

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

C.C.C.A. No.120 of 2015

JUDGMENT:

The unsuccessful plaintiff in the Court below preferred the instant appeal aggrieved by the judgment dt:09.03.2011 in O.S.No.392 of 2003 passed by learned Chief Judge, City Civil Courts, Hyderabad, whereby and whereunder learned Judge dismissed the plaintiffs suit filed for perpetual injunction and damages.

2a) Initially appeal was registered as A.S.No.265 of 2011 and later as per the docket order dt:21.08.2015, the appeal is renumbered as C.C.C.A.No.120 of 2015.

2b) The case of the plaintiffs 1 to 4 is that they are carrying on business on producing, distributing and exhibiting cinematographic films in various languages since more than 30 years and they own the Copyright for numerous films produced by them. Defendant No.4 is also engaged in the business of distribution of films. In the year 1994, D.4 and one Mr. Lalwani approached the plaintiffs seeking for acquisition of broadcasting rights to some of the films, copyright of which were owned by plaintiffs. After negotiations, D.4 advanced a sum of Rs.35,00,000/- to the plaintiffs and subsequently, upon her request satellite broadcasting rights to 16 Hindi films were assigned to D.5 to D.8 nominated by D.4 on 23.12.1994 for a period of 9 years. The assignments have been commenced on 23.12.1994 and end by 22.12.2003. Thereon, assignment

deeds would automatically revert back to the assignor i.e, plaintiffs.

c) Plaintiffs' further case is that in the year 1995, they were shocked to learn about pendency of Small Causes Suit No.281 of 1995 filed by third defendant against fourth defendant seeking for relief of declaration and injunction against her in respect of suit schedule films. On further enquiries, plaintiffs came to know that third defendant was claiming assignment rights in his favour vide agreement dt:17.10.1994. The plaintiffs came to know certain documents purporting to be Deed of Assignment dt:07.10.1994 and declaration dt:15.10.1994 have been fabricated by forging signatures of Sri D.Suresh Babu, who purportedly assigned satellite and Doordarshan rights in favour of D.4. The said suit was filed on the basis of notarized copies of said forged documents without filing originals. Alarming by such developments, Sri D.Suresh Babu, Director of first plaintiff lodged complaint with the police Jubilee Hills P.S, Hyderabad on 05.04.1995 complaining about the said forgery. Further, when he confronted D.4 and Mr.Mohan Lalwani and they claimed innocence and denied having ever executed any assignment deed in favour of D.3. Basing on the complaint of said D.Suresh Babu, Crime No.131 of 1995 was registered. D.3 also lodged complaint against D.4 in Mumbai. Various civil and criminal proceedings were filed by plaintiffs and also D.3 to D.8. Due to intervention of well-wishers in the industry, D.3 relented and agreed not to press their claim in respect of said films.

Consequently, the suits filed by either party came to be dismissed for default for non-pursuance as the controversy seems to have subsided.

d) While-so, in the month of September, 2003, plaintiffs started prospecting for customers in order to assign the rights in respect of 16 films after the expiry of the contract between the plaintiffs and D.5 to D.8 on 22.12.2003 and they issued public notice in Film Information Magazine in the issue dt:27.09.2003. They were shocked to receive a legal notice from D.1 on 14.10.2003 adverting to the public notice issued by plaintiffs and claiming that they have acquired the satellite broadcasting, Pay TV & Cable TV rights of all the said 16 Hindi films from D.2 vide Deed of Assignment dt:21.03.1997 for a period of 99 years and that, D.2 in turn acquired the said rights from D.3 vide agreement dt:16.03.1997. D.1 also called upon the plaintiffs to withdraw the public notice and to cause a publication to be issued to that effect and also to give written undertaking not to claim satellite broadcasting, Pay TV & Cable TV rights in respect of said 16 films and threatened to initiate legal action. Apparently, the plaintiffs suspect that D.3 appears to have resiled from their earlier undertaking not to deal with the rights in those films and fraudulently assigned their non-existent and imaginary rights to D.2. The action of D.1 to D.3 is collusive and calculated to deny and defraud the plaintiffs of their valuable intellectual property rights in the said films. Plaintiffs issued reply dt:14.10.2003 bringing the true facts to the notice of D.1. But however, D.1 is intending to press their claims in respect of

their non-existence and imaginary rights. Therefore, plaintiffs filed the present suit seeking declaration against D.1 to D.4 that they have no right whatsoever in respect of suit scheduled 16 films and for injunction restraining them from interfering with plaintiffs' right to enjoy copyrights in those films and also for an injunction restraining D.1 to D.4 from broadcasting the schedule films. The plaintiffs also sought mandatory injunction against D.1 to D.4 for return of U-matic/Betacam tapes and other material relating to schedule films and pay damages to a tune of Rs.1 Lakh to plaintiffs.

