

(1990) 07 KAR CK 0064
In the Karnataka High Court
Case No : First Appeal No. 56 of 1980

K.A. Venugopala Setty

APPELLANT

Vs

Dr. Suryakantha U. Kamath

RESPONDENT

Date of Decision : 20-07-1990

Acts Referred:

Copyright Act, 1957 — Section 18, 19, 19 A

Citation : AIR 1992 Kar 1

Hon'ble Judges : N.D. Bhat, J;K.A. Swami, J

Bench : Division Bench

Advocate : J.M. Umesh Murthy, for R. Nagaraja, for the Appellant; H.S. Ramachandra, for the Respondent

Judgement

Swami, J.—This appeal is preferred against the judgment Decree dated 5-10-1979 passed by the learned Additional District Judge, Bangalore, in O. S. No. 9/1975. The appellant is the defendant in the suit and the respondent is the plaintiff. The respondent-plaintiff filed the aforesaid suit for a permanent injunction restraining the defendant either himself or through his agent etc. from further printing and publishing the book titled "A Concise History of Karnataka".

2. It is the case of the plaintiff that he is the author of the book "A Concise History of Karnataka" and the manuscript of the same was given to the defendant for printing; that he had not assigned his copyright to the defendant and therefore, the defendant was and is not entitled to publish the book without assignment of the copy right in writing to him by the plaintiff; that when the book was printed and ready for publishing, the defendant came forward with the plea that the plaintiff had assigned the copy-right though no such assignment had been made by the plaintiff either orally or in writing; that as the defendant tried to publish the book claiming that the plaintiff had assigned the copy-right of the book in question, the plaintiff had no other go but to seek relief as claimed in the suit.

3. The appellant-defendant resisted the suit and inter alia contended that there

was an oral complete agreement between the plaintiff and the defendant in which the plaintiff agreed to assign the copy-right. Therefore, the defendant was entitled to publish it since the copy right had been assigned to him in lieu of the expenditure incurred for printing the book,

4. On the basis of the evidence on record, the trial court framed the following issues :

1. Whether the plaintiff had agreed to assign the copy right of the book "Concise History of Karnataka" to the defendant and whether there is equitable assignment of the same in favour of the defendant?

2. Whether the suit is premature?

3. Whether the plaintiff is entitled to the relief of permanent injunction prayed for?

5. On the basis of the evidence on record, the trial court has held that assignment of the copy right is not proved; that oral assignment is not permissible in the light of the provision contained in Sec. 19 of the Copyright Act, 1957 (hereinafter referred to as the "Act"). The trial court has also held that as the defendant tried to assert that the copy-right was assigned by the plaintiff, the plaintiff was entitled to seek the relief, and as such the suit was not premature. Consequently, in the light of the findings recorded on issues 1 and 2, the trial court has decreed the suit.

6. The points that arise for consideration in this appeal are as follows :

1. Whether an oral agreement of assigning copy-right is valid and permissible in law?

2. Whether the defendant has proved that there was any such oral agreement entered into by the plaintiff assigning the copy-right in relation to the book called "A Concise History of Karnataka".

3. Whether the decree of the trial court requires to be interfered with.

7. In support of his case, the plaintiff has examined himself as P.W. 1 and has produced 11 documents marked as Exhibits P. 1 to P. 11. The defendant has examined himself as D.W. 1 and has produced one document marked as Ex. D. 1. As points 1 and 2 go together, we consider them together.

Point Nos. 1 and 2

8. The trial court has held that the plea of the defendant that the plaintiff orally agreed to assign the copy-right is not proved. There is only an oral evidence of the defendant in support of his case of oral agreement which is denied by the plaintiff. There is no evidence on record which can persuade us to come to the conclusion different from the one arrived at by the trial court and hold that the oral agreement is proved. Therefore, we are of the view that the finding recorded by the learned trial Judge that the oral agreement is not proved, is correct and

deserves to be confirmed. Even otherwise, considering this case on the basis that the defendant has proved the oral agreement between himself and the plaintiff under which the plaintiff agreed to assign the copy-right of the book in question to the defendant, still the question that necessarily arises for consideration is as to whether such an oral agreement is permissible and valid in law. Section 18 of the Act provides for "Assignment of copyright". It reads thus :

"18(1) : The owner of the copyright in an existing work or the prospective owner of the copyright in a future 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.

Provided that in the case of the assignment in any future work, the assignment shall take effect only when the work comes into existence."

Sub-sections (2) and (3) of Section 18 are not relevant for our purpose. Therefore, it is open to the owner of the copyright who is normally the author of the work to assign it to any person in respect of his existing work, as well as of the future work. In this case, we are concerned with the copyright of the existing work because the work has been printed. It was only at the stage of publication of the book, the printer-defendant came forward with a plea that the plaintiff-author of the book had assigned the copyright orally. Section 19 of the Act provides for the "Mode of assignment". It reads thus :

"19(1) No assignment of the copy right in any work shall be valid unless it is in writing signed by the assignor or by his duly authorised agent.

2) The assignment of the copyright in any work shall, among other thing indicate clearly the right proposed to be assigned and the size of the work."

9. Thus from the aforesaid provisions contained in S. 19 of the Act, it is clear that assignment of the copyright must be in writing and signed by the assignor or his duly authorised agent. In addition to this, the assignment must in clear terms state the rights proposed to be assigned and the size of the work. No other mode of assignment is valid inasmuch as when the statute specifically provides that assignment of the copyright must be in writing and signed by the assignor, no other mode of assignment such as oral assignment (sic) is neither permissible nor it is valid. In fact sub-section (1) of Section 19 of the Act in categorical terms states that no assignment of the copy right in any work shall be valid unless it is in writing and signed by the assignor or his duly authorised agent.

10. In the instant case, the assignment set up by the defendant is an oral assignment. Therefore, in the light of the provision contained in Section 19 of the Act, it is invalid and it is impermissible in law.

11. We may also point out here that S. 19A of the Act provides for settlement of disputes relating to assignment of copyright and that section will come into play only when there is an assignment of copyright in accordance with S. 19 of the Act, in other words the assignment is in writing and signed by the assignor or his

duly authorised agent. So in the instant case, as there is no assignment in writing as per S. 19 of the Act, Section 19A cannot be held to operate and bar the suit. Accordingly, point Nos. 1 and 2 are answered in the negative.

Point No. 3

12. In the light of the findings recorded on point Nos. 1 and 2, the judgment and decree of the trial court do not call for interference.

13. For the reasons stated above, the appeal fails and the same is dismissed with costs.

14. Appeal dismissed.