

In the High Court of Judicature at Madras

Dated: 13.04.2015

Coram:

The Honourable Mr. Justice R.SUBBIAH

Original Application No.763 of 2013

in

C.S.No.686 of 2013

1.Mrs.M.Padmini

2.Mrs.R.Neelamoorthy

3.Mrs.S.Premalatha

... Applicants/Plaintiffs

Vs.

Raj Television Network Limited,
rep. by its Chairman/Managing Director/Directors,
32, Poes Road, 2nd Street,
Teynampet,
Chennai-600 018.

... Respondent/Defendant

Prayer:- This application has been filed under Order XXIV Rule 8 of the Original Side Rules read with Order XXXIX Rules 1 & 2 and Section 151 of CPC, praying for grant of ad-interim injunction restraining the respondent herein, its directors, subsidiary companies, managers, staff and officers, distributors, selling agents and servants, from in any manner infringing the plaintiffs digital cinematography copyright in the Tamil feature film 'Ninaithaalea Innikkum' produced by late Shri.R.Venkatraman under the Premalaya Banner, including by restraining them from releasing or exhibiting distributing otherwise using in any manner whatsoever, the said digital cinematography right in the said film either for theatrical, non-theatrical release or for any other purpose, pending disposal of the suit.

For applicants :Mr.G.K.Muthukumar

For respondent : Mr.K.Harishankar

ORDER

This application has been filed under Order XXIV Rule 8 of the Original Side Rules read with Order XXXIX Rules 1 & 2 and Section 151 of CPC, praying for grant of ad-interim injunction restraining the respondent herein, its directors, subsidiary companies, managers, staff and officers, distributors, selling agents and servants, from in any manner infringing the plaintiffs digital cinematography copyright in the Tamil feature film 'Ninaithaalea Innikkum' produced by late Shri.R.Venkatraman under the Premalaya Banner, including by restraining them from releasing or exhibiting distributing otherwise using in any manner whatsoever, the said digital cinematography right in the said film either for theatrical, non-theatrical release or for any other purpose, pending disposal of the suit.

2.The applicants herein are the plaintiff and the respondent herein is the defendant in the suit. For the sake of convenience, the parties are hereinafter referred to as per their rankings in the suit.

3.The plaintiffs are the three daughters of one Late Sri.R.Venkatraman, who was a famous producer and had produced a number of hit films especially during the years 1960 – 1986. The said Shri.R.Venkatraman expired in the year 2004. He was survived by his wife Mrs.V.Sakunthala and his son V.Rajendran and three daughters

(the plaintiffs herein). The said Rajendran, son of late Shri.R.Venkatraman, is suffering from parkinsons disease and paralysis and he is not in a mentally fit state of mind. The said Mrs.V.Sakunthala, wife of late Shir.R.Venkatraman, is aged about 78 years and is suffering from old age related ailments. Hence, the said Rajendran and Sakunthala have not joined the plaintiffs in filing the present suit.

4.The case of the plaintiffs, in brief, is as follows:-

4-1.The plaintiffs' father R.Venkatraman had produced several films under the film production banners of 'Navasakthi Films', 'Amutham Pictures', 'RMS Pictures', 'Premalaya' and 'Cine India'. In the year 1979, he had produced the Tamil feature film named **Ninaithale Inikkum**. It was a very popular film, which was produced under the 'Premalaya Banner'. In the year 1981-1982, the said Shri R.Venkatraman assigned his copyright in the negatives of the said film 'Ninaithale Inikkum' ie., negative rights to one 'Kumar Pictures'. Thereafter, he has not assigned any other right with regard to the said film, in particular the digital cinematography right, either for theatrical or for non-theatrical release to anyone, more so the defendant. After his demise, all the remaining copy rights, which include the digital cinematography rights (for theatrical and non-theatrical release) in the said film, devolved upon his legal heirs namely the applicants herein,

his son and wife, who as such are its copyright owners.

4-2.While so, the plaintiffs came to know from an advertisement in the Daily Thanthi Newspaper, dated 31.07.2013, and from the weekly magazine 'Anantha Vikatan' that the defendant is attempting to theatrically release the Tamil film 'Ninaithale Inikkum' produced by late Shri R.Venkatraman, as a digital cinema, having produced and edited the same by digital technology, which the defendant cannot do without a specific assignment or licence of the digital cinematography right from the author or from his legal heirs. The act of the defendant amounts to an infringement of the plaintiffs' digital cinematography right, which is an unassigned copyright, presently vested with the plaintiffs. Hence, the plaintiffs issued a legal notice dated 12.08.2013 to the defendant, to which the defendant issued a reply notice on 05.09.2013 containing vague, false and incorrect contentions.

