

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 19TH DAY OF APRIL 2018

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

O.A. No.33 of 2018

and

A. No.2076 of 2018

in

C.S. No.28 of 2018

C.S. No.28 of 2018:

K.S.Rajashekaran @ K.S.Nagaraja
Proprietor of M/s.GSR Vinmeen Creations,
Son of late T.Kadhirvel,
No.5/6, 2nd Cross Street,
Bharathisalai, Karambakkam, Porur,
Chennai- 600116 ... Applicant/Plaintiff
(in both applications)

-Versus-

1. The South Indian Film Chamber of Commerce
Represented by its Honorary Secretary,
T.R.Sundaram Avenue, No.604, IV Floor,
Anna Salai, Chennai- 600 006
2. M/s.Wonderbar Film Pvt.Ltd.,
Rep.by its authorized person,
Old No.6, New No.13, 4th Floor,
Jaganathan Road, Tirunurthy Nagar,
Ponnangipuram, Nungambakkam,
Chennai - 600 034
3. PA.Ranjith,
Film Director,
C/o.M/s.Wonderbar Films Pvt.Ltd.,
Old No.6, New No.13, 4th Floor,
Jagannathan Road, Tirumurthy Nagar,
Ponnangipuram, Nungambakkam,
Chennai- 600 034
4. Shivaji Rao Gaikwad @ Rajinikanth,
S/o.Ramoji Rao Gaikwad,
No.18, Raghava Veera Avenue,
Poes Garden, Chennai- 600 086 ... Respondents/Defendants
(in both applications)

O.A. No.33 of 2018:-

*Original Application praying that this Hon'ble Court be pleased to grant ad-interim injunction restraining the respondents, agents, representations, assigns, legal heirs, their office bearer, persons claiming through them, etc., from conducting any shooting or marking any shooting - in - progress of the motion picture or to release the film in any mode, in any language which is titled as Karikalan by affixing the same as after the main title "Kala" by way of either sub-title or surname to the main title, or in any other name for the same story which is being produced by the 2nd respondent, being directed by the 3rd respondent and acted in the said title role by 4th respondent till the dispose of main suit.

(*Amended as per order dt.22.02.2018 in Appln.No.1611/2018) .

A. No.2076 of 2018:-

Application praying that this Hon'ble Court be pleased to:-

a)in para 16 of the plaint add the following after last line of para 16 "Relief of prayer(aa) in para 17 is incapable of valuation".

b)to insert in between para 17(a) and para 17(b) as follows:

"17(aa)" to declare that the plaintiff is the owner of Title and story in "Kaala @ Karikalan" or "Karikalan @ Kaala" and its story modifying the life of earlier Chola emperor Karikalan to suit the modern life of a hero reforming the evils activities of others in the society". in the interest of justice.

These applications coming on this day before this court for hearing the court made the following order:-

CS.No.28 of 2018 was originally filed in the City Civil Court as OS.No.2940 of 2017. The Plaintiff, K.S.Rajasekaran @ K.S.Nagaraja, Proprietor of M/s.GSR Vinmeen Creations, Chennai, had filed the suit against four Defendants, namely, (1) The South Indian Film Chamber of Commerce, represented by its Honorary Secretary, (2) M/s.Wonderbar Films Private Limited, represented by its authorized person, (3) P.A.Ranjit, Film Director, whose address is given as C/o.M/s.Wonderbar Films Private Limited and (4) Shivaji Rao Gaikward @ Rajinikanth.

2. Before the City Civil Court, the relief sought was to declare the Rules 4, 5, 6 and 8 and the Rules of Procedure, governing the title registration of the 1st Defendant Association, which is a registered body under the Tamil Nadu Societies Registration Act, as bad in law, null and void and are against the principles of natural justice and also for permanent injunction, restraining the Defendants or anybody claiming under them, from conducting any shooting or making any shooting in progress of the motion picture film in any mode, which is titled as KARIKALAN, by affixing the same after the main title KAALA by way of either sub title or surname to the main title, which is being produced by the 2nd Defendant, directed by the 3rd Defendant and acted by the 4th Defendant, since the Plaintiff has preemptive rights over the title, the knot and story of the Chola Emperor, namely,

KARIKALAN, which is modified to the present social aspects.

