
(2011) 12 MAD CK 0313
In the Madras High Court
Case No : O.S.A. No. 424 of 2009

M/s. Modern Digitech Media Limited

APPELLANT

Vs

K.P. Ravichandran Proprietor, M/s. Movie Land, Vijayalakshmi
Complex, No. 59/60, Singanna Chetty street, Chindadripet,
Chennai-600 002

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Citation : (2011) 12 MAD CK 0313

Hon'ble Judges : R. Mala, J;R. Banumathi, J

Bench : Division Bench

Advocate : T. V. Ramanujam, for Mr. T.V. Krishnamachari, for the Appellant; K. Harishankar, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—This appeal arises out of the order in O.A.No. 973 of 2009 in C.S.No. 830 of 2009 granting interim injunction restraining the Appellant-1st Defendant from in any manner infringing Video Compact Disc (VCD); Digital Versatile Disc (DVD) and Laser Disc (LD) rights in respect of items 26 and 27 [Ingeyum oru Gangai; Mudal Vasantham] and items 42 to 45 [Nenjil Oru Alayam; Kadhalikka Neramillai; Venniraadai; Thaen Nilavu] of plaint schedule films.

2. Case of Respondent-Plaintiff is that he is in the business of acquiring various copyrights in Tamil cinematograph films and in the course of business, Respondent had acquired VCD, DVD and LD and other copyrights in 49 Tamil cinematograph films which are described in the plaint schedule by way of assignment from the Producers of the films/Defendants 2 to 9. Appellant-1st Defendant has recently started acquiring copyrights in cinematograph films including Tamil cinematograph films and releasing VCD's, DVD's and LD's on various cinematograph films. Case of Respondent is that he had filed other suits with respect to the same films against the other persons infringing his copyrights

and obtained interim injunction in his favour, where the Courts have held that Respondent has prima facie case in his favour. Stating that Appellant has been interfering and infringing with the Respondent-Plaintiff's copyrights, Respondent-Plaintiff has filed C.S.No. 830 of 2009 for:- (i) declaration that the Respondent-Plaintiff is the absolute owner of the copyrights viz., VCD, DVD and LD copyrights in the plaint schedule films; (ii) permanent injunction restraining the Appellant-1st Defendant, his men, agents, servants or assigns from in any manner infringing the Respondent-Plaintiff's copyrights viz., VCD, DVD and LD. Along with the suit, Respondent has filed O.A.No. 973 of 2009, seeking temporary injunction restraining the Appellant from infringing the Plaintiff's VCD, DVD and LD rights of the plaint schedule films.

3. Appellant who was Respondent in the application [O.A.No. 973 of 2009] has filed counter contending that the Directors of the Appellant viz., S.Balasubramanian and S.Jagannathan have obtained copyrights of various films described in the plaint schedule. By the Memo of Understanding dated 07.10.2008, the copyrights vested with M/s.Digital War, S.Balasubramanian and S.Jagannathan were transferred and assigned infavour of the Appellant and thus Appellant has become vested with the said copyrights and Appellant has the right to use VCD, DVD, LD of the plaint schedule films, in particular, items 26 and 27 [Ingeyum oru Gangai; Mudal Vasantham] and 42 to 45 [Nenjil Oru Aalayam; Kadhalikka Neramillai; Venniraadai; Thaen Nilavu] of the plaint schedule films.

4. Upon consideration of rival contentions, learned Judge granted interim injunction in respect of plaint schedule items 12, 26, 27, 28, 29, 32, 39, 42, 43, 44, 45 and 49. Insofar as items 26 and 27, the learned Judge held that use of the word "Digital" - DVD used in Appellant's agreement dated 01.08.1991 creates some suspicion and on those finding granted injunction in respect of items 26 and 27. In respect of items 42 to 45, learned Judge observed that the concept of "Digital" - DVD emerged only around 1994 and expressing doubts with reference to the modern terms found in Appellant's documents, learned Judge also granted injunction in respect of items 42 to 45. Being aggrieved with the grant of injunction in respect of items - 26 and 27 [Ingeyum oru Gangai; Mudal Vasantham] and 42 to 45 [Nenjil Oru Aalayam; Kadhalikka Neramillai; Venniraadai; Thaen Nilavu], Appellant has preferred this appeal.