4-3.It is further case of the plaintiffs that under proviso 2 to Section 18(1) of the Copyright Act, 1957, no assignment of copyright shall be applied to any medium or mode of exploitation of that work, that did not exist when the assignment was made, unless the assignment specifically say so. In the instant case, there is no assignment or licence to the defendant either by the author or by his legal heirs, in respect of the digital cinematography right, either for theatrical or non-theatrical release or for any other purpose. The

digital cinematography right came into existence only after 1998, in view of the scientific and technology developments. In all the films produced prior to the coming into existence of this technology viz., digital cinematography/digital cinema, the digital cinematography rights, which include both theatrical and non-theatrical release rights, vest with the producer/copyright owner. The plaintiffs have not assigned the digital cinematography rights of the said film 'Ninaithale Inikkum' either for theatrical or non-theatrical release or for any other purpose, to any one, more so to the defendant. Further, during his life time, the plaintiffs' father Shri.R.Venkatraman has also not assigned any such right to any one, more so to the defendant. Therefore, after his demise, these rights devolve upon his legal heirs. The act of the defendant in making and attempting to theatrically release the Tamil film 'Ninaithale Inikkum' in digital format i.e., as a digital cinema, amounts to an act of infringement of the plaintiffs' copyrights ie., the digital cinematography right by the defendants. Hence, the present suit has been filed by the plaintiffs for the following reliefs_

a)a permanent injunction against the defendant, its directors, subsidiary companies, managers, staff and officers, distributors, selling agents and servants, restraining them, from in any manner infringing the plaintiffs digital cinematography copyright in the Tamil film 'Ninaithale Inikkum' produced by Late Shri.R.Venkatraman under the 'Premalaya Banner',

including by restraining them from releasing or exhibiting, distributing, otherwise using in any manner whatsoever the said digital cinematography right in the said film either for theatrical, non-theatrical release or for any other purpose.

(b) the defendants be directed to deliver to the plaintiffs or their authorised representative for destruction all equipment and digital versions of the infringing works, being the digital cinema for theatrical release of the Tamil feature film 'Ninaithale Inikkum' produced by late Shri R.Venkatraman, under the 'Premalaya Banner', starring actors Rajinikanth, Kamalahasan, Jeyapratha and others for theatrical.

(c) for costs of this proceedings.

5. Pending the suit, the plaintiffs have filed the above application for interim injunction as stated supra.

6. On appearance, the defendant has filed a counter affidavit denying the allegations made by the plaintiffs and *inter alia* contending that the suit and the application are not maintainable on the ground of non-joinder of necessary parties. Further, it is incorrect to state that only the negative rights were assigned to one Kumar Pictures in the year 1981. By an agreement dated 21.09.1981, Shri.R.Venkatraman, as partner of the firm 'Premalaya', assigned not only the negative rights of the film 'Ninaithale Inikkum', but also transferred all other rights, title and interest in the said film, in all its

dimensions and the entire copyrights relating to the said film were assigned in favour of 'Kumar Pictures' under the said assignment deed. Thus, the defendant sought for dismissal of the application.

Submissions of the learned counsel for the plaintiff

7.It is the submission of the learned counsel for the plaintiffs that the plaintiffs are the daughters of one Mr.Venkatraman. The said Venkatraman was producing movies under the banner 'Premalaya' and he was the Managing Director of 'Premalay'. In the year 1979, the Tamil film '**Ninaithale Inikkum**' was produced under the 'Premalaya Banner'. In the year 1981, the said Venkatraman assigned the copyright in the negatives of the said film to one M/s.Kumar Pictures. Except the negative rights, other rights were not assigned to the said M/s.Kumar Pictures. While so, the said Venkatraman died on 18.01.2004. After his demise, the copyright in all his works/films including the film '**Nenaithale Inikkum**' devolved upon his legal heirs viz., the plaintiffs herein and their mother and brother (daughters, wife and son of the said Venkatraman respectively). With the advancement in technology and scientific development in the field of cinematography, film production using digital technology came into vogue from the year 1990 onwards. In the instant case, the digital cinematography rights were not in existence, either when the film '**Ninaithale Inikkum**' was produced in the year 1979 or in the year

1981, when the copyright in the negatives of the said film was assigned by its producer Mr.Venkatraman to one M/s.Kumar Pictures. Only negative rights alone had been absolutely assigned and it means that the assignee had the right to assign, hire, communicate to public or take prints of the negatives or to do all such things as provided under Section 14(d) of the Copyright Act. While so, the plaintiffs came to know from an advertisement in the Daily Thanthi Newspaper, dated 31.07.2013, and from the weekly magazine 'Anantha Vikatan' that the defendant is attempting to theatrically release the Tamil film '**Ninaithalea Inikkum**' produced by late Shri R.Venkatraman, as a digital cinema having produced and edited the same by digital technology, which the defendant cannot do without a specific assignment or licence of the digital cinematography right from the author or from his legal heirs. This act of the defendant amounts to an infringement of the plaintiffs' digital cinematography right which is an unassigned copyright, presently vested with the plaintiffs.

8.In this regard, the learned counsel appearing for the plaintiffs has also invited the attention of this Court to Proviso 2 to Section 18(1) of the Copyrights Act and submitted that by amendment Act 27 of 2012, an important amendment to Section 18(1) was made by including second proviso. As per Proviso 2 to Section 18(1), no assignment shall be applied to any medium or mode of exploitation of

the work, which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work. In the instant case, by way of assignment deed dated 21.09.1981, copyrights in negatives of the Tamil film '**Ninaithalea Inikkum**' was assigned by its producer Venkatraman to 'Kumar Pictures'. In the year 1981, the digital cinematography was not in existence. But, subsequently, due to advancement of technology and scientific development, digital technology came into vogue only from the year 1990 onwards. According to the learned counsel for the plaintiffs, the digital cinematography rights, which includes both theatrical and non-theatrical release rights, vest with the producer/copyright owner. Therefore, after the demise of the said Venkatraman, the digital cinematography rights in the Tamil film '**Ninaithale Inikkum**' only vest with the applicants as the legal heirs of the producer Venkatraman. Therefore, anyone dealing with the digital cinematography rights in the said film without the permission or consent of the plaintiffs is liable to be proceeded with for the act of infringement under of Copyrights Act.

