(2000) 06 MAD CK 0075

In the Madras High Court

Case No : Original Application No. 283 of 1999 in C.S. No. 319 of 1999

Sulamangalam R. Jayalakshmi and Another — APPELLANT

Vs

Meta Musicals and Others — RESPONDENT

Date of Decision : 16-06-2000

Acts Referred:
Copyright Act, 1957 — Section 14, 17, 18, 2

Citation : AIR 2000 Mad 454 : (2000) 3 LW 38

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : J.R.K. Bhavanantham, for the Appellant; I. Mohamed Saud, (for No. 1), I. Mohamed Faizal, (for No. 2), V. Raghavachari, (for Nos. 3 to 5) and T. Kumar, (for Nos. 7 and 8), for the Respondent

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—Sulamangalam R. Jayalakshmi and the Gramophone Company of India Limited, Chennai have filed this application in O.A. No. 283 of 1999 pending disposal of the suit in C.S. No. 319 of 1999 for declaration and for other reliefs, seeking for interim relief through an order of interim injunction restraining the respondents/defendants from in any manner reproducing the Kandha Sashtl Kavacham and Kandha Guru Kavacham in audio cassettes or Compact Disc or any other media using the name of the first plaintiff and her deceased sister. Sulamangalam Rajalakshmi as singers on the cover of the package of the audio cassette or title of the Company Disc or infringing copyright in respect of Skanthaguru Kavacham exclusively belonging to the applicants in audio cassettes or any other media using in the name of the Sulamangalam sisters.

2. This Court by the order dated 12-5-1999 issued notice returnable by 7-6-1999. There are totally eight respondents. They entered appearance in different groups and filed respective counters through different counsel. For the disposal of this application, opportunity was given to the counsel for the parties,

who have elaborately argued on the strength of the respective affidavits filed by them.

3. The case of the applicants, in brief, as culled out from the plaint and affidavit filed by the applicants, is as follows :--

"(a) Sulamangalam Jayalakshmi, the first applicant and her deceased sister Sulamangalam Rajalakshmi were popular singers, who were popularly known as Sulamangalam Sisters. They composed music and tune and sung the devotional songs Kandha Sashti Kavacham. One Santhanantha Swamigal of Pudukottai is the author of the lyrics tilled as Kandha Guru Kavacham. The said Swamijt assigned all the rights over the Kandha Guru Kavacham authorising Sulamangalam Sisters to compose music and tune and to do the needful to puplarise the songs. Accordingly, they composed music for those songs.

(b) The second applicant Company has been carrying on business under the Trademark HMV and the same is very popular in sound recording of music which includes a double sided disc and cassettes. The first applicant and her deceased sister gave all rights for recording both Kandha Sashti Kavacham and Kandha Guru Kavacham through any media to the second applicant. Thus the applicants acquired proprietary rights in respect of copyright over the devotional song title as Kandha Sashti Kavacham and the lyrics titled as Kandha Guru Kavacham written and assigned by the said Swamiji to the first applicant and her sister,

(c) On assigning those rights to the second applicant in 1973, the said songs had been recorded and reproduced on a Gramophone record and later on compact discs and audio cassettes on either side. On the side "A" of the audio cassette. Kandha Sashti Kavacham are recorded and on the other side of the cassette "B", Kandha Guru Kavacham are recorded. From 1975, on the basis of the assignment of the right, the second applicant has been selling the cassettes of Sulamangalam Sisters with these songs and paying royalty to the first applicant and the legal heirs of her deceased sister.

(d) Recently, the applicants came to know that the respondents 1 and 2 copied both Kandha Sashti Kavacham and Kandha Guru Kavacham with same music and make the audio cassettes. The respondents 3 to 8 are the dealers and distributors of the audio cassettes. Thus, the respondents copied the entire lyrics and musical work without the consent of the applicants in writing.

(e) As far as Kandha Sashli Kavacham is concerned, no one can claim any copyright because the said literary work is already in existence from time immemorial and the same is commonly known to all Hindus. But. the first applicant and her deceased sister being the composers of the tune and music of Kandha Sashti Kavacham acquired the copyright in respect of the composition of music and tune. In respect of lyrics Kandha Guru Kavacham, the first applicant was assigned with rights of using the work of Swamiji and in turn, the first applicant and her deceased sister composed music and tune and assigned rights to the second applicant. Thus, the applicants own proprietary rights in respect of both Kandha Sashti Kavacham and Kandha Guru Kavacham.