5. Mr.T.V.Ramanujam, learned Senior Counsel for Appellant has contended that the suit films in respect of items 26 and 27, Respondent had relied upon the agreement dated 28.6.2005 in which the Respondent has been granted the alleged copyrights only for a period of two years and the said agreement expired on 27.6.2007 and as such the Respondent cannot base a claim on an agreement which has worked itself out and while so, the learned Judge erred in granting the order of interim injunction in respect of suit films in Sl.Nos.26 and 27 of the plaint schedule.

6. In reply to the contention that the Respondent's agreement [28.6.2005] expired on 27.6.2007, Mr.K.Harishankar, learned counsel appearing for the

Respondent has submitted that Appellant has not raised the said objection either in the counter or before the learned single Judge and the said objection has been raised for the first time only in the appeal and the Respondent cannot be made to face a new case by raising a new plea. It was further submitted that had the said objection been raised earlier, Respondent would have produced the relevant documents to show extension of the said agreement. However, the learned counsel for Respondent has produced the documents before us to show that VCD, DVD and LD rights in respect of suit films Sl.Nos.26 and 27 got extended by separate agreement. The objection raised by the Appellant regarding expiry of the agreement dated 28.6.2005 does not merit acceptance.

7. In respect of suit films Sl.Nos.26 and 27, the learned Senior Counsel for Appellant has contended that items 26 and 27 are covered by Appellant's agreement dated 01.08.1991 which is earlier in point of time and the alleged agreement dated 28.06.2005 relied upon by the Respondent is later in point of time and as such the Respondent cannot claim any right under the said agreement [28.6.2005] which is later in point of time.

8. In this regard, our attention was drawn to the schedule "B" of the agreement dated 01.08.1991 where VCD, DVD, LD rights are said to have been assigned infavour of S.Jagannathan by P.Kalaimani, Proprietor of Everest Films and Kalaimani Movies. One K.P.M.M.Mohamed Yahiya, who is the lessor of the copyrights holder had executed a lease agreement dated 28.06.2005 infavour of the Respondent assigning VCD, DVD and LD rights in respect of items 26 and 27 of the suit plaint schedule films.

9. By reading of the agreement dated 01.08.1991 infavour of S.Jagannathan, it is seen that as per Clause 1-C, the Appellant has been assigned the right to copy the film on Video Compact Discs, Digital Versatile Disc, Laser Disc and Future Innovation relating to this rights. Learned counsel for Respondent has submitted that the concept of VCD, DVD and LD emerged only in 1994 and while so, assigning VCD, DVD and LD rights in the agreement dated 01.08.1991 creates suspicion over the correctness of recitals in the said agreement dated 01.08.1991. When concept of VCD, DVD and LD emerged only in 1994, how in Clause 1-C of the said agreement, the rights regarding video copyright came to include VCD, DVD and LD is a matter that could be decided only in the trial. Suffice to say, that the Plaintiff has established a prima facie case.

10. For granting interim injunction in respect of items 26 and 27, after extracting the arguments of the learned counsel for Respondent-Plaintiff, in Paragraph 28 of his order, the learned Judge observed as under:-

20..... The use of the word "Digital" so to say D.V.D. peculiarly used in D1's agreement dated 01.08.1991, creates some suspicion as in other documents which emerged around the period do not disclose it. In the first defendant's document dated 13.11.1991, relating to items 42 to 45, there is no reference to the modern terms as found in document dated 01.08.1991, and as such there is

force in plaintiff's side argument that the document dated 01.08.1991 as of now cannot be relied on.

We do not find any error or perversity in the above observation of the learned Judge and also we do not find any reason to interfere with the grant of injunction in respect of items 26 and 27 of plaintiff schedule.