3) The Defendant No.1 filed his written statement with the following averments: Equitable relief of perpetual injunction cannot be granted to plaintiffs, since they are already acquiesced of the alleged infringement of copyright in the 16 suit schedule films for over a period of 8 years, which is a sufficient ground to debar the plaintiffs from getting the relief of injunction. Suit is also not maintainable for the reason that, the person who verified the suit in the capacity of the Director of 1st plaintiff's firm though being arrayed as its partner in the cause-title, has not filed any authorization to institute the suit on behalf of other plaintiffs. Plaintiffs did not disclose a true cause of action and on the other hand, the averments disclosed that true cause of action has arisen in the year 1995. Hence, suit deserves to be dismissed, as the suit claim is barred by time. Suit is hit by *res judicata*, since the relief sought by plaintiffs was already sought in the earlier suits i.e, O.S.Nos.18 to 21 of 1996

filed by D.5 to D.8, which were all dismissed.

a) D.1 further pleaded that assignment of satellite broadcasting rights of 16 suit schedule films by plaintiffs to the four nominees of D.4 on 23.12.1994 does not arise, since by the said date, plaintiffs 1 to 4 were divested of the rights in the said films, because D. Suresh Babu representing plaintiffs 1, 3 and 4 assigned the T.V. Doordarshan and world satellite rights in the said 16 films by way of a notarized agreement on 10.10.1994 for a valuable consideration of Rs.55,00,000/- in favour of D.4. Under the said assignment deed, Mr. Suresh Babu ostensibly authorized by his father i.e, plaintiff herein assigned T.V.Doordarshan, Satellite Broadcasting Rights, CCTV, Cable TV Television, Pay TV, High Seas and Airborne rights and all other rights and format which may be introduced during the said contract period to the D.4 and received an advance amount of Rs.5,00,000/- vide cheque No.339528 dt:10.10.1994 of Corporation Bank, M.G.Road, Secunderabad from D.4. Further, Mr.Lalwani, who was alleged to have approached the plaintiffs along with D.4 for acquiring the said rights in the films stood as witness to the said Deed of Assignment dt:10.10.1994. Therefore, plaintiffs' claim of confirming Copyrights on D.5 to D.8—the nominees of D.4 at her request is false. On the other hand, under the said deed of assignment dt:10.10.1994, D.Suresh Babu, the assignor, representing the Plaintiff Nos.1, 3 and 4 declared and assigned that, they have not, prior to the signing of the said agreement granted/transferred the said rights to any others and further

confirmed that the rights assigned under the said agreement in favour of D.4 are sole exclusive and irreversible in respect of said 16 suit schedule films. From D.3, D.2 was assigned with the satellite broadcasting rights under a deed of assignment dt:16.03.1997, since the D.3 was assigned with said rights by D.4 under deed of assignment dt:17.10.1994. Ultimately, M/s. Essel Vision, a division of M/s. Ambience Space Sellers Limited, Bombay was assigned with the satellite broadcasting rights in the said 16 films by D.2 under a deed of assignment dt:21.03.1997, under which, the deed of assignment subject to addendum to the said agreement dt:20.04.1999, 287 films for a consideration of Rs.9,16,00,000/- was assigned, which also includes the 16 suit schedule films. D.1 through, its subsidiary companies M/s. Essel Vision and M/s. Ambience Space Sellers Limited (which was amalgamated with the D.1 company, vide amalgamation sanctioning order of Mumbai High court order dt:08310.1998) was assigned with exclusive and irreversible satellite and broadcasting rights by D.2 on receipt of valuable consideration of Rs.9,16,00,000/- vide deed of assignment dt:21.03.1997. Thus, ever since the year 1997, D.1 has been exercising the satellite broadcasting rights acquired under the said deed of assignment on several occasions by telecasting the said movies through their most popular and extensively viewed channel Zee T.V., all over the world, which also very much known to the plaintiffs. It is a matter of fact that, said 16 suit films have been telecasted as many as 223 times on various occasions and dates since 1997 onwards. Therefore, it

