

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.9 of of 2014

and

O.A.No.29 of 2014

M/s.AVM Film Studios,
38, Arcot Road,
Vadapalani,
Chennai-600 026

.. Plaintiff

Vs.

1.K.S.Sabarinathan,
Proprietor, Amarjothi Movies,
G-2, Rashmi Enclave,
10, Elango Nagar Main Road,
Virugambakkam,
Chennai-600 092.

2.M/s.AVM Limited,
38m Arcot Road,
Vadapalani,
Chennai-600 026.

3.V.Sankaran

4.G.Sathya

.. Defendants

This Civil Suit is preferred, under Order IV Rule 1 of Original Side Rules read with sections 55 and 62 of the Copyright Act, 1957 read with Order VII Rule 1 of CPC seeking judgment and decree by declaring that the plaintiff is the absolute owner of the entire world negative rights and the entire copy right of the Tamil Cinematograph film titled 'KARPAGAM' starring Gemini Ganesan, Savithri, K.R.Vijaya and others and directed by K.S.Gopalakrishnan; granting a consequential permanent injunction

restraining the 1st and 4th defendants from interfering or infringing the plaintiff's entire world negative rights and the entire copy right of the tamil cinematograph film titled 'KARPAGAM' starring Gemini Ganesan, Savithri, K.R.Vijaya and others and directed by K.S.Gopalakrishnan in any manner especially by making claims that would cast cloud on the said copyright of the plaintiff; directing the defendants 1 and 4 to pay to plaintiff the cost of this suit and granting such further or other relief as this Court may deem fit and proper under the circumstances of the case and thus render justice.

For Plaintiff : Mr.Najeeb Usman Khan

For Defendants : Set ex parte

JUDGMENT

The nucleus of this suit is a Tamil cinematographic film with title 'Karpagam' and censor certificate number is 37886 dated 01.11.1963. This Tamil cinematographic film features among other artists, Gemini Ganesan, Savithri, S.V.Ranga Rao, M.R.Radha, K.R.Vijaya and Muthuraman as artists. This cinematographic film has been directed by one K.S.Gopalakrishnan. This cinematographic film titled 'Karpagam' is hereinafter referred to as 'suit film' for the sake of convenience and clarity. There is no dispute that the first defendant in the suit one K.S.Sabarinathan, carrying on business in the name and style 'Amarjothi Movies' as sole proprietor is the producer of the suit film.

2 Prayer in the suit is for a declaration that the plaintiff is the absolute owner of the entire world negative rights and entire copyright of the suit film, i.e., 'Karpagam'. There is also a prayer for consequential injunction restraining defendants 1 and 4 (to be noted, there are four defendants) from

interfering with or infringing plaintiff's aforesaid rights in the suit film in any manner. There is also a prayer for costs of the suit besides residuary prayer.

3 The trigger for the suit is a notice dated 4.2.2013 issued by the first defendant arraying defendant No.2 and plaintiff as noticee Nos.1 and 2 respectively. This notice dated 4.2.2013 has been marked as Ex.P.8. In and by this notice, first defendant contended that rights in the suit film had been given to defendant No.2 (noticee No.1) for a period commencing from 14.8.1964 ending 13.8.2013. On this basis, notice dated 4.2.2013 (Ex.P.8) called upon defendant No.2 company and plaintiff firm to transfer and entrust the sound and picture negatives of the suit film to another lab other than AVM Lab, so that first defendant can exploit the suit film.

4 Plaintiff sent a reply dated 11.3.2013 through their Advocate and this reply has been marked as Ex.P.9. Sum and substance of this reply Ex.P.9 is that the plaintiff firm is the absolute owner of world negative rights and all other rights in the suit film for a period of 99 years or in other words, upto 31.10.2062.

5 First defendant sent a rejoinder notice dated 18.3.2013 through counsel and the same has been marked as Ex.P.10. In the rejoinder, it was reiterated that the rights in the suit film do not vest with plaintiff after 13.8.2013.

6 In the light of the aforesaid trigger notice, reply legal notice and rejoinder notice, the instant suit with aforesaid prayers came to be filed on 16.12.2013 and it was taken on file as C.S.No.9 of 2014 after being admitted on 3.1.2014 by the Assistant Registrar on the Original Side.

