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(1991) 01 GAU CK 0013

Gauhati High Court

Case No: Second Appeal No. 85 of 1984

Abdul Kadir APPELLANT

Vs

Sirajul Ali Laskar RESPONDENT

Date of Decision: Jan. 7, 1991

Citation: (1991) 1 GLJ 122

Hon'ble Judges: J.M.Srivastava, J

Bench: Single Bench

Advocate: S.A.Laskar, N.Mohammad, M.A.Laskar, K.Rahman, Advocates appearing for Parties

Judgement

1. This is defendant''s second appeal against the judgment and decree dated 9.2. 1984 passed by the learned Assistant District Judge No. l, Cachar at Silchar whereby the appeal filed by the plaintiff respondent against the judgment and decree dated 31.8.1982 passed by the learned Sadar Munsiff No. l, Silchar had been allowed and the plaintiff''s suit for permanent injunction was decreed.

2. Briefly, the plaintiff respondent in this appeal filed the suit for permanent injunction against the defendant appellant on the allegations, that he had obtained permit for installation of rice mill at Bhangarpara Bazar and had set up the rice mill. The defendant was a licence holder of a rice mill at Bhangarpara (Rajghat) at a distance of three furlongs from the mill premises of the plaintiff. The defendant in the year 1979 bad purchased a plot of land about 30 yards away from the mill of the plaintiff with a view to shifting his mill to that site. The plaintiff stated that if the defendant was allowed to set up his rice mill near the plaintiff''s mill, the plaintiff would suffer irreparable loss in business and accordingly prayed for declaration that the defendant was not entitled to set up his rice mill within 30 yards from his mill and for permanent injunction.

3. The defendant resisted the suit and pleaded that the plaintiff had no right to prevent the defendant from setting up rice mill, and that the defendant had duly

obtained necessary permission for shifting of his mill from Bhangarpara (Rajghat) to Bhangarpara Bazar and as such he was entitled to set mill at the new location.

4. The learned trial Court framed issues and held that the plaintiff had no cause of action and dismissed the suit. In appeal, the learned appellate Court below by its judgment and decree impugned in this appeal held that the plaintiff was bound to suffer irreparable loss if the defendant was allowed to set up his mill within a distance of 30 yards from his mill and allowed the appeal.

5. Aggrieved, the defendant has come in appeal and Shri S.A.Laskar, learned counsel appearing on his behalf has submitted that the plaintiff had no right to prevent the defendant from setting up his mill, even within 30 yards of his own mill, and that for the defendant has duly obtained necessary permission from the competent authorities under the Rice Milling Industries (Regulation) Act, 1958 hereinafter referred as the ''Act" and as such the plaintiff could not prevent the defendant from setting up his mill. Shri M.A. Laskar, learned counsel for the plaintiff respondent, on the other hand, submitted that the plaintiff had every right to operate his mill for which he had necessary permit and that if the defendant''s mill was allowed to be set up at about a distance of 30 yards of plaintiff''s mill, the plaintiff''s business was bound to suffer and result in loss to him and as such the plaintiff had every right to prevent the defendant from setting up the mill, Shri M.A. Laskar has also submitted that it was a case of setting up of a new mill and not of transfer of the mill from one place to another, and that the provision of section 5 of the ''Act'' had not been, complied and hence there was violation of law and accordingly, the defendant could not be allowed to set up his mill. In support Shri Laskar has cited Kunjukunju. District Collector others, AIR 1984 Kerela 179.
6. I have considered the submissions of the learned counsel for the parties and the materials on record. ''

7. In this appeal the only question which requires consideration is that whether the plaintiff has any right to prevent the defendant from setting up the rice mill at a location with in 30 yards of bis own rice mill at Bhangarpara Bazar.

8. While it is true that the defendant appellate had been granted permit by the concerned authorities to set up his mill three furlongs away from the rice mill of the plaintiff, it appears that for same reasons, may be of less business, the defendant appellant has been given permission to shift his mill from the earlier location to the Bhangarpara Bazar where the defendant has purchased a plot of land and has constructed some premises to locate his mill within a distance of about 30 yards of the plaintiff rice mill. I, However do not see any reason way, the defendant cannot set up and operate his said mill at the new site or location. While there cannot be any doubt or dispute that the plaintiff has right to operate his rice mill yet, for the reason or ground, stated, I do not see what right the plaintiff has in assertion whereof the plaintiff can in law prevent any other business rival to set up and

operate similar business near, or even in close vicinity of his mill. It may be that setting up of the mill by the defendant in dose vicinity of the plaintiff''s mill may affect the business profits or prospects of the plaintiff, yet, that could not mean that the plaintiff has any right which may entitle the plaintiff to prevent another business rival to set up his mill. It appears to be a case of ''damnum sine injuria'' ie ''damage without injury'' which in law means loss or damage to a person say in income or profit or the like, but Without any legal injury i.e. violation of any legal right. Since there is no legal injury to the plaintiff, he has no right to prevent the defendant from setting up his mill.

9. Kunjukunju (supra) relied upon by the learned counsel for the plaintiff respondent is of no assistance in the matter because in that case setting up of new rice mill, without grant of permit under section 5 of the aforesaid Act had been questioned and the Court in exercise of its juries diction under Article 226 of the Constitution held that grant of permit was not in conformity with the law. Accordingly the matter was remanded for fresh consideration by the authorities. The ratio laid down therefore is of no assistance to the plaintiff respondent in this appeal.

10. The view taken by the learned appellate Court below was clearly erroneous and cannot be sustained.

11. For the aforesaid reasons, this appeal is allowed. The judgment and decree dated 9.2.1984 passed by the learned Assistant District Judge No. 1. Cachar at Silchar are set asile and that of the Munsiff No 1, Cachar are restored. No. costs.