

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

SATURDAY, THE 11TH DAY OF AUGUST 2018

THE HON'BLE MR. JUSTICE VINOD C.V.KARTHIKEYAN

A.NO.3136 OF 2017

IN

C.S.NO.602 OF 2007

Tractors and Farm Equipment Ltd.,
No.35, Nungambakkam High Road,
Chennai-600 034
rep. by its Dy. General Manager -(Legal-Services),
Mr. T. Narayanan ... Plaintiff

VS

(*) Standard Corporation India Ltd.,
Tractor Division
Standard Chowk,
Barnala-148101
State of Punjab.
(Amended as per order of court dated 05.01.2017 in
A.No.61/17) ... Defendant

A.N.3136 OF 2017:-

Tractors and Farm Equipment Ltd.,
No.35, Nungambakkam High Road,
Chennai-600 034
rep. by its Dy. General Manager -(Legal-Services),
Mr. T. Narayanan ... Applicant/Plaintiff

VS

Standard Corporation India Ltd.,
Tractor Division
Standard Chowk,
Barnala-148101
State of Punjab. ..Respondent/Defendant

Application praying that this Hon'ble Court be
pleased to permit the applicant to mark photocopy of the
industrial drawings of its tractors as filed along with
plaint as secondary evidence;

This Application coming on this day before this court for hearing the court made the following order:

A.No.3136 of 2017 has been filed by the petitioner/plaintiff to permit the applicant to mark photocopies of the industrial drawings of its tractors as filed with the plaint as secondary evidence.

2. The suit in C.S. No.602 of 2007 has been filed by the Tractors and Farm Equipment Limited, a company registered under the Companies Act 1956 against The Standard Corporation India Limited, also a company registered under the Companies Act 1956, seeking a Judgment and decree restraining the defendants by an order of permanent injunction from infringing the plaintiff's copy right in the artistic work in the drawings for its tractors and from passing off STANDARD 348 tractors which are identical to the plaintiff's MF245 DI tractors and for damages and consequential reliefs.

3. In the plaint, it had been stated that the plaintiff manufacture and market tractors and farm equipment in India. They are one of the largest manufacturers of tractors in India. They are authorised by AGCO Corporation, USA to use the trademark device of MASSEY FERGUSON tractors and also the copyright in the drawings of the MF tractors. The plaintiff's model MF245 DI and MF 1035 DI are popular models. The plaintiff claimed that they have a copy right in the drawings and these drawings are used in the manufacturer of its tractors. The details are as follows:

a.	Hydraulic Pump assembly	b.	Valve Chamber
c.	Camshaft	d.	Fork
e.	High low coupler (part of gear box).	f.	Gear main shaft
g.	Epicyclic carrier unit	h.	Ring gear

i.	Rear axle device - gear	j.	Pedal
k.	Clutch - pedal	l.	Transfer cap - lift cover
m.	Differential case	n.	Clutch release cover fork
o.	Front cover hydraulics	p.	Lift cover
q.	PTO shaft	r.	Hydraulic arm
s.	Brake drum	t.	Hub front axle
u.	Fork first and reverse gear		

4. The tractor has hundreds of parts and they are manufactured according to the drawing specifications. Strict quality controls is maintained. There has also been substantial increase in the number of tractors sold and in the advertisement expenses involved to promote such sales. The plaintiff had stated that the defendant is selling STANDARD 348 tractor which, according to the plaintiff is identical to the plaintiff's MF 245 DI and MF 1035 DI. According to the plaintiff, the defendant had copied each and every part of the plaintiff's tractor model MF 245 DI. The plaintiff claimed that the defendant has no right to copy the design of the plaintiff. The plaintiff further stated that one Mr. Moosa who was associated with the plaintiff's dealer in Bangladesh is now associated with the defendant. It is claimed that the defendant has reproduced each and every part of the plaintiff's drawings in three dimension and then manufactured their model STANDARD 348. Claiming that the plaintiff has suffered irreparable loss and damages by the violation of the copyright held by the plaintiff, the suit had been filed seeking the reliefs stated above.

