

(1999) 08 MAD CK 0086
In the Madras High Court
Case No : C.R.P. No. 1851 of 1999

A. Balakrishnan

APPELLANT

Vs

R. Kanagavel Kamaraj and another

RESPONDENT

Date of Decision : 02-08-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Copyright (Amendment) Act, 1994 — Section 62
Specific Relief Act, 1963 — Section 2, 37, 38

Citation : (1999) 3 CTC 247 : (1999) 3 MLJ 679

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : Mr. R. Krishnaswamy, for the Appellant; Mr.A.R.L. Sundaresan, for the Respondent

Judgement

1. 1st Defendant in O.S.No. 1287 of 1999, on the file of V Additional Judge, City Civil Court, Madras, is the revision petitioner.

2. Plaintiff/1st respondent filed the suit for permanent injunction against defendants restraining them from producing TV Film or Video film or

regular movie in any language without the consent and knowledge of the plaintiff in any manner and in any capacity whatsoever about late Kamaraj.

3. In the plaint it is said that plaintiff is the grandson of perunthalaivar Kamaraj and legal heir also. During the last days of that great Leader, plaintiff

was looking after him and was assisting him in his day-to-day affairs and personal matters, at Thirumalai Pillai Road House, T. Nagar, Chennai-17.

Perunthalaivar Kamaraj was a bachelor and hence he adopted the plaintiff as his son. Plaintiff left his Medical College Studies and was helping Mr.

Kamaraj. He also performed the last rites of that great Leader and also performed the death ceremony as per Hindu customs. According to

plaintiff, he is the heir of that great Leader. It is said that late Kamaraj was a National Leader, and, after his demise, his only was taken over by

Government and the sale amount was given to his family members. The reason for filing the suit was that the first defendant is taking TV serial

about the life history of that great Leader and is also attempting to telecast the same through second defendant, purely on commercial basis.

According to plaintiff, defendants will be having sponsorship from many advertising companies. Since it is done as a business venture, plaintiff has

objection for the same. According to plaintiff, defendants have no right to take any film about the National Leader without the knowledge and

consent of plaintiff, since they are not competent persons, to take such films. They should also get permission from plaintiff. It is said that one

V.G.P. and Martian Creations took video film about Kamaraj, and plaintiff filed in O.S.No. 8018 of 1992 for injunction, and the suit was decreed

in his favour.

4. When plaintiff came to know about the intention of defendants, he raised objection on 28.2.1997 when he saw a news item in Tamil Daily

"Dinamalar". First defendant remained silent for some time. Again, on 3.3.1999 plaintiff came to know through a magazine that defendants are

preparing to take regular film about the great National Leader. For these reasons, he wanted to restrain the defendants from releasing a movie or

telecasting a serial. Along with the suit, plaintiff also filed an application for injunction.

5. The same was seriously opposed by first defendant, petitioner herein. According to him, it is usual in the film trade to produce films and

teleserials depicting the life history of great personalities and political leaders. Petitioner herein has further said that plaintiff has not shown any

semblance of right as to how he will be prejudiced if the serial is telecast. According to first defendant, film have already been released depicting the

life history of great leaders like Mahatma Gandhi and John F. Kennedy. Plaintiff has not shown about the existence of any copyright in his favour

over any of the rights in the tele-serial. Even assuming that he has got any such copyright in his favour, the City Civil Court has no jurisdiction to try

that issue under the Copyright Act. It is further said that the story the teleserials is based on various true life instances in the life of Mr. Kamaraj and

published in different journals. Plaintiff cannot have any grievance if these instances are shown in the form of a teleserial. First defendant denies that

plaintiff is the legal heir of Mr. Kamaraj. He has further said that even as a legal heir, plaintiff has no right to interfere with his production as it is

totally a subject conceived and produced by him and it is a work of art which always remains with the person who is the author of the work.

According to him, plaintiff has not shown any prima facie case for the grant of interim injunction in his favour, and balance of convenience is only in

favour of first defendant who has invested huge sums of money for production of the teleserial and made commitments for telecast of the serial. If

the telecast is stopped, he will be put to great loss and hardship. He prayed for dismissal of the petition.

6. Trial Court, as per Order dated 5.4.1999, dismissed the injunction application. It came to the conclusion that plaintiff failed to prove a prima

facie case. It also found that none of the conditions under Order 39 Rule 1, C.P.C. are satisfied so as to get an injunction.

7. Aggrieved by the Order passed by the lower Court, plaintiff filed C.M.A.NO. 74 of 1999, on the file of City Civil Court, Madras. The lower

appellate Court set aside the Order and granted an interim Order. Before the lower appellate Court, the judgment in O.S.No. 8018 of 1992 was

filed as additional evidence, and, mainly relying on the same, the lower appellate court granted injunction order. The legality of the same is

challenged in this revision.

