

(1980) 08 AP CK 0008

In the Andhra Pradesh High Court

Case No : L.P. Appeal No's. 151 and 221 of 1977

Pillalamarri Lakshmikantham and Others

APPELLANT

Vs

Ramakrishna Pictures and Others

RESPONDENT

Date of Decision : 20-08-1980

Acts Referred:

Copyright Act, 1957 — Section 13, 55, 58

Citation : AIR 1981 AP 224

Hon'ble Judges : Ramachandra Raju, J;Raghuvir, J

Bench : Division Bench

Advocate : T. Veerabhadrayya, in LPA No. 151 of 1977 and P.V. Sessaiah, for N. Ramamohana Rao, in LPA No. 221 of 1977, for the Appellant; T. Veerabhadrayya in LPA No. 221 of 1977 and P.V. Sessaiah, for N. Ramamohana Rao in LPA No. 151 of 1977, for the Respondent

Final Decision : Dismissed

Judgement

Raghuvir, J.—The proprietor of the Modern Publishers at Tenali who have now changed their business name to be "Pillalamarri Publishers" (the Publishers) complain in the suit of infringement of copyright in a book "Tara-sasankam" printed by them in 1945. The author of the book, Kopparapu Subba-rao, they aver, had assigned copyrights to the publishers on January 17, 1945, under Ex. A-1 deed. The book appears to have been written at the suggestion of late Suri Babu, a well known stage and cine actor. Having written, the author assigned the stage rights to Suri Babu and imposed a condition that he (the actor) and another actress Ch. Rajeswari to perform "in combination" the play -- the theme in the book. Suri Babu died in 1966, and on his death, under the terms of Ex. A1 deed the publishers aver that absolute copyrights vested in them. The author died on May, 7, 1957, after the book was printed in three editions by the publishers. The spouse of the author, notwithstanding the transfer in Ex. A1, caused citation once on December 28, 1962, in Andhra Prabha and for the second time on January, 1, 1970, in Andhra Jyothi that copyrights in the book vest in her person and that any conversion of the play or theme in the book

without her consent will be treated as infringement of rights vested in her. The citations were published, for at that relevant time in particular when the latter citation was published, to impute notice to Ramakrishna Pictures, Vijayawada, (the first defendant) who between 1965, and 1969, filmed the theme of the book. The Film was released in 1969, in as many as twenty-three cinema houses (defendants 6 to 28). The instant suit was laid on December 4, 1969, before the District Judge at Guntur by the publishers to restrain K. Satyanarayana the producer, the five distributors Ramakrishna Pictures, Vijayawada (the first defendant), Purna Pictures (P) Ltd., Viayawada (the second defendant), Usha Films, Secunderabad (the third defendant), Gowri Film (P) Ltd, Secunderabad (the fourth defendant) and Suresh Films (P) Ltd., Secunderabad (the fifth defendant) and twenty three cinema exhibitors (defendants 6 to 28) to desist screening the picture any further and for having infringed the publishers' rights, they have prayed to render account of the collections made by the date of suit. In addition damages were claimed against the producer and the distributors.

2. The suit was resisted principally by the producer of the film to hold that Ramakrishna Pictures were the assignees of copyrights in the book by virtue of assignment made by the spouse of the author on April, 1, 1967, that they were transferees for value without notice of earlier transfer in Ex. A-1 in favour of the publishers. In the alternative, it was averred the assignment in Ex. A-1 was not true. In the event of Ex. A-1 being true, the publishers having transferred their rights to the Gramophone Company of India at Madras, therefore, have no subsisting rights in the book. In the further alternative it was alleged there was no infringement of the book because the deed in Ex. A-1 was not registered u/s 13 of the Indian Copyright Act III of 1914 read with the provisions in the Copyright Act of 1911 passed by the Parliament of the United Kingdom. In the final alternative it was averred the book is a "national property" referable to a known epic in Sanskrit which in Telugu was dealt by several writers. Sesham Venkatapathi wrote the theme in Telugu in "Prabandham" style in 1704 and in recent times authors like Veera Raghavaswami dealt the theme in Telugu. Therefore, in the theme, there was no monopoly either in the author or the assignee under Ex. A-1 deed and cited as an instance, a picture filmed in 1939, again filmed in Telugu in 1941 by the Director-producer R.S. Prakash.

