

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on	Judgment Pronounced on
20.09.2019	01.10.2019

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

**Civil Suit Nos.1303 of 1988
and 260 of 1996**

Civil Suit No.1303 of 1988:-

Raj Video Vision, A partnership firm,
Rep., by its Partner, M.Raghunathan,
703, Mount Road, Madras-6.

.. Plaintiff

-VS-

1.M/s.Bala Movies,
Rep., by N.Krishnaswamy,
6A, Second Street,
Lake Area, Madras-34.

2.M/s.Navrang Films,
7/20, Gopalapuram,
Coimbatore.

3.S.J.Combines,
Rep., by its Partner, J.Karunakaran,
5, Meeran Sahib Street, Madras-2.

[DD2 & 3 set ex-parte]

4.M/s.Cine India,
137, Purasawalkkam High Road,
Madras-10.

.. Defendants

[4th defendant impleaded as per order dated 25.07.1991 in
Appln.No.3496 of 1991 and delay in carrying out the amendment
condoned as per order dated 03.01.1996 in Appln.No.7131 of 1993]

Civil Suit under Order IV Rule 1 of the Original Side Rules and Order VII Rule 1 of the Code of Civil Procedure and Section 55 of the Copyright Act, 1957 for the following judgment and decree:-

i. For a declaration that the plaintiff is the owner of the copyright of the picture "Padikkatha Medai" Black and White for a perpetual period of 99 years;

ii. For an injunction restraining the defendants, their men and agents etc., from interfering with the plaintiff's copyright in the picture "Padikkatha Medai"; and

iii. For costs of the suit.

For Plaintiff : Mr.C.Ramesh

For D-1 : Mr.K.Harishankar for Mr.K.Elango

For D-4 : Mr.G.Veerapathiran – No appearance

Civil Suit No.260 of 1996:-

N.Krishna Swamy

.. Plaintiff

-VS-

1.Vijay TV,
No.3, 2nd Line Beach,
Mcdowell House, Madras-1.

[D1-Dismissed vide order dated 23.03.2017]

2.Raj Video Vision,
Rep., by its Partner, M.Raghunathan,
703, Mount Road, Madras-600 006.

3.Hansa Vision (P) Ltd,
Mount Road, Madras-6.

.. Defendants

Civil Suit under Order VII Rule 1 of the Code of Civil Procedure and Order IV Rule 1 of the Original Side Rules and Sections 55 and 62 of the Copyright Act, 1957 for the following judgment and decree:-

i. For a declaration that the plaintiff is the owner of the absolute copyright of TV rights of the picture "Padikatha Medhai", Black and White, Tamil;

ii. For a direction directing defendants 1 to 3 to pay a sum of Rs.10 Lakhs with interest at the rate of 18% per annum from the date of this Suit till the date of realization to the plaintiff;

iii. For permanent injunction restraining the defendants, their men and agents etc., from interfering with the plaintiff's copyright (TV) in the picture "Padikatha Medai" and

iv. For costs of the suit.

For Plaintiff	:	Mr.K.Elango
For D-2	:	Mr.K.Harishankar
For D-3	:	No appearance

COMMON JUDGMENT

Civil Suit No.1303 of 1988 has been filed for a declaration that the plaintiff is the absolute copyright owner of the picture "Padikkatha Medai" Black and White for a perpetual period of 99 years; and for an injunction restraining the defendants from interfering with the plaintiff's copyright of the picture "Padikkatha Medai".

2. Civil Suit No.260 of 1996 has been filed for a declaration that the plaintiff is the absolute copyright owner of TV rights of the picture "Padikatha Medhai", Black and White, Tamil; for a direction upon defendants 1 to 3 to pay a sum of Rs.10 Lakhs; and for an injunction.

3. The brief facts leading to the filing of C.S.No.1303 of 1988 are as follows:-

The plaintiff is carrying on exploitation and distribution of motion pictures in all dimensions for commercial and non-commercial exhibition in the entire world. The 1st defendant, Producer of the film "Padikkatha Medhai", assigned the rights of the said picture perpetually for a period of 99 years, vide agreement dated 16.07.1976, for a price of Rs.27,500/- in favour of the 2nd defendant. The 2nd defendant, in turn, assigned all the rights in favour of the 3rd defendant on 07.12.1981. The 3rd defendant by an agreement dated 29.04.1988, assigned the entire right for a consideration of Rs.3,000/- to the plaintiff. The assignment includes all dimensions of commercial and non-commercial and the television rights for the entire Overseas Territories and video rights for the entire world. Thus, the plaintiff is vested with the copyright of the said picture. While so, the defendants have made all such misleading propaganda and also lodged false police

complaints setting the criminal law in motion, thereby harassing the plaintiff resulting in the infringement of the plaintiff's copyright. Hence, the suit.