3. This suit had to meander through a difficult path during its course in the City Civil Court. The Defendants had entered appearance and had filed an application, seeking to reject the plaint under Order 7 Rule 11 of CPC. However, orders were passed under Order 7 Rule 10 of CPC and it was directed that the plaint was to be re-presented in a Court of competent jurisdiction and it was held that the Court, which could actually try the lis among the parties, was the Original Side of the Madras High Court. Consequently, the life time of OS.No.2940 of 2017 became truncated and a new beginning arose in the form of CS.No.28 of 2018 before the Original Side of the Madras High Court. The same plaint was retained to a large extent. However, it appears that the relief in the plaint had been amended pursuant to permission granted in A.No.1610 of 2018, by order dated, 23.10.2018. Subsequent to the amendment, the second relief relating to permanent injunction was amended to a limited extent, including the words 'release the film in any mode in any language' since it was probably informed that shooting of the movie had been completed and production of the movie was in an advanced stage and could be released at any time.

4. In the plaint, the Plaintiff, K.S.Rajasekaran @ K.S.Nagaraja, Proprietor, M/s.GSR Vinmeen Creations, Chennai, has stated that after completing his schooling, he had joined

the Tamil Nadu Music College and had secured Diploma in Music. He was also awarded title, 'ISAI KALAIMANI VIDWAAN'. He had left his native place in the year 1991 and had come down to Chennai to study music with an intention to have access with the cinema people and also to get a chance in films. He was also aiming to get a chance to compose music in motion pictures. He had composed music for several serial programmes, which had been telecast in the Television Channels. He had given the details in the plaint.

5. The Plaintiff has also stated that while studying XII Standard, he had an occasion to study the history of Chola Emperor, Karikalan. He then prepared a story on his own imagination, by adopting the knot and history of Chola Emperor, Karikalan. According to the plaintiff, available sources of history of Karikalan is very limited. He had modernised and re modified the story. His story was titled, KARIKALAN. This was in the year 1991-1992. He also told the story about KARIKALAN to various friends related to the film Industry. He always wanted to portrait the 4th Defendant in the lead character, KARIKALAN.

6. The Plaintiff has specifically stated that he had also told the story to one Sathyanarayana, the then Secretary of the 4th Defendant's Fans Association at Raghavendra Kalyana Mandapam, Kodambakkam, in the year 1995. He along with his mother and brother also went to the residence of the 4th

Defendant. They had all taken photographs with the 4th Defendant. According to the Plaintiff, in the photographs, he is seen carrying a file, which implies that he wanted to narrate the story of KARIKALAN to the 4th Defendant. He also met several other film personalities to make a movie on the said subject. He also registered the title, KARIKALAN in the year 1994 in the Office of the 1st Defendant. Thereafter, he diverted his attention to composing music. According to the Plaintiff, the 1st Defendant, with whom, the title was registered, was misusing Rules 4, 5, 6 and 8, which determine the title registration and renewal of registration, to favour influential persons.

7. The Plaintiff continuously claimed in the plaint that the story of KARIKALAN belonged to him and was created by him. However, the registration of the title was not renewed by the 1st Defendant, since production is not commenced within one year from the date of registration of the title of a movie, then Rule 5 provides that the 1st Defendant need not renew the registration. The Rule also provides that the 1st Defendant was not under any obligation to inform about the lapse of registration.

