

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :04.11.2019

Coram

The Honourable Mr.Justice N.SATHISH KUMAR

C.S.No.485 of 2008

M/s.Shri Balaji Enterprises
Represented its Proprietor
Me.Sanjay A.Wadhwa
S/o. Late Arjundas Pokardas
Old No.80, New No.42,
New Avadi Road, Kilpauk
Chennai 10.

...Plaintiff

Versus

1.M/s.Sri Surya Movies
Rep by its Proprietor Mr.A.M.Rathnam
No.1, Vellavan Street,
West Kamakotti Nagar, Valasarawakkam,
Chennai 600 087.

2.Ayyappan (Deceased)
Proprietor: Yokesh Movie Makers,
No.9/7, Soundarrajan street,
T.Nagar,
Chennai 600 017.

3.Prasad Film Laboratories
Rep by its Managing Director,
No.58, Arunachalam Road,
Saligramam,
Chennai 600 093.

4.Panchammal,

5.Mani Bharathi

6.Karuppusamy

...Defendants

(Defendants 4 to 6 are brought on record as legal heirs of the deceased second defendant as per order dated 04.06.2018 in A.Nos.7082 to 7084 of 2018)

This Civil Suit is filed under Section 55 and 62 of the Indian Copyright Act, 1957 read with Order IV Rule 1 and 2 of Original Side Rules, prayed (a) for a permanent injunction restraining defendants 1 and 2, their men, agents, servants, representatives or any body claiming through, by or under them from in any manner infringing the Surface Transport copyrights of the plaintiff in respect of the suit schedule films in VCD, DVD formats either by dealing with the said rights or exploiting the same in any other manner, whatsoever;
(b) cost of the suit.

For Plaintiff : M.Gautham S.Raman
for Mr.C.Seethapathy

For Defendants : Defendants 1,3,4 to 6 are set
exparte.
D2 died.

J U D G M E N T

The suit has been filed for the following reliefs:

(a) for a permanent injunction restraining defendants 1 and 2, their men, agents, servants, representatives or any body claiming through, by or under them from in any manner infringing the Surface Transport copyrights of the plaintiff in respect of the suit schedule films in VCD, DVD formats either by dealing with the said rights or exploiting the same in any other manner, whatsoever;

(b) cost of the suit.

2. The case of the plaintiff is that the plaintiff firm was originally formed by Mr.Arjundas Pokardas, who was a sole proprietor. The plaintiff is doing the business, inter alia, of acquiring and distribution of satellite TV video copyrights and other cinematograph copyrights. The plaintiff's proprietor, Mr.Arjundas Pokardas was approached by the first defendant who is a producer and the first defendant sought financial assistance. The plaintiff

had agreed to pay the first defendant for his production of various Tamil films viz., Run, Boys, Enakku 20 Unakku 18, Gilli, Kovil, 7-G, Rainbow Colony, Ponniyan Selvan and finance agreements were also entered into between them. The securities for the aforesaid agreements were the Satellite TV rights and other rights backed up by lab letters specifying the VCD/DVD rights, Airbone, Surface Transport, Internet rights etc. The plaintiff further submits that, later on, the first defendant had given letter to the plaintiff requesting relinquishment of the security in lieu of granting distribution rights of the aforesaid films to the plaintiff for VCD and DVD format in India on a sole, exclusive, absolute and irrevocable basis for a perpetual period from the date of the said letter in lieu of the repayment of dues. The details of these seven letters are as follows:

- i) Date of Finance Agreement : 04.09.2002
Request letter for relinquishment dated 30.09.2002
Lab letter dated:30.09.2002 for the film RUN
- ii) Date of Finance Agreement : 16.11.2002
Request letter for relinquishment dated 15.04.2003
Lab letter dated:15.04.2003 for the film BOYS

iii) Date of Finance Agreement :10.01.2003

Request letter for relinquishment dated 16.01.2004

Lab letter dated:16.01.2004 for the film ENAKKU 20
UNAKKU 18

iv) Date of Finance Agreement : 09.07.2003

Request letter for relinquishment dated 05.04.2004

Lab letter dated:05.04.2004 for the film GILLI

v) Date of Finance Agreement : 27.08.2003

Request letter for relinquishment dated 16.01.2004

Lab letter dated:16.01.2004 for the film KOVIL

vi) Date of Finance Agreement : 31.01.2004

Request letter for relinquishment dated 07.01.2005

Lab letter dated:07.01.2005 for the film 7G RAINBOW
COLONY

vii) Date of Finance Agreement : 29.01.2005

Lab letter dated:23.08.2006 for the film PONNIYAN SELVAN

3. The third defendant has sent a letter to the plaintiff
acknowledging the rights of the plaintiff referring to the assignment
letters from the first defendant in respect of distribution rights of

the aforesaid seven films and confirmed the availability of negatives for taking delivery by the plaintiff on payment of necessary charges to the lab. Thereafter, on 04.03.2008, the plaintiff shocked was to see the public notice issued by the second defendant stating that he has acquired the transport rights (through VCD, DVD formats) of the schedule films from the first defendant. Hence, the suit has been filed.