4. The 1st defendant filed a written statement contending that the plaintiff has suppressed the material facts. From the assignment deed dated 16.07.1976, it is seen that the lessees have no right over the exploitation of the said film in Tamil version on TV anywhere in the world. Hence, his contention is that the plaintiff has no right to produce the film in video cassette, which is meant for TV screening. The nutshell contention of the 1st defendant is that he has retained the right over the exploitation of the Tamil version of the film in respect of screening of the picture over TV and the lessees, 2nd and 3rd defendants have no such right, and hence, the suit cannot be maintained.

5. Based on the above pleadings, the following issues are framed for consideration:-

"i. Whether the plaintiff is entitled to the declaration and permanent injunction relating to the TV rights and Video copyrights in the suit picture?"

- ii. Whether the plaintiff has acquired the limited copyright, viz., the TV rights and Video copyrights in the suit picture as claimed? and*
- iii. To What relief the parties are entitled to?"*

6. On the side of the plaintiff, P.W.1 was examined. On side of the defendants, D.W.1 was examined.

Witness examined on the side of the plaintiff :

P.W.1. - Mr.M.Ravindran (PW1)

Witness examined on the side of the defendant :

D.W.1 - Mr.N.Krishnaswamy (DW1)

7. C.S.No.260 of 1996, has been filed by the plaintiff, who is the 1st defendant in C.S.No.1303 of 1988, for a similar relief of declaration and also directing defendants 1 to 3 to pay a sum of Rs.10 Lakhs and for a permanent injunction.

8. It is the case of the plaintiff that vide Assignment Deed dated 16.07.1976, the plaintiff has assigned the picture to one P.D.Emmanuel of M/s.Navrang Films, Coimbatore for a period of 99 years and except the languages rights, he has retained and reserved

his rights over the exploitation of the said version of the above picture on Television anywhere in the world. The said P.D.Emmanuel of M/s.Navrang Films has assigned the rights acquired under the agreement dated 16.07.1976 to one M/s.S.J.Combines. The said M/s.S.J.Combines by agreement dated 29.04.1988, entered into an agreement with the 2nd defendant, the plaintiff in C.S.No.1303 of 1998 wherein also, TV rights, exploitation of the said film on TV has been retained as specific clause in their limit. However, the 2nd defendant is claiming over the entire right. Hence, the suit.

9. Though the 1st defendant has filed a written statement, a compromise memo was entered between the plaintiff and the 1st defendant and the same was recorded by this Court on 23.03.2017 wherein, they settled the issues among themselves. Hence, the 1st defendant has been discharged from the suit. In view of the memorandum as recorded by this Court, the written statement filed by the 1st defendant is not re-produced.

10. The main contention of the 2nd defendant is that the plaintiff having transferred the entire negative rights without reservation, except Terrestrial TV rights, is not entitled to Satellite Broadcasting TV

rights or Video rights. It is further contended that the plaintiff is only trying to achieve what he is not entitled to. The plaintiff by getting a declaration of TV rights wants to exploit Satellite TV broadcasting rights to which, he is not legally entitled to.

11. Based on the above pleadings, the following issues are framed for consideration:-

- "i. Is not the plaintiff entitled to decree as prayed for, in view of Clause-II of the Suit Agreement dated 16.07.1976? and*
ii. To what relief the parties are entitled to?"

12. On the side of the plaintiff, P.W.1 was examined and Ex.P.1 to Ex.P.5 were marked. On side of the defendants, D.W.1 and D.W.2 were examined.

Witnesse examined on the side of the plaintiff :

P.W.1. - Mr.N.Krishnaswamy (PW1)

Witnesses examined on the side of the defendants :

D.W.1 - Mr.Bhaskar (DW1)

D.W.2 - Mr.M.Ravindran (DW2)

Exhibits produced on the side of the plaintiff :

S.No.	Date	Description of documents	Exhibit
1	16/07/1976	Original agreement entered between the plaintiff and P.D.Immanuel.	P-1
2	29/4/1988	Photo copy of Lease agreement entered into between S.J.Combines and the 2 nd defendant.	P-2
3	---	Photo copy of Order in Appln.No.5419 and 6489 of 1988 in C.S.No.1303 of 1988.	P-3
4	31/1/1996	Office copy of Legal notice sent by the plaintiff to the 1 st defendant.	P-4
5	14/2/1996	Reply notice from first defendant's lawyer to plaintiff's lawyer	P-5

13. In these two suits, the main contesting parties are, the plaintiff in C.S.No.260 of 1996 and the 2nd defendant in the said suit. The said 2nd defendant is the plaintiff in C.S.No.1303 of 1988, wherein, the plaintiff in C.S.No.260 of 1996 is the 1st defendant. The other defendants are not contesting the suits. In fact, one of the defendants in C.S.No.260 of 1996, viz., the 1st defendant, has entered into compromise with the plaintiff, who has been discharged from the suit proceedings. Therefore, the main issue is between one Mr.N.Krishna Swamy and Raj Video Vision. Both of them are claiming video rights over the film "Padikkatha Medhai". In view of the same, this Court is of the view that the issues framed in both the suits can be clubbed and discussed together and both the suits can be disposed of, since in both

the suits, the only issue is, who is entitled to TV rights and Video rights of the film.