(f) Moreover, the audio cassette distributed by the respondents 1 and 2 is package with cover using the name of Sulamangalam Sisters. This is with a view to mislead or canvass the devotees as to identity. On seeing the package, every one is misled and mistaken for the audio cassette with songs of Kandha Sashti Kavacham and Kandha Guru Kavacham with names of Sulamangalam Sisters. It is found out that the respondents earned huge profit by using the name of Sulamangalam Sisters and also adopting the same lyrics written by Swamiji of Pudukottai who has assigned righ ts to the first applicant and her sister.

(g) Under those circumstances, both the applicants filed suit for declaration that the plaintiffs are the sole and exclusive owners of the copyright of the devotional songs Kandha Sashti Kavacham and Kandha Guru Kavacham sung by Sulamangalam Sisters. who composed the music and tune for singing the said songs and recorded by the second plaintiff in the year 1973 on the assignment made by them and for other allied reliefs, such as damags, permanent injunction, etc. In order to stop the piracy, the plaintiffs have filed this application seeking for interim relief."

4. The counter-affidavit has been filed by the first respondent separately, which has been adopted through the memo filed by the second respodnent. Similarly, the counsel for the respondents 3 to 5 also filed a separate counter-affidavit. The 7th respondent filed a counter and the same was adopted by the 8th respondent through the memo. There is no separate counter filed on behalf of the 6th respondent, as he is attached with the second respondent-Company.

5. Though the tenor of the objection through the counters by all the respondent opposing the application is the same, it would be better to refer to the counter-statement of each of the groups separately, as they have given different details.

6. The contents of the averments in the counter-affidavit filed by the first respond-ent-Meta Musicals, Chennal. supported by the second and the 6th respondent is this :--

"The devotional songs dedicated in favour of Almighty cannot have a statutory production and exclusive ownership. Swamiji Santhanandha Swamigal of Pudukottai being a saint and ascetic, having renounced the world cannot claim that he was owner of the composition of the lyrics and assigned the said composition in favour of the first applicant and her sister. Similarly, the applicants cannot acquire copyright in respect of composition of music and tune for the devotional songs Kandha Sashti Kavacham, since the Raagas, Aradhanas and Karnatic music are not the property of any Individual. The music composed by the respondents is entirely different and highly distinct from the music of the applicants. The display of the cassettes would clearly establish that the cassettes produced by HMV, the second applicant with songs sung by the first applicant along with her sister would, in no way show any resemblance or relevance or similarity. Therefore, the application has to be dismissed."

7. The case of the respondents 3 to 5. viz., Ramjee Folk Songs Research Centre and two other persons, is this :--

"Kandha Sashti Kavacham and Kandha Guru Kavacham are devotional songs. Therefore, none hns a copyright over it. Swamiji Santhanandha (sic) being an ascertion cannot claim right over the composition and consequently, assign his right. The tunes and Ragas emerge from the cassettes manufactured by these respondents are quite distinctive and of superior quality than that of the applicants. Moreover, these songs have contributed by Devaraya Swamigal and Avathootha Swamigal. Further, these songs were sung by Padma Swamlnathan, a well known reputed Singer. The cassette which contains "A" side Kandha Sashti Kavacham and "B" side Kandha Guru Kavacham would give clear details and lyrics of Avathootha Swamigal. The cassettes released by the applicants are of a different sruthi and thalam. Avalhootha Swamigal has granted permission to these respondents to perform in public the above songs. Since the cassettes of the respondents have no relevance and resemblance with that of the applicants, there is no piracy and the public would not be misled by the cassettes sold by the respondents. Therefore, the application has to be dismissed."

8. On the same line, the 7th respondent has also filed a counter.

9. On the strength of the above stand projected through the affidavits of the parties. Mr. Bhavanantham, the learned counsel for the applicants. Mr. I. Mohamed Saud, the counsel appearing for the first respondent, Mr, I. Mohamed Faizal, the counsel appearing for the second respondent, Mr, V. Raghavachari, the counsel for the respondents 3 to 5 and Mr. T. Kumar, the counsel for the respondents 7 and 8 have argued at length.

