

1920

MATHURA
PRASAD
v.
BHUP
NARAIN.

prima facie sufficient, where a party is not found at the address given by him, one *locus penitentiae* is given to him if he is absent at the hearing. The latter part of the new rule 22 of order VII runs in this way:—

“If on the date fixed such party is not present, another date shall be fixed and a copy of the notice shall be sent to the registered address by registered post, and such service shall be deemed to be as effectual as if the notice or process had been personally served;” and that rule by the new rule 38 (3) of order XLI is applied to appellate proceedings. The procedure through service by post or fixing to the door is *prima facie* sufficient, but if the party is absent at the hearing, where service has been effected in that way, the court itself fixes a fresh date and directs additional service by registered post. That provision has been omitted in this case, which gives the appellant the right to come here and to have a second shot.

It is desirable that the attention of the lower court should be drawn to the working of these rules which establish a new and somewhat stringent procedure.

We set aside the order of the District Judge and direct him to re-admit the appeal and to dispose of it according to law.

This appeal has been heard *ex parte*. The costs in this Court will be costs in the cause.

Appeal allowed and cause remanded.

Before Justice Sir Pramada Charan Banerji and Mr. Justice
Gokul Prasad.

GHAFUR BAKHSH AND SONS (DEPENDANTS) v. JWALA PRASAD
SINGHAL AND ANOTHER (PLAINTIFFS).*

Copy-right—Reasons for acquisition of copy-right in a compilation like a grammar—Novel mode of arrangement—Joint Hindu family—Inheritance of copy-right in a work compiled by the father.

There is no reason why a copy-right may not be acquired by the compiler of a book like a grammar, if the arrangement of the subject-matter is novel and has not been employed in previous books of the same nature.

Plaintiff compiled a book of this nature, whereupon defendant produced a similar work. He adopted the special arrangement of the plaintiff's book, copied a large number of pages verbatim from it, added a small amount of matter of his own and slightly altered the title.

* First Appeal No. 214 of 1919 from a decree of Gopal Das Mukerji, Officiating District Judge of Agra, dated the 17th of February, 1919.

1921
January, 6.

Held that the infringement of plaintiff's copy-right extended to the whole of the book and could not be limited to the pages actually copied from plaintiff's compilation.

Held also that, whether or not a copy-right would in a joint Hindu family pass by survivorship, the sons of a Hindu father who had acquired the copy-right were entitled to sue respecting its infringement.

THE facts of this case are fully set forth in the judgment of the Court.

Mr. M. L. Agarwala, Dr. S. M. Sulaiman and Pandit Mangal Prasad Bhargava, for the appellants.

Babu Piari Lal Banerji, for the respondents.

BANERJI and GOKUL PRASAD, JJ. :—This is an appeal by the defendants arising out of a suit for damages for infringement of copy-right and for an injunction. The plaintiffs are the sons of one Babu Piari Lal, M. R. A. S., the author of the book styled 'English Teacher,' both Urdu and Hindi editions of which were published by the Vidya Sagar Dēpôt, Aligarh. The allegation of the plaintiffs is that Babu Piari Lal was the owner of the copy-right in the said book, and the various editions of this book were registered under sections 18 and 19 of the Press and Registration of Books Act (No. XXV of 1867), the Act then in force; that their father the said Babu Piari Lal died on the 15th of June, 1917; that the plaintiffs were his heirs and as such entitled to all the rights that he had in the aforesaid book; that the firm of the defendants, who are publishers of school books, copied largely from the 'English Teacher' referred to above and published a book named 'English Teacher with Letter-Writer' following the same arrangement as that of the book published by the plaintiffs' father. The defendants' father thus infringed the copy-right, the plaintiffs sued for a permanent injunction restraining the defendants from printing, publishing or selling the copies of the book which they have compiled or in any other way infringing the copy-right of the plaintiffs. The plaintiffs further claimed that all the copies of the said book printed by the defendants be ordered to be delivered to the plaintiffs and in case of default, the plaintiffs might be allowed the price thereof as damages. The defence raised on behalf of the defendants was that the plaintiffs had no right of suit, as their book was not an original book, but it was practically a

1921

GHAFUR
BAKSH
v.
JWALA
PRASAD
SINGHAL.

1921

GHAFUR
BAKSHI
v.
JWALA
PRASAD
SINGHAL.

compilation made of materials found in other books on grammar. The learned District Judge of Agra came to the conclusion that the defendants had slavishly copied almost word for word a large number of pages of the plaintiffs' book. He further found that, as the arrangement was the same as that of the plaintiffs' book and as it was impossible to separate the portions slavishly copied from the other parts of the work, the injunction should apply to the whole book and not to those particular pages only. On the question of damages the court came to the conclusion that the plaintiffs would be entitled to the profits made by the defendants on the sale of these books, inasmuch as the defendants had not offered to deliver any copy printed by them to the plaintiffs, as they had in fact sold them. He, therefore, passed a preliminary decree in favour of the plaintiffs for the taking of accounts and granted the injunction prayed for. The defendants come here in appeal. Their first contention is that the plaintiffs' book itself being not an original book, as it is a compilation from other works, the plaintiffs have no right to sue, and that in any event the plaintiffs have no copy-right in the title of the book. They further argue that, as the court below has found that only some pages have been copied from the plaintiffs' book the infringement could be deemed to relate to those pages only and the injunction should be confined to those parts of the book. Those were the two main points argued. As regards the first point, we have no hesitation in saying that the book published by the plaintiffs' father is arranged in a way totally different from the earlier books on the subject which have been put before us. The arrangement is a novel one and there can be no doubt that Babu Piari Lal had a real copy-right in the book. The question that the said copy-right passed to his sons does not seem to admit of any doubt. It was at one time argued on behalf of the appellants that the plaintiffs claimed a right in the copy-right by virtue of survivorship, their late father and they having been members of a joint Hindu family. It is not necessary for us to decide whether the right of survivorship would apply to such properties or not. The plaintiffs are the sons of their father and as such heirs to all the property he had, so that the argument regarding the want of title in the plaintiffs to sue must fail. Now as to

the second point, we have compared about sixty pages of the one book with the other and we find that the book published by the defendants is copied *verbatim* so far as those pages are concerned from the book published by the plaintiffs' father. We also find that they have followed the same arrangement which was adopted by Babu Piari Lal in his book. There can be no doubt whatever that, except the title, which is very much like that of Babu Piari Lal's book, the whole work is practically the same as that of the plaintiffs. In some places we find that even the spelling mistakes found in the original work are repeated in the book published by the defendants' firm. In fact the book published by the defendants is not the result of any independent labour on their part, but is practically a reproduction of the book published by the plaintiffs' father. There has thus been a clear infringement of the plaintiffs' right. The points taken in appeal by the defendants fail. The plaintiffs are, therefore, entitled to an injunction as prayed for. During the course of the argument it was admitted by Mr. *Piari Lal Banerji*, the learned vakil for the respondent, that the injunction would not affect the title of the defendants' book, *viz.*, "English Teacher with Letter-Writer." This is a small matter, but we think, in order to avoid further complications, we should make this point clear in our final order. This disposes of the points taken in appeal by the defendants. The plaintiffs put in an application regarding the mode in which damages are to be assessed. That application is not pressed and it is not necessary to say anything as regards that application. We think that the method adopted by the court below is the right method and for calculating damages would simplify the assessment of damages and lessen complications. The result is that this appeal fails and is dismissed with costs, with this modification that the injunction would not extend to the name of the book.

Appeal dismissed.

1921

GHAFUR
BAKSH
v.
JWALA
PRASAD
SINGHAL.