9. In this regard, the learned counsel for the plaintiffs, by inviting the attention of this Court to Section 19(2) of Copyrights Act, submitted that copyrights include several rights. In the instant case,

though in the assignment deed the word 'absolutely' was used, it does not mean that the defendant is entitled to any future right, which would come into vogue due to advancement of technology and scientific development. In the instant case, the word 'absolutely' mentioned in the assignment deed dated 21.09.1981 would mean all forms of right to exploit the negative rights as mentioned above and cannot be construed to include some other copyright from the bundle, as each right in the bundle is a separate copyright. The assignment deed must specifically mention 'future rights' as contemplated under Section 19(2). The rights not mentioned in the assignment deed would vest only with the producer/assignor and after his demise, the said rights vest only with his legal heirs. In this regard, the learned counsel for the plaintiff has relied upon the decision reported in **AIR 1998 MADRAS 294 (Raj Video Vision Vs. K.Mohanakrishnan)**, wherein it has been held that any right, which was given under any assignment, should be specified and definite.

10.It is further submitted by the learned counsel for the plaintiffs that in the instant case, what was assigned to M/s.Kumar Pictures by the producer Venkatraman vide assignment deed dated 21.09.1981 was only the negative rights in the film '**Ninaithale Inikkum**', which did not include any future right. While so, the defendant, who got the assignment from the said M/s.Kumar Pictures by way of assignment

deed dated 15.05.2000, is not legally entitled to exploit any other right in future, because M/s.Kumar Pictures cannot assign more than the right what was assigned to them by way of Assignment Deed dated 21.09.1981. Thus, the learned counsel for the plaintiffs sought for grant of injunction.

Counter submissions of the learned counsel for the defendant

11.Opposing the prayer of the plaintiffs, the learned counsel for the defendant submitted that the producer of the film viz., 'Premalaya' had assigned all the rights and ownership of the film to 'Kumar Pictures' for perpetual period of 99 years. Thereafter, by an agreement dated 15.05.2000 between 'Kumar Pictures' and the defendant herein, the entire ownership/rights came to devolve upon the defendant. Hence, as on date, the defendant is the sole and absolute owner of all rights in the film '**Ninaithale Inikkum**'. Negative right is not a specific right; but it includes within it the right of the owner of such negative right to exclude everyone else from using the negatives of the picture. Without the negatives of the picture, no digital version can also be prepared. Therefore, in that sense, the plaintiffs cannot make any digital version of the picture as the control of the negatives in the laboratory is with the defendant. In this regard, the learned counsel for the defendant by inviting the attention of this Court to Assignment Deed dated 21.09.1981 executed

by the producer 'Premalaya' in favour of 'Kumar Pictures', submitted that under the said assignment deed, the producer – M/s.Premalaya has only reserved to itself the rights of re-take and dubbing and no other reservation of rights was made after assigning the entire ownership of the picture in favour of the 'Kumar Pictures'.

12.The learned counsel for the defendant, by drawing the attention of this Court to Clause 10 of the Assignment Deed dated 21.09.1981, submitted that a reading of Clause 10 would show that the assignees are the exclusive owners and they will have the right to exploit and exhibit the said Tamil film '**Ninaithale Inikkum**' in all dimensions through television and any other mechanisms or contrivances.

13.By inviting the attention of this Court to Clause 12 of the Assignment Deed dated 21.09.1981, the learned counsel for the defendant submitted that even the rights to receive royalties from the exploitation of audio rights is only in favour of the 'Kumar Pictures' and not with the producer; hence, a reading of the entire agreement dated 21.09.1981 would indicate that the entire ownership of Tamil version of the picture '**Ninaithale Inikkum**' had been transferred in favour of 'Kumar Pictures' and by virtue of the assignment deed dated 15.05.2000, the defendant has acquired the entire ownership of the

said film from 'Kumar Pictures'. The learned counsel for the defendant, by inviting the attention of this Court to Clauses 6, 8, 9 & 10 in the Assignment Deed dated 21.09.1981, submitted that the said clauses would show that the assignee 'Kumar Pictures' had been assigned not only the negative rights, but also all the rights relating to the said picture and they were entitled to exploit the same as the sole and absolute owner thereof. Thus, the learned counsel for the defendant submitted that undoubtedly the producer, by retaining the re-take and dubbing rights, had assigned all the rights absolutely in favour of the assignee and under such circumstances, it is incorrect to state that after the demise of the producer Venkatraman, the digital cinematography rights would vest with the legal heirs of the producer.