5. Along with plaint, the plaintiff had filed 79

the plaintiff's parts and the defendant's parts. Document Nos.22 to 78 are copies of scanned photographs again showing the similarities between the plaintiff's parts and the defendant's parts. These documents relate to each and every separate part of the tractor, like Hydraulic pump, Gear box, Gear systems, Brake drum, Foot board etc. Document No.79 is a compact disc showing the comparison of the plaintiff's and defendant's tractors part by part.

6. In the suit, the defendant also filed their written statement.

7. This Court had framed issues on 24.10.2016.

8. Thereafter, the parties were referred to the learned Additional Master-II, High Court, Madras for recording of evidence. The plaintiff examined R.Muralikrishnan, Senior Vice President, Production and Marketing as P.W.1. They also marked Ex.P.1 to Ex.P.55 and also marked Compact Disc as M.O.1.

9. At that stage, this application has been filed by the petitioner/plaintiff, seeking permission to mark xerox copies of the drawings of the design of the plaintiff's drawings. It had been stated that these drawings had actually been filed along with the plaint. It had further stated that after the year of the institution of the suit in 2007, several modifications and upgradation in the drawings had taken place. It had been further stated that the original drawings were not filed along with plaint since they were required in the Research and Development Department of the plaintiff. Thereafter, the upgradations and changes were incorporated in the drawings and the present drawing of the design available with the plaintiff would not be similar to the drawings filed at the time of institution of the suit. It had been stated that

if the xerox copies are not permitted to be marked, then much hardship would accrue to the plaintiff since these are crucial documents to establish that the defendant had infringed the copy right of the plaintiff. It had been stated that the defendant had objected to the marking of the present drawings available with the plaintiff since the drawings differed from what had been filed at the time of filing the suit. In these circumstances, this application has been filed seeking permission to make secondary document as evidence before the Court.

10. A counter has been filed on behalf of the defendant. It had been stated in the counter affidavit that the application had been filed after evidence had commenced and when P.W.1 was in the witness box. It had been stated that the xerox copies of the drawings cannot be accepted as evidence in a claim of copyright infringement. It has been further stated that the plaintiff had not given convincing reasons for not producing the original drawings. It had been further stated that the original drawings as on the date of filing the suit should be produced. The xerox copies of the same cannot be marked. The defendants stated that the plaintiff can always mark the originals of the drawings which had been filed as plaint documents. It had been stated that the application had been filed only to drag on the proceedings. It was stated that the application has to be dismissed.

11. Heard the arguments advanced by Mr.P.S.Raman, learned Senior Counsel for Mr.Arun C.Mohan, learned counsel for the petitioner and Mr. G. Muthukumar, learned counsel for M/s.GMS Law Associates, for the defendant. For sake of convenience, the parties would be referred as Plaintiff and Defendant.

12. The plaintiff is a leading manufacturer of

tractors. They claimed to have a copy right in a brand of tractor called MASSEY FERGUSON tractors. They had been authorised by AGCO Corporation, USA to use the trade mark device and copyright in the drawings of such tractors. The plaintiff's tractors manufactured with the applications of such drawings are called MF 245 DI and MF 1035 DI. The plaintiff is primarily concerned with the infringement by the defendant in their tractor by name STANDARD 348 tractors. According to the plaintiff, they have a copy right in the drawings which are used for the manufacturer of the following parts.

a.	Hydraulic Pump assembly	b.	Valve Chamber
c.	Camshaft	d.	Fork
e.	High low coupler (part of gear box).	f.	Gear main shaft
g.	Epicyclic carrier unit	h.	Ring gear
i.	Rear axle device - gear	j.	Pedal
k.	Clutch - pedal	l.	Transfer cap - lift cover
m.	Differential case	n.	Clutch release cover fork
o.	Front cover hydraulics	p.	Lift cover
q.	PTO shaft	r.	Hydraulic arm
s.	Brake drum	t.	Hub front axle
u.	Fork first and reverse gear		