is a common knowledge in the trade circles and in the satellite and film industry, that satellite broadcasting rights in the said 16 films are owned by D.1 irreversibly having acquired them bonafidely and under valid assignment deeds from the predecessor assignors, who have been assigned with such rights by plaintiffs represented by D.Suresh Babu, who is none other than the son of Mr.D.Ramanaidu, who is representing plaintiff Nos.1 to 4, upon receipt of valuable consideration. Thus, plaintiffs got full knowledge of the rights of the D.1. Except for formally lodging a complaint with the police, Mr.D.Suresh babu, has not taken any steps or protective measures under copyright in restraining D.3 and D.4 to assign rights in the films to others and also allowed D.1 to broadcast the films by preventing spectators without taking steps to protect their rights if any. Now they cannot conveniently approach the court having kept silence for more than 8 years being fully aware of the litigation between the parties to the suit and having allowed bonafides assignees like the first defendant to exploit and exhibit the broadcasting rights in the suit schedule films and the plaintiffs cannot be allowed to stop such broadcast or exhibition of the suit schedule films. Plaintiffs are not entitled for the declaration and permanent injunction sought for, Assignment dt:10.10.1994 is not challenged and it is not sought to be declared as null and void and this deed shall continue to bind the defendants as well as the predecessor assignees i.e, D.2 to D.4. The plaintiffs are not entitled to prosecute their injunction in respect of satellite broadcasting

rights of the suit schedule films upon expiry of alleged assignments. The agreement dt:10.10.1994 entered into by D.Suresh babu with D.4 binds the plaintiffs and hence the suit is liable to be dismissed.

4) The Defendant No.3 filed his written statement and contended that the suit is barred by limitation and that the alleged assignment of 16 Hindi films mentioned in the suit schedule to four persons nominated by D.4 for a period of 9 years on 23.12.1994 are all incorrect and that the said documents are brought into existence by plaintiffs and D.4 to D.8 in collusion. S.C.No.281 of 1995 filed by D.3 against Mrs.Nalini Shankar was not followed up, as it was felt that it is not necessary to pursue the same, particularly, on the Small Causes Court side at Mumbai, which was not having jurisdiction. The said suit was returned for want of jurisdiction by the Court at Mumbai. Plaintiffs are well aware way-back in the year 1995 itself that D.4 has assigned rights acquired from the plaintiffs on 15.10.1994 under the deed of assigned dt: 07.10.1994 and showed the deed while furnishing an authenticated copy of the same. The contention of the signatures of Mr.D.Suresh Babu are forged is incorrect. D.3 never agreed for not pressing their claims in respect of the suit schedule claims. Suits filed by either party got dismissed for default for non-prosecution, as the controversy seems to have subsided D.3 and its successors-in-interest continued their claim and exercised their rights absolutely in respect of the suit schedule films right from the year 1994 without any sort of

interference or intervention to the knowledge of plaintiffs and D.4 to D.8. By issuing public notice in Film Information Magazine, plaintiffs reagitated and revived the issue which was already sorted out and dead for all purposes, as far as plaintiffs are concerned. They have given up all their rights and claims, not only by virtue of agreement dt:07.10.1994 but also their subsequent conduct and proceedings from time to time. They cannot be permitted now to reagitate the issue, which has been already closed. Subsequent to assignment of subject films in favour of D.3, D.3 assigned the same in favour of D.2 under agreement dt:16.03.1997 and further, D.2 has assigned the same under assignment dt:21.03.1997 to D.1 subject to addendum dt:20.04.1999. The said films were telecasted as many as 223 times on various occasions and dates since August, 1997. Valuable consideration was passed among D.1 to D.4 in this respect in connection with acquisition rights and assignment of the same. D.1 is the present owner of the said 16 films. Plaintiffs are not entitled for any damages. They cannot claim any damages tentatively. It is for them to quantify and claim particular amount by duly paying Court Fees. Plaintiffs are not entitled to resume in respect of the specific rights. Assignment made has been absolute, final and complete. Plaintiffs are not entitled for grant of interim injunction sought for either. Plaintiffs have suppressed true and correct facts. Plaintiffs conveniently omitted to mention about the suits in O.S.Nos.221 to 225 of 1995 filed by D.4 to D.8, initially before the Court of V Additional Judge, City Civil Court, Hyderabad