14. The learned counsel appearing for the defendant would further submit that in the year 2000 the ownership of the film **'Ninaithale Inikkum'** was absolutely assigned in favour of the defendant by the 'Kumar Pictures', who got the ownership of the said film from the producer of the film. The first owner of the copyright in a film is the producer. In this regard, by inviting the attention of this Court to Section 18(1) of the Copyrights Act, the learned counsel for the defendant would submit that Section 18(1) uses the term 'owner' and not 'first owner'. Further, if all the rights accruing due to advancement in scientific technology were to be conferred only on the

producer of the film, then Section 18(1) would have stated as 'first owner' and not just 'owner'. Thus, the learned counsel for the defendant submitted that it is incorrect to state that the right, which was not in existence, but subsequently came into vogue due to development of scientific technology, would automatically vest with the producer and on the demise of the producer, it would devolve upon his legal heirs. In this regard, the learned counsel for the defendant relied upon the decision reported in **1991(1) LW 220 [P.Thulasidas Vs. K.Vasantha Kumari]** and submitted that in that case, this Court has interpreted what is meant by 'absolute owners of the said negative rights' and held that the said words would imply that all rights pertaining to the picture were conveyed and consequently the assignee alone shall have the right to deal with the picture.

15. Further, the learned counsel for the defendant by relying upon the judgment reported in **1994(2) LW 158 (Raj Video Vision Vs. Sun TV)** rendered by the same Single Judge of this Court, who rendered the judgment reported in **1991(1) LW 220** (cited supra), submitted that in the decision in **1994(2) LW 158**, the learned Single Judge, while considering the fact as to *whether the video rights holder or the person holding the satellite television rights specifically is entitled to exploit the satellite television rights*, has held that since the rights have been specifically assigned to the satellite television rights

holder, the person having the video rights cannot exploit the satellite television rights. But, in the judgment relied upon by the learned counsel for the plaintiff reported in **AIR 1998 MADRAS 294**, the learned Single Judge relied on the decision in **1994(2) LW 158**. According to the learned counsel for the defendant, the *subsequent decision in AIR 1998 MADRAS 294*, which was relied upon by the learned counsel for the plaintiff, has not taken into account the fact that the assignment that was sought to be made specifically was with reference to satellite television broadcast rights and the dispute in the decision in **1994(2) LW 158** was between the video rights holder and the satellite rights holder. Therefore, the decision in **AIR 1998 MADRAS 294** relied upon by the learned counsel for the plaintiffs cannot be made applicable to the present facts of the case. In this regard, the learned counsel for the defendant has also relied upon the decisions reported in **1991(2) LW 581 (Rathna Movies Vs. Muthu Enterprises)** and **2005(3) LW 249 (Raj Video Vision Vs. S.A Rajkannu & another)**.

16.It is further submitted by the learned counsel for the defendant that even as per the own admission of the plaintiffs, the 'Premalaya Productions' was a partnership firm and not a sole proprietorship run by Mr.R.Venkatraman; without including the other partners, the plaintiff have selectively filed the present suit; even all

the legal heirs of Mr.R.Venkatraman have not been made as parties to the suit; thus, the suit has been filed entirely by picking and choosing selectively between the legal heirs for the sake of convenience of the parties. Therefore, according to the learned counsel for the defendant, without adding the other partners and the other legal heirs as parties to the suit, the present suit is not maintainable, for non-joinder of necessary parties.

Reply submissions made by the learned counsel for the plaintiffs

17.By way of reply, the learned counsel for the plaintiffs reiterated that in the year 1981, what was assigned to 'Kumar Pictures' is only the negative rights; unless future right was specifically mentioned in the assignment deed, the second assignee also will not have any digital cinematography right, which is the result of advancement in scientific technology. In this regard, the learned counsel for the plaintiff once again stressed on the Proviso 2 to Section 18(1) (inserted by way of amendment Act 27/2012) and submitted that a reading of the said proviso would undoubtedly go to show that when a copyright was not in existence at the time of assignment, if in future due to advancement of scientific and technology, any copyright came into existence, then the said right only vests with the producer and after his demise, it will devolve upon his legal heirs.

18. With regard to non-impleadment of the partners of 'Premalaya Productions' and the other legal heirs, the learned counsel for the plaintiff submitted that 'Premalaya Productions' is not a partnership firm and it is a proprietorship concern of the plaintiffs' father Venkatraman; it was incorrectly mentioned in the Assignment Deed that the 'Premalaya' is a partnership firm and their late father Venkatraman was its Managing Director. But, what was meant was that he was only the Managing Sole Proprietor. It is further submitted by the learned counsel for the plaintiffs that even assuming, without admitting, that 'Premalaya' is a partnership firm, still by virtue of Section 42 of the Indian Partnership Act, the firm stands dissolved upon the death of its partner Venkatraman, unless there is an agreement to the contrary, which is not the case of the defendant.

19. It is further submitted by the learned counsel for the plaintiffs that all the legal heirs of late Venkatraman are co-owners of the properties viz., copyright in the film **Ninaithale Inikkum** produced by late Venkatraman. In respect of the injury suffered on account of infringement of copyright, the plaintiffs, as co-owners, are entitled to get compensation by way of the suit.

20. I have carefully heard the submissions made on either side and perused the materials available on record.

21.It is the case of the plaintiffs that their late father R.Venkatraman has produced the Tamil film **Ninaithale Inikkum** in the year 1979. Subsequently, in the year 1981, by way of assignment deed dated 21.09.1981, he assigned the entire negative rights in the said film in favour of one 'Kumar Pictures', retaining the re-take and dubbing rights alone. Subsequently, the defendant herein acquired the negative rights from the said 'Kumar Pictures' by way of assignment deed dated 15.05.2000. During the year 2004, the producer Venkatraman died. While so, in the year 2013, the defendant was making arrangements to theatrically release the Tamil film **Ninaithala Inikkum** produced by late Shri R.Venkatraman, as a digital cinema, having produced and edited the same by digital technology. According to the learned counsel for the plaintiffs, in the year 1981 when the assignment was made by their late father R.Venkatraman in favour of 'Kumar Pictures', the digital cinematography right was not in existence; hence, the defendant cannot release the film **Ninaithale Inikkum** produced by the plaintiffs' father Venkatraman, as digital cinema, without a specific assignment or licence of the digital cinematography right from the author or from his legal heirs. In this regard, much reliance was placed by the learned counsel for the plaintiffs upon the proviso 2 to Section 18(1) of Copyrights Act.