13. To substantiate their contention of violation of copyright, the plaintiff had also filed 78-documents along with the plaint. They have filed the drawings showing the design of each and every part. They also produced scanned photographs to show the similarities between the plaintiff's and defendant's parts. These documents relate to every part for which the plaintiff claims copyright and every part which the plaintiff claims

have been infringed and copied by the defendant. The plaintiff has also produced a Compact Disc as M.O.1 showing the comparison between the plaintiff's and defendant's tractors part by part. It is the claim of the plaintiff that the design of the tractor evolve by time with new innovation made for each part. Consequently, the drawings would be upgraded. The master drawing would therefore be suitably upgraded in the Research and Development Department of the plaintiff. The plaintiff therefore seeks permission to file xerox copies of the documents already filed along with the plaint. The plaintiff has stated that they could not produce the originals since the master copies have been suitably altered with the upgradation in technology for each and every part. The plaintiff has also let in evidence and has marked Ex.P.1 to Ex.P.58 and M.O.1. They now seek permission to produce the photo copies of the industrial drawings which had already been filed as documents with the plaint. The plaintiff seeks to produce 21-documents in this manner. The documents now sought to be filed are the drawings for the parts which had been enumerated above. The defendant has objected to the marking of the xerox copies since they claimed that the original documents have to be produced in a suit for copy right infringement. They also challenged the reasons given by the plaintiff for not producing the originals.

14. Section 61 of the Indian Evidence Act relates to contents of proof of documents. It is as follows:

"Proof of contents of documents : The contents of documents may be proved either by primary or by secondary evidence".

Section 62 of the Indian Evidence Act deals with primary evidence. Section 63 of the Indian Evidence Act deals with secondary evidence. It is to be noted that the documents filed along with plaint have been part of the Court records from the year 2006. The trial in the case commenced only

on 03.01.2017. Till that time, the defendants have not raised any objection with respect to the accuracy or correctness of the documents filed along with the plaint. They have not raised any objection that the documents do not relate to the tractors manufactured by the plaintiff or challenged the similarities pointed out. They have not stated that the plaintiff has filed in Court irrelevant documents. It is also to be noted that in the manufacturing field the designs of every individual part will evolve as technology develops. It will also evolve whenever slight defects are pointed out and improvements necessary. It will also evolve when upgradations are made in keeping with advancement made in research and in technology. This would happen particularly in vehicles and it is common knowledge that each new model has a new additional feature, though the basic model is still retained. In a similar manner, the designs of the plaintiff's tractors have been upgraded from the year 2007 till date. The reason given by the plaintiff for not producing the original is acceptable, particularly, when Court applies its mind to the nature of the trade, the competition faced leading to constant requirement to upgrade the tractors manufactured.

15. In the present case, the trial cannot be simple stalled. The plaintiff cannot be directed to produce the original drawing when according to the plaintiff they do not have them. However, this reason given by the plaintiff should be subject to the evidence given by P.W.1 and his explanations during the course of his deposition for not producing the originals. Thereafter the defendant can advance a further case that the documents as produced cannot form the basis of a copyright infringement suit. This right is available to the defendant. Trial involves examination of witnesses and cross examination of the witnesses on his oral evidence and

16. With these observations, I hold that the application has to be allowed and the xerox copies of the documents can be permitted to mark. Objections raised by the defendants have to be noted by the learned Additional Master-II, High Court, Madras and they shall be answered at the time of delivering the main judgment. The learned Additional Master-II, High Court, Madras should also record the oral evidence relating to the marking of the documents and the cross examination on those aspects, preferably by recording both questions and answers.

17. With these observations, this application is allowed. No costs.

//Certified to be a true copy//

11.08.2018

//Certified to be a true copy//

Dated this the th day of 2018.

KY/20.08.2018

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.