

(1906) 12 CAL CK 0023
In the Calcutta High Court

Rash Behary Dey

APPELLANT

Vs

Bhowani Churn Bhose

RESPONDENT

Date of Decision : 07-12-1906

Acts Referred:

Citation : (1907) ILR (Cal) 97

Hon'ble Judges : Woodroffe, J

Bench : Single Bench

Judgement

Woodroffe, J.—This is an application by the plaintiff in a suit in this Court to restrain the defendant by injunction from proceeding with a suit instituted against the plaintiff in the Small Cause Court.

2. The suit in this Court is for the specific performance of an agreement for lease of certain premises and was instituted on the 17th August 1906. The suit in the Small Cause Court was instituted three days afterwards, on the 20th August 1906, and is for ejectment.

3. It is obvious that the same questions will arise in both these suits, and, without expressing any opinion upon the merits of the application I think it is quite clear that convenience requires that an injunction should be granted in terms of the application restraining the defendant from proceeding with the suit in the Small Cause Court pending the hearing of the suit in this Court.

4. It is contended however by Mr. Dass (who appears for the defendant), on the authority of the decision in *Jairamdas Ganesh das v. Zamonlal Kissorilal* ILR (1903) 27 Bom. 357, that I have no jurisdiction to make the order sought. The grounds of decision in that case were that an application of the present character can only be granted by the final decree under the Specific Relief Act and not upon an interlocutory application, in that such an application is not expressly mentioned in Sections 492 and 493 of the Civil Procedure Code.

5. The question however does not appear to have been considered in this case, as to whether apart from the terms of the CPC the High Court might issue an

injunction under the general equity jurisdiction inherited by it from the Supreme Court.

6. The CPC does not, as I have already held in *Hukum Chand Boid v. Kamalanand Singh* I.L.R.(1906) Cal. 927, affect pre-existing powers of the Court, unless it takes them away. In my opinion, this Court had and has, independently of the Civil Procedure Code, power to make the order sought, and that power is not affected by the fact that Sections 492 and 493 of the CPC do not mention the particular injunction, which is the subject of this application.

7. Similarly, as pointed out in the argument although Section 111 mentions a particular form of set-off, it is well settled that that section does not take away any right of set-off, which parties would have independently of its provisions. And other similar instances may be mentioned.

8. It has been the practice of this Court to grant injunctions of the character sought; for instance a similar injunction was granted in the case of *Mungle Chand v. Gopal Ram* I.L.R.(1907) Cal. 748 decided on the 6th August 1906 by Sale J, in which case, I am informed, my learned brother issued an injunction upon the defendant in the suit in this Court, restraining him from proceeding with a suit in Bareilly. In the case of *Hart v. Grosser* (1905) 9 C.W.N. 748 an objection was taken on behalf of the defendant that on the authority of the Bombay decision cited, this Court had no jurisdiction to grant an injunction. It was held however that this Court had jurisdiction to restrain the defendant in the High Court suit from proceeding with the suit in the Small Cause Court.

9. I will therefore make an order in terms of the application. I think, however, this is a case in which the suit should be expedited and with the consent of learned Counsel for both parties I order that the case be placed on my list this day week for hearing, The costs of this application to be costs in the cause.