and they were renumbered as O.S.Nos.18 to 22 of 1996 on the file of Chief Judge, City Civil Court, Hyderabad and they were dismissed on 30.08.2000. The said judgment became final.

a) D.3 further pleaded that Ms.Nalini Shankar, representing D.4 approached the D.3, stated that she was acquiring/acquired exclusive rights and copy rights in world satellite rights, cable TV rights and 16mm rights in respect of 16 motion pictures and after negotiations, a working arrangement was arrived at. Thereafter, D.4 produced agreement dt:10.10.1994 between plaintiff Nos.1, 3 and 4 on one hand and D.4 on the other and basing on the representation made by D.4 that they got exclusive rights over the said films and accepting the agreement dt:10.10.1994, which is irreversible and there is also indemnity clause in the said agreement, payments were made in pursuance of the said agreement. After negotiations on 17.10.1994, D.3 entered into an agreement with D.4. The contention of plaintiffs that agreements dt:10.10.1994 and 17.10.1994 were forged and fabricated documents are all false. Smt. Nalini Shankar also gave a declaration on 29.10.1994 duly notarized confirming the sale and assignment thereof. D.3 already filed copies of the said agreement and declaration referred to above. In pursuance of the agreement dt:17.10.1994, payments were made to D.4 amounting to Rs.60,00,000/- by way of D.Ds, which were admittedly received and encashed by D.4. In pursuance of said agreement, plaintiffs also delivered Umatic Betacam Master Cassettes

pertaining to 14 pictures and other material including the copy of Censor Board Clearance. Pictures pertaining to (1) Santan and (2) Anari, were not delivered initially and the same were subsequently delivered. The 2nd plaintiff and their sister concern delivered the Umatic Betacam Cassettes to D.4 on various dates and in turn, the same were delivered to D.3 is completed and acted upon is irrevocable. Therefore, neither D.4 nor plaintiffs can get any rights either from D.3 or from other defendants or any other third party. Plaintiffs already parted with their rights. Cancellation alleged to have been made is not valid and binding on the D.3. In fact, no such cancellation has ever been made and it is being alleged for the purpose of the suit. The rights set-out by the plaintiffs amount to withdrawal from obligation and commitment arising under the agreements dt:10.10.1994 and 17.10.1994 in favour of D.3 and which have already been acted upon. D.3 is a bonafides purchaser of the suit mentioned 16 films for valuable consideration. Thus the suit is not maintainable.

5) D.2 filed a memo adopting the written statement filed by D.3. Though defendant Nos.4, 5, 6 and 8 appeared before the Court but they did not file their written statement. Defendant No.7 remained *ex parte*.

6) Basing on the above pleadings, the trial Court framed the following issues:

- 1) *Whether the suit is barred by limitation?*
- 2) *Whether the suit is barred by res judicata in view of decree in O.S.Nos.18 to 21 of 1996?*

- 3) *Whether the plaintiffs acquiesced the infringement of copy right of the schedule films?*
- 4) *Whether the claim of Defendant No.1 over the plaint schedule films is true?*
- 5) *Whether the suit transactions, as alleged by the plaintiffs are true, valid and binding on the defendants?*
- 6) *Whether the plaintiffs are entitled to the declaration as prayed for?*
- 7) *Whether the plaintiffs are entitled to the perpetual injunction as prayed for?*
- 8) *Whether the plaintiffs are entitled to the delivery of tapes etc., as prayed for?*
- 9) *Whether the plaintiffs are entitled to the damages, as prayed for?*
- 10) *To what relief?*

7) During trial, PW.1 was examined and Exs.A.1 to A.29 were marked on behalf of plaintiffs. DWs.1 and 2 were examined and exs.B.1 to B.3 were marked on behalf of defendants.