4. The second defendant has filed the written statement stating that the suit is not maintainable. The second defendant is a bonafide purchaser and he does not have knowledge about the alleged agreement between plaintiff and first defendant entered on 23.08.2006, at the time of agreement entered by the second defendant with one Murugesan dated 22.02.2008. The second defendant enquired the first defendant regarding the transport right to the said 26 movies and thereafter the second respondent entered into the agreement. With ulterior motive, the plaintiff and the first defendant colluded together on the basis of the alleged agreement dated 23.08.2006 and filed the present suit against the

second defendant.

5. This Court, upon perusal of the pleadings, plaint and written statement framed the following issues:-

"1. Whether the plaintiff is the sole and absolute owner of the copyright including DVD, VCD, HD DVD, Transportation rights, etc. over the suit schedule films?

2. Whether the defendants 1 and 2 are guilty of infringement of the plaintiff's copyright over the suit schedule films?

3. To what reliefs are the parties entitled to?"

6. Heard the learned counsel for the plaintiff and perused the materials.

7. Subsequently, the plaintiff was examined as P.W.1 and the following documents were marked as Exs.P1 to 40:

<i>Exhibits</i>	<i>Date</i>	<i>Description of Documents</i>
Ex-P1	04.09.2002	The finance agreement between plaintiff and the first defendant for the film RUN
Ex-P2	30.09.2002	The letter from the first defendant requesting to relinquish Satellite TV.
Ex-P3	30.09.2002	The lab letters issued by first defendant to third defendant.
Ex-P4	05.12.2006	The confirmation letter issued by the third defendant to plaintiff for the film RUN.
Ex-P5	16.11.2002	The finance agreement between plaintiff and first defendant for the film BOYS.
Ex-P6	16.11.2002	The lab letter by first defendant for the film BOYS reg. Grant of World Satellite TV rights.
Ex-P7	15.03.2003	The letter from first defendant requesting to relinquish Satellite TV rights.
Ex-P8	15.04.2003	The lab letter issued by the first defendant to third defendant.
Ex-P9	05.12.2006	The confirmation letter issued by the third defendant to plaintiff for the fil BOYS.
Ex-P10	10.01.2003	The finance agreement between plaintiff and the first defendant for the film ENAKKU 20 UNAKKU 18.
Ex-P11	10.01.2003	The lab letter by first defendant requesting for the above film reg. Grant of World Satellite TV rights.
Ex-P12	16.01.2004	The letter from the first defendant requesting Satellite TV rights.
Ex-P13	16.01.2004	The lab letter issued by first defendant to third defendant.
Ex-P14	05.12.2006	The confirmation letter issued by third defendant to plaintiff for the film ENAKKU 20 UNAKKU 18.

<i>Exhibits</i>	<i>Date</i>	<i>Description of Documents</i>
Ex-P15	09.07.2003	The finance agreement between plaintiff and first defendant for the film GILLI
Ex-P16	07.07.2003	The lab letter from the first defendant for the film GILLI reg. Grant of World Satellite TV rights.
Ex-P17	31.01.2004	The letter confirming the loan obtaining by first defendant.
Ex-P18	05.04.2004	The letter from first defendant requesting to relinquishing satellite TV rights.
Ex-P19	05.04.2004	The lab letters issued by first defendant to third defendant.
Ex-P20	04.12.2006	The confirmation letter issued by third defendant to plaintiff for the film GILLI.
Ex-P21	27.08.2003	The finance agreement between plaintiff and the first defendant for the film KOVIL.
Ex-P22	27.08.2003	The lab letter from the first defendant for the film KOVIL reg. Grant of World Satellite TV rights.
Ex-P23	16.01.2004	The letter from first defendant requesting to relinquishing satellite TV rights.
Ex-P24	16.01.2004	The lab letters issued by first defendant to third defendant.
Ex-P25	04.12.2006	The confirmation letter issued by third defendant to plaintiff for the film KOVIL.
Ex-P26	31.01.2004	The finance agreement between plaintiff and the first defendant for the film 7G RAINBOW COLONY.
Ex-P27	31.01.2004	The lab letter from the first defendant for the film 7G RAINBOW COLONY reg. Grant of World Satellite TV rights.
Ex-P28	07.01.2005	The letter from first defendant requesting to

