pottas put forth by the defendants in an enhancement suit, are spurious—*Omar Salima Bibi* v. *Lakhi Prya Debi* (1).

Mr. *Allan*, Mr. *Twidale*, and Baboo *Nilmadhab Sen* for the respondent were not called upon.

to say that the defendant Ahmedulla, was bound to make with him, and nowhere does he distinctly declare the exact nature of the occupancy which he sued to have declared. Looking, therefore, whether to the absence of any cause of action on the part of the plaintiff, or to the distinctness of that right which he sought to have declared, we have no sort of doubt that the plaintiff did not put himself in that position that the Courts could have come to any decree in his favour.

In this view of the case, we think that the decisions of the Courts below were substantially right, and that each and all of these appeals must be dismissed, appeals Nos. 1814-15-16 with costs, and appeals Nos. 2072-73-75 without costs, no one appearing on the other side in these last three cases.

(1) *Before Mr. Justice Kemp and Mr. Justice E. Jackson.*

The 11th June 1868.

OMAR SALIMA BIBI AND ANOTHER (TWO OF THE DEFENDANTS) *v.* LAKHI PRYA DEBI (PLAINTIFF).*

Mr. *C. Gregory* and Baboo *Krishna Sakha Mookerjee* for the appellants.

Baboos *Srinath Das* and *Ashutash Chatterjee* for the respondents.

THE facts are fully stated in the judgment of the Court which was delivered by

KEMP, J.—These are three special appeals, and it is admitted that one decision governs the three appeals.

The suits were to obtain a declaratory decree that certain pottas put forth by the defendants were forged and calculated to injure the future interests of the minor whom the plaintiff as guardian represents in these suits.

It is admitted that the plaintiff's estate is a farming lease, and that the term of that lease has yet nine years to run. In the suits which the plaintiff's lessor brought to enhance the rent of the defendant's tenure, the defendants pleaded an istemrari mokurrari holding, and filed their pottas to support their claim to protection from enhancement. It is said that the plaintiff's lessor, in collusion with the defendants, admitted the pottas and allowed his suits for enhancement to be compromised.

Both the lower Courts have pronounced the pottas to be spurious.

In special appeal, it is contended that the plaintiff's suit is premature, and that it will not lie under the provisions of section 15, Act VIII of 1859.

9 B.L.R. 16.

We think this contention is good. The plaintiff is not injured in her rights, nor is the minor injured by these pottas being put forward by the defendants. The plaintiff, as guardian of the minor, or the minor, if he is of age when the lease terminates, will be at liberty to sue the defendants for enhancement, and in a suit of that description, the whole question,—*viz.*, the right to enhance and the *bona fides* of the pottas can be tried.

We reverse the decision of the lower Appellate Court, and decree this appeal with costs and interest.

* Special Appeal, No. 3022 of 1867, from a decree of the Judge of Rungpore dated the 11th August 1867, affirming a decree of the Principal Sudder Ameen of that district, dated the 15th April 1867.

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MACPHERSON, J.—The only ground of special appeal which it is necessary for me to notice because I think that it is the only one in which there is any substance, is the first, namely, that the plaint merely asks for a declaratory decree, and therefore discloses no legal cause of action.

The suit is brought to obtain a declaration that a certain mortgage-bond dated 24th March 1869, which has in fact been registered, and is falsely alleged to have been registered by the plaintiff, is invalid, as being a forgery, the registration of which was obtained by a false personation of the plaintiff.

The defendant, while contending that the suit would not lie as being merely for a declaratory decree, pleaded that the bond was genuine and was really executed by the plaintiff, and that plaintiff the himself got it registered.

The lower Appellate Court has found the facts for the plaintiff; that is to say, has found that the bond is a forgery, and that the plaintiff never executed it and never got it registered.

Mr. Ghose for the defendant contends that, inasmuch, as no special injury to the plaintiff by reason of the existence of this bond is alleged in the plaint or found by the lower Appellate Court, and inasmuch as it is neither alleged nor proved that the defendant has ever taken any action against the plaintiff upon this bond, the suit is bad as being simply for a declaratory decree; and he has cited a variety of cases in support of that contention.