8) The trial Court basing on the oral and documentary evidence on record dismissed the suit by holding that though plaintiffs could establish their claims over the suit schedule films as true and correct, they are not entitled for the declaration, perpetual injunction and relief of delivery of tapes of the given films as well as damages sought for, as the suit claims are barred by limitation.

Hence, the appeal by plaintiffs.

9) The parties in this appeal are referred as they were

arrayed before the trial Court.

10) Heard the arguments of Sri T.Raghu Ram, learned counsel for appellants and Sri Sai Gangadhar Chamarty, learned counsel for respondent No.1. Notices to respondents 2, 3 and 4 to 8 have been published in 'Times of India' English Daily in Mumbai and Hyderabad editions respectively vide Memo dt:13.11.2015 filed by learned counsel for appellants and on 17.11.2015, there was no representation for them.

11) As can be seen from the judgment though trial Court decided all other issues in favour of plaintiffs, still dismissed the suit in view of its finding on issue No.1 to the effect that suit was hopelessly barred by limitation. To come to the said conclusion, the trial Court observed that limitation to file the suit is three years and plaintiffs had ample knowledge about the adverse claim of defendants 1 to 3 over the suit schedule 16 films by virtue of agreement dated 10.10.1994 in the year 1995 itself but the plaintiffs slept over the matter for eight years and filed the suit only on 12.11.2003 and thereby the suit was hopelessly barred by limitation. It further observed that plaintiffs' claim that cause of action for filing the suit arose only on 14.10.2003 when the first defendant issued notice to it has no substance.

12) Learned counsel for appellants/plaintiffs severely fulminated the finding of the trial Court on the limitation aspect. His contention is that the plaintiffs have assigned the broadcasting rights over suit schedule 16 films to defendant

Nos.5 to 8 who are the nominees of defendant No.4 for valuable consideration for a period of nine years by virtue of Exs.A7 to A12—assignment agreements dated 23.12.1994 and during that period defendant Nos.4 to 8 were at liberty to distribute or sell to any other party or to use or exploit the films for commercial/non-commercial purpose and therefore, the plaintiffs cannot question their acts. It is because in 1995 defendant No.3 made a false claim as if 1st plaintiff's son—Suresh Babu had executed an assignment deed dated 10.10.1994 in favour of defendant No.4 and defendant No.4 in turn executed an assignment agreement dated 17.10.1994 in favour of defendant No.3, Suresh Babu had to lodge police complaint on 05.04.1995 before the Jubilee Hills PS and subsequently at the intervention of elders the matter was subsided and therefore, the plaintiffs did not proceed further as there was no threat. Learned counsel vehemently argued that by that time i.e. by 1995 the so-called defendants 1 and 2 were not at all in the scene even by their own pleading and admission and so the question of plaintiffs taking any action against defendants 1 to 3 by way of filing suit during the year 1995 does not arise. It was only after the assignment period was over by 22.12.2003 and when the plaintiffs made a publication inviting prospective buyers for the 16 films and when defendant No.1 for the first time came into the scene and issued a notice dated 14.10.2003 under Ex.A13 making a false claim of perpetual lease said to have obtained from defendant No.2 and defendant No.2 in turn from defendant No.3 and

defendant No.3 from defendant No.4, then the plaintiffs could know about the conspiracy of defendants 1 to 4 and filed the suit under appeal within the period of three years and hence the suit claim was well within the period of limitation. He argued, merely because plaintiffs could know the suit schedule films were telecasted in the channel of defendant No.1 between 1997 and 2003 that fact will not give cause of action to file the suit because as per the assignment made under Exs.A7 to A12, the plaintiffs agreed that defendant Nos.4 to 8 can commercially exploit the suit schedule 16 films in different manners including distributing and selling them to third parties during the assignment period of nine years and hence when the films were telecasted in the channel of defendant No.1, they were under the impression that defendant No.4 may be assigned them to third parties. This fact was clearly spoken by PW1 in his evidence to the effect that there was no need and legal right for him to find out or ask defendant Nos.5 to 8 as to whether they have assigned rights to Zee films or for that matter to any other third party for a period of nine years. Learned counsel submitted that in those circumstances, even if some third party telecasted suit schedule 16 films during the assignment period that will not create cause of action to the plaintiffs to file a suit against such person for the reason that plaintiffs created further assignment right in favour of defendant Nos.4 to 8. Learned counsel submitted that trial Court misunderstood the admission of PW1 that he had knowledge about the telecast of suit schedule films in Zee channel and

held as if the cause of action had arisen to the plaintiffs from 1995 onwards. Learned counsel argued in the context of above facts, the cause of action did not arise during the assignment period of nine years but arose only when threat offered by defendant No.1 under Ex.A13—notice. He relied upon the judgment of the Apex Court in ***Daya Singh v. Gurdev Singh***^[1]. He thus prayed to allow the appeal.

