

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

C.C.C.A. No.170 OF 2008

JUDGMENT:

The present C.C.C.A. is directed against the judgment and decree dated 18.01.2008, in O.S. No.16 of 2005 passed by the learned Additional Chief Judge, City Civil Court, Hyderabad.

2. The defendant, having got aggrieved by the aforesaid judgment and decree, preferred the present appeal under Section 96 of Code of Civil Procedure, 1908 (for short 'CPC').

3. By the aforesaid judgment, the suit filed by the respondent (plaintiff) for declaration that he is absolute owner of copyright of the two Telugu motion films 'Aa Okkati Adakku' and "Bhoo Khailas", produced by M/s. AVM Pictures Limited and for consequential permanent injunction restraining the appellant herein (defendant) from exploiting the rights over the scheduled films in any manner, was decreed.

4. Heard Sri Vedula Venkata Ramana, learned Senior Counsel for the appellant (defendant), and Sri T. Vinod Kumar, learned counsel for the respondent (plaintiff), and perused the material on record.

5. For the sake of convenience, the parties are hereinafter referred to as arrayed in the suit before the trial Court.

6. The main submissions of the learned Senior Counsel have been, firstly, that absence of M/s. AVM Pictures Limited, makes the suit bad, which the Court below overlooked despite settling the first issue, thus, “Whether M/s. AVM Productions, Chennai, had right to assign the copyright of the motion films ‘Aa Okkati Adakku’ and ‘Bhoo Kailash’ as on 22-07-2004? If not, whether such assignment in favour of the plaintiff is true and valid?”

7. Second, the plaintiff has to stand or fail on his own legs and cannot rely on the weaknesses in the case of the defendant. This argument is based on the observation made by the trial Court that the defendant did not face cross-examination and did not substantiate the case projected by him that he had acquired rights to exploit the VCD printing and distribution of these two films, as he claimed that he had acquired rights from M/s. PSR Pictures and G.B. Rajender, and also on the basis of the observation by the Court below that though, the documents were filed by the defendant, the defendant has not marked those documents as he did not tender those documents for marking or for cross-examination.

8. Incidentally, in one of the grounds the defendant also complained that it was incumbent on the Court below to issue summons to the defendant since his evidence was not completed and instead of taking recourse to such an action, the Court has allowed an undue favour to the plaintiff by eschewing the evidence of DW.1 which resulted in miscarriage of justice.

9. The submission of the learned counsel for the respondent has been that though, no witnesses were examined so far as Ex.A-4 is concerned, the evidence of PW.1, who is the plaintiff, would suffice to satisfy the evidentiary rule for the reason that he is a signatory to Ex.A-4.

10. The following points would arise for consideration on the grounds agitated and the submissions made by the learned counsel on either side:

1. Whether M/s. AVM Pictures Limited is a necessary party?
2. Whether the trial Court was obligated with the duty to issue summons to DW.1, when he failed to turn up for continuation of his evidence?
3. Whether the judgment and decree passed by the trial Court cannot be sustained?
4. To what other relief, if any?

POINT Nos.1 to 3:

11. A perusal of Ex.A-4, which was placed for perusal by the learned senior counsel for the appellant, would in unmistakable terms show that the plaintiff is a signatory being a party directly to the agreement entered into by the parties i.e., M/s. AVM Productions and

the plaintiff. In such an event, certainly, there is no necessity to examine any others, more particularly, when the defendant examined himself as DW.1 in chief and though, filed the documents, did not mark by attending the Court to continue the chief-examination and that that was the reason why the trial Court has rightly eschewed the evidence of PW.1

12. Now turning to the first submission, that M/s. AVM Productions is a necessary party, in view of the very frame of the first issue, in whose absence, the rights cannot be effectively and completely adjudicated upon is concerned, Exs.A-11 and A-12, more particularly, Ex.A-12, which relates to the rights assigned to the defendant dated 27.03.1995, as rightly observed by the Court below, is for a period of six years and that period expires by 2001. It is, no doubt, true, none connected with Ex.A-12 is examined, but, in view of the evidence of PW.1 and when he filed Ex.A-12 issued by M/s. AVM Productions to M/s. PSR Pictures, certainly, the defendant is obligated with a duty to step into the box to rebut the said allegation. Even otherwise, M/s. AVM Productions is not a necessary party, for the main reason that M/s. AVM Productions' absolute right is not in dispute between the parties herein and in fact, M/s. AVM Productions assigned it to the plaintiff, according to the plaintiff's case, whereas, the defendant's stand is that it assigned to M/s. PSR Pictures from whom he has taken display rights. Therefore, even there is no merit in that submission.

13. So far as incidental ground in the grounds of appeal that it was incumbent on the trial Court to issue summons to the witnesses when the evidence of the witness was not completed and that instead of taking recourse to such an action, the trial Court has allowed an undue favour by eschewing the evidence of DW.1 and that resulted in miscarriage of justice is concerned, Order - XVI of CPC deals with compelling a witness to attend the Court. No obligation is cast on the Court to summon the witness *suo motu*. In the case on hand, the defendant himself is a party witness and having deposed to certain extent in the chief-examination in part, did not turn up to continue further chief-examination and then to face the cross-examination. In such an event, certainly, it is not obligatory for the Court to issue notice to him and compel him to attend the Court, which is not the object in enacting the provisions of Order - XVI of CPC. Thus, there is no merit even in the present ground.

14. Accordingly, point Nos.1 to 3 are answered.

POINT No.4:

15. Therefore, the present appeal is dismissed confirming the judgment and decree of the trial Court in all respects. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the present appeal stand dismissed.

A. SHANKAR NARAYANA, J

February 8, 2018.

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