

(2011) 09 SC CK 0002

In the Supreme Court Of India

Case No : Civil Appeal No. 6438 of 2005

Divya Exports

APPELLANT

Vs

Shalimar Video Company and Others

RESPONDENT

Date of Decision : 02-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 24
Trusts Act, 1882 — Section 73, 74

Citation : AIR 2011 SC 3063 : (2011) AIRSCW 5276 : (2011) 5 CHN 341 Supp :
(2012) 1 RCR(Civil) 154 : (2013) 2 RLW 1073 : (2011) 9 SCALE 630

Hon'ble Judges : G.S. Singhvi, J;Asok Kumar Ganguly, J

Bench : Division Bench

Advocate : Pallav Shisodia, Abhijit Sengupta, AOR, D. Bharat Kumar and M. Indrani, for the Appellant; Raju Ramchandran Shakil Ahmed Syed, M.M. Abbasi, Shankar N., Vikramjit Banerjee and Vishal Arun, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.

1 This appeal is directed against the judgment of the learned Single Judge of the Andhra Pradesh High Court whereby he allowed the appeal filed by Respondent No. 1 and decreed the suit filed by the said Respondent for grant of a declaration that it is having exclusive worldwide video rights of VCD/DVD and other formats of video rights in respect of 15 Telugu films for which it had entered into an agreement dated 27.8.2001 with M. Srinivasa Rao and also for restraining the Appellant and Respondent Nos. 2 and 3 from producing or selling VC Ds/DV Ds or any other video format of those films in any form of exploitation.

2 M/s. Vijaya Production Private Limited (hereinafter referred to as "the Producer") produced 15 Telugu films. By an agreement dated 28.9.1987, the Producer granted the sole and exclusive video rights of the films to M/s. Jyothi Video for a period of seven years. During the currency of that agreement, the Producer gifted the films to M/s. Nagireddy Charities (Respondent No. 3)

represented by its Managing Trustee, Shri B. Nagireddy. Respondent No. 3 entered into an agreement of lease with Respondent No. 2-M/s. Vijaya Pictures whereby the rights of theatrical and non-theatrical distribution, exhibition and exploitation including video and TV rights were given to Respondent No. 2 for the areas of Andhra and Nizam for a period of 20 years commencing from 1.1.1975 for a consideration of Rs. 20 lakhs. By another agreement dated 25.6.1990 (Exhibit A-4) the term of agreement dated 10.1.1975 was extended by 70 years with effect from 1.1.1995. The relevant portions of that agreement are extracted below:

Whereas the Lessors are the absolute owners in possession of the negatives, holding the entire rights for the Indian Union of the Telugu Talkie pictures produced by M/s Vijaya productions Private Ltd., as specified hereunder, the rights of which have been assigned absolutely by way of gift by the said Vijaya Productions Private Ltd., in favour of the Lessors.

Whereas the Lessors have already granted to the Lessees, the exclusive lease rights of exploitation of their several Black and White and Colour pictures for the territory of Andhra and Nizam by way of agreement of lease dated 10.1.1975 for a period of 20 years from 1st of January, 1975. Whereas the Lessees have approached the Lessors to grant unto them the exclusive lease rights of Theatrical and Non-theatrical distribution, exhibition and exploitations of the several pictures by way of lease, in respect of the areas of Andhra and Nizam as known in the Film Trade, for a further period of 70 (seventy) years from the date of expiry of the present lease agreement i.e. from 1st January 1995 and to transfer complete pictures negatives in favour of the Lessees herein.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. The Lessors hereby grant us the Lessees as the rights of Theatrical and Non-Theatrical distribution, exhibition and exploitation by way of lease of the following Black and White Telugu Pictures produced by M/s Vijaya Productions Pvt. Ltd. Madras 600 020 including the video and T.V. Rights thereof

1 Shavukaru

2 Pathala Bhairavi

3 Pellichehi Choodu

4 Chandraharam

5 Missamma

6 Maya Bazar

7 Appuchesi Pappukudu

8 Jagadekaveerunikatha

9 Gundamma Katha

10 C.I.D.

11 Umachandi Gowrishankula Katha

12 Rechukka Pagatichukka

for the Areas of Andhra and Nizam, and to appropriate to themselves the proceeds earned by them on the said pictures by such exploitation for a period of 70 (seventy) years from 1st January 1995.

4. The Lessees shall have the power to assign this agreement either in part and/or whole to third parties at their discretion, without in any manner affecting the rights of the Lessors under this agreement.