13) Per contra, while supporting the judgment, learned counsel for respondent No.1 argued that in view of disputes between plaintiffs and defendants 3 and 4 and defendant No.3 making claim in respect of suit schedule films in the year 1995 itself and also in view of clear admission of PW1 that he was aware that the suit schedule films were telecasted on several occasions on Zee channel, the cause of action had arisen to the plaintiffs in the year 1995 itself but the suit was belatedly filed in the year 2003 and therefore, the trial Court rightly dismissed the suit. He contended that there are no merits in the appeal and hence the same may be dismissed.

14) In the light of above rival arguments, the point for determination is:

“Whether the finding of the trial Court that the suit was barred by limitation is factually and legally correct?”

15 a) **POINT:** On perusal of the judgment, the trial Court decided all other issues in favour of plaintiffs but dismissed the suit in view of its finding on issue No.1 that the suit was barred

by limitation. The respondents/defendants did not prefer any appeal or cross-objections against the findings which went against them. Hence, the only point that falls for determination is whether the finding of the trial Court that the suit was barred by limitation is factually and legally correct.

b) The suit under appeal is filed by the appellants/plaintiffs seeking declaration against defendants 1 to 4 that they have no manner of right, title or interest in respect of suit schedule 16 cinematographic films and certain injunctions and also damages. Since the relief of declaration sought for is the main relief, Article 58 of Limitation Act, 1963 applies to the case on hand. Article 58 reads thus:

Description of Suit	Period of Limitation	Time from which period begins to run
Art.58. To obtain any other declaration	Three years	When the right to sue first accrues.

As per Article 58 limitation commences when the right to sue first accrues. In **Daya Singh’s** case (1 supra) the Apex Court observed that the cause of action for the purpose of Article 58 of Limitation Act accrues only when the right asserted in the suit is infringed or there is atleast a clear or unequivocal threat to infringe that right occurs. So, it has to be seen when the right to sue was accrued to the plaintiffs for the first time.

16) Admittedly, the first plaintiff produced the suit schedule 16 films and he holds copy right thereof. Then, as per Exs.A7 to A12 the first plaintiff assigned the suit schedule 16 films to defendant Nos.5 to 8 who are the nominees of defendant No.4

on 23.12.1994 for a period of nine years permitting them to use the films in different manners such as transmit, retransmit, broadcast, rebroadcast, simulcast multiple times. As per clause 4(a) of the assignment deeds, such permission includes right to distribute the films or to sell to any other party and/or to use or exploit the same for commercial/non-commercial purposes etc. So, it is pertinent to note that the first plaintiff permitted the assignees not only to transmit, broadcast and telecast the suit schedule films but also to distribute the films or to sell to any other party and exploit the films for commercial/non-commercial uses during the period of assignment. While so, when the assignment period was in currency, according to the plaintiffs, in the year 1995 they received a notice from Sri R.R.Sharma, Advocate, Bombay informing about the third defendant filing Small Causes Suit No.281 of 1995 against 4th defendant seeking relief of declaration and injunction in respect of suit schedule films basing on some created and forged document dated 17.10.1994 and declaration dated 15.10.1994. Initially the said suit was filed against the 4th defendant alone but after obtaining injunction the 3rd defendant impleaded the present plaintiffs but the said petition was dismissed and interim injunction was vacated holding that the Court at Bombay had no jurisdiction. The further case of the plaintiffs is that in the said suit 3rd defendant filed a document dated 10.10.1994 purported to be an agreement said to have been executed by PW1— D.Suresh Babu who is son of first plaintiff. Since the said

agreement was forged one and not executed by PW1 in favour of 3rd defendant, PW1 lodged a complaint on 05.04.1995 in the Jubilee Hills PS which was registered as FIR No.131/1995. While so, defendants 5 to 8 initiated suits—O.S.Nos.18 to 21 of 1996 against the plaintiffs and defendants 3 and 4 herein for declaration and perpetual injunction and plaintiffs contested the matter by filing the written statement. However, later defendants 3 to 8 compromised the dispute among themselves out of Court and all the cases were put to rest.