10. According to the counsel for the applicants, the applicants have acquired right over the composition of music and tune for the songs of Kandha Sashti Kavacham and copyright over the lyrics and the musical work of Kandha Guru Kavacham, as the same was assigned to them by the composer and author.

11. On the other hand, the learned counsel for the respondents 1, 2 and 6 would submit that nobody can claim copyright over the Carnatic music Ragas and Aradhanas and the author of Kandha Guru Kavacham, Santhanandha Swamigal of Pudukottai also cannot assign the songs composed by him to any one and since there is no prima facie case made out for the relef of interim injunc-tion, the application has to be deismissed.

12. Mr. V. Raghavachari, the counsel appearing for the respondents 3 to 5 would also add that there is no specific pleadings against these respondents and therefore the applicants, in any event, would not be entitled to interim relief as against them.

13. I have given my earnest consideration to the submissions made by the learned counsel for the parties.

14. In order to appreciate the arguments of both the parties, it may be

necessary at the outset to discuss the law on this subject,

15. The expression ''musical work'' is defined in Section 2(p) of the Copyright Act, 1957, which is as follows :--

" ''Musical work" means a work consisting of music and includes any graphical notation of such work hut does not include any words or any action intended to be sung, spoken or performed with the music."

Section 2(d) defines author. "Author" means.--

(i) in relation to a literary or dramatic work, the author of the work;

(ii) in relation to a musical work, the composer.

The word ''composer'' is defined in 2(ffa) :

"Composer", in relation to a musical work, means the person who composes the music regardless of whether he records it in any form of graphical notation."

Section 2(m)(i) defines

''infringing copy'' "Infringing copy" means, in relation to a literary, dramatic, musical or artistic work, a reproduction thereof otherwise I han in the for of a cinematographic film."

Section 2(y) defines ''work''

"Work" means any of the following works namely :--

(i) a literary, dramatic, musical or artistic work."

Section 13 of the Act provides as follows :--

"13. Works in which copyright subsists. (1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,--

(a) original literary, dramatic, musical and artistic works."

Section 14 of the Act which contains the meaning of "copyright" is to the following effect :--

"For the purposes of this Act, "copyright" means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely :--

(a) in the case of a literary, dramatic, or musical work, not being a computer programme,--

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to (iii) .....

(iv) to make any cinematograph film or sound recording in respect of the work;

(e) in the case of a sound recording,--

(i) to make any other sound recording embodying it;

(ii) ..... -.

(iii) to communicate the sound recording to the public."

Section 17 which relates to the owner of the copyright provides as under :--

"Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein.

Provided that in the case of a literary. dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, by the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work."

Section 18 deals with the assignment of copyright.

"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 where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly."

Sections 22 and 27 of the Act which deal with the term of copyright in musical and other works are to the following effect :--

"22, Term of copyright in published literary, dramatic, musical and artistic works.--Except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph) published within the lifetime of the author until sixty years from the begining of the calendar year next following the year in which the author dies."

"27. Term of copyright in sound recordings.-- in the case of a sound recording, copyright shall subsist until sixty years from the beginning of the calendar year next following year in which the sound recording is published."

16. On a conspectus of the scheme of the Act as disclosed in the various provisions mentioned above, it is clear that a prolectable copyright has been vested with the author of the literary or musical work and if it is assigned, the assignee will get the said right. In the case of a literary work, the copyright is vested with the author of the work. In the case of a musical work, the composer is the owner of the copyright.

17. On a harmoneous construction of Sections 13 and 14, the composer enjoys his/her copyright in the musical work and as such, the composer has the sole right to exercise what is his/her entitlement u/s 14.

18. Once the author of a lyric or musical work parts with a portion of his copyright by authorising the other party to make a reproduction or to make a publication in the public, the latter acquires the right conferred u/s 14 of the Act.

19. The author as defined in Section 2(d) in relation to musical work is only the composer and Section 16 confines a copyright to those works which are recognised by the Act.

20. The Apex Court, while dealing with the law relating to the copyright and its infringement in R.G. Anand Vs. Delux Films and Others, , after careful consideration and elucidation of the various authorities laid down the following important propositions :--

"(1) There can be no copyright in an idea, subject-matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.

(2) The Courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant''s work is nothing but a literal Imitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

(3) One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original."