5. It is agreed that the Lessors shall not lease out, sell or exhibit the pictures in the territories for which the rights of exploitation are herein be granted, till the expiry of the agreement. The Lessees also shall not exhibit the pictures in any station outside the territory leased herein.

7. It is understood between the parties herein that this agreement is without prejudice to the 16mm rights; T.V. and Video rights committed by the producers Vijaya Productions (P) Ltd for the various periods with the parties concerned and the Lessees herein are entitled for the said rights after the expiry of the periods committed thereunder.

3. A third agreement dated 11.12.1995 (Exhibit A-5) was entered into between Respondent Nos. 3 and 2 whereby and whereunder copyright for broadcasting of films through satellites, cassettes, disc, cable, wire, wireless or any other system including its transmission through cable system without restriction of geographical areas was assigned to Respondent No. 2 for a sum of Rs. 8 lakhs. The relevant portions of the third agreement are also extracted below:

Now, This Agreement Witnesseth:

1. The Assignors irrevocably assign to the Assignees the copyright for broadcasting the said films through satellite, cassette, disc, cable, wire, wireless or any other system including its transmission through cable system without restriction of geographical areas and for this purpose the assigners are authorized to make such copies of recordings on film, taps, disc or such other media as may be required.

2. The Assignors have already delivered to the Assigners the concerned version of the picture and sound negatives of the said films as per the Agreement dated 25-6-1990 between the Assignors and Assignees.

3. The Assignees shall have the full right to broadcast the said Films after subtitling, editing, deleting any portion, altering colour or inserting advertisement, or broadcasting the excerpts, or programme including the excerpts, or part of whole of the sound track only, at their sole and absolute discretion.

4. The Assignees shall be entitled to assign their rights under this Agreement in part or in full to any other party and to broadcast through any authority or agency, at their sole and absolute discretion including Doordharshan's Terrestrial Primary Channels.

4. After five years, Respondent No. 2 entered into an agreement of lease dated 30.7.2001 with M. Srinivasa Rao and granted him rights of theatrical and non-theatrical (excluding satellite rights) exhibition and 35 mm exploitation, video, VCD, DVD, Audio and 16 mm by way of lease in respect of 14 films for the areas of Andhra and Nizam for a period of 60 years for a consideration of Rs. 10 lakhs. Paragraphs 5 to 9 of that agreement read as under:

5. The Lessees shall have the power to assign this agreement either in part or whole to third parties at their discretion, without any manner affecting the rights of the lessors under this agreement.

6. The lessors hereby grant to the lessees the rights of theatrical and non-theatrical (excluding satellite rights) exhibition and 35mm exploitation, video, VCD, DVD, Audio and 16mm by way of lease of the following.

7. It is agreed the lessors shall not lease out, sell or exhibit the pictures in the territories for which the rights of exploitations herein granted till the expiry of this agreement.

8. In case the original procedures M/s Vijaya Productions Pvt. Ltd. or lessors herein require any prints of the pictures lease out herein for any overseas exploitation the same share be delivered by the lessees herein at cost.

9. It is understood between the parties herein that 16mm rights, video rights committed by the producers Vijaya Productions Pvt. Ltd. with the parties concerned was expired. The lessees herein are entitled for the said rights.

5. M. Srinivasa Rao executed an agreement dated 17.8.2001 in favour of Respondent No. 1 and granted C Ds, VC Ds, DV Ds, copyrights for transferring, processing, recording, duplication, copying, taping on to video grams, discs, C Ds, VC Ds, DV Ds and the digital formats for commercial and private exhibition of the 15 films for the entire world.

6. Three days prior to the execution of the aforesaid agreement, Respondent No. 3 entered into an agreement dated 14.8.2001 with the Appellant and assigned it exclusive DVD rights, VCD rights and internet rights (worldwide web TV rights) by way of lease in respect of the 15 films for the entire world including Indian Union Territory for a period of 60 years in lieu of a consolidated royalty amount of Rs. 1,50,000/-.

7. Within 8 days of the execution of agreement dated 17.8.2001, Respondent No. 1 got published a notice in the newspaper dated 25.8.2001 declaring that it had purchased DVD and VCD rights for 15 Telugu films produced by M/s. Vijaya Production. Thereupon, Respondent No. 3 issued telegram to Respondent No. 1

and called upon it to stop production of DVDs and VCDs. In its reply dated 31.12.2001, Respondent No. 1 relied upon agreement dated 17.8.2001 executed by M. Srinivasa Rao and claimed that it had purchased all the rights in respect of the 15 films. By way of rejoinder, Respondent No. 3 informed Respondent No. 1 that it had not sold or assigned any rights to Respondent No. 2 or M. Srinivasa Rao to produce DVDs and VCDs.