I admit that most of these cases do support his view to a certain extent. Nevertheless, in my opinion, the general result to be drawn from them is no more than this, that a declaratory suit will not lie, if the document which the suit seeks to set aside does not necessarily affect the plaintiff's enjoyment of his property or does not raise any substantial cloud upon his title which he is obliged to dispel by suit. In the present case, however, it is clear that the facts found by the lower Appellate Court necessarily show that a very serious cloud is cast upon the plaintiff's title by the deed which he now seeks to set aside. The existence of a mortgage-deed purporting to have been registered by the plaintiff himself, is a distinct cloud upon his title to the land affected by that deed; and without any special

evidence to prove the damage, it cannot be doubted that the existence of such a document necessarily diminishes the value, to the plaintiff, of the property which is apparently covered by the mortgage deed.' I think, therefore, that in this particular instance, the suit is not one of those inofficious, needless suits, which will not lie, but that it is a suit in which the plaintiff is found to have sustained and to be sustaining very substantial injury from the act of the defendant which is complained of. I think, therefore, that the suit will lie.

It is very difficult in these questions arising under section 15 of Act VIII of 1859, to lay down any general rule applicable to all cases. It appears to me that each case must be judged of by its own particular circumstances and on its own merits.

The decision which I now give, however, does not conflict in any degree with the general principles of most of the cases which have been quoted by Mr. Ghose. And certainly, they do not conflict with the judgment, upon which he relied much, of Mr. Justice Bayley and Mr. Justice Paul, *Sheik Jan Ali* v. *Khonkar Abdur Kuhma* (1). I find there that Mr. Justice Paul distinctly expresses his opinion that such a suit as the present suit is, will lie, if the deed, which is sought to be set aside, manifestly and unquestionably does throw a cloud over the title of the plaintiff.

Under all the circumstances of this case, I think the suit is a substantial suit seeking substantial relief, and not merely a declaratory suit, because the effect of the declaration will be to relieve the property of that which is a great injury to it, and diminishes its value.

I think, therefore, that the appeal ought to be dismissed, and the judgment of the lower Appellate Court ought to be affirmed with costs.

MOOKERJEE, J.—I entirely concur. I think the plaintiff in this case had a good cause of action, and that it was necessary for him to bring this suit. A very serious cloud was cast on his title, and he had every right to sue to dispel that cloud. Suppose

(1) 6 B. L. R., 154.

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the plaintiff wanted to raise a large sum of money on this property —say equal to three-fourths of its market value, and for that purpose had applied to a mahajan or any other man of business, it is most probable that the lender would institute inquiries in the Registry office. On that inquiry, it would be found that a large sum of money had already been advanced to the borrower by the defendant on the security of this property, and finding that, the lender would probably decline to advance the amount asked for. Would it be said that the plaintiff even then had suffered no injury, because the defendant had not taken any action on the bond? The defendant had published his mortgage by causing it to be registered; it is a notice to the world that the value of the property has diminished by the amount advanced by him, and intending purchasers and lenders would not advance such sums of money in respect of this property as they would have otherwise done. The plaintiff therefore had good reasons to come into Court and ask for a declaration that the deed of mortgage purporting to have been registered by him in favor of the defendant be declared a false and invalid document. The mere fact of the defendant not having yet taken any action on the bond is of no consequence, for as long as the deed remains unchallenged, the value of plaintiff's property is deteriorated and there is a heavy cloud upon the plaintiff's title to it. It cannot be well argued that the plaintiff must wait till he is actually injured,—namely till he has occasion to deal with this property and till parties actually decline to advance money to him on the ground of this mortgage. But why should the plaintiff wait till that time? He sees that a deed which he has not executed had been registered in a public office as a deed executed by him. It is certainly a cloud on his title, and tends to depreciate the value of his property. The plaintiff is in my opinion quite right in bringing this action to remove that cloud and thereby to restore the property to its full value.

Appeal dismissed.