
(1938) 02 CAL CK 0041
In the Calcutta High Court

Ramnarain Trivedi

APPELLANT

Vs

Shib Kumar Tewary and Another

RESPONDENT

Date of Decision : 08-02-1938

Acts Referred:

Copyright Act, 1911 — Section 1

Citation : AIR 1938 Cal 594

Hon'ble Judges : Panckridge, J

Bench : Division Bench

Judgement

Panckridge, J.—In this case the plaintiff claims to be the owner of the copyright in "Sorothe Brijabhar" a book in Hindi published by him in Calcutta in the year 1931.. The alleged author of the book is named" Mahadeo Prosad Singh and a document (Ex. A) has been tendered, whereby Mahadeo on 11th October 1931, purports to sell to the plaintiff "all rights in respect of Sorothe Brijabhar in 16 parts." The document states that the plaintiff "alone will have henceforth the right of printing and selling the same." About the time of the assignment, the plaintiff made a declaration in respect of his ownership of the book under Act 25 of 1867 (Ex. C). The plaintiff and" Mahadeo have given evidence on this point, and I may say that in the light of that evidence, corroborated as it is by the documents, I have no doubt as to the genuineness of the assignment. The plaintiff complains that his copyright in "Sorothe Brijabhar" has been infringed by a book called "Sorothe Panwara." This book was ostensibly published by defendant 1, Stub Kumar Tewari, in 1935, and the plaint states that defendant 2, Nehal Chand Varma, "is aiding and directing defendant 1." The plaint contains an alternative claim for relief on the basis that the defendants have passed off Sorothe Panwara (to which I shall hereafter refer as "Sorothe II"), as and for Sorothe Brijabhar (to which I shall hereafter refer as "Sorothe I"). The allegation as to passing off is based on the similarity of title and get up. Defendant 2 has not entered appearance or filed a written statement, though he has been present throughout and has manifested considerable interest in the proceedings. He has also asked a few questions of one of the witnesses called by the plaintiff.

2. Defendant 1 by his written statement denies the plaintiff's copyright, and on the assumption that the plaintiff has the copyright he denies that Sorothi II infringes it. Analogous defences are taken with regard to the charge of passing off. In arriving at a conclusion with regard to the existence of copyright in Sorothi I, it is necessary to consider the nature and origin of the publication. Sorothi and Brijabhar are respectively the names of the heroine and hero of a legend or series of legends, well known in various parts of India and specially in Western Behar. The plaintiff and his witnesses say that the legends have never been reduced to writing, or versified, but have been handed down in prose form from generation to generation. It is his case that in the verse form to which they are to be found in Sorothi I, they are the independent composition of Mahadeo. The defendants and their witnesses say that the verses in Sorothi I are not the plaintiff's composition, although it is admitted they have never before been printed. The defendants' case is that they are traditional songs, and that what Mahadeo has done is merely to copy them from the dictation of another person.

3. Mahadeo has given evidence in support of the plaintiff. He says that he is a poet, although in the course of his life he has followed the diverse callings of a bill collecting sarkar, a sepoy in the Bengali regiment and an omnibus conductor. He says he has written and had published 200 books, of which he admits that a dozen are compilations of other persons' works. He was tested in cross-examination and he certainly cannot be described as a man of a high standard of education, although he is by no means illiterate. Nonetheless he has, in my opinion, a considerable talent for rhyming and rough versification. He was called upon by the plaintiff's counsel to produce a verse on a subject named by counsel on the other side. I suppose the Muses have seldom been required to work at such short notice, but although the verse produced was rough and inelegant, it was very far, in my opinion, from being a ludicrous failure. Witnesses have been called on each side varying from University graduates to Behari rikshaw coolies to deny or to affirm that, prior to the publication of Sorothi I, verses setting out the legend of Sorothi and Brijabhar, were current in Behar. The most substantial points made by the defendant depend on suggested admissions in Sorothi I. It is pointed out that Mahadeo is described as "lehkar" and it is said that the meaning of this term is not "author" but "scribe" or "copyist." In my opinion the evidence shows that the word is ambiguous, that is to say, it may mean either "author" or "compiler," though I doubt if it can be properly used of a scribe. Certain passages in the body of the work are more important. At page 206 (Translation No. 1311 B), there is a passage which does not appear to be of any value for the present purpose. A passage on page 4 (Translation No. 1311 A) is however significant. It runs:

The Sorothi legend is sung by Ganga Sahu, who is an inhabitant of Chapra. Imiron Sahu joins in chorus with him, and sings Sorothi in Chapra (a pun). They have a shop at Manioktollah and deal in rice and pulse. Mahadeo Singh writes the same having got it sung.

4. The defendant with considerable plausibility urges me to treat this as an admission that Mahadeo does no more than transcribe the words as sung by Ganga. Mahadeo in cross-examination says that the passage means that when he has written the poem he asks Ganga to sing it so that he may judge the effect. The defendant's construction of the passage is certainly more convincing than Mahadeo's. Finally at p. 244 there is an invocation (No. 238/38) in the course of which the writer says:

I have neither intellect nor wisdom. After hear-ing the details, I have reduced the same into writing. Missing words supply and read.

5. "Why" asks the defendant's counsel "should there be any missing words in a poem composed during the last decade?" In my opinion the truth lies somewhere between Mahadeo's story and the suggestion of the defendants.