8. After exchange of notices, Respondent No. 1 filed suit for grant of relief to which reference has been made in the opening paragraph of this judgment. It also applied for and was granted ex parte injunction by the trial Court on 23.6.2003, which was vacated on 22.8.2003. The appeal preferred by Respondent No. 1 was dismissed by the Division Bench of the High Court.

9. In the written statement filed by the Appellant through its Managing Partner Bh. Sudhakar Reddy, which was adopted by Respondent No. 3, it was pleaded that the rights of VCDs/DVDs had not been assigned by Respondent No. 3 to Respondent No. 2 and, as such, M. Srinivasa Rao could not acquire any such rights from Respondent No. 2 and assign the same to Respondent No. 1. In a separate written statement, Respondent No. 2 claimed that in terms of agreement dated 15.12.1995 executed with Respondent No. 3, it had acquired the rights for future technical development in the field of cinematography. Respondent No. 2 pleaded that after accepting a sum of Rs. 8 lakhs, Respondent No. 3 had assigned irrevocable copyright for broadcasting the said films through satellite, cassette, disc, cable, wire, wireless or any other system including its transmission through cable system without restriction of geographical areas and for this purpose, the assignees were authorised to make copies of recording of films, disc, tape or such other media as may be required. Respondent No. 2 admitted that it had entered into an agreement dated 30.7.2001 with M. Srinivas Rao for assignment of the rights acquired by it under agreements dated 25.6.1990 and 15.12.1995.

10. On the pleadings of the parties, the trial Court framed the following issues:

- 1) Whether this Court has territorial jurisdiction to maintain the suit?
- 2) Whether the suit is bad for non joinder of necessary parties?
- 3) Whether the agreement dt. 25.6.1990 will include VCD/DVD rights and whether the Plaintiff is entitled to claim the broadcasting rights thereunder coupled with the agreement dt. 15.2.2002 and thereby the Plaintiff is entitled for the manufacture and sale of the VCDs/DVDs of the suit films?
- 4) Whether the Plaintiff is entitled for declaration and the injunction sought for?
- 5) To what relief?

11. After considering the pleadings of the parties and evidence produced by them, the trial Court held that the suit was bad for non joinder of M. Srinivasa Rao, who is said to have assigned rights to Respondent No. 1. This is evinced

from the following observations made by the learned trial Court:

The Plaintiff is claiming his right through M. Srinivasa Rao from whom the Plaintiff has obtained an agreement for assignment of the rights over the suit schedule films. When the Defendants 1 and 3 have come forward with a specific contention that the M. Srinivasa Rao have no right at all to assign the VCD and DVD rights the Plaintiff ought to have impleaded the said M. Srinivasa Rao as a party to the suit. But the Plaintiff has not chosen to bring him on record and he has deposed in his cross examination that he has no grievance at all against M. Srinivas Rao and therefore he thought that it is not necessary to bring him on record. It is important to note that the Plaintiff is claiming right through M. Srinivas Rao. He has purchased the rights from the 2nd Defendant and because the dispute is that he has conveyed the rights which was not covered by the agreement under which he got the assignment in his favour from the 2nd Defendant the Plaintiff ought to have impleaded M. Srinivasa Rao as one of the parties and in spite of the objection taken by the other side the Plaintiff has not chosen to bring the Srinivasa Rao on record but only satisfied by saying that he has no grievance against Srinivas Rao. This issue to be held as against the Plaintiff holding that the necessary party Srinivas Rao is not brought on record and therefrom the suit is bad for non joinder of necessary party and Issue No. 2 is held accordingly.

12. The trial Court then referred to agreements dated 25.6.1990 and 15.12.1995 executed between Respondent Nos. 2 and 3, agreement dated 30.7.2001 entered into between Respondent No. 2 and M. Srinivasa Rao as also agreement dated 14.8.2001 executed by M. Srinivasa Rao in favour of Respondent No. 1, referred to the provisions of the Copyright Act, 1957, two judgments of the Madras High Court and concluded that the Plaintiff has failed to make out a case for grant of declaration and injunction.

13. In the appeal filed by Respondent No. 1, the learned Single Judge framed the following questions:

1. Whether the assignment of copyrights made by the third Defendant in favour of first Defendant is true and valid?
2. Whether the assignment of copyrights made by the third Defendant in favour of second Defendant confers the right of manufacturing and selling VCDs/DVDs and whether the rights assigned and conferred under Exs.A.4 and A.5 are only meant for 'broadcasting' the suit films and if so, what is the effect thereof?
3. Whether the non-joinder of the person by name Srinivasarao, who was allegedly the assignee from the second Defendant and assignor in favour of the Plaintiff, would vitiate the suit? or

Whether the Plaintiff can be non-suited for non-joinder of one Srinivasarao who was allegedly the assignee from the second Defendant and assignor of the Plaintiff?

