

(1872) 08 CAL CK 0007

Calcutta High Court

Case No: None

S.M. Prankumari Dasi
and Another

APPELLANT

Vs

Abinash Chandra
Mookerjee

RESPONDENT

Date of Decision: Aug. 29, 1872

Judgement

Macpherson, J.

It appears to me that this is not a case in which I ought to order that the damages and costs, or the costs, payable by the defendant Abinash Chandra Mookerjee, should be paid by Krishnalal Gosain. The case is by no means one of those contemplated by Phear, J., in the remarks made by him in his judgment in the case of S.M. Bammassundry Dossee v. Anundololl Does Bourke, 44, at p.46; for this is not a case in which, in the course of the trial itself, it for the first time turned out that the party before the Court was a man of straw, and merely the puppet of Krishnalal Gosain, who was actually pulling the strings of litigation. In the first place, the party, before the Court is not a man of straw, as far as I can see, whether he is or is not now able to pay the amount decreed. Abinash Chandra Mookerjee was in no sense a sham defendant, he was a real substantial defendant, who had himself done the wrongful act on which the suit was based; and who had a six-anna interest in the whole matter, which was really the subject of the suit. Then, the plaintiff did not for the first time, in the course of the trial itself, discover the position of the defendant with relation to Krishnalal Gosain. They, in fact, all along know of the connection between these persons. The negotiations which had taken place between Abinash Chandra and the plaintiffs were for a lease of the house to him and Krishnalal Gosain for the purposes of the printing business which they were carrying on. At any rate, if the plaintiffs did not know of the partnership at the time they filed their plaint, they certainly knew on the 20th February as much of the connection of Abinash Chandra Mookerjee with Krishnalal Gosain as they now know, and they on that day wrote a letter to Krishnalal Gosain threatening to have him added as a party defendant to the suit, if he did not immediately give up possession of the house. The course indicated in this letter was in fact the course

the plaintiffs should have followed: Krishnalal Gosain ought to have been made a defendant, for practically he was just as much liable in this suit as was Abinash Chandra Mookerjee. Krishnalal Gosain had certainly no more interest in defending the suits than Abinash Chandra Mookerjee had, except that he had a larger share in the partnership. It is a case in which the plaintiffs have chosen to sue only one person instead of suing two. The defendant was selected by the plaintiffs themselves, and is in no sense a sham defendant. I, therefore, refuse this application; but, considering all the circumstances, I shall not give any costs.

¹ See *Srimati (sic) v. (sic)* 8 B.L.R. (sic)