8. The Plaintiff also met several Producers with the story of Karikalan, hoping that somebody would produce a movie on the same. He then found that M/s.Silverline Film Factory had announced a film project with the title of

'Karikalan'. He had also lodged a complaint before the Commissioner of Police on 24.11.2011. He also filed OS.No.9509 of 2011 on the file of the 15th Assistant City Civil Court, seeking a relief quite similar to one which was sought in the present suit. He was examined as PW.1, but he could not attend the Court at the time of marking the documents and consequently, the suit was dismissed for default. According to the Plaintiff, he had filed an application to set aside the order. The application was returned for certain compliance and had been misplaced by his advocate. He then came to know that the 2nd Defendant was producing a movie by name, KAALA @ KARIKALAN and the 3rd Defendant was directing the movie and the 4th Defendant was acting in it. He lodged another complaint before the Commissioner of Police on 27.5.2017. He claimed that he had a valid case to prosecute the Defendants.

9. The Plaintiff further claimed that he registered the name, 'KARIKALAN' in the first instance and he had narrated the knot and story of 'Karikalan' among the cinema people. He particularly charged the 3rd Defendant, who was a Director, of deliberately using the name, 'Karikalan', though he knew that it belonged to another person. It was under these circumstances that he had instituted the suit before the City Civil Court in OS.No.2940 of 2017. As stated above, the suit had been returned and had been re-presented before

this Court and renumbered as CS.No.28 of 2018. The relief had also been amended to include the relief of injunction against the release of the movie.

10. In the suit, the Plaintiff has filed OA.No.33 of 2018, seeking interim injunction, restraining the Respondents / Defendants, from conducting any shooting or making any shooting in progress of the motion picture and from releasing the film in any mode, which is titled as KARIKALAN, by affixing the same after the main title KAALA by way of either sub title or surname to the main title or in any other name for the same story, which is being produced by the 2nd Defendant, being directed by the 3rd Defendant and acted in the said title role, by the 4th Defendant, till the disposal of the suit.

11. In the affidavit filed in support of the said application in OA.No.33 of 2018, the Plaintiff has pleaded the same facts as stated in the plaint. Pending adjudication of OA.No.33 of 2018, the Plaintiff has also filed A.No.2016 of 2018, seeking permission to amend the plaint, by including yet another prayer, namely, declaration that the Plaintiff is the owner of the title and story in KAALA @ KARIKALAN or KARIKALAN @ KAALA and its story, modifying life of earlier Chola Emperor, Karikalan to suit the modern life of a hero, reforming the evil activities of others in the Society.

12. In the affidavit filed in support of the

application in A.No.2076 of 2018, the Plaintiff has stated that he subsequently came to know that the suit prayer did not include the relief of declaration, relating to ownership of title and story of KAALA @ KARIKALAN OR KARIKALAN 2 KALA. He, therefore, claimed that the relief should be amended to include the same.

13. Interim order was not granted in OA.No.33 of 2018, but notice was directed to the Respondents, who had entered appearance and a counter has also been filed by the Respondents 2, 3 and 4. The 1st Respondent did not choose to participate in the judicial proceedings.

14. In the counter affidavit filed by the Respondents 2, 3 and 4, it has been stated that the 2nd Defendant's film 'KAALA' had been registered with the Tamil Nadu Film Producers Council. It was specifically stated that registration with another Council would not bind or give rise to cause of action to claim any right if registration is done with yet another Council. It has also been further stated that the 3rd Defendant was the Author of the story titled KAALA, who is a fictitious person, incidentally, named 'Karikalan'. Events are set in Mumbai. It has also been stated that if a title is registered, production has to begin within a year otherwise registration would expire or lapse if it is not renewed by paying to 1st Defendant a sum of Rs.400/-

15. It has been further stated in the counter that the 2nd to 4th Defendants had filed IA.No.10550 of 2017 when the suit was pending before the City Civil Court, seeking to reject the plaint. However, orders were passed under Order 7 Rule 10 of CPC. It was specifically stated that no right vests in a person to prevent anyone from using the name of a person as a title to a feature film. It is also stated that the Plaintiff had not sought any relief under the Copyright Act. The facts relied on by the Plaintiff leading to him writing the story of Karikalan, had been challenged. It was stated that it was the Plaintiff who has to prove it to the satisfaction of the Court. It has been further stated that in the movie under production, the words 'Kaala' appears prominently and the words 'Karikalan' appeared below in small letters. It has been stated that the application should be dismissed.

