
(1966) 06 CAL CK 0014

Calcutta High Court

Case No: Appeal from Original Decree No. 36 of 1966

Sree Sankar Oil
Industries

APPELLANT

Vs

Harish Chandra
Mukherjee and Another

RESPONDENT

Date of Decision: June 8, 1966

Acts Referred:

- Calcutta Municipal Act, 1951 - Section 586, 586(4)
- Specific Relief Act, 1877 - Section 54

Citation: 70 CWN 969

Hon'ble Judges: P.N. Mookerjee, J; P. Chatterjee, J

Bench: Division Bench

Advocate: Subodh Kumar Bhattacharya, Ajit Kr. Banerjee and Sunil Ranjan Mitra, for the Appellant; Bratendra Narayan Banerjee, for the Respondent

Final Decision: Allowed

Judgement

P.N. Mookerjee, J.

This appeal is by the plaintiff and it arises out of a suit for permanent injunction, restraining the defendant No. 1, Commissioner, Corporation of Calcutta, and defendant No. 2, Corporation of Calcutta, from giving effect to the order of demolition, dated April 3, 1963, passed by defendant No. 1 in respect of premises No. 67/46, Strand Road, Calcutta. The suit has been dismissed by the learned trial Judge on the preliminary ground that it is bad for want of notice under Sec. 586 of the Calcutta Municipal Act, 1951. According to the learned trial Judge, the suit is not covered by sub-section (4) of that section, as, although it is a suit for permanent injunction, it involves or implies a prayer for some declaration in respect of the above order or the setting aside of the said order.

2. In our view, the learned trial Judge has been entirely wrong in his above approach and conclusion. The suit, in our opinion, on the plaint, as it stands, is clearly a suit for permanent injunction, which will come within Sec. 54 of the Specific Relief Act, 1877. It is true that it might involve or imply some finding or declaration in respect of the order in question but as was observed by this Court in Messrs. Metro General Traders v. The Commissioner, The Corporation of Calcutta & Ors., 69 C.W.N. 584, that is the position in the matter of every suit for permanent injunction. That does not, however, alter its character as a suit for permanent injunction within the meaning of the aforesaid statutory provision. In this view, we hold that, in respect of the present suit, notice under Sec. 586 of the Calcutta Municipal Act, 1951, would not be necessary and the present suit would fall within the exception to that requirement by reason of sub-section (4) of that section. We, accordingly, allow this appeal, set aside the decree of dismissal, passed by the learned trial Judge, and send the case back to him for further consideration in accordance with law.

There will be no order for costs in this Court.

Chatterjee, J.

I agree.