1954 *Present :* **Gratiaen J. and Gunasekara J.**

A. G. SELVAM, Appellant, *and* N. KUDDIPILLAI, *et al.*, Respondents

S. C. 310—D. C. Jaffna, 5,405

Quia timet—*Action for declaratory decree—Scope of such action—"Cause of action"—Civil Procedure Code, s. 5.*

An owner of immovable property is entitled to enjoy it without disturbance and without fear of unjustifiable interference from outsiders. If his enjoyment is disturbed by forcible ouster, the remedies of a *rei vindicatio* action or (in appropriate cases) of a possessory action are available to him ; if it is seriously threatened, he may demand in *quia timet* proceedings a declaration of his rights so as to prevent in anticipation the apprehended invasion of his rights of ownership.

Plaintiff, who claimed to be owner of certain immovable property, alleged that the defendants, disputing his claim to be the sole owner, wanted him to pay them the value of their share of the property. He instituted the present action claiming a declaration that he was the sole owner of the property. He admitted that, notwithstanding the dispute as to title, he had continued to possess the property and enjoy its produce exclusively. The trial Judge dismissed the action on the ground that it was premature.

Held, that the plaintiff had a "cause of action" within the meaning of section 5 of the Civil Procedure Code and was, therefore, entitled to maintain the action.

APPEAL from a judgment of the District Court, Jaffna.

H. W. Tambiah, for the plaintiff appellant.

No appearance for the defendants respondents.

Cur. adv. vult.

January 20, 1954. GRATIAEN J.—

The plaintiff-appellant instituted this action against the 1st, 2nd and 3rd defendants on 20th April, 1949, claiming, by virtue of a conveyance P2 of 1941 and of prescriptive user, a declaration that he was the sole owner of the property described in the schedule to the plaint. He complained that since 1947 the respondents had falsely asserted title to the property in dispute and " were disturbing his possession thereof to his damage of Rs. 100 *per annum* ".

In a joint answer filed on 20th September, 1949, the respondents conceded that the appellant was entitled to an undivided $\frac{1}{4}$ share of the property, but they disputed his claim to be sole owner. They asserted that they owned the outstanding shares in accordance with the chain of title set out in their pleadings, and asked " that the plaintiff's action in respect of a $\frac{3}{4}$ share of the said land be dismissed with costs ".

Fourteen issues clarifying the dispute as to title were framed at the commencement of the trial, and the plaintiff then gave evidence. He stated that he had been in exclusive enjoyment of the property from 1941 (i.e., since the date of his purchase under P2) until 1947, but that the respondents then " disturbed " his possession in the sense that they asserted their disputed claim to the property and " asked (him) to pay money for their share ". He instituted proceedings against them in the Village Tribunal in 1947, but the dispute was referred to a higher Court. " After that ", he explained, " the defendants met me and wanted me to pay the value of their share of the land and therefore I came and filed this action ". He admitted that, notwithstanding this dispute as to title, he had continued to possess the property and enjoy its produce exclusively.

After the plaintiff had concluded his evidence, but before his case had been closed, the respondent's counsel raised an additional issue in the following form :

> " 15. Has the evidence of the plaintiff ' disclosed a cause of action against the defendants inasmuch as in his evidence he has stated that he is in undisturbed possession of the land since 1948 ' ? "

The learned judge answered this issue in the negative and, without trying the rest of the issues, dismissed the plaintiff's action with costs.

In my opinion the learned judge has taken too narrow a view of the meaning of the expression " cause of action " as defined in section 5 of the Civil Procedure Code. The expression " includes the denial of a right ", and, without questioning the correctness in their context of certain *dicta* of Pereira J. and de Sampayo J. in *Loive v. Fernando* [1], I am satisfied that the respondents' conduct complained of in these proceedings goes far beyond what those distinguished Judges characterised as " a mere verbal denial " which by itself is insufficient to constitute a " cause of action ". In the present case, the plaintiff's evidence (which

[1] *(1913) 16 N. L. R. 398.*

the learned trial Judge has assumed to be true on this point) makes it clear that the respondents had *not merely denied his title but had positively asserted theirs ;* and, on the basis of that allegedly false assertion, they had, both before and after the institution of the Village Tribunal proceedings in 1947, made demands upon him for a recognition of their claims. In their pleadings, and in the issues framed at the commencement of the trial, the continuation of the outstanding dispute as to title was further emphasised. In such a state of things, it is idle to suggest that the appellant's claim to obtain a final adjudication of the dispute is premature.

An owner of immovable property is entitled to enjoy it without disturbance and without fear of unjustifiable interference from outsiders. If his enjoyment is disturbed by forcible ouster, the remedies of a *rei vindicatio* action or (in appropriate cases) of a possessory action are available to him ; if it is seriously threatened (as the appellant claims it has) he may demand in *quia timet* proceedings a declaration of his rights so as to prevent in anticipation the apprehended invasion of his rights of ownership.

The Civil Procedure Code, even in its present form, does not deny to litigants the benefit of declaratory decrees in certain circumstances for the purpose of settling concrete disputes which have arisen between them —*Hewavitarane v. Chandrawathie*[1] and *Naganathar v. Velauthan et al*[2]. Where an owner of property complains only of a " bare verbal denial of his rights ", a Court may very properly refuse to entertain a declaratory action if no concrete dispute relating to the conflicting interests of the parties can be said to have actually arisen. In the present case, however, the plaintiff's evidence does disclose a cause of action within the strict meaning of section 5 of the Code. The law does not compel an owner to postpone his claim to relief until the dispute as to title has led to physical dispossession (perhaps by violence). With great respect, I think that this is a more accurate explanation of the appellant's right to maintain his action than that suggested in *Ratwatte v. Cumarihamy*[3].

In my opinion, the dismissal of the plaintiff's action was premature. His evidence as to the nature of the " disturbance " complained of certainly destroys his claim to damages or to an order for ejectment. On the other hand, he is entitled to proceed with that part of his action which relates to a bare declaration of his rights of ownership to the property in dispute. I would set aside the order under appeal, and send the record back for a re-trial on all the issues relevant to the dispute between the parties as to title. The appellant is entitled to the costs of this appeal and his costs of the abortive trial in the lower Court. All other costs will be costs in the cause.

GUNASEKARA J.—I agree.

Order set aside.

[1] *(1951) 53 N. L. R. 169.* [2] *(1953) 55 N. L. R. 319 ; 50 C. L. W. 13.*

[3] *(1917) 4 C. W. R. 87.*