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OSA (CAD) NO.129 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 13 / 03 / 2024

JUDGMENT DELIVERED ON: 03 / 04 / 2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

OSA (CAD) NO.129 OF 2023

AND CMP NO.22754 OF 2023

IN OSA (CAD) NO.129 OF 2023

N.Govindarajan

... Appellant

Vs.

1.N.Ravi

2.The Director

Doordarshan Kendra

Swami Sivananda Salai,

Chennai – 600 005.

... Respondents

PRAYER: Original Side Appeal filed under Section 13 of Commercial Courts Act, 2015 read with Order XXXVI Rule 1 of Madras High Court Original Side Rules, praying to set aside the judgment and decree dated 06.06.2023 in C.S.No.922 of 2017 (Comm. Suits) on the file of this Court and thereby allow the original side appeal and dismiss the Suit in C.S.No.922 of 2017.



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For Appellant : Mr.K.Shakespeare
For Respondent-1 : Mr.P.Sreenivasulu
For Respondent-2 : Mr.Rajesh Vivekanandan
Deputy Solicitor General

J U D G M E N T

R.SAKTHIVEL, J.

Assailing the judgment and decree dated June 6th, 2023 passed by the Hon'ble Single Judge of this Court in C.S.No.922 of 2017 (Comm. Suits), the appellant / second defendant has preferred this Original Side Appeal under Section 13 of Commercial Courts Act, 2015, read with Order XXXVI Rule 1 of Original Side Rules, praying to set aside the judgment and decree.

2.For the sake of convenience, the parties will be referred to as per their array in the suit *i.e.* the appellant herein will be referred to as 'second defendant'; the first respondent herein will be referred to as 'plaintiff'; and second respondent herein will be referred to as 'first defendant'.



Plaintiff's case:

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3.1.The plaintiff had filed the Suit in C.S.No.922 of 2017 (Comm. Suits) seeking declaration that he is the exclusive copyright holder of the Television Telecasting Rights of the Tamil Film titled 'Elangeswaran' and for injunction restraining the defendants from telecasting the said film without plaintiff's consent and from making any royalty payment to any one other than the plaintiff for having telecasted the said film on December 20th, 2014.

3.2.According to the plaintiff, the Tamil film titled 'Elangeswaran' was produced by M/s.Sri Sivakami Productions. The original producer assigned the Television Telecasting Rights in favour of M/s.Sridhar Films on December 20th, 1989 under Ex-P.2 on receipt of royalty amount of Rs.3,000/-. The said M/s.Sridhar Films, in turn, assigned television telecasting rights in favour of one K.Palani for a consideration of Rs.15,000/- on May 18th, 1995 under Ex-P.3. The said K.Palani, in turn, assigned the Television Telecasting rights in favour of one Mrs.K.Indira



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Devi for consideration on May 24th, 1995 under Ex-P.4. The plaintiff

acquired Television Telecasting rights of the above said film along with 13 other films from the said Mrs.K.Indira Devi on March 17th, 2011 under Ex-P.7 for a total consideration of Rs.30,000/-. Thus, the plaintiff claims copyright of television telecasting rights of the Tamil film 'Elangeswaran'.

3.3.The plaintiff further contends that the first defendant by fraudulently obtaining the softcopy of the film 'Elangeswaran' from unknown sources telecasted the same on December 20th, 2014 without the consent and knowledge of the plaintiff. Upon learning the same, on December 22nd, 2014 and March 30th, 2015, the plaintiff sent letters to the first defendant informing them about the infringement of his Television Telecasting rights of the film and called upon them to stop the payment of royalty amount to any other person. The plaintiff had not received any reply from the first defendant. Thereafter, the plaintiff issued legal notices, one on October 1st, 2015 and another on September 16th, 2017, calling



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upon the first defendant to make the payment of royalty amount to the plaintiff informing that in case of its default to pay, legal action would be taken against it for infringement of copyrights.

3.4. The plaintiff further averred that the plaintiff alone had the copyright of Television Telecasting rights and the first defendant without obtaining any authorisation from the plaintiff stealthily obtained the print of the film from unknown person and telecasted the same on December 20th, 2014. The plaintiff, as the copyright holder of the Television Telecasting Rights in the film is entitled to receive royalty amount for the film 'Elangeswaran' telecasted by the first defendant and the first defendant is not entitled to make payment to any person from whom it received the print of the film. In spite of several notices and letters, the first defendant failed to comply with the lawful request made by the plaintiff and hence, he was constrained to file the suit for the aforesaid relief.



