
(2014) 11 MAD CK 0253

In the Madras High Court

Case No : C.S. Nos. 12, 13, 14, 15, 16 and 17 of 1998

G.R. Raju

APPELLANT

Vs

National Film Development Corpn.

RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Copyright Act, 1957 — Section 19(4), 55

Citation : (2014) 5 LW 707 : (2015) 64 PTC 540

Hon'ble Judges : G.M. Akbar Ali, J

Bench : Single Bench

Judgement

G.M. Akbar Ali, J.—The plaintiff had filed six suits against the defendants for the declaration that he is the copy right owner of various motion pictures having obtained from the 3rd defendant in each suit and the suit is filed against the defendants 1 and 2 for infringement of copy right and also for permanent injunction.

2. Since the prayer in all the suits is one and the same and the defendants are one and the same except 3rd defendant, common issues were framed and joint trial was conducted and they are disposed of by a common judgment.

3. The case of the plaintiff in all the suits, in common, is as follows:

(a) The 3rd defendant in each of the suit was the rightful owner of various motion pictures. The plaintiff purchased the copyright of all these motion pictures for a period of 99 years by agreements dated 16.8.95 (in respect of C.S.Nos. 12, 14 to 17 of 1998) and agreement dated 7.9.95 (in respect of C.S.No. 13 of 1998) and thereby was assigned with the copyright for exhibiting the same via satellite etc.,

(b) In 1996, the plaintiff came to know that the defendants 1 and 2 were exhibiting the same motion pictures, for which, the plaintiff had obtained copy right therefore, issued notice dated 27.9.1995.

(c) The plaintiff found that the 4th defendant, who was later impleaded as a party, seemed to have obtained the same copy right on 5.8.1995 (in respect of C.S.Nos. 12, 15, 16 and 17 of 1998) and 30.8.1995 (in respect of C.S.No. 13 of 1998) and 10.6.1995 (in respect of C.S.No. 14 of 1998) prior to the plaintiff's agreement, but has not exercised that copy right, sold the same right to the defendants 1 and 2. However, the plaintiff is the absolute assignee of the copy rights of the motion pictures, therefore, he is entitled to be declared as such and the defendants are to be prevented from infringing of copy right from the plaintiff.

4. The 1st defendant, which is the National Film Development Corporation, filed written statement in all the suits, denying the exclusive rights of the plaintiff as there was an excluding clause related to Doordarshan channels. The defendants 2 and 3 remained ex-parte. The 4th defendant alone filed written statement and contested the case.

5. According to the 4th defendant, prior to the plaintiff's agreement, the 4th defendant has already purchased the rights of the suit motion pictures from the various 3rd defendant. In pursuant to such assignment and on payment of consideration, the 4th defendant also obtained the negative of the motion pictures from various colour labs. In 1999, the 4th defendant was negotiating with the defendants 1 and 2 for telecast of the motion pictures in satellite television. The 4th defendant came to know that the plaintiff has made a claim of copy right. The plaintiff has no right or title to the copy rights as it was already conveyed to the 4th defendant.

6. According to them, the plaintiff and the 3rd defendant have colluded together and created documents to make a false claim. The plaintiff has no right or authority much less than copy right in the motion pictures and the suit is liable to be dismissed.

7. On the basis of the pleadings, common issues were framed:

1. Whether the plaintiff is the owner of the Limited Copyright as claimed in the plaint?

2. What rights have been acquired by the plaintiff from the 3rd defendant under agreement dt.16.8.95?

3. What are the rights of 3rd defendant which he could assign?

4. Whether the plaintiff has any subsisting rights at all for the reason stated in Para.8 of the written statement/

5. Does the agreement dt.16.08.1995 give the plaintiff the rights to exploit the film by exhibiting the same in D.D. Satellite Channel and Cable T.V Channel or whether such rights are excluded from being assigned?

6. Is the plaintiff entitled to injunction as prayed for?

7. To what relief is the plaintiff is entitled?

8. In order to prove the case of the plaintiff, the plaintiff was examined as P.W.1. And Ex.P.1 to P.11 were marked. On the side of the defendants, the 4th defendant was examined as D.W.1 and Ex.D.1 to D.46 were marked. The first Defendant did not take part in the trial. The 3rd defendant in all the suits remained *exparte*.

9. Issue No. 3:

It is an admitted case that the 3rd defendant had acquired rights from various producers of the motion pictures which are the subject matter of the suit and has assigned the same to the plaintiff as well as the 4th defendant. Both are claiming the rights only from the 3rd defendant and therefore, this issue is unnecessary.

10. Issue Nos. 1,2,4 and 5:

The suit is for declaration of copy right for various motion pictures, alleged to have been assigned to the plaintiff on various dates and on various agreement, which have been marked as Ex.P.1 (in C.S.Nos. 12, 17 of 1998) as Ex.P.4 in C.S.No. 13 of 1998; Ex.P.6 in C.S.No. 14 of 1998; Ex.P.8 in C.S.No. 15 of 1998 and Ex.P.10 in C.S.No. 16 of 1998.

11. It is admitted that the 4th defendant had also entered into an agreement and thereby, assigned with copy right for the same motion pictures earlier to the assignment to the plaintiff. The oral and documentary evidence of the plaintiff are to the effect that he had entered into an agreement with the 3rd defendant and the 3rd defendant had executed various agreement assigning the copy right for the worldwide telecast of motion pictures through satellite, television and cable operators.

12. However, the 4th defendant, through his oral and documentary evidence would also produce various agreement of assignments of the same right which are prior to the agreements of the plaintiff.