<i>Exhibits</i>	<i>Date</i>	<i>Description of Documents</i>
		relinquishing satellite TV rights.
Ex-P29	07.01.2005	The lab letters issued by first defendant to third defendant.
Ex-P30	03.02.2004	The confirmation letter issued by third defendant to plaintiff for the film 7G RAINBOW COLONY.
Ex-P31	29.01.2005	The finance agreement between plaintiff and the first defendant for the film PONNIYAN SELVAN.
Ex-P32	29.01.2005	The lab letter from the first defendant for the film PONNIYAN SELVAN reg. Grant of World Satellite TV rights.
Ex-P33	04.12.2006	The confirmation letter issued by third defendant to plaintiff for the film PONNIYAN SELVAN.
Ex-P34	23.08.2006	The assignment agreement between plaintiff and first defendant.
Ex-P35	04.03.2008	The publication given by second defendant in Daily Thanthi.
Ex-P36	04.03.2008	The certificate true copy of the telegram issued by plaintiff to second defendant .
Ex-P37	02.04.2008	The reply from second defendant.
Ex-P38	20.03.2008	Original Death Certificate of PW1's father
Ex-P39	31.03.2008	The true copy of Legal Heirship Certificate of PW1's father attested by Tahsildar
Ex-P40	15.04.2008	The affidavit executed by PW1's two sister and mother

8. Ex.P1 is the finance agreement between plaintiff and the

first defendant for the film RUN dated 0409.2002. Ex.P2 is the letter from first defendant requesting to relinquish Satellite TV dated 30.09.2002. Ex.P3 is the lab letters issued by first defendant to third defendant dated 30.09.2002 and Ex.P4 is the confirmation letter issued by third defendant dated 30.09.2002. Exs.P5 to P34 makes it clear that the plaintiff not only acquired right in the assignment agreement there were also official agreement entered into between first defendant and the proprietor. The letters sent by the Laboratories to the plaintiff also indicates that the rights are vested with the plaintiff. P.W.1 deposed about the nature of the transaction entered to acquire the rights over the films. Evidence of P.W.1 and documents adduced remain unchallenged.

9. From the above documents, the plaintiff has proved his claim. Accordingly, the suit is decreed as prayed for.

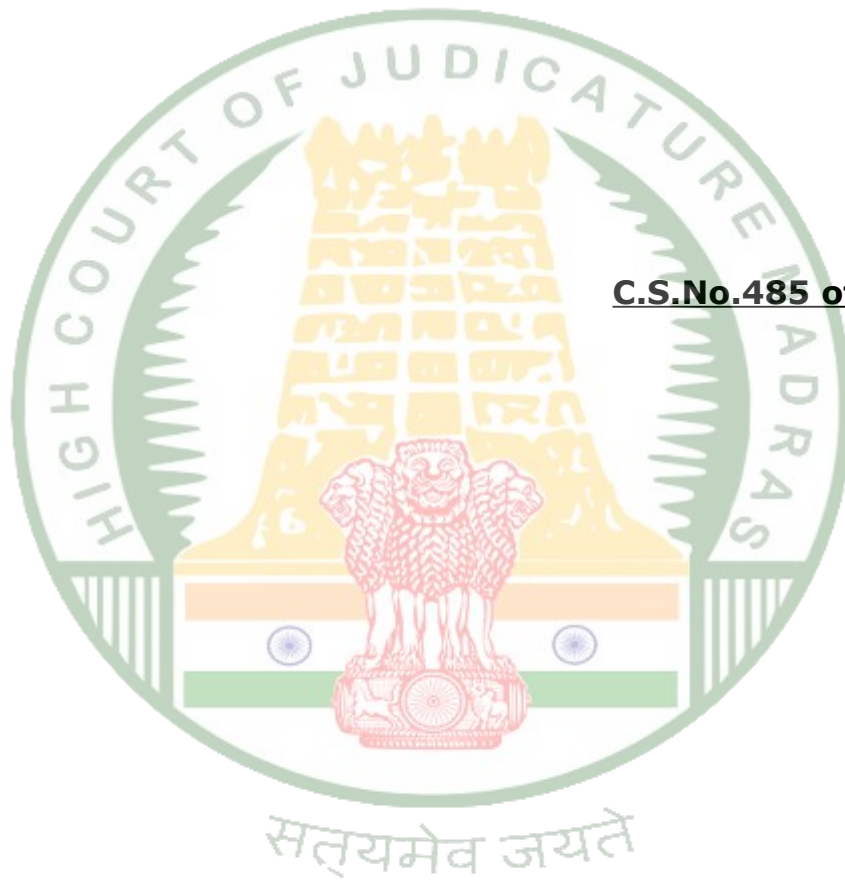
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N.SATHISH KUMAR, J.,

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