16. The Defendants advanced oral arguments in A.No.2076 of 2018. They claimed that registration of the Plaintiff of the name 'Karikalan' with the 1st Defendant had expired by efflux of time and also because production of movie was not commenced within a period of one year as stipulated under the Rules and also because it was also not renewed on payment of additional charges. It was also therefore claimed that the Plaintiff cannot claim exclusive right over the name, 'Karikalan'.

17. This Court heard the arguments of V.Raghupathi the learned counsel for the Plaintiff and Mr.P.S.Raman, the learned senior counsel for the Defendants 2 to 4.

18. The Plaintiff, K.S.Rajasekaran @ K.S.Nagaraja, Proprietor, M/s.GSR Vinmeen Creations, had filed the suit before the City Civil Court, originally, seeking to declare the Rules 4, 5, 6 and 8 of the 1st Defendant, the South Indian Film Chamber of Commerce, as bad in law, null and void and against the principles of natural justice. He had also, at that particular point of time, included the relief of permanent injunction, restraining the Defendant from conducting any shooting or making any shooting in progress of the motion picture film, KARIKALAN, either by affixing or suffixing the name 'KAALA'. On the face of it, the cause of action for both the reliefs differs substantially.

19. Cause of action to declare the Rules of the 1st Defendant would lead the court to enter into a discussion over the legality and the vires of the Rules. As a matter of fact, a suit of that nature would also have to be filed only as a representative suit and the provisions of Order 1 Rule 8 of CPC should be taken recourse. Quite independent of the said relief, the Plaintiff had also included a peculiar relief, seeking to prevent, by way of interim injunction, shooting or making any shooting in progress of a film, KAALA @ KARIKALAN. The reason why the Plaintiff had sought such a

relief was that he claimed that he had registered the title, KARIKALAN with the 1st Defendant. The purpose of such registration was to ultimately have a movie either by producing it or directing it or in some form creating a movie in the name of KARIKALAN.

20. The 1st Defendant had also registered the same name, but the Rule stipulates that production must commence within a particular period of such registration and if not, additional charges should be paid for renewal of registration. The Plaintiff failed to do both. Registration was cancelled by the 1st Defendant. With that, the saga of the Plaintiff with the 1st Defendant came to end in so far as the name, KARIKALAN, is concerned. Thereafter, the name, KARIKALAN was thrown to the open domain and consequently, there could be no restriction on any person from using the same name. There could also be no restriction for using the name KARIKALAN in any manner whatsoever since it signifies the name of much revered Chola King and there could be no right exercised over such a name. If this is upheld, then there could be no art form either in the form of a movie or in the form of a drama or in the form of a story, using the name, KARIKALAN. This would also mean that the history of Karikalan could also not be projected in any form whatsoever in media or by any person. This would certainly be detrimental to the interest of the Society as Karikalan was

an Emperor, who is held in esteemed position, by the Society in Tamil Nadu and it is only just that the name is glorified.

21. Be that as it may, The Plaintiff had an occasion to file an earlier suit in OS.No.9509 of 2011 before the City Civil Court when he came to know that yet another film producing unit by name, M/s.Silverline Film Factory, had commenced shooting of a movie, 'Karikalan'. The Plaintiff was invited to give evidence in the said suit. He tendered evidence as PW.1, but he did not pursue the suit and he did not tender further evidence to mark documents. He did not attend the Court and thereafter, the suit was dismissed. The Plaintiff had actually abandoned as provided under Order 23 Rule 1 of CPC, the cause of action. Revival of such abandonment can be done only with reasons, which are acceptable to the Court. But, the Plaintiff cannot ask the Court to revive such abandonment as and when he pleases. He has to pursue the suit to its logical conclusion. Otherwise, the right to institute another suit on the same cause of action extinguishes.