22.Per contra, it is the submission of the learned counsel for the

defendant that by the Assignment Deed dated 21.09.1981 executed by the producer 'Premalaya' / Mr.Venktraman in favour of 'Kumar Pictures', has only reserved to itself/himself the rights of re-take and dubbing alone and no other reservation of rights was made after assigning the entire ownership of the picture. In other words, it is the submission of the learned counsel for the defendant that by way of Assignment Deed dated 21.09.1981, the entire copyright was assigned by the 'Premalaya' to the 'Kumar Pictures', from whom the defendant got the assignment by way of second assignment deed dated 15.05.2000. Therefore, according to the learned counsel for the defendant, there is absolutely no need to obtain any permission from the legal heirs of the producer, since the defendant has obtained the copyright for the perpetual period of 99 years.

23.In view of the above submissions made on either side, it would be appropriate to extract relevant Clauses in the Assignment Deed dated 21.09.1981 assigned in favour 'Kumar Pictures', hereunder_

“1.That the Assignors herein do hereby grant, convey, assign and transfer to the Assignee herein this day, the Entire World Negative Rights including the possession of negatives both Picture and Sound and all other rights of the Tamil Talkie Picture titled 'NINAITHALE INIKKUM' in Colour in all its

dimensions and the **entire copyright** relating to the said Picture together with the exclusive rights of distribution, exhibition and exploitation of the said Picture (Tamil Version only) throughout the World by way of Perpetual Lease for a period of Ninety nine (99) years from the date of this deed, and also the properties of the said Picture in the hands of the existing distributors of the said Tamil Talkie Picture.

2. That the Assignees or their authorized nominee or nominees shall be entitled to release, distribute, exploit and exhibit the said Tamil Talkie Picture 'NINAITHALE INIKKUM' in Tamil, Colour, in all its dimensions, throughout the World as and with effect from this date, subject to the existing lease period notified in the Schedule hereto.

.....

4. That the Assignors guarantee the Assignees that the entire negatives (Picture negatives in 15 reels and sound negatives in 15 reels) etc., are being the good and proper condition and absolutely fit for taking out any number of required prints in all dimensions.

.....

6. That the Assignees hereby declare, assure and covenant with the Assignees that there are no encumbrances in any manner whatsoever in respect of the said Picture and

except those disclosed in this agreement and that the Assignee will henceforth be entitled to deal with the negatives and all the rights relating to the said Picture in any manner as the sole and absolute owners thereof.

.....

8.That the Assignees herein have got the absolute, exclusive rights and powers to recensor the said Tamil Talkie Picture and to obtain necessary recensor certificate and also duplicate certificates from the competent authorities in favour of any one directly by the Assignees at all times.

9.That the Assignees herein are irrevocably authorised by the Assignors to apply to the National Film Development Corporation, Madras or to the concerned authorities for obtaining necessary raw film permits for positive film in all dimensions for the purpose of taking out print or prints of the said Picture directly by the Assignment and also to their authorised nominees at all times.

10.That the Assignees herein are exclusive owners and shall have the rights to exploit and exhibit the said Tamil Talkie Picture 'NINAITHALE INIKKUM' in all dimensions through Television and any other mechanisms or contrivances.

11.That the Assignees are not entitled to dub or to retake the said Picture 'NINAITHALE INIKKUM' in any language at any time, as

all the rights of retake and dubbing are assigned to the Assignors only under this agreement.

12. That the Assignors shall irrevocably authorise the All India Radio authorities and Messrs. Saraswathi Stores, Madras etc to remit the Royalty amount payable by way of broadcast of songs, sound track etc., and sales of gramophone records royalty respectively of the said Picture directly to and in favour of the Assignees with effect from the date of this deed."

A reading of the above clauses in the Assignment Deed dated 21.09.1981 would show that the entire copyright was assigned to the 'Kumar Pictures' absolutely to exploit the same in all dimensions.

24. But, it is the submission of the learned counsel for the plaintiffs that though in the assignment deed the term 'entire copyright' was used, it does not mean that the defendant is entitled to any future right, which would come into vogue due to advancement of technology and scientific development. It is further submission of the learned counsel for the plaintiffs that the word 'entire copyright' mentioned in the assignment deed dated 21.09.1981 would mean all forms of right to exploit the negative rights as mentioned above and cannot be construed to include some other copyright from the bundle,

as each right in the bundle is a separate copyright. The assignment deed must specifically mention 'future rights' as contemplated under Section 19(2) of the Copy Right Act. Further, according to the learned counsel for the plaintiffs, only negative rights alone had been absolutely assigned and it means that the assignee had the right to assign, hire, communicate to public or take prints of the negatives or to do all such things as provided under Section 14(d) of the Copyright Act.