21. in the above decision of the Apex Court, various American cases with reference to the term ''infringement and copyright'' have been referred to. In this context, it would be relevant to refer to those passages relied upon by the Apex Court.

"Infringement of a copyright is a trespass on a private domain owned and occupied by the owner of the copyright, and, therefore, protected by law, and infringement of copyright, or piracy which is a synonymous term in this connection, consists in the doing by any person without the consent ofthe owner of the copyright, of anything the sole right to do which is conferred by the statute on the owner of the copyright."

This is observed by the U.S. Supreme Court in the case of Bobbs-Merrill Company v. Isidor Straus and Nathan Straus (1907) 210 US 339 : 52 LEd 1086.

22. The next important passage is given below :--

"An infringement is not confined to literal and literal and exact repetition or reproduction; it includes also the various modes in which the matter of any work may be adopted, imitated, transferred, or reproduced, with more or less colorable alterations to disguise the piracy. Paraphrasing is copying and an infringement, if carried to a sufficient extent ..... The question of infringement of copyright is not one of quantity but of quality and value."

This is observed by the U.S. Supreme Court in (1955) 2 L Ed 2d 260: 355 US 907.

23. On a reading of the various judgments referred to in the above decision, it is clear that in order to constitute infringement of copyright two elements are essential. First, there must be sufficient objective similarly between the infringing work and the copyright work. Secondly, the copyright work must be the source from which the Infringing work is derived, but, it need not be the direct source.

24. In the light of the above provisions and various authorities referred to above, if we look at the present facts of the case, in my considered opinion that there is a prima facie case made out by the plaintiffs/applicants to grant interim Injunction against the respondents as there are clear materials to show that the copyright work of the plaintiffs have been infringed by the defendants/ respondents. The circumstances which have driven met to the above conclusion could be briefly stated as follows.

25. The plaintiffs claim copyright in respect of musical work of both Kandha Sashti Kavacham and Kandha Guru Kavacham recorded in the cassette as "A" and "B" resepectively. Further, they claim copyright in respect of the literary work of Kandha Guru Kavacham, since the Lyricist assigned the copyright of the said literary work to the first plaintiff for composing music and tune and to popularise to the public. However, they do not claim copyright in respect of literary work of Kandha Sashti Kavacham, since no one claim any copyright over the said literary work because it is commonly known to all the Hindus.

26. Let us first consider the claim of the plaintiffs over the copyrights in respect of musical work of both Kandha Sashti Kavacham and Kandha Guru Kavacham.

27. According to the plaintiffs/appli-cants, the first plaintiff and her deceased sister composed music and tune for Kandha Sashti Kavacham and Kandha Guru

Kavacham in the year 1973 and assigned all the rights for recording the said songs to the second plaintiff and accordingly, recorded and the same was distributed to the public in the form of Gramophone record then Compact Disc and cassettes, etc.

28. According to the respondents, the plaintiffs cannot, claim copyright over the musical work since nobody can claim copyright for the devotional songs dedicated in favour of Almighty and the same cannot have a statutory protection or exclusive ownership and the Ragas and Carnatic music are not the property of any individual and Ragas and Aradhanas have to be within a specific frame work and therefore, there cannot be any claim of copyright in Carnatic music.

29. This submission of the respondents, in my view, does not merit acceptance. As indicated above, the ''musical work'' has been defined in Section 2(p). This means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung or spoken to perform with music. The work also is defined u/s 2(y). The ''work'' means any of the following works, namely, literary, dramatic, musical or artistic work.

30. It is specifically stated in Section 31(a) that the copyright shall subsist in original literary, dramatic, musical and artistic work. Section 14 defines ''copyright'' as to mean the exclusive right to do or authorise the doing of the acts in respect of a work in the case of literary, dramatic or musical work.

31. Section 2(d), while defining the term ''author'' provides that ''author'' means in relation to a musical work, the composer. Section 2(ffa) defines ''composer'' stating ''composer'' in relation to a musical work means the person who composes the music regardless of whether he records it in any form of graphical notation.

32. Section 17 would say that the author of the work shall be the first owner of the copyright. Section 18 would provide that the owner of the copyright may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for whole term of the copyright or any part thereof. Section 22 also would provide that the copyright shall subsist in any musical work published within the lifetime of the author until sixty years from the beginning of a calendar year next to following year in which the author dies.

