

(1991) 08 MAD CK 0057
In the Madras High Court
Case No : O.S.A. No"s. 142 and 143 of 1991

Cine India

APPELLANT

Vs

Muthu Enterprises, Madras and Rathna Movies

RESPONDENT

Date of Decision : 05-08-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Copyright Act, 1957 — Section 13, 14, 14(1)(c), 17, 18

Citation : (1991) 08 MAD CK 0057

Hon'ble Judges : Mishra, J;Janarthanam, J

Bench : Division Bench

Advocate : K. Ramamurthy for M/s. A. Chidambaram, G. Veerapadran and A. Abdul Kader, for the Appellant; B.T. Seshadri for second Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Mishra, J.

O.S. Appeal No. 142 of 1991:

1. Heard learned counsel for the appellant as well as learned counsel for the second respondent. This appeal is preferred against an order passed in an Application No. 416 of 1991 under Order 14 Rule 8 of the Original Side Rules of this Court read with Order 39, Rules 1 and 2 of the Code of Civil Procedure. The learned single Judge who heard the application took notice of the facts of the case and he came to the conclusion that a prima facie case warranting interim injunction had been made out. He has accordingly made an order of temporary injunction in these words:

Therefore, I am of the firm view that the applicant/plaintiff has established his case and that consequently, he has succeeded in this application, with the result, both the defendants/respondents, their agents, servants, representatives and distributors or restrained from in any way interfering with the copyright of the

plaintiff in respect of the suit picture "Meenava Nanban" either by telecasting or by exhibiting the same through video cassettes or by producing the video cassettes containing the said picture during the pendency of the suit by means of a temporary injunction immediately and that accordingly, the application is allowed.

2. The first defendant in the suit, it is not in dispute, was the owner, i.e., author as defined in S.2(d)(v) of the Copyright Act, 1957 of the Cinematograph film concerned. He executed an agreement on 16-1-1978 with the plaintiff (second respondent herein) stating therein that the picture comprised in the agreement of lease was leased to the plaintiff on the following terms and conditions:

The area and period of lease are as follows:-

(a) North Arcot, South Arcot, Chingleput, Chittoor Districts including Pondicherry for a period of 86 years from 18-8-1982:

(b) Coimbatore and Nilgris Districts for a period of 86 years from 18-8-1982:

(c) Trichy, Tanjore and Pudukkottai Districts including Karaikal for a period of 86 years from 18-8-1982;

(d) Madurai and Ramnad Districts for a period of 86 years from 18-8-1982;

(e) Madras City for a period of 86 years from 18-6-1982

(f) Salem and Dharmapuri Districts for a period of 86 years from 18-8-1982;

(g) Tirunelveli and Kanniyakumari Districts for a period of 86 years from 18-8-1982;

(h) Kerala and Karnataka States for a period of 86 years from 18-8-1982;

(i) North India for a period of 86 years from 15-10-1982;

(j) Andhra Pradesh Tamil Rights for a period of 86 years from 15-2-1983;

(k) do dubbing rights in Telegu for a period of 86 years from this date;

(l) Complete Overseas except Ceylon for a period of 81 years from 18-10-1992

(m) Ceylon for a period of 86 years from this date.

It also stated that in view of the negative lease rights being granted to the party of the Second part by the party of the first part for the entire area and period granted as above, the party of the second part shall pay the party of the First part a consolidated consideration of Rs. 1,75,001/- only and that the party of the First part shall give a letter of transfer to Measra. Film Center, Virugambakkam, Madras-92, intimating the lease and instructing them to transfer the negatives of the said picture to the party of the Second part, reserving the rights for them to take any number of prints to enable them to supply to the Distributors, with whom the party of the First part have already entered into agreements for the

period prior to what has been mentioned in clause 1 of the agreement, and that the party of the Second part is at liberty to deal in any manner they like regarding the areas and period granted to them under the agreement and that the party of the Second part is entitled to take any number of prints at their cost, and the complete realisations of the said picture in the areas and during the period mentioned in the agreement shall only belong to them and the party of the first part shall not have any claim over the same since they are being paid a consolidated consideration.

3. Thus in the terms as above, the first defendant transferred every right in the negative of the film for taking out any number of positives for the purpose of exhibition of the picture because the first defendant had received a consolidated consideration from the plaintiff and reserved only one condition that the plaintiff would supply prints of the film to the Distributors, with whom the first defendant had already entered into agreements for the period prior to the agreement.

4. The Copyright Act contains specific provisions with respect to the cinematograph films. We may profitably extract a passage from a Division Bench Judgment of this Court cited by the learned counsel for the appellant to understand as to what happens to the ownership right in the film in the event of any lease or assignment of this kind. In *A.V. Meiyappan, Sole Proprietor of A.V.M. Productions Vs. The Commissioner of Commercial Taxes, Board of Revenue and Another*, it is stated,

We feel it necessary to examine the rights which the producer of a film gets under the law.

It is well recognised that such rights in relation to cinematograph productions are governed by the statute at the present time, in whatever manner they may have been characterised in the past, S.2(d)(v) of the Copyright Act XIV of 1957, defines "author" to mean in relation to a cinematograph film that the owner of the film at the time of its completion A cinematograph film includes the sound track. The further parts of this section define what an "exclusive licenses", and an "infringing copy" or a "performance" mean in relation to cinematograph films. Under S.13 of the Act copyright is declared to exist throughout India in words, such as cinematograph films and records. S. 14 lays down what is meant by copyright. It means in the case of literary, dramatically or musical work the exclusive right by virtue of the provisions of the Act to make any cinematograph film or a record in respect of the work. In the case of the copyright in a cinematograph film, it means the exclusive right to cause a film, in so far as it consists of visual images, to be seen in public and in so far as it consists of sound to be heard in public. There are other rights comprehended in the copyright in the case of a cinematograph film, which find place in S.14(1)(c) and (d), to which we shall refer later in due course. S.17 states that the author of a work shall be the first owner of the copy right, "work" in this connection meaning the cinematograph film. There is no doubt that in the circumstances of this case, the lessors is the author of the work, viz., the cinematograph film in question.