3. The trial Court on May 29, 1973, found that the deed in Ex. A-1 was "not false" but a true transfer in favour of the Publishers. The deed was valid and "acted upon" by the publishers who printed the book in four editions. The fourth edition was printed in 1959 and in all the editions as transferee under Ex. A-1 deed, the publishers guaranteed their copyrights "zealously" with appropriate declarations in the book. The non-registration of the deed in Ex. A-1 u/s 13 of Act III of 1914 did not defeat their copyrights. That on August 7, 1970 the Gramophone Company of India at Madras in their letter Ex. A-13 did not assert any rights subsisting in them, therefore, the copyrights under Ex. A-1 deed continued to vest in the publishers. That the transfer set up by K. Satyanarayana on April 1, 1967, in favour of the producer was not true. The author of the book

was found to have "taken" some characters from Telugu film of 1941. As to the theme, it was held "three important characters". "twelve padyams" and "some dialogues", there was conversion of the book by the producer of the film and ordered injunction as prayed by the publishers. As to damage the producer was found to have "spent Rs. 3,96,000/-" and realised "Rs. 4,60,000/-" and some more amounts for "dubbing the picture". The publishers were held to have suffered no "damages" however, for the piracy of the book under Sections 55 and 58 of the Copyright Act XIV of 1957, it was observed:

"It is impossible to determine what precise part of the defendants' profits are attributable to the above borrowed material. I do not therefore consider it necessary to order the taking of an account in this respect. I consider that damages of Rs. 3,000/- would be just under this head,"

4. The decree of the lower Court was the subject in two appeals in this Court. The publishers lodged A. S. No. 324 of 1974. Ramakrishna Pictures Limited and the Purna Pictures of Vijayawada -- the two out of the five distributors, lodged A. S. No. 368 of 1973. A learned single Judge of this Court on March 7, 1977 affirmed the decree of the trial Court in all its aspects. As to the conversion of the book, the learned single Judge held;

".....in all its essential particulars and nine poems have been created in the film even if we make allowance for the three characters and three poems mentioned above which are to be found even in 1941 film."

5. Out of the twelve padyams, since three out of them were found in 1941 film, the user of the three padyams was not held to be piracy or conversion and as to damages the learned single Judge held;

".....the amount of Rs. 3,000/- fixed by the Court below as an appropriate measure of compensation for infringement of plaintiff's copyright, cannot be said to be either unreasonable or arbitrary. I, therefore, confirm the said figure."

The relief of accounts was negatived.

6. This Court against the judgment of the learned single Judge, admitted on August 17, 1977, two appeals, one by the publishers L. P. A. No. 151 of 1977. The other appeal L. P. A. No. 221 of 1977 was lodged by the two appellants in A. S. No. 368 of 1973.

7. We have not heard the learned counsel in the appeal of the producer that there was no conversion of the book in question. The excerpts shown in the judgment of the lower Court were affirmed by the learned single Judge as piracy on the part of the producers. Whether in the face of such a piracy the relief of injunction as prayed for by the publishers was appropriate, however, was debated. In this regard it may be stated that the law of this country as to the copyrights is the same as in England up to 1956. The principles under the Copyright Act, 1911 passed by the Parliament of the United Kingdom was applied and incorporated in Act III of 1914. The history of copyright legislation in

England goes back to the date when Star Chamber was abolished and when Licensing of the Press Act in 1661 was passed. The Law Revision Act of 1863 repealed the Copyright Act, 1775. Then, came the Copyright Act of 1814 and the Copyright Act, 1911 which is now repealed by the Copyright Act of 1956. The Act XIV of 1957 of Indian Parliament incorporated all principles that were in the statute of Act III of 1914 with some variations which are not relevant for these appeals. The law in the United Kingdom for the last four hundred years as to copyrights was understood that in the event of conversion or piracy of the copyright, "injunction" was held as normal remedy. On February 6, 1953, in the case reported in London Times, an incident in a film was found to have infringed the copyright in a book. (*Fernald v. Jay Lewis Production's Ltd*), Halsbury's Laws of England 4th Edition para 942 (Vol. 9). Therefore we see no merit in the contention that injunction was not the appropriate remedy in the instant case.