33. These provisions would clearly indicate that a composer, who has done the musical work to the particular song by providing proper tune will be the owner of the copyright and also has got authority to assign the said copyright on musical work to any person.

34. When this is the legal situation, it cannot be contended by the respondents that the devotional songs dedicated to Lord Muruga cannot be the subject matter of the copyright, as Carnatic music and Ragas are not the property of the individual.

35. It is not the case of the plaintiffs/ applicants that they have got the copyright

over the Carnattc music or any particular Ragas. But, it is their specific case through the plaint, affidavit and the documents that the first plaintiff and her deceased sister composed music and tune for the devotional songs Kandha Sasthi Kavacham and Kandha Guru Kavacham and the rights of the musical work have been assigned to the second plaintiff in 1973 permitting him to record and reproduce any Gramophone and medias. Therefore, the claim of right in the act of composing music and tune to the devotional songs in various Ragas cannot be said to be the claim over Carnatic music.

36. The musical work done by the first plaintiff and her sister is a work consisting of music with graphical notation in a particular tune. When a particular music and tune, has been composed by the composer for signing the devotional song, it becomes musical work and therefore, the composer who composed that music and tune in relation to the said musical work can certainly have the right to claim copyright and on the assignment of the first plaintiff, the second plaintiff also would derive such a right under the relevant provisions of the Act. as indi-cated above.

37. Moreover, on display of the copyright work, namely, the cassette in which the songs sung by Sulamangalam Sisters were recorded gives a distinct, divine and graphical notations with a fine variety of tune. This, in my view, is the musical work done by the composers, viz. the first plaintiff and her deceased sister.

38. It is the next contention of the respondents in their respective counters that the musical work composed by the respondents in their cassettes are highly distinctive and different by using superior quality instruments which could not have been imagined by the plaintiffs/applicants.

39. The plaintiffs along with the plaint have produced the cassette released by the plaintiffs and also the cassette released by the defendants/respondents. The cassette produced by the defendants I and 2 would contain the printing of the version on the cover of the package, which is as follows :--

"MOAMeta Audio In Tamil "Mettavln Kanthar Sashli Kavacham Andru Padiyavar Sulamangalam Sisters recorded in Digital system."

40. A perusal of the cassette released by the defendants 1 and 2 would show that the cassette is containing the devotional songs of Kandha Sashti Kavacham and Kandha Guru Kavacham sung by Sulamangalam Sisters. The prominence is given to the singers by printing the letters (Vernacular matter omitted.--Ed.) in bold letters in red colour. The word (Vernacular matter omitted.--Ed.) is put in very small letters in black colour in between (Vernacular matter omitted.--Ed.) and (Vernacular matter omitted.--Ed.). The words (Vernacular matter omitted.--Ed.) are not quite visible. But. on the face of it. If we look at the cassette produced by the defendants 1 and 2, it would reveal that the cassette of devotional songs were sung by Sulamangalam Sisters.

41. The counsel for the defendants 1 and 2 would say that those songs were not

sung by Sulamangalam Sisters, but by some other singers, who are not popular. However, the names of those singers have not been printed either on the front side or rear side. A look at the said cassette would clearly indicate that the cassette containing the devotional songs were sung by Sulamangalam Sisters which is a clear misrepresentation,

42. The plaintiffs also produced before this Court yet another cassette released by the defendants 3 to 5. In this cassette, it is clearly stated that the devotional songs of Kandha Sashti Kavacham and Kandha Guru Kavacham..... recording with songs sung by Padma Swaminathan. In this cassette, the name of Sulamangalam Sisters has notbeen used.

43. However, in order to verify whether these cassettes released by the defendants 1 and 2 and 3 to 5 have a different or distinctive musical work as projected by the defendants, this Court displayed and listened to all the cassettes. On listening the songs from all the cassettes, 1 am of the clear view that the musical work with fine music and tunes made by Sulamangalam Sisters have been fully copied by the respondents through some other singers. 1 would rather say that the graphical notation, rhythm, music, tune and musical notes in these infringed cassettes are similar to the copyright cassettes. So, the contention that the cassette released by the plaintiffs are of different Sruthi and Thalam, is devoid of truth.

44. It is to be noticed, in this context, that in all the counters filed by the different groups of the respondents, the same statement has been made stating that the music contained in the infringed cassettes are distinctive and different from the songs sung by Sulamangalam Sisters.

