

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2016

CORAM

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**
AND
THE HONOURABLE MR.JUSTICE **N.AUTHINATHAN**

O.S.A.NO.92 of 2013
and M.P.1 of 2013

Mr.S.Parthasarathy,
Proprietor,
M/s.V.J.Vision,
No.15/6, Vanamali Apartments,
Singaram Street,
T.Nagar, Chennai-17.

.. Appellant/first defendant
in C.S.No.205/2011

Vs.

1.Asianet Communications Limited,
rep. By its Company Secretary,
No.15/6, Vanamali Apartments,
Singaram Street,
T.Nagar, Chennai-17.

...first respondent/plaintiff
in C.S.No.205/2011

2.S.S.T.Lakshmanan

3.S.S.T.Subramanian

4.M/s.Evershine Productions,
rep. By its Partner S.S.T.Lakshmanan
72, Habibullah Road,
T.Nagar, Chennai-17.

5.M/s.Pals Communications Private Limited,
Kadakkadan Buildings,
Down Hill, Malapuram, Kerala-19.

6.M/s.Prasad Film Laboratories,
Saligramam, Chennai-93. .. Respondents

Appeal filed under Order 36, Rule 9 of O.S. Rules read with Clause 15 of the Letters Patent against the judgment and decree dated 15.03.2012 passed by the learned single Judge made in A.No.3616 of 2011 in C.S.No.205 of 2011.

For Appellant : Mrs.M.Vidya
 For Respondent : Mr.Srinath Sridevan for R-1
 Mr.P.L.Narayanan for R-2
 No appearance RR-3 to 6

- - -

J U D G M E N T

(Judgment of the Court was made by N.AUTHINATHAN, J)

The first defendant in C.S.No.205 of 2011 is the appellant. The suit has been filed by the plaintiff/first respondent herein for the relief of declaration that it(plaintiff) is the absolute owner of Satellite Television rights of Malayalam movies i)Ayshkalam 2.Onnum Mindatha Bharya 3.Boeing Boeing 4.Cheppu 5.Edavelakku Sesham 6.Sayam Sandhya 7.New Year.

2. The case of the plaintiff is that initially, they acquired Satellite Rights of the above movies for a period of 10 years under two agreements dated 01.12.1988 commencing from the date of Telecene transfer. The fifth respondent/Messrs.Pals Communication Private Limited acquired copyrights of the movies from the 3rd defendant/Messrs.Evershine Release, represented by its Partner Mr.S.S.T.Subramaniam and 4th defendant/messrs.Evershine Productions represented by its Partner Mr.S.S.T.Lakshmanan under three agreements all dated 27.11.2004. The fifth respondent under an agreement

dated 15.12.2004 assigned world Satellite Television rights and all other rights in the movies in favour of the plaintiff for a period of 25 years commencing from 30.11.2008. It is the normal practice of copyright holders of the movies to address an irrevocable letter to the sixth respondent/Messrs.Prasad Film Laboratories intimating any assignment of the rights and authorising the lab to hand over the negatives to assignees for the purpose of processing negatives in accordance with the agreement. Assignments in favour of the plaintiff are all backed by valid lab letters issued by the respective assignors to the sixth respondent.

3.On the basis of the assignments in its favour in respect of the movies, the plaintiff company has filed the suit. The plaintiff has also prayed for a declaration that the agreement dated 10.06.2004 entered into between the first defendant/ Mr.S.Parthasarathy, Proprietor V.J.Vision and second defendant/ Mr.S.S.T.Lakshmanan is not valid and enforceable. A prayer for permanent injunction restraining the defendants, their men, agents, servants, persons acting on their behalf from in any manner infringing the plaintiff's copyrights in the suit pictures by assigning, exhibiting or exploiting the suit pictures

through any satellite television channel or by any other means is also there.

4. The first defendant/Mr.S.Parathasarathy filed a suit in C.S.No.480 of 2009 against the above mentioned S.S.T.Lakshmanan, S.S.T.Subramanian, M/s.Evershine Productions represented by its partner S.S.T.Lakshmanan, M/s.Pals Communication Private Limited and M/s.Prasad Film Laboratories. The appellant/first defendant in the suit claimed that S.S.T.Lakshmanan is the owner of the copyrights of the said Malayalam movies viz., 1.Boeing Boeing 2.Cheppu 3.Edavelukku 4.Onnum Mindatha Bhariya and 5.Sayam Sandhya and he entered into an agreement with him on 10.06.2004 and assigned the satellite rights of the above mentioned movies in his favour for a perpetual period commencing from 10.12.2008 for a consideration of Rs.6 lakhs. Rs.3 lakhs was paid on the date of execution of the agreement and the balance was agreed to be paid before 10.06.2008 or at the time of handing over the lab letter by S.S.T.Lakshmanan authorizing the M/s. Prasad Film Laboratories to deliver the negatives to him. It is alleged that S.S.T.Lakshmanan has failed and neglected to hand over the lab confirmation letter to the M/s. Prasad Film Laboratories as per the agreement. The second

