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forward certain pottas in a *butwara* proceeding, the plaintiff was not entitled to bring a suit to have it declared that those documents were forgeries. See *Udai Chandra Mandal* v. *Ahmedulla* (I). A suit will not lie for a declaration that certain

(1) *Before Mr. Justice Bayley and Sir C. Hobhouse, Bart.*

The 6th December 1869.

UDAI CHANDRA MANDAL AND OTHERS (PLAINTIFFS) *v.* AHMEDULLA AND OTHERS (DEFENDANTS).*

Baboos *Akhil Chandra Sein* and *Girish Chandra Ghose* for the appellants.

Baboo *Bhawani Charan Dutt* for the respondents.

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

HOBHOUSE, J.—These were suits to have the plaintiff's right of possession declared in certain lands, and to set aside certain alleged fraudulent talooki pottas which it was averred by the plaintiff stood as obstacles to his attaining to his right.

The plaintiff's statement was that the lands in question were originally khas lands of Government; that Government had sold their rights to Ahmedulla, defendant No. 2, and that the said defendant had created a certain talooki potta in favor of defendant No. 1, Abul Reza, a potta namely which the plaintiff averred was that obstacle to his right which he wished to remove.

The lower Courts have, in substance, found that the plaintiff has a right of occupancy of some kind or other, they do not say what; but in substance they hold that notwithstanding that right of occupancy, the defendant Ahmedulla was not prevented by the agreement under which he brought the land from Government from executing the talooki pottas to which the plaintiff objected. Whether this last finding is a correct finding or not, it does not seem to us necessary to determine, because from the modein which the plaintiff has laid his suits, we think that they do not either disclose a sufficient cause of action or a sufficiently distinct right to entitle, or indeed to enable the Courts to make any declaration in favour of the plaintiff. The plaintiff simply claims a right of occupancy of some kind. Until therefore, that occupancy was disturbed by some act on the part of the defendants, there would necessarily be no cause of action. Now in this case there is nothing on the record to show that the right of occupancy in question was disturbed by any act on the part of the defendants. These defendants possibly did as between themselves come to some agreement by which one was to be a talookdar holding under the other; and it seems also that one of the defendants did sue the other for arrears of rent and got a decree. But the decree was never executed, much less did the defendants or either of them under color or by virtue of that decree attempt after it to disturb the plaintiff's occupancy. It is possible that it may have been the intention of the defendants so to act hereafter, but as a matter of fact they did not do so, and the plaintiff therefore had no cause of action so far as they were concerned. This fact alone would be fatal to the plaintiff's cause, but when we come to look into the nature of the plaintiff's statements, and to the nature of the declaration which he demanded of the Court, we find it impossible to say what exactly that right was, which the plaintiff called upon the Courts to declare. In one part of his plaint, he seems to demand a right of occupancy without paying any rents at all. In another part, he seems to demand a right of occupancy after settlement of rent, which he seems

* Special Appeals, No. 1864 to 1869, and analogeous cases from the decree of the Subordinate Judge of Chittagong, dated the 21st June 1869, reversing the decrees of the Moonsiff of that district, dated the 15th July 1868.

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

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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) B*efore 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.