45. In Para 10 of the counter filed by the respondents 3 to 5, it is stated as follows :--

''The music composed by the respondents are distinct and superior quality and even the instruments used are different."

In Para 15, it is staled thus :--"Bare perusal of the representation and display on the cassettes would amply indicate that the cassettes distributed by H.M.V. has no relevance or semblance or resemblance with that of the respondent."

Similarly, the first respondent has also made the same statement. In Para 15 of his counter, it is stated as follows :--

"I submit that the music composed by the respondents are highly distinct by using superior quality instruments and which could not have been imagined by the applicants."

In Para 21, it is stated as under :--

"I further submit that a bare perusal and display of the cassette of us would clearly and amply establish that the cassette produced by H.M.V. would no in way have any resemblance of relevance, or similarity."

46. These portions contained in the counter-affidavits of the respective parties would show that one counter has copied the other counter. There is no change even in the wordings and sentence. Similarly, the display of these cassettes also would show that the music and tune composed by Sulamangalam Sisters have been completely copied in these infringed cassettes released by the respondents.

47. Furthermore, it is the clear case of the plaintiffs that the music and tune in both the Kandha Sashti Kavacham and Kandha Guru Kavacham has been composed by Sulamangalam Sisters. But, in the counter filed by the respondents, though it is stated that music in their cassettes is different and distinct, no details have been given as to who actually composed the said music and tune. Though it is stated vehemently in the counter that the music was composed by the respondents, no clear particulars have been given. There is no reason as to why the particulars regarding the composer have not been given, particularly when the cassette released by the respondents 3 to 5 contains the name of the singer, viz., Padma Swaminathan.

48. As stated above, the display of both the cassettes would indicate that the defendants'' Infringed cassettes are nothing but musical imitation of the copyrighted cassettes of the plaintiffs/applicants, which would amount to violation of the copyright in respect of both the Kavachams. On comparison through display, it is clear that the listener after having listened to both the works would be of the opinion and would get an unmistakable impression that the infringement work appear to be the copyrighted work.

49. The plaint document Nos. 4, 5, 6 and 7 would categorically indicate that Sulamangalam Sisters tuned the music of both Kandha Sashti Kavacham and Kandha Guru Kavacham in 1973 and assigned the right of recording and reproduction through the Gramophone records, etc. to the second plaintiff. It is also admitted by Sulamangalam Sisters in the letters that they have been receiving the royalty from the second plaintiff from 1975 onwards. There is no specific denial of this fact in the counter, though it is stated that those things were not known to the respondents.

50. The first plaintiff has stated in the documents being the letters sent to the second plaintiff dated 17-1-1999, 21-1-1999 and 2-2-1999 as follows :--

(Vernacular matter omitted--Ed.)

51. In the counter, the respondents themselves admit that Sulamangalam Sisters are very reputed singers in the past decades and even now their devotional songs are being liked by the devotees. Therefore, the statement of the first plaintiff that they have only done the musical work in these two Kavachams. made in these letters and the plaint filed by the first plaintiff, who is admittedly a reputed singer even now, would definitely assume significance,

52. Under those circumstances, there is no difficulty on the basis of the materials available as on date to conclude that the musical work in respect of both these

devotional songs had been done by the first plaintiff with her deceased sister as composers and assigned the copyright for sound recording and reproduction to the second plaintiff. On the other hand, there is nothing to indicate that this musical work was composed by the respondents.

53. Let us now come to the other claim regarding the literary work.

54. As noted above, the plaintiffs claim copyright over the literary work only in respect of Kandha Guru Kavacham, as the author of the same, viz., Santhanandha Swamlgal of Pudukottai assigned the copyright to the plaintiffs.

55. Both in the plaint and affidavit, it is specifically stated that the lyrics of Kandha Guru Kavacham were written by Swamiji Santhanandha Swamigal of Pudukottai and as such, the said Swamljl is the author of the lyrics, who assigned all the lights over the said Kavacham to the first plaintiff and her deceased sister to compose music and tune for the said songs to do the needful to popularize the songs and thereafter, they composed music and tune for the said songs and gave all the rights for recording and reproduction of the said songs in any media to the second plaintiff. It is also specifically stated that the said songs were recorded and reproduced on a Gramophone record in 1973 and later on compact discs and audio cassettes on either side.

