

(2011) 04 MAD CK 0513

In the Madras High Court

Case No : O.A. No. 129 of 2011 in C.S. No. 241 of 2004

Mr. S. Vijayaraghavan and Vani Recording Private Limited

APPELLANT

Vs

Mrs. Sellappappa Keeran

RESPONDENT

Date of Decision : 12-04-2011

Acts Referred:

Copyright Act, 1957 — Section 18

Citation : (2011) 04 MAD CK 0513

Hon'ble Judges : S. Palanivelu, J

Bench : Single Bench

Advocate : Chitra Sampath, for R. Ravichandran, for the Appellant; Sivam Sivanandaraj, for the Respondent

Final Decision : Dismissed

Judgement

S. Palanivelu, J.—The Original Application is filed for interim injunction restraining the Respondent and her men from in any manner copying, recording, publishing, marketing, editing or doing any other act so as to infringe the copy right of the applicants in the works detailed in the schedule.

2. The Respondent has filed suit for declaration of her title as owner of copyright in the works of her husband late Pulavar Keeran (by virtue of inheritance) and consequent injunction restraining from the applicants and their men illegally exploiting the works of late Keeran. The suit is in part-heard stage. The applicants/Defendants have filed this application under Order XIV Rule 8 of Original Side Rules read with Order XXXIX Rule 1 and 2 of C.P.C., for a temporary injunction.

3. In the affidavit it is alleged that the suit has been instituted by the Plaintiff nearly 14 years after the death of her husband. Pulavar Keeran died in November 1990. These applicants have purchased the exclusive right to the works of Pulavar Keeran outright and he did not retain any right over his literary work even during his lifetime. The applicants were informed on the evening of

3.2.2011 that the Respondent had entered into some deal with a third party and has proposed to publish MP3 version of her husband's work on 6.2.2011, in which the applicants alone have the exclusive right. In the midst of trial the Plaintiff cannot usurp into her hands and defeat the rights of the applicants by publishing the works of her husband on her own or through anybody. Hence, temporary injunction is prayed for.

4. In the counter, the allegations in the affidavit are controverted. The applicants are claiming that they had orally purchased the copy right from Late Keeran. He did not assign copy rights to the applicants. The arrangements with the applicant/ first Defendant was only to make copies to determine the commercial viability and market for the work of late Keeran. At no point of time, he did sell or assign or part with the copy right. The copy right cannot be assigned orally. It can be only in the written form. On 6.2.2011, this Respondent decided to release a new developed version of the "Kamba Ramayanam Kalangiyam" and other spiritual works of Late Keeran by way of DVD. This application is unsustainable in law and on facts. The balance of convenience is in favour of the Respondent. Hence the application may be dismissed.

5. It is the contention of the applicants that the first Respondent has approached the Late Pulavar Keeran for the purpose of recording and selling audiocassettes of religious discourses and lectures of Late Pulavar Keeran and he demanded an outright payment of Rs. 2,500/- for every discourse to be recorded in a single cassette for which the first Respondent agreed for the same. This allegation is available in the written statement and in the reply notice issued by the first Defendant which is marked as Ex.P.2. The written statement further goes to say that the above said was the manner and method in which the business transactions between the Late Keeran and the Defendants were conducted. Hence it is patent that the copy right was not transferred to the applicants by means of any written assignment. The above said allegations in the reply notice and written statement do not indicate the date on which both Late Keeran and first Defendant entered into the agreement.

6. The learned Counsel for the Respondent Mr. Sivam Sivanandaraj would contend that the assignment or transfer of a copyright can only be in writing which is a statutory mandate and that in the absence of any written conveyance of transfer, the claim could not stand. In support of his contention, he placed reliance upon a Division Bench decision of Karnataka High Court in K.A. Venugopala Setty Vs. Dr. Suryakantha U. Kamath, in which the learned Judges have extracted Section 18 and 19 of the Copyright Act, 1957, and explained the import of provisions also. The extraction of the relevant provisions and operative portion of the decision are as follows:

8. ... 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 Section 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.

7. He also draws attention of this Court by citing a decision of the Delhi High Court in Phonographic Performance Ltd. Vs. Hotel Gold Regency and Others, in which it is observed on the provisions of Copy Right Act, 1957 that the parties can only agree to do what the law permits they to do and if they agree on something which is not permissible under law, such an agreement to that extent would not be enforceable.

8. In view of the provisions under Sections 18 and 19 of the Copy Right Act 1957 the assignment of copy right can only made by writing and if it is made other than writing, it is not at all enforceable in law. When the statutory requirement is not fulfilled, the agreement whether orally by any other means is not sustainable.

9. In order to obtain temporary injunction, the applicants have to show prima facie case and the balance of convenience. But in view of the above said observation, this Court is unable to find any prima facie case nor balance of

convenience in favour of the applicants. Hence, they have to be non-suited for the relief prayed for. The application is liable to be dismissed.

In the result, the Original Application is dismissed without costs.