14. Although, the trial Court had not framed any issue which could give rise to question No. 1 and in the appeal filed by the Respondent no such prayer was made, the learned Single Judge invoked Order XLI Rule 24 of the Code of Civil Procedure, 1908 (CPC) and justified the framing of first question by recording the following observations:

The first point as formulated by this Court in this appeal was not framed by the trial court as an issue in the suit. But in my considered view, the trial court ought to have framed this issue also in the light of the specific averment made by the Plaintiff in the plaint that the acquisition of rights by the first Defendant-M/s Divya Exports from the 3rd Defendant-M/s Nagireddy Charities, represented by its Trustee-Venugopal Reddy was totally false and baseless having regard to the fact that Sri B. Nagireddy, the original Managing Trustee of the 3rd DefendantM/s Nagireddy Charities, had already given away the copyrights during the year 1995 itself in favour of the second Defendant. Hence, having regard to the said specific averment made by the Plaintiff in the plaint and also in the light of the specific ground taken by the Plaintiff in this appeal with regard to the application of Section 73 of the Indian Trusts Act 1881 (for short "the Trusts Act"), I deem it absolutely necessary to formulate the first point for consideration, exercising the jurisdiction of this Court under Order 41, Rule 24 CPC For this reason, this Court formulated the first point as stated supra.

From the submissions made at the Bar by the learned Counsel appearing for the parties, it could be seen that the whole controversy revolves around Exs.A.4 and A.5 and Ex.A.3 on one side and Ex.B.1 on the other.

The learned Single Judge then referred to the pleadings and oral as well as documentary evidence produced by the parties, Sections 73 and 74 of the Trusts Act and held that Exhibit B.1 executed by Respondent No. 3 in favour of the Appellant was not valid. Paragraphs 52 to 55 and 58 of the impugned judgment, which contain the reasons recorded by the learned Single Judge for arriving at the said conclusion, are extracted below:

52. What is more interesting to note is that no trust deed or any other document was pressed into service by the first Defendant while getting himself examined as D.W.1 to clarify or explain that Mr. Venugopalreddy had acquired the status of a trustee of M/s Nagireddy Charities in order to effectively represent the trust and to execute Ex.B.1 document in favour of the first Defendant. Interestingly, D.W.1 was the Special Power of Attorney Holder also, representing M/s Nagireddy Charities.

53. In other words, totally an alien, not connected with the affairs of M/s Nagireddy Charities, but a beneficiary under Ex.B.1, was examined as D.W.1, representing both Defendant No. 1 and Defendant No. 3. No document relating to appointment of Venugopalreddy as a trustee of M/s Nagireddy Charities, authorizing Venugopalreddy to represent trust has been brought on record and no person directly connected with, and having knowledge of the affairs of M/s

Nagireddy Charities had been examined on behalf of the Defendants.

54. It is to be remembered that the suit was instituted in the year 2003 and during the pendency of the suit Mr. B. Nagireddy was very much alive, of course, totally in a state of indisposition. In such circumstances, I am of the considered view that the burden heavily lies on either the first Defendant or the third Defendant to establish the change in trusteeship of M/s Nagireddy Charities, in which case alone Ex.B.1 document can be called as a validly and legally executed document by Venugopalreddy in the capacity of the trustee of M/s Nagireddy Charities in favour of the first Defendant. Unfortunately, no other witness, except D.W.1, was examined in this behalf.

53. It is well-known principle that a person who has no proper authorization to represent a trust cannot enter into agreements with third parties in order to bind the trust - even if such agreements are entered into, such agreements are not valid in the eye of law. In the instant case, the first Defendant and the third Defendant - M/s Nagireddy Charities, represented by its Power of Attorney Holder have utterly failed to establish the capacity of Venugopalreddy as trustee to execute Ex.B.1 agreement assigning the VCDs and DVDs copyrights in respect of the suit schedule films in favour of the first Defendant during the lifetime of Sri Nagireddy, the Managing Trustee of M/s Nagireddy Charities. This is a strong and suspicious circumstance, which compels this Court, to hold that Ex.B.1 was not executed by a proper and authorized person representing the third Defendant-trust, conveying the copyrights of VCDs and DVDs in favour of the first Defendant. Further, when Mr. Venugopalreddy's authority as trustee to execute Ex.B.1 is in serious doubt, first Defendant, who is the beneficiary of the said document cannot be placed on a higher and comfortable position that Mr. Venugopalreddy.