56. According to the respondents 1 and 2, Santhanandha Swamigal is an ascetic who had renounced the world and therefore. he cannot be said to be the owner of the composition and he had no authority to assign the said composition in favour of the first plaintiff. It is stated by the respondents 3 to 5 in their counter that Swamlji belongs to the entire world and they do not live for themselves and therefore, Santhanandha Swamigal cannot assert exclusive ownership to assign the same to the first plaintiff. It is further stated that the cassette released by them contains in "A" side Kandha Sashti Kavacham and in "B" side Kandha Guru Kavacham and the said lyrics were written by one Avathootha Swamigal of Simmakkal, Madural and that the said Swamigal had also given permission to the respondents to perform in public either by use of cassette or otherwise.

57. On a careful consideration of the submission, it is quite clear that it is strange and rather mischievous for the respondents to contend that the Swamigal had renounced the entire world inclusive of the exclusive right over his composition of Kandha Guru Kavacham and consequently, he cannot assign the same to any other person.

58. As indicated above, ''work'' is defined in Section 2(y). "Work" means, a literary. dramatic, musical and artistic work. ''Literary work'' is defined in Section 2(o). The "literary work" includes computer programmes, tables and compilations including computer data basis. The "author" means. as per Section 2(d), in relation to a literary work, the author of the work.

59. According to the plain tiffs/applicants, as averred in the plaint and affidavit, the Kandha Guru Kavacham was written by Santhanandha Swamigal, which was

composed and recorded by the second plaintiff in the year 1973. The document Nos. 8 and 9 dated 22-2-1999 and 15-3-1999 respectively, the letters from Shri Skandasramam Salem to the second plaintiff would also show that Shri Sathguru Swamigal is the author of the Skandha Guru Kavacham and the rights have been given to the first plaintiff and her sister for composing music and tune and to popularize the same to the plaintiffs.

60. It is settled law that the expression "literary work" means not only such work which deals with any particular aspect of literature in prose and poetry but also indicates a work which is literature i.e. anything in writing which could be said to come within the ambit of literary work. A compilation derived from a common source fails within ambit of literary work. It also appears to be well settled that even where the source of information used in a book is something common and is such which is available to all. even then a compilation which has been brought out as a result of labour and industry put by a person, then in such a case he can claim a copyright in the publication brought out by him. The above principles have been laid down in Shyam Lal Paharia and Another Vs. Gaya Prasad Gupta ''Rasal'', .

61. The right which a person acquires in a work which is the result of his intellectual labour is called his copyright. The primary function of copyright law is to protect the fruits of a man''s work, labour, skill or test from annexation by other people.

62. The Swamigal may be a saint or ascetic. But, it does not mean that he has lost his exclusive right in the literary work done by him by using his Intellectual labour and skill. The law of copyright has to protect a man''s copyright irrespective of his status as a family man or saint.

63. In a similar situation, an interesting question of copyright law was raised in the Calcutta High Court. There, the question was whether the works of a religious preacher in his own handwriting and the compilations of the discussions and sermons of a religious preacher are literary work within the meaning of the word "work" under the Copyright Act. The answer by the Calcutta High Court is this :--

"Having regard to the law on the subject, writings of a religious preacher, or his sermons and sayings which are compiled by Satasang Society on his behalf would prima facie, come within the meaning of ''literary works'' and would in any view, be protected under the Copyright Act. In the instant case, the works as well as the compilations of speeches, discourses, etc. In which copyright is claimed are the result of the knowledge, labour, judgment, learning skill, lest realisation and understanding of the founder of the Satsanga sect and as such they are protected under the Copyright Act."

This observation, in my view, would squarely apply to the present facts of the case, as it is the exact answer for the submission made by the respondent.

64. In the light of the facts of the present case and on the strength of the documents filed in the suit, I am of the view that the Kandha Guru Kavacham written by Santhanandha Swamigal is a literary work, as defined in Section 2(o), since the said work was done by him by using his spiritual knowledge, labour, Judgment, learning skill, realisation etc. Therefore, the said literary work is protected under the Copyright Act and consequently, the said Swamigal being the author of the literary work has authority to authorise any person to use the said literary work. In the instant case, Swamigal assigned the literary work to the first plaintiff and her sister as early as in the year 1973 and the same has been composed and reproduced and for popularising to the public as per the wish of the Swamiji.