14. For the sake of convenience, both the parties are referred to by their names in this judgment.

15. The learned counsel for Raj Video Vision has submitted that the declaration in respect of video rights in favour of Raj Video Vision is not an issue in this matter, provided, Mr.N.Krishna Swamy is entitled only to Terrestrial TV rights alone and not Satellite Broadcasting TV rights or Video rights. He has placed reliance on the judgments of this Court in **P.Thulasidas vs. K.Vasanthakumari** reported in **1991-1-L.W.** and **M.Padmini and Ors. vs. Raj Television Network Limited** reported in **2015-3-LW43** whereas, the learned counsel appearing for Mr.N.Krishna Swamy submitted that at the time of assignment, Mr.N.Krishna Swamy has only retained the rights over the exploitation on Television anywhere in the world, merely because, the Satellite TV had come into operation after the assignment deed, it does not mean that there is any right to exploit film in the Satellite TVs. If any rights accrued in future due to advancement of science and technology, it will only devolve upon the

owner, who retained such rights in the agreement. Hence, it is the contention that the right has been retained by the owner by way of Assignment Deed, as envisaged under proviso to Section 18 of the Copyright Act, 1957.

16. Though many issues have been framed, the issue is only with regard to copyrights, accordingly, this Court decide all the issues together. The entire issue revolves around Ex.P.1, agreement, dated 16.07.1976. It is not disputed by both sides that one N.Krishna Swamy, who is the plaintiff in C.S.No.260 of 1996, is the producer of the film "Padikkatha Medhai". He has originally assigned the above movie to one P.D.Emmanuel, by agreement dated 16.07.1976, and the same has been mentioned as Ex.P.1. The relevant clauses in Ex.P.1 are as follows:-

"I. The Lessors have leased out as with effect from this date on Outright Lease Hold Right Basis, perpetually for a period of 99 (Ninety nine) years all and their movie rights, interests and the Entire World Negative Rights including the rights of distribution, exhibition, except languages rights, in respect of the said picture entitled "Padikkatha Methai" (Tamil), in black and white, in 35mm subject, howerver to the commitments already made by the lessors with their

several distributors, in several territories, and in several dates as per the detailed schedule attached herein.

II. The lessees have no right over the exploitation of the said Tamil Version on TV anywhere in the world.

III.....

IV. The lessors have agreed and undertaken to deliver the Negatives (Both Picture and Sound) in 19 reels each totalling 38 reels including lillies etc of the said picture to the lessees on signing this Agreement in good and proper condition and without any damage or loss in the said negatives.

V. The lessees are entitled to take out any number of print or prints in any millimeter, as they may think necessary for exploiting the said picture in the World territories anywhere at any time.

VI. That the Lessors guarantee the Lessees that both picture and sound Negatives of the said picture are being in good condition and also absolutely fit for taking out required prints in any millimeter of the said picture.

.....
XVII. That the copyright over the story, dialogue, and songs of the said picture are the absolute property of the lessors only and the lessees shall have no claim whatsoever over the same.

....."

17. The above clauses in the agreement, make it clear that the owner has retained exploitation of the movie on TV anywhere in the world. Clause II of the agreement makes it very clear that the lessees have no right over the exploitation of the said Tamil version on TV anywhere in the world. Raj Video Vision has acquired the same right by agreement dated 29.04.1988, from the 3rd defendant. Such assignment is not in dispute. It is also not in dispute that the original assignee was P.D.Emmanuel, who has assigned the right acquired under the assignment and further assigned to the 3rd defendant on 07.12.1981. The original assignee P.D.Emmanuel has, in fact, acquired the rights except exploitation of the movie and dimensional version on TV. The exploitation of the movie in TV dimensions has been specifically retained by the producer, viz., Mr.N.Krishna Swamy. The fact that the first owner of the film "Padikkatha Medhai" is one N.Krishnaswamy, is not disputed. He has specifically retained exploitation of the film on Television. In this regard, it is relevant to extract Section 18 of the Copyright Act, 1957.