Defendants' case:

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3.5.The first defendant filed written statement stating that the film 'Elangeswaran' was supplied by one N.Govindarajan and the same was telecasted on December 20th, 2014 based on the documents furnished by him. The first defendant further contended that original producer of the film, M/s. Sivakami Productions, transferred the rights of the film to M/s. Shyamala Movies on September 27th, 1990, for a sum of Rs. 95,000. Subsequently, M/s. Shyamala Movies transferred these rights to an individual named V. Balu on July 18th, 2011. V. Balu then assigned the rights to N. Govindarajan on March 17th, 2014, who supplied the film for broadcasting to the first defendant.

3.6.The written statement further claimed that upon receiving a legal notice from the plaintiff, payment owed to N.Govindarajan was held back pending verification of his ownership over the Television Telecasting rights to the film. Further, it is stated that first defendant is



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willing to pay royalties to the legitimate owner of the film contingent upon the court's decision. Furthermore, it was asserted that N. Govindarajan is necessary party to the lawsuit.

3.7.Subsequently, the above said N.Govindarajan named by first defendant was impleaded as second defendant in the suit and he had filed a written statement stating that he adopts the written statement of the first defendant. In addition, he has stated that he incurred heavy loss as the film was not telecast because of the suit.

3.8.The Hon'ble Single Judge, on July 8th 2019, framed the following issues:

“(i)Whether Sri Sivakami Productions assigned negative rights agreement in favour of A.Ganesan of Ms.Shyamala movies or in favour of M/s.Sridhar films?

(ii)Whether K.Palani assigned letter of arrangement in favour of K.Indra Devi as alleged by the Plaintiff?



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(iii) Whether N.Govindarajan – second defendant is the lawful owner of the film having assigned it from V.Balu by a deed of agreement dated March 17th, 2014?

(iv) Whether the plaintiff is the copyright owner of the film Elangeswaran?

(v) Any other relief or reliefs?”

3.9. Before the Hon'ble Single Judge, the plaintiff himself was examined as P.W.1 and Ex-P.1 to Ex-P.18 were marked on the side of the plaintiff. On the side of the defendants, Upper Division Clerk of first defendant's office was examined as D.W.1 and second defendant was examined as D.W.2 and Ex-D.1 to Ex-D.8 were marked.

3.10. The Hon'ble Single Judge, after hearing both sides, found that the plaintiff has proved his case that he is the copyrights owner of the Tamil film 'Elangeswaran' with respect to Television Telecasting rights and accordingly, decreed the suit as prayed for. Feeling aggrieved with the judgment and decree, the second defendant has preferred this appeal.



Arguments

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4.This Court has heard Mr.K.Shakespeare, learned counsel for the appellant, Mr.P.Sreenivasulu, learned counsel for the first respondent herein and Mr.Rajesh Vivekanandan, learned Deputy Solicitor General for the second respondent herein.

5.The learned counsel for the appellant / second defendant would argue that M/s.Sri Sivakami Productions was the original owner of the Tamil Film ‘Elangeswaran’ and the suit is bad for non-joinder of the original owner / necessary party; that the said original owner sold the negative rights to one A.Ganesan of M/s.Shyamala Movies on September 27th, 1990 , who in turn, sold the Negative Rights to one V.Balu on July 18th, 2011; and that on March 17th, 2014, V. Balu assigned the said right to the appellant herein. The learned counsel would further argue that the appellant herein upon acquiring the negative rights become the absolute owner of the film and is entitled to exhibit the same as he pleases; that Ex-



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P.1 to Ex-P.3, Ex-P.8, Ex-P.13 to Ex-P.18 are photocopies which are

inadmissible in law and title can't be traced through photocopies; and that

the Hon'ble Single Judge without considering the trade custom prevailing

in the Cinema Industry and the aforementioned points, granted decree in

favour of the plaintiff. Accordingly, he prayed to allow the appeal and set

aside the judgment and decree. In support of his contention, he relied on

the decision of a Hon'ble Single Judge of this Court in ***Mrs.M.Padmini***

and Ors Vs. Raj Television Network Limited reported in ***2015 3 LW 43***.