65. As stated above, the respondents 3 to 5 have also taken yet another stand with reference to the authorship of the literary work stating that these devotional songs were written by Avathootha Swamigal of Simmakkal. Madurai, who had granted permission to them by using the same through cassette, etc.

66. It is quite preposterous on the part of the respondents 3 to 5 to have taken such a stand, while they stated in the earlier paragraphs that Santhanandha Swamigal cannot claim copyright oi''the literary work, as the Swamiji belongs to the entire world and they do not live for themselves.

67. As stated above, the plaintiffs have produced documents to show that the said literary work was made by Santhanandha Swamigal and the rights have been assigned to them. It is now the rase of the defendants/ respondents 3 to 5 that these songs had been written by Avathootha Swamigal who had granted permission to the defendants. To establish this fact, no document has been produced.

68. On the other hand, a perusal of the cassette released by the respondents 1 and 2 would show that it is written on the rear side that Metavin Kanthar Sashti Kavacham'' and side-A contains Kanthar Sashti Kavacham, the song compiled by Devaraya Swamigal and side-B contains Kanthar Guru Kavacham, the song compiled by H. H. Sathananda Saraswathi Swamigal. But, in the cassette of the respondents 3 to 5. It is staled on the rear side that both Kandha Sashti Kavaeham and Kandha Guru Kavacham were compiled by Devaraya Swamigal Avathootha Swamigal.

69. Though the case of the respondents 3 to 5 that Kandha Sashti Kavacham and Kandha Guru Kavacham were compiled by Devaraya Swamigal Avathootha Swamigal. It is printed in the cassette released by the respondents 1 and 2 that Kandha Guru Kavacham was compiled by Santhanandha Swamigal. This aspect also would strengthen the case of the plaintiffs with reference to the authorship of the literary work, namely Kandha Guru Kavacham.

70. The plaintiffs also filed yet another additional document, the L.P. album containing the songs Skandha Sashti Kavacham and Skandha Guru Kavacham. On the rear side of the disc, it is specifically printed that Sulamangalam Sisters

have rendered this recitation that rhythm for the above Hymns in their own inimitable musical style. On side One, Skandha Sashti Kavacham is recorded. The details of the meaning of Skandha Sashti Kavacham are printed on the left hand side of the rear side. On the right hand side, the details of the author of the Skandha Guru Kavacham is given as follows :--

"The gift of the song celestial, styled as "SKANDHA GURU KAVACHAM" by H.H. Sri Santhanandha Saraswathi Avadhutha Swamiga! of Skandasramam, Salem to the humanity at large and the devotees in particular. Is a timely boon for easy practice and quick benefits here and hereafter.

..... Swamiji''s "Skandha Guru Kavacham" written in mellifluous Tamil prose-poetry with simple rhythm and rhyme forms a touching rhapsody revealing his deep vision, heights of experience and the pourings of the pinning heart of a typical Mumukshu, adoptable by any ardent devotee at any time.

.....Sure of relief sought, for, from out of belief in the Grace of Gnanaskandha, the Kallyuga deity, for the devotee. H.H.S.S. Swamiji. with his power of introspection reiterates the different benefits, both mundane and spiritual accruing to those who repeat the rhapsody with a pure heart and mind."

71. Under those circumstances. I cannot but hold that the Kandha Guru Kavacham written by Santhanandha Swamigal as claimed by the plaintiffs and as seen from the documents filed along with the plaint is a literary work within the meaning of Section 2(o) of the Act. Merely because he is a Swamigal having renounced the world, he cannot be compelled to renounce his copyright too.

72. In the absence of contra materials, it is to be stated that the literary work of Skandha Guru Kavacham was made by Santhanandha Swamigal of Pudukottai, who had assigned the rights for composing music and tune to the first plaintiff and her sister for recording and popularising the same to the public.

73. In view of the above analysis of the various materials available on record the plaintiffs/applicants have made out a prima facie case over the copyright in respect of the musical work for both Kandha Sashti Kavacham and Kandha Guru Kavacham and copyright over the literary work of Kandha Guru Kavacham and those rights have been Infringed by the respondents and consequently, the plaintiffs/applicants would be entitled to interim injunction sought for in this application against the defendants/respondents pending disposal of the suit. Accordingly, the application is allowed.