58. From the perusal of the impugned judgment it could be seen the court below while discussing issues 3 and 4, without going to the aspect of validity or otherwise of the assignment of copyright in favour of first Defendant by third Defendant, incidentally recorded a finding basing on the Xerox copy of a document Ex.A-12, that the Plaintiff is estopped from raising a plea that B. Venugopal Reddy has no authority to represent third Defendant trust. But a perusal of Ex.A-12 discloses that it is only a reiteration of assignment of broadcast rights under Ex.A-5. In this context it is to be noted that Ex.A-12 is only a Xerox copy and the original is not filed. No reasons were recorded by the trial court with regard to the admissibility of the said document. Even assuming that the said document was really executed by B. Venugopal Reddy in favour of second Defendant, as already noticed, it is only a reiteration or confirmation of Ex.A-5. Further there is no cross-examination by the Defendants 1 and 3 on this aspect and there is also no reference to this document in the written statements filed by them. Therefore, so long as the execution of Ex.A-4 was agreed to have been in subsistence by virtue of its execution by B. Nagi Reddy, Managing Trustee of third Defendant assigning rights for a period of seventy years, Ex.A-12

does not gain any significance. If Ex.A-12 is to be accepted, notwithstanding the admissibility or otherwise of it, at best it has to be presumed that B. Venugopal Reddy had become the Managing Trustee of third Defendant as on the date of execution of Ex.A-12 dated 15-2-2002. But in the present case, the whole dispute is with regard to the authority of B. Venugopal Reddy to execute Ex.B-1 document in the capacity of trustee of third Defendant in favour of first Defendant, which is a prior transaction. In other words the genesis of the rights of assignment of broadcast is Exs.A-4 and A-5, but not Ex.A-12. Furthermore, the reasons for bringing into existence of the controversial Ex.A-12 is not explained in the evidence of either of the parties and as its execution is subsequent to the execution of Ex.B-1, on which Defendants 1 and 3 are mustering their claim of copyright of VCDs and DVDs, the same is not relevant and inconsequential. Hence, the finding of the trial court that the Plaintiff is estopped to question the validity or otherwise of the trusteeship of B. Venugopal Reddy for third Defendant is not justifiable.

15. Although, learned senior counsel appearing for the parties made elaborate arguments on the merits of the findings recorded by the learned Single Judge with reference to questions No. 2 and 3 and produced publications titled Copinger and Skone James on Copyright (15th Edition), Goldstein on Copyright (3rd Edition) Volume 1 and the judgments of different High Courts, we do not consider it necessary to examine the same because in our considered view, the learned Single Judge was not at all justified in non-suiting the Appellant by recording a finding that Exhibit B.1 was invalid.

16. Since the trial Court had not framed specific issue touching the validity of agreement Exhibit B.1, the parties did not get effective opportunity to lead evidence in support of their respective cases. In the absence of any issue, the trial Court did not even advert to the question whether or not agreement Exhibit B.1 was valid. The evidence available on the record was not at all sufficient for deciding that question and yet the learned Single Judge decided that question by drawing inferences from the statements made by the witnesses examined by the parties with reference to the issues framed by the trial Court and returned a negative finding on the validity of Exhibit B.1.

17. In our view, in the peculiar facts of this case, the learned Single Judge was not at all justified in invoking Order XLI Rule 24 CPC. If at all the learned Single Judge felt that the trial Court should have framed specific issue on the validity of agreement Exhibit B.1, then he should have remanded the matter to the trial Court with a direction to frame such an issue and decide the suit afresh. The omission on the part of the learned Single Judge to adopt that course has resulted in manifest injustice to the Appellant.

18. In the result, the appeal is allowed. The impugned judgment is set aside and the case is remitted to the trial Court with the direction that it shall, after considering the pleadings of the parties, frame an additional issue on the validity of agreement Exhibit B.1 executed between Respondent No. 1 and Respondent

No. 3, give opportunity to the parties to produce evidence and decide the suit afresh without being influenced by any of the observations made by the High Court and this Court.

19. Since the matter is sufficiently old, we direct the trial Court to dispose of the matter as early as possible but latest within nine months from the date of receipt/production of copy of this judgment. The parties are directed to appear before the trial Court on 10.10.2011.

20. The Registry is directed to send a copy of this judgment to IX Additional Chief Judge, City Civil Court (Fast Track Court), Hyderabad by fax.