25. But, in my considered opinion, as contended by the learned counsel for the defendant, negative right is not a specific right; but it includes within it the right of the owner of such negative right to exclude everyone else from using the negatives of the picture. Without the negatives of the picture, no digital version can also be prepared. Therefore, in that sense, the plaintiffs cannot make any digital version of the picture as the control of the negatives in the laboratory is with the defendant. Further, by way of Assignment Deed dated 21.09.1981 executed by the producer M/s.Premalaya in favour of M/s.Kumar Pictures, the producer M/s.Premalaya has only reserved to itself the rights of re-take and dubbing alone and no other reservation of rights was made after assigning the entire ownership of the picture. Therefore, I am not inclined to accept the submission made by the learned counsel for the plaintiff that what was assigned to

the M/s.Kumar Pictures is only a negative right and therefore, the word 'entire copyright' mentioned in the assignment deed dated 21.09.1981 would mean all forms of right to exploit the negative rights alone and it cannot be construed to include some other copyright from the bundle, as each right in the bundle is a separate copyright, cannot be accepted.

26.It is yet another submission of the learned counsel for the plaintiffs that in view of the amendment to Section 18(1) of Copyrights Act, if a copyright was not in existence at the time of assignment, if in future due to advancement of scientific and technology any copyright came into existence, then the said right only vests with the producer and after his demise, it will devolve upon his legal heirs. In view of the said submission of the learned counsel for the plaintiff, it would be appropriate to extract Section 18(1) of Copyrights Act_

"18.Assignment of copyrights_ (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 that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence;

Provided further that no such assignment shall be applied to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work;

Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilization of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copy right society for collection and distribution and any agreement to contrary shall be void;

Provided also that the author of the literary or musical work included in the sound recording but not forming part of any cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilization of such work except to the legal heirs of the authors or to a collecting society for collection and distribution and any assignment to the contrary shall be void."

Section 18(1) would indicate that the section itself is applicable to the 'owner' of the copyright in an existing work or prospective owner of

copyright in a future work. Further, Section 18 uses the term 'owner' and not 'first owner'. The first owner of any copyright, unless otherwise mentioned, is usually the producer, in the case of cinematograph films. The first owner is to be distinguished from owner. If all the rights accruing due to advancement in scientific technology were to be conferred only on the producer of the film, then Section 18 would have to read as 'first owner' and not just 'owner'. Therefore, in terms of Section 18(2), the assignee viz., M/s.Kumar Pictures has become the owner of the copyrights on and from the date of assignment. Now, the Proviso 2 to Section 18(1) states only that no assignment shall be applied to any medium or mode of exploitation of the work, which did not exist or was not in commercial use at the time when the assignment was made. Therefore, as contended by the learned counsel for the defendant, the newly added proviso 2 would also benefit only the owner of the copyrights in the work and therefore, in this case, M/s.Kumar Pictures and later, the defendant being the owners of the work, are alone entitled to take benefit of the assignment as the owner of all the copyrights as on the date of amendment in 2012.

27. In this regard, a reference could be placed in the judgment reported in **1991-1 LW 220 [P.Thulasidas Vs. K.Vasanthakumari]**, wherein it has been held as follows_

"7.It is seen from the above exhibits marked and proved by P.W.1 that the plaintiff has been all along dealing with the picture - "Bhaga Pirivinai" as an absolute owner. Per contra, it is contended by the learned counsel for the defendant that the plaintiff is not having the absolute exploitation right and exclusive copyright and that the plaintiff is having only the exploitation rights of 35 mm films. It is further contended that the defendant released the cassettes of the picture only in their right to exploit their rights acquired under the agreement dated 20.08.1987 entered into with the legal heirs of G.N.Velumani, the producer of the picture. The defendant has not committed any act of infringement or caused any loss or damage to the plaintiff or made unlawful gains as stated in the plaint and also in the evidence of P.W.1.

8.It is useful to refer the following two Dictionaries to understand and to appreciate the arguments of the learned counsel for the plaintiff in regard to the word 'Absolute':

i)Biswas: An Encyclopedic Law Dictionary 1979 Edition, defines the word "ABSOLUTELY" in the following terms:

"ABSOLUTELY. If any independent meaning can be given to "absolutely" it must be 'unconditionally'. *Re Pickworth*, 68 LJCh 328. The ordinary meaning is "without condition or limitation". And it is commonly used with regard

to vesting as meaning "indefeasibly". *Re Thompson, Rhoden Vs. Wicking* 1947 W.L.R. 60 (67).

ii) Legal Thesaurus by William C. Burton defines the word 'Absolute' as under_

"ABSOLUTE (Complete), adjective, absolutus, blanket, comprehensive, downright, entire, exhaustive, final, finished, full sheer, total unbounded, unconditional, unconstrained, unlimited, unqualified, unreserved unrestrained, unrestricted, unstinted, utter, whole, without qualification."

