

**Subodh Kumar Banerjee Vs. Soshi Kumar Banerjee and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/871815](http://sooperkanoon.com/871815)

**Court :** Kolkata

**Decided On :** Dec-17-1957

**Reported in :** AIR1959Cal668,63CWN197

**Judge :** K.C. Das Gupta and ;U.C. Law, JJ.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Section 95

**Appeal No. :** A.F.O.O. No. 248 of 1955

**Appellant :** Subodh Kumar Banerjee

**Respondent :** Soshi Kumar Banerjee and ors.

**Advocate for Def. :** A.D. Mukherji and ;Monomohan Mukherji, Adv.

**Advocate for Pet/Ap. :** Rabiranjana Das Gupta, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**K.C. Das Gupta, J.**

1. On 14-2-1950, an application was made by the plaintiff in his partition suit against his brothers and sons of deceased brothers praying for issue of an order of temporary injunction restraining his brothers, defendants Nos. 1, 2 and 3 from building or raising any structure or construction on any part of premises Nos. 16,

17 and 15 with their sub-numbers 15A, 15B and 15C. Hazra Road or otherwise altering the character or features of the land comprised in the said premises. An interim order of injunction as prayed for was granted by the Court on that very date, 14-2-1950. Ultimately, on 14-9-1950, after hearing both parties and after consideration of the affidavits filed on their behalf and several documents, The Court came to the conclusion that the matters in dispute were matters which concerned a vital question, namely, whether the leases and kabalas of defendants 1 to 3 were genuine and valid documents, that it was neither desirable nor possible to decide such a vital matter then even though indirectly and that 'it further appears to me that pending the hearing of the suit, nothing should be done to put one or the other party in a position of greater advantage-or disadvantage regarding any vital issue.' The learned Judge being of opinion that the construction of any structure on any of the premises might put the defendants in a position of greater advantage, was of opinion that the interim order of injunction should stand and accordingly he made that order absolute. Defendants Nos. 1 to 3 preferred an appeal to this Court. This Court came to the conclusion that the plaintiff had failed to make out a prima facie case to the effect that premises Nos. 15A, 15B and 15C, Hazra Road, were joint family properties. This Court was also of the opinion that the balance of convenience required that the defendants should be entitled to construct a boundary wall on the east of premises Nos. 15B and 15C as well and that the balance of convenience was certainly in favour of allowing defendant No. 3 to add another floor to the one storeyed house built by him. Their Lordships found it difficult to realise how the defendants would be placed in a position of greater advantage or the plaintiff in a position of greater disadvantage if the defendants were allowed to make the constructions pendente lite. For all these reasons, they refused to uphold the order made by the learned Subordinate Judge. This order was passed on 15-2-1954. Almost a year after this, on 1-2-1955, the successful appellants in the High Court, namely, defendants Nos, 1, 2 and 3, made to the trial Court an application under Section 95 of the Civil Procedure Code alleging that the plaintiff had applied for injunction on insufficient grounds and as injury had been caused to them thereby and they had also been put to unnecessary expenses, compensation should be awarded to them. The learned Subordinate Judge founding himself almost entirely on the judgment of this Court

in the appeal against the order granting injunction, held that the application had been made by the plaintiff on insufficient grounds and holding further that this had caused injury to defendants Nos. 1 to 3 and put them to expenses, he assessed the compensation at slightly more than Rs. 1,000/- but as the Civil Procedure Code limits the amount of Rs. 1,000/-, he ordered that the applicants would get compensation of Rs. 1,000/-.

2. The application of any penal provision of the nature of Section 95 of the Civil Procedure Code has to be considered by the Court with very great care and anxiety. On the one hand, the Court is bound to give the party asking for relief the full benefit of the provisions made by the Legislature but, on the other hand, the Court has to take care not to do anything which would put unnecessary and avoidable obstacles in the way of litigants. Section 95 of the Civil Procedure Code provides that

'where in any suit in which ..... a temporary injunction has been granted ..... it appears to the Court that such ..... injunction was applied for insufficient grounds ..... the defendant may apply to the Court and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expenses or injury caused to him.'

