

(2009) 01 MAD CK 0289

In the Madras High Court

Case No : Application No. 4331 of 2008 in C.S. No. 814 of 2008

Thanjavur Pagutharivalar Kazhagam

APPELLANT

Vs

The Periyar Self Respect Propaganda Institution and Periyar
Dravidar Kazhagam

RESPONDENT

Date of Decision : 29-01-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (2009) 01 MAD CK 0289

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : S. Shankaran, for the Appellant; D. Veerasekaran, for R1, M. Senthil Kumar, for R2 and S. Duraiswamy, for S. Kumaradevan, for R3, for the Respondent

Final Decision : Dismissed

Judgement

M. Jeyapaul, J.—Thanjavur Pagutharivalar Kazhagam represented by its President Mr. R. Rathnagiri files this application seeking

impleadment in the suit for infringement of copyrights laid by the first respondent as against respondents 2 and 3.

2. The applicant would contend that in order to bring to the notice of this court certain facts and materials for complete adjudication of the case,

the applicant is to be necessarily impleaded. In an interview to a journal "Kumudham Reporter", the third respondent has specifically stated that the

copy of the writings, books and speeches of late Thanthai Periyar was received from Thanjai Pagutharivalar Kazhagam in which the applicant is the

President. It is contended that the applicant, being one of the members who worked under the first respondent's instruction in Thanjai

Pagutharivalar Kazhagam during the years 1982 to 1984, has personal

knowledge about the subject matter of the suit. At the instruction of the first respondent, there was compilation of the works of Thanthai Periyar by the members of Thanjai Pagutharivalar Kazhagam. Therefore, the applicant is a necessary party, it is contended.

3. The second and third respondent would contend in the counter that the applicant is neither a proper nor a necessary party to the suit. No assignment was given to the applicant. Mr. Rathnagiri volunteered himself for supply of copies of Periyar's writings to the second respondent. The copies were not collected as the applicant demanded a sum of Rs. 5,00,000/= for handing over the materials. The applicant had praised the job executed by the second respondent by bringing out the booklet. Therefore, respondents 2 and 3 would submit that there is no necessity to implead the applicant as a proper and necessary party to the suit.

4. Referring to the article published in the journal "Kumudham Reporter", the learned Counsel appearing for the applicant would submit that the third respondent has specifically admitted during the course of interview to the said journal that a copy of the compilation was received from the Thanjai Pagutharivalar Kazhagam. The applicant, being President of the said Kazhagam, has to explain before the court as to the veracity of such interview given by the third respondent. Further, referring to a decision taken in the interaction session organized by the Committee of members including the applicant and the second respondent, he would submit that a decision was taken to pay a sum of Rs. 5,00,000/= to the President of the applicant Mr. Rathnagiri for the help he rendered by handing over the compilation of Kudiয়ারasu journals. Therefore, he would submit that in the action for infringement of copyrights, the applicant is a proper and necessary party.

5. Learned Senior Counsel appearing for the first respondent/plaintiff would submit that the interview given by the third respondent in Kumudham Reporter and the resolution passed in the Committee consisting of the applicant and the third respondent renders the applicant a proper and necessary party to the suit.

6. Per contra, learned Counsel appearing for second and third respondents would seriously contend that the applicant can, at best, be examined by the first respondent/plaintiff to establish the alleged infringement of copyrights.

The first respondent has contended that the applicant functioned under their control. Further, the applicant, having appreciated the labour of the third respondent, volunteered to send money for getting a copy of the compilation published by the third respondent. At any rate, the applicant is not a proper and necessary party. If at all, the applicant has any grievance as against the third respondent in the compilation work published by him, the applicant has to lay a separate suit.

7. As per Order 1 Rule 10 of the Code of Civil Procedure, only in a case where the presence of a party before the court is very much necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit, such a party can be impleaded as a proper and necessary party. Necessary party to the suit is a party without whom, no decree can be effectively passed at all in his absence.

But, a proper party is a party whose presence is necessary for a complete and final decision on the question involved in the proceedings. A proper party is one who has definite, subsisting, direct and substantive interest in the issues arisen in the litigation.

8. The first respondent has laid an action for infringement as against the second and third respondents. That the work of the first respondent was completely hijacked by second and third respondents and thereby they committed infringement of copyright is the case of the first respondent. The applicant may be part of the team entrusted with the job of compilation of the work of Thanthai Periyar. The issue before the court is who is the copyright owner of the work of Thanthai Periyar. The applicant does not claim exclusive copyright over the work of Thanthai Periyar. It is his case that he assisted in the Herculean task of compiling the work of Thanthai Periyar. To establish the teamwork allegedly contributed by the applicant, the first respondent, whose admitted case is that the applicant is under their control, will have to be examined as star witness in this case. The process of compilation of the work of Thanthai Periyar allegedly undertaken by the applicant at the instance of the first respondent may form part of the evidence during the course of trial of the case. But, the participant in such a process cannot claim any participatory role in the lis hotly contested by the second and third respondents.

9. As regards the interview of the third respondent published in Kumudham

Reporter, there is no specific denial in the counter affidavit filed by the third respondent. If such an interview is established by the first respondent, it may go to advance the case of the first respondent. But, in the guise of such an interview, the applicant cannot gain entry into the proceedings initiated by the first respondent as against the second and third respondents for infringement of copyright.

10. It is stoutly denied by the third respondent that there was any decision arrived at in the Committee that interacted with regard to the publication of the work of Thanthai Periyar. At any rate, the proof of such a decision taken in the presence of the third respondent may go to substantiate the case of the first respondent. It may also give rise to a different cause of action for the applicant to claim civil remedy based on such a decision arrived at in the said meeting, but, a reported decision in the meeting of those who interacted with regard to the publication of the work of Thanthai Periyar does not clothe the applicant with any right to invoke the provision under Order 1 Rule 10 as the applicant is found to be a totally unnecessary and improper party to the copyright action initiated by the first respondent against second and third respondents.

11. Of course, the applicant has appreciated the efforts taken by the third respondent in compiling the work of Thanthai Periyar and offered to send a cheque for a copy of such compilation. It is to be noted that originality of the compilation of the work of Thanthai Periyar by the third respondent was not admitted by the applicant. At any rate, it is found that the applicant is neither a necessary nor a proper party to the suit inasmuch as the issues arisen in the suit can be thrashed out effectively and conclusively even without the association of the applicant as a party to the suit.

12. In view of the above facts and circumstances, the application stands dismissed. There is no order as to costs.