6.Per contra, learned counsel for the first respondent / plaintiff

would argue that on December 20th, 1989, M/s.Sridhar Films acquired PAN

India Television Telecasting rights of the film from M/s.Sri Sivakami

Productions vide letter dated December 20th, 1989 (Ex-P.2); that

M/s.Sridhar Films granted All India Television Telecasting rights of the

film 'Elangeswaran' along with two other films to one Mr.K.Palani for a

perpetual period of ninety nine years from the date of Ex-P.3 *i.e.*, May 18th,



1995, who in turn, gave the same rights of those 3 movies to one K.Indira

Devi on May 24th 1995 for a perpetual period through (Ex-P.4); that the

said K.Indira Devi assigned the second defendant the Television

Telecasting rights of the film 'Elangeswaran' along with 13 other films

vide Ex-P.7 on March 17th, 2011 and thus, the Television Telecasting rights

within India were given to the plaintiff; that the defendants have no right to

telecast the film either partly or fully without obtaining proper licence from

the plaintiff in India; that the Hon'ble Single Judge after appreciating the

oral and documentary evidence, decreed the suit; and that, there is no

warrant to interfere with the said judgment and decree. Accordingly, he

prayed to dismiss the appeal.

Points for consideration

7.The points that arise for consideration is as follows:



(i) Whether the plaintiff is the prior copyright holder of the Tamil film 'Elangeswaran' in respect of Television Telecasting within India?

(ii) If so, whether the aforementioned prior copyright of the plaintiff overrides the 'negative rights' of the appellant / second defendant with respect to the film 'Elangeswaran'?

(iii) Whether the appellant / second defendant is entitled to the Television Telecasting rights of the Tamil film 'Elangeswaran'?

(iv) Is there any reason to interfere with the findings of the Hon'ble Single Judge?

Discussion and Decision

8. Admittedly, M/s. Sri Sivakami Productions is the original owner of the Tamil film 'Elangeswaran'. According to the plaintiff, M/s. Sri



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Sivakami Productions assigned the Perpetual All India Television

Telecasting Rights of the said film in favour of M/s.Sridhar Films on

December 20th, 1989 under Ex-P.2, who in turn, assigned the same in

favour of one K.Palani under Ex-P.3. The said K.Palani, in turn, assigned

the said rights in favour of one K.Indira Devi on May 24th, 1995 under Ex-

P.4. The first defendant / Door Dharshan entered into various agreements

marked as Ex-P.13 to Ex-P.18 with the said K.Indira Devi with regard to

telecasting songs from the film 'Elangeswaran' in the Doordarshan

Kendra. Though the said document are all photocopies, both the

defendants did not raise any specific objection while marking the said

documents. Needless to mention that, general objection without any

specificity is deemed as no objection to mark the document. D.W.1 is the

Upper Circuit Clerk from Door Dharshan. This Court deems fit to extract

Question No.74 and 79 of D.W.1's deposition hereunder.

“Q74: Previously the picture and also song sequences were telecasted through Prasar Bharthi by one K.Indra Devi, Am I correct?”



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A: Only songs were sequences were telecasted by K.Indra Devi and not the film.

Q79:Ex.P14, Ex.P15, Ex.P16, Ex.P17 and Ex.P18 are the letters issued by Prasar Bharathi kindly see the Hon'ble court?

A: The letters are issued by Doordarshan Kendra Chennai.”

9.From the above, it is clear that the plaintiff's predecessor-in-title, K. Indira Devi, was holding the Television Telecasting Rights of the film 'Elangeswaran'. The plaintiff side has marked the original agreement (Ex-P.7) pertaining to the transfer of the Television Telecasting Rights of the film 'Elangeswaran' from his predecessor-in-title, K.Indira Devi to him. Thus, the plaintiff traces his title over the Perpetual All India Television Telecasting Rights of the film 'Elangeswaran' from M/s.Sri Sivakami Productions through M/s.Sridhar Films, K.Palani and K.Indira Devi vide Ex-P.2, Ex-P.3, Ex-P.4 and Ex-P.7.