13. Mr.C. Ramesh, learned counsel for the plaintiff submitted as follows:

The plaintiff and the 4th defendant claimed to have acquired the rights from the 3rd defendant, however, the 4th defendant has not exercised the rights assigned to him under the agreement. The learned counsel pointed out that in cross examination, D.W.1 would state as follows:

"Before 1999 I have not exercised my rights and only in the year 1999 for the first time I approached the 2nd defendant for sale of this picture. I have sold the rights to NFDC, the 1st defendant but I have not filed any document into Court. I have not issued any notice to the 2nd defendant questioning the exploitation of the picture before my application to implead in the suit."

14. The learned counsel would rely upon Section 19(4) of the Copyright Act which was amended and came into effect on 9.8.1994. The learned counsel would reiterate that the 4th defendant has not exploited the rights in the suit pictures and even assuming that the agreement of the 4th defendant is true and

valid by virtue of Sec. 19(4) of the Act and such rights deemed to have lapsed.

15. On the other hand, Ms.K. Bhanumathi, learned counsel for the 4th defendant would submit as follows:

The foremost question which arises for consideration is whether the plaintiff has proved infringement under Section 55 of the Copyright Act. The plaintiff although pleaded that defendants 1 and 2 exploited the pictures Hari Bhaktha and Thuku Deepa, songs, clippings and also telecast the picture, he has not produced any document before the Hon"ble Court to prove the alleged exploitation by the defendants 1 and 2. Even during cross examination, the plaintiff has clearly stated that he does not know as to when the First and Second defendants started exploitation of the said picture. In the absence of any proof of the alleged infringement of the alleged copyright of the plaintiff, the suit filed by the plaintiff under Section 55 of the Copyright is liable to be dismissed.

16. The learned counsel would further submit that the 4th defendant, after entering into various agreements on various dates, had addressed the cine labs and the cine labs have handed over the negatives of the said picture and also confirmed that the 4th defendant can collect the negatives for Umatic transfer. She has also pointed out that the defendants have not only produced the agreement of assignment, but also the receipt for making payment, letter addressing to the colour labs and the confirmation letters from the colour labs to the 4th defendant and also the censor certificates. She would further submit that the plaintiff has not filed any document to prove either for the payment of consideration to obtain the rights of the pictures or produced any document to show that they have received the negatives for Umatic transfer. According to her, the plaintiff has miserably failed to prove that they have acquired copy rights in the disputed pictures.

17. Heard and perused the materials available on record.

18. It is admitted that the 3rd defendant in each suit was the original owner of suit motion pictures. It is also admitted that the 4th defendant entered into an agreement and obtained the copy right on 5.8.1995 (in respect of C.S.Nos. 12, 15, 16 and 17 of 1998) and 30.8.1995 (in respect of C.S.No. 13 of 1998) and 10.6.1995 (in respect of C.S.No. 14 of 1998). For the same motion pictures, the plaintiff had also obtained copy right under various agreements dated 16.8.1995 and 7.9.1995.

19. In any event, both seemed to have made claim only in the year 1999. According to the plaintiff, the 4th defendant has not exercised the copy right till 1999 and therefore, his copyright was extinguished by operation of law.

20. However, the contention of the 4th defendant is that the plaintiff, in collusion with the 3rd defendant, had created documents only to make a false claim.

21. The plaintiff had relied on various agreements dated 16.8.95 and 7.9.95 and also a letter of declaration executed by the 3rd defendant. However, the 4th

defendant would rely on the agreement, which is prior to the plaintiff's agreement, and also rely on the various letters, by which, the colour labs have confirmed handing over the negative of the motion pictures for Umatic transfer.

22. Sec. 19(4) of the Copyright Act reads as follows:.

"19(1)

(2)

(3)

(4) Where the assignee does not exercise the rights assigned to him under any of the other sub-sections of this section within a period of one year from the date of assignment, the assignment in respect of such rights shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment".

23. The contention of the learned counsel for the plaintiff is that the 4th defendant has failed to exercise his right and therefore, the copy right has been extinguished by operation of law.

24. However, this court is not inclined to accept such argument for the simple reason that the 4th defendant has produced documents to show (i) payment of consideration (ii) addressing the colour labs for negatives (iii) the letter from the colour labs (iv) permitting the 4th defendant to receive the negatives for Umatic transfer and (v) censor certificate.

25. In the case of Copy right of the motion pictures, the negatives will be in the custody of the colour lab. If any assignment or transfer is effected regarding the motion pictures, the assignor will instruct the colour labs to hand over the negatives to enable the assignee to transfer the same for Umatic form for telecasting. Therefore, once such transfer is effected, it is presumed that the assignee has exercised copy rights. Therefore, sec. 19(4) will not come into operation.

26. Further more, the burden is on the plaintiff to prove that he has obtained copy right under the agreement and exercised his right and it is also his duty to prove that the defendants have infringed the said copy right. Except the production of the agreement and the confirmation letter from the 3rd defendant, the plaintiff has not produced any document that he has exploited the copy rights till 1998.

27. Under such circumstances, the plaintiff has not proved that he is the copyright holder of the disputed motion pictures. Therefore the plaintiff is not the owner of the copyright as claimed and he has not acquired any right from the 3rd defendant as the agreement of the 4th defendant is prior to the plaintiff and the plaintiff has no right to exploit the film and the above issues are answered against the plaintiff.

28. Issue No. 6 Since the issues 1 to 5 are answered against the plaintiff, the plaintiff is not entitled for the injunction as prayed for.

29. Issue No:7:

For the foregoing reasons, the plaintiff is not entitled for any relief.

30. In the result, all the suits are dismissed. No costs.