17) Now, the submission of learned counsel for appellants is that in the above proceedings the 3rd defendant raised a false plea of assignment on the strength of forged assignment deed dated 10.10.1994 purported to be executed by PW1 and therefore, PW1 lodged a police complaint and later the matter subsided. During that stage defendant Nos.1 and 2 were not at all in the scene. Learned counsel submitted that since there was no further threat from defendant No.3 on one hand and defendants 4 to 8 on the other and since the assignment period was in existence, the plaintiffs did not contemplate to file any suit of the present nature against any of them as no cause of action had also arisen against them. I find force in the above submission. During the assignment period of 1994—2003, since defendant No.3 raised claim of assignment from defendant No.4 by virtue of assignment deed dated 10.10.1994 said to have been executed by PW1 in favour of defendant No.4, PW1 lodged a police complaint and later the matter was

subsided. By that time defendants 1 and 2 were not at all in the scene and so, the question of plaintiffs taking any action against them does not arise. Merely because the suit schedule films were telecasted on the Zee channel during the assignment period to the knowledge of PW1 and the plaintiffs, that will not give any cause of action for the plaintiffs to initiate proceedings against defendant No.1 or some others for the reason that during that period the assignment in favour of defendants 5 to 8 was in vogue and they had a right to sell the telecast rights in favour of third parties. So, even if the plaintiffs and PW1 had knowledge that their films were being telecasted on different channels they cannot entertain any suspicion against anybody. This fact was clearly deposed by PW1 in his cross-examination. After admitting that he was aware that the suit schedule films were telecasted on several occasions in Zee and other channels, he emphatically clarified that there was no need and legal right for him to find out or ask defendant Nos.5 to 8 as to whether they have assigned rights to Zee films or to any other third party for a period of nine years. He further clarified that he has not filed any case against defendant No.3 because he has no right to fight against him as he had no direct transaction with defendant No.3. Unfortunately the trial Court misread the facts and evidence and observed that plaintiffs got knowledge about the 1st defendant's claim over schedule films in the year 1995 itself. It must be reiterated that neither the 1st defendant nor the 2nd defendant was in the scene in 1995. It was only defendant No.3 who made the claim on the strength of

assignment agreement dated 10.10.1994 said to have been executed by PW1 which resulted in PW1 lodging police report and later the matter subsided. On the other hand, as per the written statement of defendants 1 to 3, PW1 executed assignment deed in favour of defendant No.4 on 10.10.1994, who in turn executed the deed of assignment in favour of defendant No.3 on 17.10.1994, defendant No.3 in turn executed deed of assignment in favour of 2nd defendant on 16.03.1997 and defendant No.2 in its turn executed deed of assignment on 21.03.1997 in favour of M/s. Essel Vision a division of M/s.Ambience Space Sellers Limited, Bombay who was later amalgamated with first defendant Company as per the permission given by Bombay High Court on 08.10.1998. So, the above alleged chronological events would show that by 1995 defendants 1 and 2 were not in the scene and so the question of plaintiffs taking action against them does not arise. As rightly argued by learned counsel for appellants/plaintiffs, the cause of action had arisen for the plaintiffs for the first time when defendant No.1 issued notice under Ex.A13 claiming right of perpetual lease over the suit schedule films. The suit was filed within three years thereafter and hence the present suit was well within the period of limitation. Hence, issue No.1 in the suit has to be held in favour of plaintiffs. Since all other issues in the suit were already decided in favour of plaintiffs, they deserve decree in their favour.

18) In the result, this appeal is allowed by setting aside the

judgment of the trial Court and the suit— O.S.No.392 of 2003 is decreed in favour of plaintiffs as prayed for with costs throughout.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 11.03.2016

Scs/Murthy

[\[1\]](#) (2010) 2 SCC 194