22. The Plaintiff thereafter had kept a watch over the activities in the film world. He then found that the 2nd to 4th Defendants were in the process of producing a movie using the name KARIKALAN. He had immediately given a police complaint and instituted the suit, which is now under consideration originally before the City Civil Court in

OS.No.2950 of 2017.

23. As stated above, the suit had been re-presented before this Court, owing to judicial orders passed in the City Civil Court. The Plaintiff had amended the relief to include the word, 'release' in the injunction prayer, which he has sought. Even before examining that, it has to be noted that the 4th Defendant is only an Actor in the said movie and if the 4th Defendant has to be included in the cause title, the Plaintiff should have included all the listed actors in the movie. No specific reasons have been given why he has included the 4th Defendant alone and excluded all the other actors. The Plaintiff cannot choose the Defendants. The Plaintiff's claim for exclusive right over the film title cannot also be conceded by the Court primarily because registration had been cancelled by the 1st Defendant and also because in **2016 2 SCC 521 (Krishika Lulla and others Vs. Shyam Vithalrao Devkatta and another)**, relating to a movie title, 'Desi Boyz', it had been held that there cannot be any exclusive right over the name of a movie.

24. The name of the movie had been repeated and used as a convention in Tamil language. We have also had earlier instances, where the movie, 'Billa' had been reproduced in the same name. Similarly, the movies, 'Naan Aanayittal' , 'Aayirathil Oruvan', Uthama Puthiran had been reproduced with the very same names. As stated above, the Plaintiff

also does not have an existing registration to claim any right. The suit also suffers from misjoinder of causes of action and two reliefs cannot be clubbed together and cannot be examined with one piece of evidence. The balance of convenience is against the Plaintiff. The Plaintiff has not made out any prima facie case, particularly, since he has not produced the registration certificate or the story lines of the movie, 'KAALA', which according to him he had written.

25. It is for the Plaintiff to produce the story lines of the movie. He should not wait for the Court to pass orders directing him to do it. As the Plaintiff, he should come forward to disclose all documents or information. Failure to so disclose would reasonably lead the Court to draw an adverse inference under Section 114(g) of the Indian Evidence Act that if a document had not been disclosed, it is only because if disclosed, it would be adverse to the interest of the party who should have disclosed it. Moreover, proper disclosure would have enabled the Court to find out whether there was actually any similarity in the story.

26. In fact, the Plaintiff having not come to Court with full disclosure of all the facts cannot turn around and seek any relief. The Plaintiff has not made out any prima facie case. The balance of convenience is also against the Plaintiff. The Defendants commenced shooting and as on date, the Defendants have also completed the shooting. When

comparing the hardship caused, the hardship that would be caused to the Defendants by an order of interim injunction would far outweigh any other loss. The Plaintiff has not disclosed either his registration or the story lines said to have been written by him. When the Plaintiff had not produced the registration, naturally he cannot claim any exclusive right over the name, 'KARIKALAN'.

27. On a plain reading of Section 13 of the Copyright Act, 1957, copyright subsists in, inter alia, original works including original literary, dramatic and artistic works and cinematograph films. A title is not an original literary work, as held by the Supreme Court **in Krishika Lulla and others v. Shyam Vithalrao Devkatta and another, reported in (2016) 2 SCC 521**. A title does not qualify for being described as work. It is incomplete in itself and refers to the work that follows.

28. In **Krishika Lulla, supra**, the Supreme Court was considering the title "Desi Boyz" of the film released by the appellants on a story written by Milap Zaveri. The Supreme Court observed that the words "Desi" and "Boys" were quite common in India and their combination also produced a commonly understood expression. The words were, therefore, not protectable either on the basis of copyright or trade mark, or in passing off action.