11. Insofar as items 42 to 45 of the plaintiff schedule films, S.Balasubramanian, Director of Appellant has got perpetual copyrights of VIDEO FORMAT CD DISC Future invention Rights of Five feature films mentioned in the plaintiff by an agreement dated 13.11.1991 from J.Karunakaran who is the copyright holder of the Tamil talkies picture. Case of Appellant is that while the Appellant got the copyright of items 42 to 45 under agreement dated 13.11.1991, Respondent-Plaintiff has got right only by an agreement dated 10.02.1992 which is later in point of time.

12. Contention of Appellant is that the alleged agreement relied upon by the Respondent dated 10.02.1992 is a forged one and does not contain the name of the person in whose name the stamp papers were purchased. It was further submitted that inspite of the notice to produce the original agreement, the said agreement dated 10.02.1992 was not produced before the Court which would show that Respondent has not come to the Court with clean hands and has forged, fabricated the documents only for the purpose of the case.

13. Per contra, learned counsel for Respondent has submitted that the agreement dated 10.02.1992 has been produced before the Delhi High Court and therefore, the certified copy issued by the Delhi High Court has been produced for perusal by the Appellant and therefore, Appellant cannot raise objection as to the genuineness of the said agreement dated 10.02.1992. M/s.Moser Baer India Private Limited has filed the suit C.S.(O.S) No. 1625 of 2007 on the file of the Delhi High Court against the Respondent-Plaintiff for permanent injunction restraining the Respondent from manufacturing, selling and distributing any video cassettes, VCDs, DVDs, LDs in respect of 66 Tamil cinematograph films. In the said suit, originally interim injunction was granted ex parte infavour of M/s.Moser Baer India Private Limited by the Delhi High Court. After contest, the interim injunction was vacated where the Delhi High Court held that the Respondent herein has prima facie case over the VCDs, DVDs and LDs. In the said suit, the agreement dated 10.02.1992 is said to have been produced. Respondent has produced the certified copy of the said agreement dated 10.02.1992 and the same was also produced before us. By perusal of Page No. 1 of typed set-Volume III and also by going through the certified copy of the agreement dated 10.02.1992 produced before us, we find that the certified copy of agreement [10.02.1992] has been issued by the Delhi High Court. Appellant cannot raise objection as to the production of certified copy of the agreement dated 10.02.1992 issued by the Delhi High Court.

14. Learned counsel for Appellant has contended that the expression "future

invention rights of five feature films" would certainly include VCD, DVD and LD which are future invention rights and while so, the Respondent-Plaintiff who claims right under the agreement dated 10.02.1992 which is later in point of time cannot have a better right. It was further submitted that the learned Judge erred in holding that "CD Disc" means only "Audio CD" and not Video Compact Disc (VCD) and this finding is wholly without any basis.

15. Under the agreement dated 13.11.1991, S.Balasubramanian, Director of Appellant has got assignment of "exclusive lease rights of exhibition and distribution of VIDEO CD DISC Future Invention Rights of Five feature films mentioned in the plaint schedule". As discussed earlier, the concept of VCD, DVD and LD came to be vogue only in 1994. By the expression "VIDEO FORMAT CD DISC" parties meant only "Audio" and not "VCD, DVD and LD". Whether the expression "future invention rights" include VCD, DVD and LD is the matter to be tried only in the trial. At this stage when we are considering only the prima facie case, expression "VIDEO FORMAT CD DISC" cannot be construed to include VCD, DVD and LD which were not in vogue at the time of agreement in 1991. Learned Judge has rightly held that whether the Appellant-1st Defendant has got rights over VCD, DVD and LD could be gone into only at the time of trial.

16. Upon consideration of the contentions and various documents, the learned Judge has rightly held that Respondent- Plaintiff has established the prima facie case in respect of items 26 and 27 [Ingeyum oru Gangai; Mudal Vasantham] and items 42 to 45 [Nenjil Oru Aalayam; Kadhalikka Neramillai; Venniraadai; Thaen Nilavu] and has rightly granted interim injunction. Normally, Appellate Court will not lightly interfere with the discretion exercised by the trial Court. Appellant-1st Defendant has not made out any substantial ground warranting interference with the order of the learned Judge and the Appeal is liable to be dismissed.

17. In the result, the appeal is dismissed. Consequently, connected M.Ps. are closed. No costs.