8. Learned counsel for revision petitioner submitted that the judgment of the lower appellate Court is patently illegal. According to him the lower

appellate court has not taken into consideration the relevant provisions of law either under Copyright Act or under Order 39, C.P.C. for granting

the interim order. It was further argued by learned counsel that the discretion exercised by the trial Court is not liable to be interfere with in appeal

unless the Order was arbitrary or capricious. In this case, the trial Court found that the plaintiff has not shown any prima facie case. He has also not

substantiated that he has got any right to institute the suit. Trial Court found that merely because he claims to be a legal heir, that will not give him a

right to institute the suit, unless he substantiates that he has inherited that right. Story of National Leader is part of History and the same cannot be

considered as property which could be inherited by a person. If plaintiff has no right over the same, then there cannot, be any question of granting

injunction. For granting injunction, provisions of Order 39, Rule 1, C.P.C. and Sec. 37 and 38 of the Special Relief Act will have to be complied

with. Trial court considered this question and held against the plaintiff. The lower appellate court has not considered any of these aspects, but

granted injunction order merely because plaintiff had obtained decree for injunction in a suit filed by him. It was argued that the judgment and

decree in O.S.No.8018 of 1992 were granted ex parts, and none of these questions were considered, except the relationship of plaintiff with the

great National Leader.

9. As against the said contention, learned Counsel for first respondent would contend that when a film is taken about the National Leader, whether

it depicts the true picture of that great leader is a matter for consideration, for, it may affect the reputation of the family, if there is anything wrong in

the depiction, So, without the consent of the family members (in this case, the plaintiff), the petitioner should not be allowed to proceed with the

telecast or release of any movie.

10. After hearing learned counsel on both sides, I do not think that the Order of the lower appellate Court could be justified.

11. In "Copyright and Industrial Designs" - Second Edition 1995 by P. Narayanan, at page 29, the learned Author says thus:

Historical Works. Historical facts are not copyrightable per se. A book on history is designed to convey information to the readers. There is no

copyright in this information as such. But the manner in which it is presented makes it an original literary work. Any person is free to read it and

acquire from it such information as he could. A book of history may not only contain bare facts but also inferences drawn by the author's own

efforts on the facts narrated and their relationship.

A historical work is not to be judged by precisely the same standards as a work of fiction. The purpose of novel is usually to interest the reader

and to contribute to his enjoyment of his leisure. A historical work may properly be assumed by his readers to have another purpose as well,

namely, to add to the knowledge possessed by the reader and perhaps in the process to increase the sum total of human experience and

understanding. The author of a historical work must have attributed to him an intention that the information thereby imparted may be used by the reader, because knowledge would become sterile if it could not be applied. Therefore, it is reasonable to suppose that the law of copyright will allow a wider use to be made of a historical work than of a novel so that knowledge can be built upon knowledge." Vide *Ravenscroft v. Merbert* 1980 RFC 193 .

12. For the grant of injunction, u/s 38 of the Specific Relief Act and for the grant of temporary injunction Relief Act and for the grant of temporary injunction under Order 39, Rules 1 and 2, C.P.C., plaintiff will have to prove that there is an obligation existing in his favour and that he has a subsisting legal right to enforce. An obligation is defined u/s 2 of the Specific Relief Act as inclusive of every duty enforceable by law. By the term obligation is meant both the right and the corresponding duty in the case of proprietary right in personam. The duty which is the correlative of a proprietary right in personam is by itself referred to as an obligation. Understood as a duty corresponding to a property right in personam, the chief sources of obligation are contract and quasi-contract. Since the concept of obligation is inseparably connected with right and duty, it is necessary to analyse these two concepts. It is said that for every right there must be a corresponding duty imposed on some one else.

13. In "Law of Specific Relief (4th Edn. 1994) learned Author G.C.V. Subba Rao, has considered as to what is meant by obligation (at page 101). Relevant portion reads thus:

Dr. Holland defines a right as "a capacity residing in a person of controlling with the assent and assistance of the State the actions of others". A legal right thus secures "control" over the actions of others, that is, places others under a legal duty. For every right there must be a corresponding duty imposed on someone else.

(2) Ingredients of right -Elements of right -According to Sir John Salmond a legal right involves five essential elements:

(i) The first ingredient in the conception of a right is the subject of the right-a person in whom the right resides, the person of inherence, or the person entitled to the right. A-right without a subject or a person who owns it is inconceivable. The owner of the right, however, need not be

certain or determinate, The subject of the right is uncertain, when, for instance, the owner is a person unborn. It is indeterminate when a right is owned for instance, by the society at large.