6. I think there are poems current in which the main incidents of the legend are embodied and that Mahadeo has used these poems as the basis of the versified portion of Sorothe I. At the same time I think that his work has been very much more than that of a transcriber. To give these traditional poems even the primitive literary form they now possess demands considerable powers of adaptation and polishing, and I consider that the result is an original literary work within the meaning of Section 1 of the Copyright Act, 1911. Moreover even if the suggestion made by the defendant is correct that all that Mahadeo has done is to take down the words as sung by Ganga Sahu, I am still disposed to hold that there is copyright in the result. In *Walter v. Lane* (1900) AC 539 the House of Lords held that a person who had taken down shorthand notes of a speech made by the Earl of Rosebery, and after transcribing them had published a verbatim report in a newspaper was entitled to the copyright in the report. *Walter v. Lane* (1900) AC 539 was decided before the Act of 1911, but it appears to be generally held that it is still authoritative: See *Copinger on Copyright*, Edn. 7, p. 45. I cannot see how a man who gets another to sing or recite traditional poems for the express purpose of recording the words can be in a worse position as regards the record than a stenographer, who takes down and transcribes the speech of a politician delivered at a public meeting. In both cases there has been "a change of medium" to adopt the phraseology of the textbook referred to. I may add that it is admitted that Sorothe I contains directions indicating the "Bag" or musical form in which the various poems are, or should be, sung and these directions cannot be regarded as merely the result of copying or transcribing. An important feature of Sorothe I and Sorothe II consists of "notes" - a somewhat inaccurate description of a series of narrative passages in prose which serves to link together the various poems. The defence admits that there is a copyright in the notes in Sorothe I but denies infringement submitting that any similarities that there may be in Sorothe II are no more than are to be expected where independent writers are describing the same events. I will now consider Sorothe II and I am compelled to state that I think the history of the production of the work given by defendant 2 is highly suspicious. The author or

compiler is said to be a man named Rameswar Chobey. The defendant is unable to produce him, and does not know where he is. He says that Rameswar handed over the manuscript of Sorothi II to him for publication, but did not ask for anything in the way of remuneration or royalty, saying it would be enough for him if the defendant published the book. The manuscript is not forthcoming, and the defendant's story is that it was destroyed with his authority after the book had been printed. In my opinion there are substantial grounds for accepting the plaintiff's suggestion, that Rameswar Chobey is a myth and that the true facts as to the production of Sorothi II have been withheld from the Court. I have had the advantage of a very careful examination on the part of the learned Counsel of the two books. I do not think it necessary to go into the matter at great length. It will be enough if I say that I am satisfied that Sorothi II reproduces a substantial part of Sorothi I in a material form. I do not think comparison of the following passages leaves any doubt as to this:

- (1) Translation No. 30-A, page 7, Sorothi I, with translation No. 31-A of 1937, page 9, Sorothi II.
- (2) Translation 30/37-B note of p. 10 with corresponding note translation 31/37-B, page 12, Sorothi II.
- (3) Translation 30-D of 1937, Sorothi I, with translation 31.D of 1937, p. 27, Sorothi II (poems and notes).
- (4) Translation 30-E of 1937, note p. 205, Sorothi I with translation 31-E of 1937, note p. 285, Sorothi II.

7. I might say here that in view of my ignorance of Hindi, I suggested to counsel that the two Sorothis might be sent for a report to a commissioner familiar with that language, but both sides found the suggestion unacceptable, and asked me to decide the case on the basis of the official translations. Apart from the passages which I have held to be direct infringements of the plaintiff's copyright, there are various facts which taken together make it abundantly clear that the case is one of deliberate copying. First there is the title. A preliminary advertisement of Sorothi II appeared in a book published by defendant 2, but the forthcoming work was described as "Sorothis Brijabhar", the title of the plaintiff's book, and not as "Sorothis Panwara," the title under which it was eventually offered to the public. The plaintiff suggests that an eleventh hour alteration was made because the defendants were alarmed by injunctions issued against defendant 2 in respect of other publications. I think this very probable, because the alteration from Brijabhar to Panwara is only to be found on the cover of the book, the pages of Sorothi II being all headed " Sorothi Brijabhar." Also it is not without significance that the same incident in the legend is the subject of the illustrations on the covers of both books, and in these illustrations the treatment of the incident is very much the same.

8. Again there are 12 illustrations in Sorothi II of which seven depict incidents that are the subjects of illustrations in Sorothi I. The effect of these alleged

coincidences is cumulative. Taken with the passages to which I have referred in the poems and notes, and the absence of any reasonable account of the genesis of Sorothe II, they leave no doubt in my mind that I have to deal with a case of systematic and deliberate piracy, in spite of the fact that Sorothe II contains chapters and materials not to be found in Sorothe I.

9. I hold it proved that defendant 2 was a party to the infringement complained of indeed I am by no means certain that he was not the moving spirit in it. Be that as it may, it has been shown that he advertised Sorothe II in his publications and placed the orders for the illustration blocks. He admittedly received nothing as remuneration or commission, and I do not accept the evidence of defendant 1 that defendant 2 acted as he did merely to oblige defendant 1. Before considering the relief to which the plaintiff is entitled, I must briefly deal with his claim on the basis of passing off. In my opinion the cause of action on that basis has not been established. I will assume that the assignment by Mahadeo conferred on the plaintiff any rights to the title of the work and its get up that Mahadeo might have. I think however that before a case of passing off can be proved it must be shown that the public connect the title "Sorothe Brijabhar" with a particular work written by Mahadeo. Again as to get up it must be shown that a particular style of printing or illustration indicates to the public that the work is Mahadeo's. There is not a jot or tittle of evidence to show that either of these conditions is fulfilled and in these circumstances the question of passing off needs no further consideration. On the basis of infringement of copyright, the plaintiff is entitled to the following reliefs against both defendants : (1) The injunction asked for in para. (c) of the prayer to the plaint. (2) An order for delivering up in terms of para. (b). (3) An enquiry as to the damages sustained by the plaintiff by reason of the breach of copyright complained of. (4) The costs of the suit with interest at 6 per cent. per annum. The suit will appear for further directions when the enquiry which I have directed is completed.