18. Assignment of copyright -

(1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or

subject to limitations and either for the whole term of the copyright or any part thereof:

Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence:

[Provided further] that no such assignment shall be applied to any medium or mode of exploitation of the work which did not exist or was not in commercial use at the time when the assignment was made, unless the assignment specifically referred to such medium or mode of exploitation of the work:

Provided also that the author of the literary or musical work included in a cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for the utilization of such work in any form other than for the communication to the public of the work along with the cinematograph film in a cinema hall, except to the legal heirs of the authors or to a copyright society for collection and distribution and any agreement to contrary shall be void:

Provided also that the author of the literary or musical work included in the sound recording but not forming part of any cinematograph film shall not assign or waive the right to receive royalties to be shared on an equal basis with the assignee of copyright for any utilization of such work except to

the legal heirs of the authors or to a collecting society for collection and distribution and any assignment to the contrary shall be void.]

(2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.

(3) In this section, the expression "assignee" as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence.

18. The second proviso to Section 18(1) of the Copyright Act, 1957 makes it clear that no such assignee shall be assigned to copyright when the work does not exist or was not added as commercial use at the time when the assignment was made unless such assignment was specifically referred to the memo or mode of work. Therefore, the proviso makes it clear that when the mode to exploitation of the work has been reserved or retained by the owner and the copyright got assigned either wholly or partially and either generally or subject to limitations and either for the whole term of the

copyright or any part thereof, the owner has retained the exploitation on television at the time of the agreement. Ex.P.1 is of the year 1976 and it is an undisputed fact that at the relevant time, Satellite TV was not in vogue and only after 90's, Satellite TVs had come into operation. The fact remains that the exploitation of the movie on television has been retained by the owner. It is also relevant to note that television and Satellite TVs are the result of advancement of science. Therefore, the medium of exploitation having been retained in the year 1976, due to advancement of science and technology, such right to exploit the films on television will definitely enure the person who retained such right of exploitation on television. Therefore, it cannot be posed by Raj Video Vision that the Producer, Mr.N.Krishna Swamy is entitled to exploit the film only in Terrestrial TV rights and not satellite broadcasting and TV rights. Such contentions have no legs to stand for the simple reason that right to exploit the movie on TV has never been assigned to anybody. Such right has solely been retained by the producer in the very same agreement. Therefore, any development in the field of television takes place, such benefit shall automatically go to the person who reserves such right to exploit the movie on televisions.

19. The judgment in **Ratna Movies vs. Muthu Enterprises [C.S.No.605 of 1991, dated 22.06.1991]** relied upon by the learned counsel for Raj Video Vision is not applicable to the facts of the case since in that case, the owner has not retained specific rights whereas, in the agreement entered between P.W.1, it is clearly stated that the right of installation and television has been specifically retained by the owner and such being the position, the judgment cited by the learned counsel for the plaintiff is not applicable to the facts of this case.

20. So far as Raj Video Vision is concerned, the learned counsel fairly submitted that if video rights are given to the Raj Video Vision, they will have no grievance. However, he put a caveat that satellite rights should not be given to Mr.N.Krishna Swamy. The learned counsel appearing for Mr.N.Krishna Swamy has fairly submitted that he has no issue in respect of the video rights to be given to Raj Video Vision. In view of specific stand taken during the submissions, this Court is of the view that Raj Video Vision can be given a declaration that they are entitled to only video rights and not satellite rights. Accordingly, all the issues are answered.

21(i) In the result, C.S.No.260 of 1996 is decreed for a declaration that the plaintiff is the absolute copyright owner of the TV rights of the picture "Padikkatha Medhai" Black and White, Tamil including the Satellite rights.

21(ii) As far as the damages are concerned, the suit is dismissed only against the 2nd and 3rd defendants in C.S.No.260 of 1996, since the 1st defendant has already entered into compromise and has paid the compensation to the plaintiff. However, so far as the damages are concerned, there is no evidence available and the same is negatived.

21(iii) So far as C.S.No.1303 of 1996 is concerned, the plaintiff is entitled to declaration that they are entitled to video rights alone. In respect of other reliefs, the suit is dismissed. No costs.

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Encl.

C.S.No.260 of 1996
Documents List

<i>Sl.No.</i>		<i>Description of Documents</i>	<i>Date</i>
1	Ex.P1	Original agreement entered between the plaintiff and P.D.Immanuel.	16/07/1976
2	Ex.P2	Photo copy of Lease agreement entered into between S.J.Combines and the 2 nd defendant.	29/4/1988
3	Ex.P3	Photo copy of Order in Appln.No.5419 and 6489 of 1988 in C.S.No.1303 of 1988.	---
4	Ex.P4	Office copy of Legal notice sent by the plaintiff to the 1 st defendant.	31/1/1996
5	Ex.P5	Reply notice from first defendant's lawyer to plaintiff's lawyer	14/2/1996

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N.SATHISH KUMAR, J.

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Pre-delivery Judgment made in
Civil Suit Nos.1303 of 1988
and 260 of 1996

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Dated : 01.10.2019