(ii) The second ingredient in the concept of a legal right is a person against whom the right avails and may be distinguished as "the person of incidence". He is the person bound by the duty and so may be described also as the "Subject of the duty".

(iii) The third element in the conception of a "rights" is the content of the right, the act or forbearance which the person in whom the right resides can extract.

(iv) The fourth element in the concept of a legal right is the object of the right or thing over which the right is exercised. Dr. Holland seems to consider that some rights have no objects,

... ..

(v) The fifth and last element of a legal right is the "title" - the events by which the right has become vested in the owner.

At page 103, the learned author says as to what is meant by duty. Relevant portion reads thus:-

Duty is the predicament of a person whose acts are controlled by the State in respect of a right vested in another. It is thus the correlative of right

... ..

It is true that under the Specific Relief Act, the word "obligation" has an inclusive definition and it is every duty enforceable by law.

14. If we analyse the case of plaintiff on the basis of the provision of the Specific Relief Act read with Order 39, Rules 1, C.P.C., I do not think

that he has got a case to urge before this Court. To come under Order 39, Rule 1, C.P.C., there must be a property in dispute and the same must

be in danger of being alienated. When it comes under Order 39, Rule 2, C.P.C., there must be a contract and a breach of contract or injury of any

kind relating to some property or right. Even if the extended definition of the term "obligation" is applied, plaintiff in order to get an order of

injunction, must prove that he has got a right and there is a breach of the same by defendant. The history of a National Leader is not an asset which

could be inherited by any person, nor can the plaintiff say that what late Kamaraj did for the nation was for himself or that he is the sole beneficiary.

In this case, petitioner has specifically stated that what he is depicting are, those matters which have already been published in various journals,

magazines and weeklies and he is producing them as- a-work conceived by him.

15. On going by the averments in the plaint, I find that the plaintiff is not claiming a right under Copyright Act. If it is a claim under Copyright Act,

as rightly contended by learned counsel for plaintiff, the suit is not maintainable before Civil Court. It has no jurisdiction to entertain the same. On

going by the averments in the plaint, I find that plaintiff only says that he is the legal heir of the great Leader Mr. Kamaraj and without his consent

picture pertaining to Mr. Kamaraj should not be taken. Naturally, a question arises as to what is the legal right of plaintiff if it is not a property

which cannot be inherited? He might have lived with and assisted that great Leader during his last days. But, merely because of that, it cannot be

said that he is the custodian of the history of late Mr. Kamaraj.

16. An argument was advanced by learned Counsel for plaintiff/first respondent that many incidents that took place in the life of late Mr. Kamaraj

are being telecast, and in case if any incident that is not true is depicted, there is a possibility of the reputation of that great Leader being affected.

17. I do not find any merit in the said submission since plaintiff is not in position to give any definite instance by which the reputation of the family is

affected. On the other hand, petitioner/first defendant has got a definite case that he is taking a film or televising a serial only on the basis of various

reports which were already published in journals, weeklies and newspapers, and plaintiff has no case that these publications have affected the

reputation of the family of the great Leader till date.

18. Reliance was placed by learned counsel for 1st respondent/plaintiff on an ex parte judgment in O.S.No. 8018 of 1992. It was argued that

petitioner herein was really the agent of defendants in that suit and, therefore, that judgment is binding on the petitioner. Even the lower appellate

Court did not accept the suggestion. Absolutely no material has been placed before this Court to substantiate the said contention. In the ex parte

judgment, except to hold that plaintiff is a legal heir, his legal rights have not been considered. In that judgment, it was only held that because

plaintiff is a legal heir, picture shall not be taken. Petitioner herein will not be bound by it.

19. An argument was advanced by learned counsel for first respondent/plaintiff that the judgment is relevant atleast u/s 13 of the Indian Evidence

Act as an assertion of a right and recognition by Court I do not think that the Court recognised that there is a property liable to be inherited and

consequently granted injunction. This question was never considered. Even if it is relevant u/s 13 of the Evidence Act, that will not take away the

substantive right of first defendant. I hold that the first respondent/plaintiff has no subsisting legal right enforceable in a court of law.

20. In the result, the Order of lower appellate Court is set aside and that of the trial Court is restored. I.A.No. 3717 of 1999 in O.S.No. 1287 of

1999, on the file of V Assistant Judge, City Civil Court, Madras will stand dismissed. Revision is allowed. No costs. CMP.No. 9947 of 1999 for

stay is closed.