7 A perusal of the suit file reveals that defendants entered appearance through counsel, but did not file written statement, owing to which defendants were set ex parte and suit was set down for recording ex parte evidence.

8 The suit was set down for recording ex parte evidence before learned Additional Master-IV, who recorded ex parte evidence on 21.11.2016. One witness was examined on behalf of plaintiff as P.W.1. P.W.1 is one R.Gowri Kumar, Manager of plaintiff firm. 10 exhibits, i.e., Ex.P.1 to Ex.P.10 were marked through Gowri Kumar.

9 I have examined the averments in the plaint, deposition of P.W.1 and 10 exhibits that have been marked.

10 I have heard Mr.Najeeb Usman Khan, learned counsel representing M/s.Rugan & Arya (law firm), on record for plaintiff.

11 Learned counsel Mr.Najeeb Usman Khan would draw my attention to plaint averments besides deposition and exhibits and submit that plaintiff firm has become absolute owner of all rights in the suit film. According to him, the manner in which the plaintiff became absolute owner of all rights in the suit film is as follows :

(a) There is no dispute that first defendant is the Producer of the suit film.

(b) There is no dispute that suit film was released for Deepavali on 15.11.1963.

(c) First defendant took loan of Rs.4 lakhs from second defendant company under an agreement dated

1.5.1963 which has been marked as Ex.P.2. Under this agreement, first defendant Producer assigned to second defendant one half of the entire world negative rights in the suit film.

(d)Thereafter, vide agreement dated 4.10.1963, which has been marked as Ex.P.3, first defendant Producer assigned to second defendant world distribution rights of the suit film for a period of 49 years from the date of censorship certificate (To be noted, as alluded to supra, the censorship certificate is dated 1.11.1963 and therefore, 49 years would be upto 30.10.2012).

(e)Thereafter, under letter and further agreement, both dated 14.8.1964 [letter is marked as Ex.P.4 and agreement is marked as Ex.P.5], first defendant Producer assigned his share in the entire world negative rights of suit film absolutely in favour of second defendant for a period of 99 years and transferred the negatives in their favour.

(f)Thus, first defendant has assigned in favour of second defendant world negative rights and entire copyright of suit film including all copyrights in the story, the special treatment given by first defendant and his staff with regard to literary, dramatic, musical, artistic, comic and humorous aspects, etc., in the suit film.

(g)Thereafter, in and by letter of arrangement dated

14.6.2005, which has been marked as Ex.P.6, second defendant assigned all aforesaid rights in the suit film without any reservation whatsoever to third defendant.

(h) Third defendant, under letter of arrangement dated 31.1.2006 marked as Ex.P.7, assigned to plaintiff all aforesaid rights in the suit film without any limitation whatsoever.

12 Learned counsel for plaintiff, after tracing the rights in the suit film in the aforesaid manner, drew my attention to the fact that all agreements have been duly signed by first defendant Producer and also by his brother K.S.Gopalakrishnan, who is the Director of the suit film besides being the author of the story and screenplay.

13 My specific attention was drawn to the aforesaid Ex.P.7, where the suit film is referred to in serial No.5 in the annexure, wherein the period has been clearly shown as upto 31.10.2002.

14 It is when things stood as above and when plaintiff was having absolute rights in the suit film, the aforesaid trigger notice being Ex.P.8, reply Ex.P.9 and rejoinder Ex.P.10 came to be exchanged. I have already alluded to the notice, reply and rejoinder (Exs.P.8, P.9 and P10) supra.

15 On a perusal of the plaint averment, i.e., pleadings, deposition of P.W.1 and aforesaid exhibits, it comes to light that plaintiff has established its right qua suit film. Specific reference can be made to covenant 3(H) in Ex.P.2 and clause 3 in Ex.P.5 with regard to the case of plaintiff that all rights

in the suit film have been obtained by them for the period upto 31.10.2062.