defendant S.S.T.Subramanian and late Thirupathi Chettiar have issued two letters dated 07.01.2005 to the M/s. Prasad Film Laboratories informing them about the transfer of worldwide satellite television rights in the movies in favour of the M/s.Pals Communication Private Limited for a period of 25 years commencing from 01.12.2008. Thirupathi Chettiar is the father of S.S.T.Lakshmanan and S.S.T.Subramanian. However, S.S.T.Subramanian and his father have no copyright in the movies. S.S.T.Subramanian issued letters dated 07.01.2005 in his capacity as partner of M/s.Evershine Release. The appellant in his suit prayed for a declaration that he is the exclusive owner of the copyrights and satellite rights of the movies for a perpetual period commencing from 10.12.2008. He has prayed for an injunction restraining the defendants from in any manner infringing upon his copyrights in the movies. The suit was decreed ex-parte on 29.04.2011.

5.The present suit in C.S.No.205 of 2011 has been filed on 14.03.2011. Pending disposal of the suit, the appellant filed an application No.3616 of 2011. He prayed for dismissal of the suit in C.S.No.205 of 2011 for the reasons stated in the affidavit filed in support of the petition.

6.The learned Single Judge dismissed the application holding that the suit is not barred by res judicata and the appellant has not made out a case for rejection of the plaint. Aggrieved by the order of dismissal, the present Original Side Appeal has been filed.

7.The learned counsel for the appellant submits that the suit in C.S.No.205 of 2011 does not disclose any cause of action and it is hit by the principle of res judicata, since a decree has been passed declaring the rights of the appellant in the suit movies. C.S.No.480 of 2009 has been filed against the respondents 2 to 6 and the first respondent/plaintiff is bound by the said decree, since it claims right under the fifth respondent M/s.Pals Communications Private Limited.

8.The learned counsel for the first respondent/plaintiff would submit that the decree in C.S.No.480 of 2009 has been obtained collusively and fraudulently in order to defeat the rights of the first respondent and he is not a party to the said suit and no issue has been raised and decided in the former suit and that therefore, the suit is maintainable.

9.The appellant claims rights in the movies under an agreement dated 10.06.2004. The agreement dated 10.06.2004 is between S.S.T.Lakshmanan and the appellant/Mr.S.Parthasarathy. This agreement is for the movies Boeing Boeing (1), Cheppu (2), Edavelukku Sesham (3), Onnum Mindatha Bhariya (4) and Sayam Sandhya(5). M/s. Pals Communication acquired rights in the movies from 3rd and 4th defendants under an agreement dated 27.11.2004. The plaintiff claims that the fifth defendant assigned the rights in the films in its favour under an agreement dated 15.12.2004. According to the parties, it is a normal practice of the copyright holders of the movies to address an irrevocable letter to M/s.Prasad Film Laboratories intimating any assignment of the rights in the movies and authorising the lab to hand over the negatives to the assignees for the purpose of processing negatives in accordance with the agreement.

10.The appellant in his plaint (C.S.480/2009) alleged that S.S.T.Lakshmanan has failed and neglected to hand over lab confirmation letter, as agreed to the Lab. In the plaint, he has admitted that S.S.T.Subramanian and his father had issued two letters dated 07.01.2005 to the Lab

informing transfer of satellite television rights of the movies in favour of M/s.Pals Communication Private Limited. M/s.Asianet Communications Limited claims in its plaint that M/s.Pals Communication Private Limited assigned rights in their favour under an agreement dated 15.12.2004.

11.In the former suit, only an ex-parte decree has been passed. No issue was raised and decided. Admittedly, the first respondent is not a party to the former suit. The first respondent claims rights under an agreement dated 10.06.2004. The former suit was instituted in the year 2001 and decreed on 29.04.2011. The cause of action to obtain a relief in respect of the movies in question arose against the first respondent also. However, the first respondent was not added as a party to the former suit by the appellant. The rights in the movies have been assigned in favour of the first respondent before the institution of the former suit. The assignment in favour of the first respondent was not effected during the pendency of the former suit. The confirmation letter to the lab has also been issued before the institution of former suit. In these circumstances, it cannot be said that the learned Single Judge committed error in coming to the conclusion that the suit is not barred by res judicata.

12.The plaint in C.S.205 of 2011 discloses cause of action. A reading of the plaint does not indicate that it is vexatious. It discloses a clear right to sue. The plaint does not come within any of the infirmities enumerated under Order 7 Rule 11 of the Civil Procedure Code. Therefore, it is not liable to be rejected under Order 7 Rule 11 of the Civil Procedure Code.

13.For the reasons stated above, we agree with the conclusion of the learned Single Judge. The Original Side Appeal is, therefore, dismissed. There is no order as to costs. M.P. is closed.

(S.N.,J) (N.A.N.,J)
23.12.2016

Index : Yes / No
Internet : Yes / No
vs

**S.NAGAMUTHU, J.
and
N.AUTHINATHAN, J.
vs**

JUDGMENT IN O.S.A.NO.92 of 2013

23.12.2016