

(1934) 01 CAL CK 0012
In the Calcutta High Court

Niladri Nath Mukherjee and Others

APPELLANT

Vs

Madan Theatres Ltd., and Another

RESPONDENT

Date of Decision : 10-01-1934

Acts Referred:

Citation : AIR 1934 Cal 671 : 155 Ind. Cas. 867

Hon'ble Judges : Roy, J

Bench : Division Bench

Judgement

Roy, J.—This is another suit by the three grandsons of Rai Bahadur Bankim Chandra Chatterjee who were the plaintiffs in Suit No. 2400 of 1930, Niladri Nath Mukherjee v. Satish Chandra Mukherjee AIR 1931 Cal 668, for the recovery of damages for infringement of copyright. The facts are not in dispute. Counsel for the plaintiffs handed in to me a chronological list of events which was admitted by counsel for the defendants and which I have directed should be kept on the file. The issues submitted in this suit were practically the same as in suit No. 2400 of 1930 and were the following:

2. (1) Have the plaintiffs any interest in the copyright in any of the books mentioned in the plaint? (2) Has the defendant company infringed the plaintiffs copyright as alleged in para. 5 of the plaint? (3) Is the suit barred by limitation? (4). What reliefs, if any, are the plaintiffs entitled to? (5). Is the suit maintainable having regard to the fact that the plaintiffs do not claim any right or declaration of title to property?

3. By my judgment in the last suit I have held that the plaintiffs are entitled to the copyright claimed along with defendant 2 and I decided the issues as to maintainability of the suit and limitation in favour of the plaintiffs. Counsel for defendant 1 in this suit intimated to me at the outset that so far as those issues were concerned he would not advance further argument as he had been following the arguments in the last case. Issues (1), (3) and (5) are decided in favour of the plaintiffs.

4. Counsel for defendant 1, Madan Theatres Limited, has however argued that though the plaintiffs might be entitled to the copyright in the books there had been no infringement of copyright. The infringement complained of in this case as has been alleged in para. 5 of the plaint is that the defendant Madan Theatres Limited had represented and performed or caused or permitted to be represented and performed the works mentioned in the plaint or parts thereof at places of dramatic and public entertainment in Calcutta. In its written statement the defendant company admitted what had been alleged in para. 5 of the plaint but denied that the representation or performance was unauthorised or wrongful. They never disputed that copyright existed in the works mentioned in the plaint but only contended that the plaintiffs had no interest in the copyright. Counsel for the defendant company however sought to argue in Court that the rights of the parties were governed by the old Copyright Act (Act 20 of 1847) and that the plaintiffs' copyright in the books could only be infringed if the defendant printed the books.

5. There is no substance in this argument but I do not think it is necessary to discuss the matter at all as in my view it is not open to the defendant company to raise this point on the present pleadings. The existence of the copyright in the books not having been denied, it follows that what the defendant company had done amounted to an infringement of copyright Under Sub-section (1) and (2) Copyright Act of 1911 (I and 2 Geo. V.C. 46). Reference may be made in this connexion to the case of Sita Nath Basak Vs. Mohini Mohan Singh and Others, , which was cited by learned counsel for the plaintiffs. Issue 2 is therefore answered in the affirmative. With regard to Issue (4) I do not think the plaintiffs are entitled to any relief against defendant 2 and the suit should be dismissed against him.

6. As against defendant 1 there will be a decree for an injunction and for discovery as claimed in prayers (b) and (c) of the plaint. There will be a reference as to damages and an inquiry will be directed to ascertain the profits made by defendant 1 by the infringements complained of and the plaintiffs will be entitled to 3/4th share of such profits. The reference would be to such officer as the Registrar may appoint. The plaintiffs will be entitled to the costs of this suit against defendant 1. There will be no order for costs with regard to defendant 2.