Obviously, by the very terms of the section, the Court has wide discretion in deciding whether, any compensation should be allowed and, if so, to what extent. The question arises whether in exercising such discretion all that the Court need see in deciding that the defendant is entitled to compensation is that the grounds which are mentioned in the application have totally been found to be insufficient. In my judgment, it will be wholly improper for the Court to circumscribe its own mind in this manner. The discretion is a judicial discretion and it seems to me wholly proper and reasonable for the Court to which such an application is made to take into consideration all the circumstances of the case including the question whether or not the grounds are so clearly insufficient that the applicant himself could not but have known that they were insufficient. To take any other view, might have the dangerous result of driving people away from the Court and of dissuading them

from making proper applications for injunction in appropriate cases. Nobody knows better than Judges themselves that mistakes are often made by the Courts in deciding whether the grounds taken are, in fact, insufficient or not. If the mere fact, that an appellate Court has considered the grounds insufficient and has therefore allowed the appeal and rejected the prayer for injunction, was to justify an order for compensation under Section 95, the position might very well arise that persons bona fide asking for compensation on grounds believed by them to be sufficient, might ultimately find that such grounds have been found to be insufficient and then they will be mulcted for damages. It appears to me essential on these considerations that in considering an application under Section 95 of the Civil Procedure Code, the Court should not merely look at the question from the point of view of the ultimate decision by which the application was disallowed but also the question whether the applicant for injunction had reason to believe that they were insufficient. This aspect of the matter has not, in the present case, received any consideration from the learned Judge. He seems to have been content with pointing out that as the High Court considered the grounds relied upon for the application for injunction insufficient, the application for compensation was bound to succeed. It is well to remember that the learned Judges of this Court who allowed the appeal against the decision of the Subordinate Judge and dismissed the application for injunction took care to point out that the views they expressed on some of the matters in dispute were tentative only. Is it right to base on such tentative expressions of opinion by this Court a conclusion that the grounds are indeed insufficient? Ordinarily, I would think it wholly unsafe to do so. I find it impossible to ignore the fact that in the present case the learned Judge who dealt with the application for injunction, took into consideration the numerous documents and after such consideration came to the conclusion that there was a good case why injunction should be granted. As I have pointed out above, the findings on which he based this conclusion have been reversed by this Court in appeal. As Mr. Mukherji appearing before us for the respondents said, we have to proceed on the basis that the appellate Court is right and the trial Court was wrong. The fact, however, that the trial Court in a judgment which took into consideration the numerous documents and several circumstances disclosed by the evidence did seriously consider the grounds sufficient is a matter which cannot be overlooked in

coming to a conclusion on the question whether the plaintiff himself believed the grounds to be sufficient. There can be no doubt that in many cases it might well be held in spite of the fact that the trial Court had come to conclusion favourable to the applicants that the grounds were, in fact, insufficient--so very insufficient--that the applicant for injunction himself knew and believed them to be insufficient. In the present case, I am unable to discover anything on which a decision could be made that the plaintiff knew the grounds to be insufficient--Much would turn in this case ultimately on the right answer to the question whether the leases and other documents were fraudulently obtained by defendants Nos. 1 to 3 or not. The trial Court came to the conclusion that there was a serious case to be considered in these disputes. This Court, in appeal, on the other hand, held that there was no prima facie case of the plaintiffs, but as already stated, pointed out that this was a tentative decision only.

3. Taking everything into consideration. I have come to the conclusion that in the present case, the defendants Nos. 1 to 3 have failed to show that the plaintiff knew or had reason to believe that the grounds on which the application for temporary injunction was made were insufficient. It seems to me that he and his advisers thought them to be sufficient grounds and that it would be unfair to make him pay compensation merely because this Court in appeal held that these grounds were insufficient.

4. I would, therefore, allow this appeal but in the peculiar circumstances of the case, we make no order as to costs.

5. Let the records be sent down as early as possible.

6. I agree.