S.18 provides for assignment of copyright. The owner of the copyright in an existing work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof. Upon such assignment being made, under S. 18(2) the assignee continues to be the owner in respect of the rights not assigned. S.19 requires an assignment of copyright in any work to be in writing signed by the assignor. S.26 provides the life-time of the copyright to be fifty years. Apart from assignment of copyright which is provided by S.18, S.30 enables the owners of the copyright to grant any interest in the right of licence in the work.

5. The first owner, that is to say, the first defendant thus transferred certain rights in property, i.e., the film to the plaintiff under the agreement quoted above and made him the owner to the extent assigned to him.

True, the owner, i.e., the author or the producer continued to enjoy only such rights which were not assigned to the plaintiffs; he nonetheless decided to transfer the video rights to the second defendant as shown in a letter dated 7-7-1989, to the following affect;

This day I have received a sum of Rs. 7,500/- (Rupees seven thousand five hundred only) by cheque on State Bank of India dated 7.7.1989, being royalty amount in full settlement for my Tamil 35 mm colour picture "Meenava Nanban" Video Rights for Indian Territories granted to you for a perpetual period from this day

Learned single Judge in his order has so clearly stated the law that it is possible without any hesitation to say that it was necessary to find out as to what had been assigned to the plaintiff by first defendant and whether any video right in the film continue with him which he could transfer to the second defendant. He has said;

Thus, it was made clear that the copyright means all the rights conferred by the Act upon its owner, viz., the applicant herein in respect of his literary, dramatic, musical and artistic work of the suit picture which squarely comes under the definition of cinematograph films and that it does not essentially mean a right to do something, but only the right to exclude others from doing such of the acts which are expressly mentioned in the section. This position of law has not been disputed by the learned counsel appearing for the respondent herein. It was the well established principles of case laws that both the video and televisions are cinematograph and that both are jointly and severally become the apparatus for the representation of moving pictures or series of pictures and that the video is an appliance capable of use for the reception of signs, signala, images and sounds. When a video cassette recorder is used for playing pre-recorded cassettes, of movies on the television screen, it is certainly used as an apparatus for the representation of moving pictures or series of pictures and comes within the definition of cinematograph as defined under the Cinematograph Act. Placing reliance upon a decision held by the Division Bench of this Court reported in

Entertaining Enterprises v. State AIR 1984, Mad. 278 : 1984 Writ. L.R 57 (D.B.) my learned brother Thiru Lakshmanan, J. has also held in affect that the video of a cinema picture and the television were all perfectly come within the definition of cinematograph after elaborately discussing various case laws and the said judgment was reported, in P. Thulasidas v. K. Vasanthakumari 1991 (1) L.W. 220. In the context enunciated by this Court as well as other High Courts, there is no need for me again to make an emphasis on the question of law as per the specific provisions of the Copyright Act, 1957, as hereinbefore referred.

6. Learned counsel for the appellant has drawn our attention to a judgment by Kader, J. in the case of Century Pictures v. V. Mohan 1983 T.L.N.J. 354 to suggest that "copyright" which consists of a bundle of rights in respect of a cinematograph film means the exclusive right to do or authorise the doing of any of the following acts, i.e., (i) to make a copy of the film; (ii) to cause the film, in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public; (iii) to make any record embodying to recording in any part of the sound track associated with the film by utilising such sound track; (iv) to communicate the film by a radio-diffusion (S.14(1)(c) of the Copyright Act, 1957). He referred to S.18 of the Copyright Act which deals with the assignment of copyright to say "By virtue of this section, the owner of a copyright in any work may assign the right (a) either wholly or partially; (b) either generally or subject to limitations; and (c) either for the whole term of the copyright or for any part thereof. Copyright may therefore be regarded as divisible as to content, territory or time and in case the assignee is to be regarded as the owner of the part assigned and the assignee is the owner of the part not assigned. The effect of the Act is to render it possible that there shall be within the meaning of the Act two or more owners of the copyright in any work at one and the same time."

7. The above statement of law is in the same terms as in the case of A.V. Meiyappan 1969 (I) MLJ 480 and certainly not in conflict with the statement made by the learned single Judge in the impugned order. All that had to be seen for finding out whether the plaintiff made out a prima facie case or not was whether under the agreement dated 16-1-1979 the first defendant had transferred the cinematograph ownership in the negative as well as prints to the plaintiff or not and whether such transfer by him also covered the video right or not. Learned single Judge has prima facie found in favour of the plaintiff.

8. It is a case in our opinion in which the Court must hold that balance of convenience is in favour of the plaintiff. The second defendant obtained from the first defendant a certain right which had already vested in the plaintiff. He exploited, it is asserted before us, for some time the said right and only by the impugned order has been denied the same. Whatever he exploited he did so infringing the copyright of the plaintiff. Any such act under an invalid agreement cannot be allowed to continue. The learned single Judge has rightly held that the plaintiff has made out a prima facie case for temporary injunction.

9. While disposing of this appeal, at the admission stage, we make it clear that any observations made by us in this judgment or even by the learned single Judge while disposing of the application for temporary injunction shall not be taken to prejudice the case of any of the parties because any prima facie determination for the purpose of injunction cannot be said to be a final adjudication of the dispute between the parties.

10. In the result, this appeal is dismissed but without costs. O.S.A. No. 143 of 1991:

In view of the dismissal of O.S.A. No. 142 of 1991 this appeal also is dismissed. No costs.