8. In support of the publishers appeal, larger aspects of judicial remedies were debated. What is piracy and what is conversion in that context as "defined" under the United Kingdom Copyright Act, 1911 by Lord Atkin in the case of *Lancashire and Yorkshire Ry. Co. v. Mac Nicoll* (1918) 88 KB 601 at p. 605, was cited: where conversion was "dealing" with goods in a manner inconsistent with the right of the true owner". Scrutten Lord Justice approved of the definition in *Oakley v. Lyster*. (1931) 1 KB 148 and this was relied in the case of *Caxton Publishing Co. v. Sutherland Publishing Co.* 1939 AC 178.

9. In the Letters Patent Appeal of the Publishers, however, two questions were raised by the learned counsel for the appellants. The first question was with reference to Section 55 of Act XIV of 1957 and the three reliefs set out in that provision.

10. A successful suitor can obtain damages, it is argued, for the conversion in addition to the relief of injunction. The publishers in the instant suit, in addition to damages, sought for accounts of profits received by the producer. According to the learned counsel for the appellant, for any act of piracy the person aggrieved can claim the three remedies injunction, damages and accounts as set out in Clause (1) of Section 55 of the Act. That is to abate further infringement, the aggrieved (party) is entitled to the relief of injunction, for conversion per se, a suitor is entitled to damages. What is urged now is that the publishers are also entitled to accounts. Therefore in addition to damages awarded to the publishers, it is argued accounts also must be ordered by this Court.

11. The remedies of damages and accounts are remedies in the alternative for it was held the two reliefs are incompatible. That proposition is well settled in the case of (1939 AC 1781 (above) and in the long time of cases. In the case of *Neilson v. Betts* (1870) 5 HL 1 at 22. Lord Westbury observed :

"My Lords, I have only further to observe that the decree of the Court below directed not only an inquiry as to damages, but also an account of profits. The two things are hardly reconcilable, for if you take an account of profits you

condone the infringement."

12. In the case of *De Vitre v. Betts* (1873) 6 HL 319 at 321, the case in (1870) 5 HL 1 (above) was referred and Lord Chelmsford observed:

"My Lords, the case of *Neilson v. Betts* (1870) 5 HL 1 most undoubtedly decided the general principle that, upon a decree against a party for the infringement of a patent, the patentee is not entitled both to an account of profits and an inquiry into damages. That principle applies generally and without any distinction at all. It applies to every case of infringement; and therefore, it must be taken to have settled conclusively that point, that the patentee must, in all these cases, where he will have an account of profits or an inquiry into damages. He cannot have both."

13. Therefore on the facts of the case, since the publishers were accorded the relief of damages, they cannot lay claim to the relief of accounts.

14. Lastly it is argued (the second question) the damages in Rs. 3,000/- was not adequately quantified and a large number of authorities have been cited to show that no method was adopted in quantification of damages by the lower Court and the single Judge was satisfied holding the decree for damages as not "arbitrary" or "unreasonable". We cannot say the complaint made in this regard is unjustified. There was no method adopted in quantification of damages is self-evident for the trial Judge merely said:

"I consider that damages of Rupees 3,000/- would be just under the head."

True it is, in saying that, no method or principle was followed. The difficulty in the instant case arises because against the decree of damages, no Letters Patent Appeal has been filed. Therefore, the decree of damages became final. The publisher's appeal is directed to claim the relief of accounts and they valued the relief of accounts and paid court-fee of Rs. 23/- u/s 20 of the Andhra Pradesh Court- fees and Suits Valuation Act VII of 1956. No Appeal thus is lodged complaining about the adequacy of damages. Since damages were awarded, the publishers are not entitled to the relief of accounts. The Letters Patent Appeals, therefore, merit dismissal. The two appeals are accordingly dismissed. No order as to costs in both.