10. According to the defendants, one A.Ganesan of

M/s. Shyamala Movies got lifetime Global Negative rights with all dimensions from M/s. Sri Sivakami Productions on September 27th, 1990 for a sum of Rs.95,000/- (Rupees Ninety Five Thousand Only). The said M/s. Shyamala Movies represented by A.Ganesan transferred their rights to one V.Balu on July 18th, 2011, who in turn, entered into an agreement and assigned the rights in favour of the second defendant on March 17th, 2014. Accordingly, the second defendant traces his title over the Tamil film “Elangeswaran”. Though the second defendant contends that the same original owner assigned the Global Negative Rights perpetually in favour of one A.Ganesan of M/s. Shyamala Movies on September 27th, 1990, the concerned Assignment Deed between the parties has not been produced by the defendants. The defendants did not assign any reason for non-production of the said document. A photocopy of the letter dated September 27th, 1990 addressed to Vijaya Productions by M/s. Sri Sivakami Productions is alone marked as Ex-D.3 by the defendants. Notably, the



original owner assigned the Perpetual All India Television Telecasting

Rights to the plaintiff's predecessor on December 12th, 1989 under Ex-P.2

i.e., prior to Ex-D.3.

11.The question that arises here Is whether the alleged assignment of the Perpetual Global Negative Rights to the second defendant's predecessor is subject to the prior assignment of Perpetual All India Television Telecasting Rights to the plaintiff's predecessor or not. To decide on the above question, perusal of the alleged Assignment Deed between the second defendant's predecessor and the original owner on September 27th, 1990 is crucial and essential. As stated supra, the defendants failed to produce the same. Even while assuming that the second defendant's predecessor duly obtained the Global Negative Rights, that will not affect the Perpetual All India Television Telecasting Rights assigned in favour of the plaintiff's predecessor under Ex-P.2, as it is prior to alleged Assignment Deed between the second defendant's predecessor



and the original owner. In short, in the absence of the alleged Assignment

Deed between the second defendant's predecessor and the original owner,

it can only be concluded that the second defendant's Global Negative

Right, if any, would be subject to the Perpetual All India Television

Telecasting Rights assigned to the plaintiff. In such circumstances the

burden is upon the defendants to prove the contrary.

12.The contention of the defendants is that Ex-P.2 and Ex.P.3 are photocopies and therefore, inadmissible in law. In view of the fact that the defendant's did not raise any specific objection while marking the said documents and that the plaintiff has produced the Original Agreement between him and his predecessor pertaining to the transfer of the Television Telecasting Rights of the film 'Elangeshwaran', the contention of the defendant does not hold water. Notably, even the defendant claiming Global Negative Rights, has produced only a photocopy of the letter addressed by the Original Owner to Vijaya Productions (Ex-D.3).



13. Further contention of the second defendant is that there

exist a trade custom in the industry that Negative Rights holder is the absolute copy right holder of the property / film and has all rights including the Television Telecasting Rights. The decision of the Hon'ble Single Judge in *Padmini's case (supra)*, though valid, is not applicable to this case as the defendant therein was the Negative Right holder including any right that may accrue in the future due to advancement of science and technology. In this case the plaintiff is the prior Television Telecasting Rights holder. The second defendant, if established as a Negative Right holder, is entitled to exhibit the film in any manner as he may desire subject to the rights of the plaintiff. Be that as it may, there is no pleading or proof on the side of the defendants in this regard. In the absence of such pleadings and evidence, the second defendant cannot introduce a new plea in the form of argument in the Appeal. The same goes for the argument with respect to non-joinder of necessary parties as there is no plea for the same.



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14.Hence, this Court concludes that the plaintiff is the prior

copyright holder of the film 'Elangeswaran' with respect to the television telecasting; that, the Global Negative Rights of the second defendant, if any, is subject to the Television Telecasting Rights of the plaintiff; and that the second defendant is not entitled to the Television Telecasting Rights of the Tamil film 'Elangeswaran'. Thus, this Court is not inclined to interfere with the judgement and decree of the Hon'ble Single Judge. Accordingly, Point Nos. (i) to (iv) are answered in favour of the plaintiff and against the defendants.

15.Resultantly, this Original Side Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

[R.SUBRAMANIAN, J.]

[R.SAKTHIVEL, J.]

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Speaking Order



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R.SUBRAMANIAN, J.

AND

R.SAKTHIVEL, J.

TK

To

The Director

Doordarshan Kendra

Swami Sivananda Salai,

Chennai – 600 005.

PRE-DELIVERY JUDGMENT MADE IN

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