29. In **E.M.Forster v. A.N.Parasuram, reported in AIR 1964 Mad 331**, a suit filed by E.M.Forster for alleged infringement of copyright in the title of his book "A Passage to India", the adoption of the title "E.M.Forster, A Passage to India, Everyman's Guide" by the defendants was held not to infringe copyright as there was no copyright in respect of the title. This Court held thus:-

"... As we have earlier affirmed, there is no copyright in the title and purchasers, whether of the original work or of the guide, are most unlikely to be illiterate, or unacquainted with English. It will be perfectly clear to them, from the words enclosed in brackets as a subtitle, that they were acquiring, not the original work, but a 'guide for university students'."

30. In **Kanungo Media (P) Limited v. RGV Film Factory, reported in (2007) 1 Del 1122**, A.K.Sikri, J, held as under:

"12. ... What, therefore, follows is that if a junior user uses the senior user's literary title as the title of a work that by itself does not infringe the copyright of a senior user's work since there is no copyright infringement merely from the identity or similarity of the titles alone."

31. The First Division Bench of this Court in **OSA.No.63 of 2018, by order dated 22.02.2018**, in respect of the title in Tamil, 'KARU' had held as under:-

"31. In the instant case, it is not in dispute that there is no originality in adoption of the title "KARU", which is a common Tamil word, which means "foetus" and figuratively "concept" and/or "theme".

32. In **R.Radhakrishnan v. A.R.Murugadoss and the**

Film and Television Producers Guild of South India, reported in AIR 2014 Mad 25, the question was whether the respondent could be injuncted from using the title of the applicant's film. The learned Single Bench quoted with approval the decision of the **Delhi High Court in Kanugo Media (P) Ltd. v. RGV Film Factory and others, reported in (2007) 34 PTC 591 (Delhi)**, which is as follows:

"11. It is common, rather imperative, to give title to literary or entertainment works. Like human beings, literary work produced by the author or the work of entertainment produced by a producer needs a name. It is only then such work would be identified. The term 'literary title' is used to encompass titles of books, periodicals, newspapers, plays, motion pictures, television series, signs, phonograph records, cartoon features and the like (Mc Carthy on Trademarks and Unfair Competition, Third Edition (1995) Vol.I)

12. American Courts have taken uniform view that title alone of a literary work cannot be protected by Copyright Law. Copying of a title alone, and not the plot, characterization, dialogue, song etc. is not the subject of Copyright Law. Thus, a copyright on a literary work would not include exclusive right to use the title on any other work. What, therefore, follows is that if a junior user uses the senior user's literary title as the title of a work that by itself does not infringe the copyright of a senior user's work since there is no copyright infringement merely from the identity or similarity of the titles alone. Same is the position under Copyright Law in India."

33. Relying on the aforesaid judgment, the Single Bench of this Court held that the applicant had no case on the copyright in respect of the title "Raja Rani"

34. The First Division Bench of this Court in **OSA.No.63 of 2018, by order dated 22.02.2018**, had further held as under:-

"50. there is no copyright in the title of a literary work or a cinematograph film.

53. The provisions of the Copyright Act, 1957 and in particular, the wide definition of "infringing copy" in relation to cinematograph film in Section 2(m)(ii), to mean a copy of the film made on any medium, by any means, makes it clear that the proposition laid down in the judgment of this Court in R.Radhakrishnan, supra, and the judgment of the Supreme Court in Krishika Lulla, supra, that there is no copyright in a title, would apply to all feature films.

61. The earlier registration by the plaintiff/respondent No.1 of the title "KARU" with the third defendant/respondent does not confer any right to the plaintiff/respondent No.1 to exclusive use of the title so registered, to the exclusion of other producers. Whether or not there is any dispute with regard to the dates of registration of the respective titles of the plaintiff/respondent No.1 and the appellant/first defendant, is in our view, not material."

35. In view of all these reasons, I am unable to convince myself to grant the reliefs as prayed for to the Plaintiff. Accordingly, OA.No.33 of 2018 is dismissed. The

19.04.2018

JJ 23/04.2018

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