

**(1869) 05 CAL CK 0026**

**Calcutta High Court**

**Case No:** Special Appeal No. 2822 of 1868

Bhaikdhari Sing

APPELLANT

Vs

Raghubar Chowdhry

RESPONDENT

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**Date of Decision:** May 7, 1869

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### **Judgement**

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 principle 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.