16 The evidence / deposition of P.W.1 is cogent. It is in tandem and in tune with pleadings in the plaint.

17 Exhibits support the pleadings and the deposition.

18 In the light of the narrative supra, there is no difficulty in coming to the conclusion that plaintiff has established their case qua suit prayers. With regard to costs aspect of the matter, as the plaintiff has been constrained to file this suit in 2013 and carry it to its logical end over a period of four years, plaintiff is entitled to costs of the suit. This is more so as first defendant after causing the trigger has not chosen to resist the suit which has compelled the plaintiff to carry the matter to its logical end over a period of four years.

19 I have already referred to the four limbs of the prayer in the suit. To be noted, there are four limbs of prayer which have been set out in paragraph 22 of the plaint which is the prayer paragraph. Though it should read as a,b,c and d, it reads as a,b,e and f. Learned counsel for plaintiff affirms that there are only four limbs of prayers and submits that this is a typographical error. I have verified the original plaint and it is no different.

20 Now, turning to 4th limb of the prayer, which is a residuary prayer, considering the nature and trajectory of the matter, I deem it appropriate to grant one more relief to plaintiff. If the plaintiff is able to identify damages if any owing to the threat to its rights in the suit film and if plaintiff is able to quantify the same post suit, it is open to the plaintiff to claim or pursue

its remedy available in law for recovering such damages from defendants 1 and 4 jointly or severally based on declaratory and injunctive reliefs that have been granted in this suit.

21 In the light of the narrative supra and owing to all that have been set out above, the suit is decreed with costs. Consequently connected application is closed.

19.03.2018

Index : Yes/No

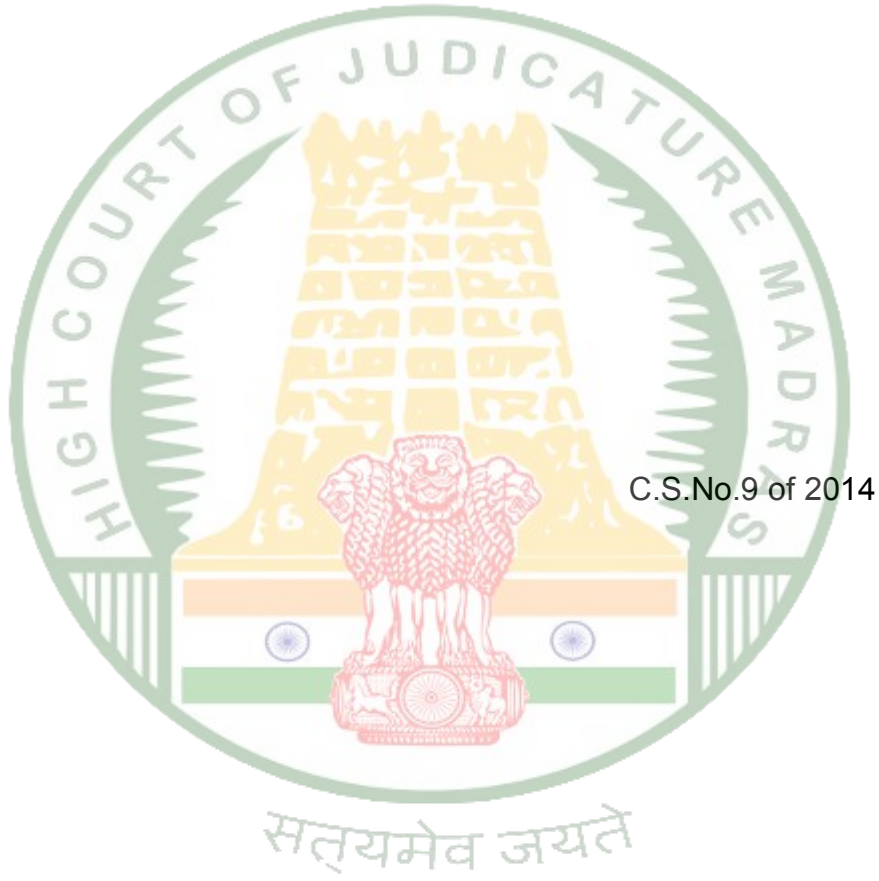
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M.SUNDAR, J.

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