It is seen from the Sale Certificate issued by the Official Assignee under Ex.P.5 that the picture produced by G.N.Velumani, Sole Proprietor has been sold to M/s.Thulasi Films/plaintiff and that they are the absolute owners of the said Negative Rights with effect from 25.09.1974. Thus, it is seen that the plaintiff has become the absolute owner by virtue of his purchase in public Court auction. Once the plaintiff has become the absolute owner it is open to him to deal with the picture in any manner he likes. The plaintiff has also explained in detail in paragraphs 4 to 6 of the plaint how he has acquired the Copyright and how he is exercising all his right over the distribution, exhibition and exploitation of the picture. In exercise of his rights he has also leased out the distribution rights of the said

picture to various persons to various areas, permitted Doordharshan Kendras to telecast the said pictures to various persons to various areas, and to telecast the said picture in the programmes and received the royalties. Thus the plaintiff has proved his absolute right over the picture "Bhaga Pirivinai" beyond any reasonable doubt. In my opinion no one else except the plaintiff has any title, interest or Copyright in the said picture 'Bhaga Pirivinai'. The only contention by the defendant is that they have obtained Video, Television rights from the legal heirs of G.N.Velumani in the year 1987. According to the defendant they entered into an agreement on 20.08.1987 with the legal heirs of G.N.Velumani, producer of the picture and thus acquired the Copyright of the Television and Video rights.

....

15. Thus, it is seen that the plaintiff was given absolute negative rights and it is open to him to exercise his right of distribution, exploitation, and exhibition of the film in question. In my opinion a reading of the exhibits filed on behalf of the plaintiff and particularly the sale certificate given by the Official Assignee of the High Court, Madras, shows *prima facie* that all the rights relating to the negatives of the films were conveyed to him and there was no reservation with regard to the films of any other or video rights. Hence, in my

opinion, the plaintiff is entitled to make copies from the films of 35 mm gauge, 16 mm gauge and also telecast the films in Televisions. It is also open to him to enjoy the absolute negative right given by the Official Assignee in any manner as he likes. The rights of the plaintiff to use the negative right is absolute, blanket, comprehensive, exhaustive, unbounded, unconstrained, unlimited and unqualified. Hence, I am of the opinion that as per the Sale Certificate, all rights pertaining to the picture and as claimed by the plaintiff were conveyed to the plaintiff by the Official Assignee and nothing was reserved; consequently, the plaintiff alone will have the right to deal with the film Bhaga Pirivinai in any manner he likes and no one else other than the plaintiff has the negative right of the film 'Bhaga Pirivinai'.

16. However, at the time of argument it was contended by Mr. Prabhakara Reddy, that the negative right does not include other rights such as T.V. Rights etc and that Ex.P.5 cannot be given any dubbing right on the plaintiff. It was further contended that the Negative rights can only mean right of exploitation of 35 mm only. I am unable to accept the said contention in view of the findings given above and hence, I reject the contentions raised by the learned counsel for the defendant. However, it was argued by Mr. Prabhakar Reddy that since G.N. Velumani was discharged from insolvency

the legal representatives are entitled to deal with the picture. I see no substance in the said contention of the learned counsel for the defendant. In this context it is useful to refer to the order passed by this Court on 15.03.1976, which is as follows: "None of the Creditors has filed counter. In view of the report of the Official Assignee, this petition for discharge is ordered."

A reading of the above judgment would show that once the entire negative right was given absolutely, there was no reservation with regard to any other right in the film and the assignee becomes absolute owner and he is free to deal with the picture in any manner he likes.

28. In this regard, a reference could be placed in one more decision reported in **1991-2 LW 581 [Rathna Movies Vs. Muthu Enterprises & another]**, wherein it has been held as follows_

"12. Clause-2 of the Agreement dated 16.01.1979, clinches the fact that the negative lease rights were granted to the applicant herein by the first defendant for a period of 86 years from the said date for the areas specified in the Agreement for valuable consideration and that accordingly, the plaintiff/applicant is at liberty to deal with the same in any manner they like regarding the areas and period granted to him and that so

much so, he is entitled to take any number of prints at their cost and the complete realisations of the suit picture in the areas and during the period mentioned in the Agreement belong to the applicant and that the producer, viz., the first defendant shall not have any claim over the said picture in any manner as evidence by the Clause-4 of the Agreement. It follows that the entire negative rights were leased out to the applicant herein and that thereby he is having an absolute and full negative rights over the suit picture in question which in effect, the copyright for the suit picture comes under the purview of the Copyright Act 1957. It has been fortified by the combined reading of Clauses-2 and 4 of the said Agreement dated 16.01.1979 and that during the subsistence of the said Agreement, no one except the plaintiff has got any right whatsoever over the suit picture in question and that the said legal aspects cannot be disputed by the respondent herein.

13. Section 2, Clause-(f) of the Copyright Act 1957, reads like this:

"(f) 'Cinematograph film' includes the sound track, if any, and 'cinematograph' shall be construed as including any work produced by any process analogous to cinematography:

Then the Explanation for the said sub-Clause is as follows:

"For the purpose of this clause, 'video films'

shall also be deemed to be worked by any process analogous to cinematography;

14.A mere reading of the above provision of law with its Explanation means in pith and substance, the negative rights include all other rights which are inherent with the cinematograph film inclusive of the sound track, if any, and with which, it shall be construed as inclusive of any work produced by any process analogous to the cinematography and that it has to be seen further that the Explanation provided by the legislature to the abovesaid section, is a complete codification of the meaning for the cinematograph film by providing a wider meaning to this clause which in every form includes the video films as the work requires to produce the said video films is the same process analogous to cinematography and that was the reason why the legislature has included the video films within the meaning of the cinematograph film. If that was the position as in the instant case, the negative rights of the suit picture were completely leased out for a period of 86 years from 16.1.1979 onwards to the plaintiff and that accordingly, it is apparent that the plaintiff has become the owner of the copyright over the suit picture in question.

