

(1910) 06 AHC CK 0027
In the Allahabad High Court

Hakim Ram Kishen

APPELLANT

Vs

Babu Piare Lal

RESPONDENT

Date of Decision : 21-06-1910

Acts Referred:

Citation : 7 Ind. Cas. 101

Hon'ble Judges : Tudball, J;Chamier, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This is an appeal by the defendant in the suit against a decree passed by the District Judge of Aligarh. The plaintiff-respondent is the proprietor of the copyright in a book called Kok Shastra. The defendant-appellant has printed and is or was selling a work on the subject and under the same title. The Court below has found that the appellant's book is an infringement of the respondent's copyright and has decreed that the appellant shall either deliver up all the pirated copies of the book now in his possession or pay the respondent Rs. 600 as damages for the detention thereof. It has also granted an injunction restraining the appellant from further infringing the copyright.

2. The appellant contends that the suit was not maintainable in the Court of the District Judge of Aligarh inasmuch as the appellant resides at Lahore and the cause of action arose there. Section 7 of the Indian Copyright Act, 1847, as it now stands, provides that "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." Upon this provision it is quite clear that a suit for damages for infringement of copyright can be brought only in the Court within whose limits the defendant resides. The respondent has not appeared in this Court but in the Court below he seems to have contended , that

the suit was maintainable in Aligarh because, although the appellant resides at Lahore, the cause of action arose at Aligarh where the respondent resides. He relies upon Section 12 of the Copyright Act which runs as follows:-- All copies of any book wherein there shall be copyright, and of which entry shall have been made in the said Registry book and which shall have been unlawfully printed without the consent of the registered proprietor of such copyright in writing under his hand first obtained, shall be deemed to be the property of the proprietor of such copyright and who shall be registered as such, and such registered proprietor shall, after demand thereof in writing, be entitled to sue for and recover the same or damages for the detention thereof." The learned Judge in the Court below seems to have accepted the contention of the respondent that it was the duty of the appellant to deliver up all pirated copies of the book in his possession to the respondent at Aligarh because the respondent resides at Aligarh or because the demand was made from Aligarh. We are unable to take this view. It seems quite clear that the place of residence of the person, who makes the demand for surrender of pirated copies of a book or other work, is altogether beside the question. If the respondent was justified in bringing his suit in Aligarh it must be by reason of the fact that he called upon the appellant to deliver the books to him at Aligarh. But the law does not require a person in possession of pirated copies of a book to deliver them to the proprietor of the copyright at any place selected by him, no matter what the expense of doing so may be. It appears to us that there is no justification for imposing on a person, in the position of the appellant, a burden which the Legislature has not laid upon him. In this connection it must be remembered that Section 12 of the Copyright Act applies as much to the innocent possessor of a pirated copy of a book as to the printer or publisher in possession of a whole edition of pirated copies of a book, and the same duty is cast upon both. We cannot think that it was the intention of the Legislature to require every person in possession of a pirated copy of a book to deliver it up to the proprietor of the copyright in the book at any place selected by the latter. In our opinion, the cause of action in the present case arose at Lahore where also the defendant-appellant resides, and u/s 17 of the Code of Civil Procedure, which was in force when the suit was brought, the suit should have been instituted in Lahore. We, therefore, allow this appeal, set aside the decree of the Court below and direct that the plaint be returned to the respondent in order that he may present it to the proper Court. The respondent will pay the appellant's costs in this Court. The parties will bear their own costs in the Court below.