

(1880) 12 CAL CK 0013

Calcutta High Court

Case No: None

Hameedoollah

APPELLANT

Vs

Mahomed Asghur  
Hossein and Another

RESPONDENT

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Date of Decision: Dec. 9, 1880

Acts Referred:

- Copyright Act, 1847 - Section 7

Citation: (1881) ILR (Cal) 499

Hon'ble Judges: Richard Garth, C.J; Field, J

Bench: Division Bench

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### Judgement

Richard Garth, C.J.

I think that this rule should be discharged.

The plaintiff in the first instance brought a suit against the defendants in the District Court of the 24-Parganas for an alleged infringement of his copyright. The Judge of the 24-Parganas dismissed the suit, upon the ground that, being a suit for damages, it ought to have been brought in the Small Cause Court.

The plaintiff then brought a suit in the Small Cause Court at Sealdah, and there the defendants took the objection that the suit could not be brought in the Small Cause Court, but should have been brought in the District Court of the 24-Parganas. The Small Cause Court dismissed the suit upon that ground; and this rule was then obtained by the plaintiff to set aside the order of the Small Cause Court, dismissing his suit and directing that Court to try the cause upon the ground that it was properly cognizable there.

In support of the rule, the learned pleader has now called our attention to a case decided in the year 1859 by Sir B. Peacock and two other judges, Jodoonath Mullick v. Yavarally (Gasper's Rep., 185).

In that case it was no doubt decided that, since the passing of the Small Cause Court Act of 1850, a suit for the infringement of copyright in Calcutta must be brought in the Court of Small Causes, and not on the Original Side of this Court; and the grounds of the decision were these: the Copyright Act (XX of 1847) had in effect provided in Section 7 that "if any person infringed a copyright, the offender, if the offence was committed within the local limits of the jurisdiction of any of the chartered High Courts, should be liable to an action in such Court; and that if he offended in any other part of the British territories, he should be liable to a suit in the highest local Court exercising original civil jurisdiction."

That being the law in 1847, the Presidency Small Cause Courts' Act was passed in 1850, giving the Small Cause Court exclusive jurisdiction in all suits for damages up to a certain amount; and Sir B. Peacock and the other Judges held in that case that, by that Act, the jurisdiction, which had been given to the High Court by the Act of 1847, was transferred to the Small Cause Court in suits up to the prescribed amount for infringement of copyright.

By that decision, which appears to me quite correct, we are of course bound; and by a parity of reasoning, the Mofussil Small Cause Courts, when they were established in 1865, obtained exclusive jurisdiction in the mofussil to try suits for damages for infringement of copyright up to a certain amount. But since these Small Cause Court Acts were passed, Section 7 of Act XX of 1847 has been amended by Act XII of 1876; and that section now in effect runs thus: "If any person shall infringe any copyright, the offender shall be liable to a suit in the highest local Court exercising original civil jurisdiction." As, therefore, by the Act of 1865 the Legislature transferred the jurisdiction in cases for infringement of copyright up to a certain amount from the District Courts to the Small Cause Courts, so the Act of 1876 has re-transferred the jurisdiction in such suits back again to the District Courts.

This appears to me the plain meaning of the Legislature, and it is certainly founded on much good reason; for these suits for infringement of copyright involve questions of great difficulty, and should be tried by the Court most competent to deal with them.

It is hard in this particular case that the plaintiff should have had to pay the costs of both Courts ; and although we must discharge this rule, we do so without costs.

Field, J.-I am of the same opinion. The effect of the decision quoted from Gasper's Reports is that the class of cases provided for by Section 7 of the Copyright Act, XX of 1847, was transferred to the jurisdiction of the Calcutta Small Cause Court by Act IX of 1850, notwithstanding the express language used in Section 7 of the former Act. By analogy the jurisdiction in the same class of cases arising in the mofussil was transferred to the jurisdiction of the Mofussil Small Cause Court by Acts XLII of 1860 and XI of 1865. Had the law remained in the position in which it then stood, there can be no doubt but that this case would have been cognizable in the Small Cause

Court; but in 1876 the Legislature stepped in and repealed a considerable portion of Section 7 of Act XX of 1847.

Eliminating the matter thus repealed, the section now stands as follows:-"If any person shall print, or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copyright, without the consent in writing of the proprietor thereof, or shall have in his possession for sale or hire any such book so unlawfully printed without such consent as aforesaid, such offender shall be liable to a suit in the highest local Court exercising original civil jurisdiction."

It appears to me that the section as so altered must be regarded as a fresh enactment of the Legislature; and this being so, there can be no doubt that the intention of the Legislature is that these cases arising in the mofussil should now be tried in the Court exercising the highest original civil jurisdiction, which in the present instance is the Court of the District Judge.