15.Then it has become necessary for

me to advert S.14(1), Sub-clause (c) of the Copyright Act 1957 which reads as follows:-

in the case of a cinematograph film, to do or authorise the doing of any of the following acts namely_

(i)to make a copy of the film;

(ii)to cause the film, in so far as it consists of visual images, to be seen in public and in so far as it consists of sounds, to be heard in public;

(iii)to make any record embodying the recording in any part of the sound track;

(iv)to communicate the film by broadcast.

16.The above provision of law has made it very clear that it is an infringement of copyright to do any of the said acts as defined in the above section and that while a person who produces or makes a film may infringe upon the rights of others and that at the same time create independent rights in himself which others may infringe either by copying of one or more of his individual photographs or by copying the film in such other way. Therefore, it follows that a copyright in the film exists in it as a series of photographs and hence it is an artistic work. Thus, it was made clear that the copyright means all the rights conferred by the Act upon its owner, viz., the applicant herein in respect of his literary, dramatic, musical and

artistic work of the suit picture which squarely comes under the definition of cinematograph films and that it does not essentially mean a right to do something, but only the right to exclude others from doing such of the acts which are expressly mentioned in the section. This position of law has not been disputed by the learned counsel appearing for the respondent herein. It is the well established principle of case laws that both the video and television are cinematograph and that both the video and television are cinematograph and that both jointly and severally become the apparatus for representation of movie pictures or series of pictures and that the video is an appliance capable of use for the reception of signs, signals, images and sounds. When a Video Cassette Recorder is used for playing pre-recorded cassettes, of movies on the television screen, it is certainly used as an apparatus for the representation of moving pictures or series of pictures and comes within the definition of cinematograph as defined under the Cinematograph Act. Placing reliance upon a decision held by the Division Bench of this Court, reported in *Entertaining Enterprises Vz., State (AIR 1984 Madras 274 = 1984 Writ L.R. 57)*, My learned brother, Thiru Lakshmanan, J, has also held in effect that the video of a cinema picture and the television will all perfectly come

within the definition of cinematograph, after elaborately discussed various case laws and that the said judgment was reported in *P.Thualasidas Vs. Vasanthakumari (1991-1 LW 220)*. In the context of the above said proposition of law enunciated by this Court as well as other High Courts, there is no need for me again to make an emphasis on the question of law as per the specific provisions of the Copyright Act 1957 as hereinbefore referred.

17. I have carefully perused the entire gamut of the negative rights leased out to the plaintiff/applicant herein for a period of 86 years by the first defendant himself upon the suit picture by virtue of an agreement dated 16.01.1979 and that accordingly, he has been enjoying, which would virtually mean that the entire rights include the video cassette rights as well as the broad-casting of the said picture programme through television or video cassette recorder and that therefore, the first defendant has no existing right to transfer or assign the video rights over the suit picture in the name of the second defendant by means of a Letter of Arrangement dated 7-7-1989 and that if so, it is not valid in law and binding on the plaintiff herein."

A reading of above said judgment would show that the negative rights

include all other rights. In the instant case also, in the Assignment Deed dated 21.09.1981 under Clause 2 it has been stated that the assignee is entitled to release, distribute, exploit and exhibit the said Tamil Talkie Picture 'NINAITHALE INIKKUM' in Tamil, Colour, in all its dimensions, throughout the World as and with effect from the date of assignment, subject to the existing lease period. When the entire copyright was assigned to M/s.Kumar Pictures, from whom the defendant obtained the assignment, now the plaintiffs cannot say that the defendant has no digital cinematography right, which came into vogue from the year 1990 onwards due to advancement of science and technology. Since the entire copyright was assigned in favour of the assignee, if any right accrues in future due to advancement of science and technology, it will devolve only upon the owner and not on the first owner. Therefore, I am of the opinion, that the plaintiffs are not entitled for interim injunction as prayed for.

29.It is the next fold of submission of the learned counsel for the defendant that M/s.Premalaya is a partnership firm and the said late R.Venkatraman is only a partner of the said firm, but the firm M/s.Premalaya has not been made as a party to the suit by the plaintiffs.. Similarly, the son and wife of the said late R.Vankatraman were also not added as party to the suit. Hence, the suit is not maintainable for non-joinder of necessary parties.

30. But, It is reply of the learned counsel appearing for the plaintiffs that M/s. Premalay is not a partnership firm and the plaintiffs' father late R. Venkatraman was the sole proprietor of the said firm. Further, according to the learned counsel for the plaintiffs, the plaintiffs are the three daughters of the producer late R. Venkatraman and they are the co-owners of the properties/works of the their father late R. Venkatraman, as his legal heirs and as such, they are entitled to file the present suit.

31. But, in my considered opinion, whether the suit is not maintainable for non-impleadment of the partners and other legal heirs and whether the M/s. Premalaya was a partnership firm and whether it was dissolved on account of the death of the partner in the year 2004 and whether some of the legal heirs of late R. Venkatraman alone can maintain the suit, are all disputed questions of fact and the same cannot be gone into at this stage.

For the foregoing reasons, the application fails and the same is dismissed.

13.04.2015

Internet : Yes / No

Index : Yes / No

R. SUBBIAH, J.

SSV

Pre-delivery order
in

O.A.No.763 of 2013
in
C.S.No.686 of 2013

13.04.2015