cause of action, and that therefore the suit does not lie, is without foundation. The defendant set up a kutkina lease, which is found to be a fictitious document, and by means of that kutkina lease he has intervened in a suit between the plaintiff and a ryot. The plaintiff has a right to come in and seek for a declaration that the instrument in question is fictitious, and to obtain a perpetual injunction to restrain the defendant from setting it up, upon the principal laid down in Story's Equity Jurisprudence, section 705 and the subsequent sections, and also in section 903. The plaintiff was not bound to remain quiescent, and leave the defendant to choose his opportunity at some future time when the plaintiff's witnesses might be dead or no longer to be found to come forward with his alleged kutkina leases.

We dismiss the appeal with costs.

\*Special Appeal, No 2322 of 1868, from a decree of the Subordinate Judge of Bhagulpore, dated the 18th May 1868, reversing a decree of the Moonsiff of that district, dated the 30th October 1867.