

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.10.2019

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.500 of 2010

Mr.Jeevanandham

... Plaintiff

Vs

1. Mr.V.Gowthaman

2. Mr.G.Manivannan
M/s.Athirvu Thiraiappatturai,
No.182, 4th Main Road,
Sri Ayyappa Nagar,
Koyambedu, Chennai – 60092.

3. M/s.Prasad Film Laboratories,
Prasad Studio
No.28, Arunachalam Road,
Saligramam, Chennai – 600 093.

... Defendants

सत्यमेव जयते

Civil Suit filed under Order VII Rule 1 of Civil Procedure Code read with
Order IV Rule 1 of the O.S. Rules and Sections 55 and 62 of the Copyright Act,
1957 for the following decree and judgment :

[a] granting a permanent injunction restraining the defendants, their men, agents, servants or any other person or persons claiming through them or authorized by them, from, in any manner infringing the copyright of the plaintiff of the story, screen play, dialogues etc. of the Tamil film “Mahizhchi” written by the 1st defendant for the plaintiff, by producing, distributing, processing the film prints or releasing/ screening the said film directed by the 1st defendant on behalf of the 2nd defendant or any other person;

[b] directing the 1st and 2nd defendants to pay to the plaintiff the costs of the suit

For Plaintiff : Mr.AR L Sundaresan SC
for Mr.K.R.Ramesh Kumar

For defendants : Mr.T.Thiageswaran
for M/s.Waraon & Sairam – D1 & D2

JUDGMENT

This suit has been filed for permanent injunction to restrain the defendants and their men from, in any manner infringing the copyright of the plaintiff of the story, screen play, dialogues etc. of the Tamil film “Mahizhchi” written by the 1st defendant for the plaintiff, by producing, distributing, processing the film prints or releasing/ screening the said film directed by the 1st defendant on behalf of the 2nd defendant or any other person and for costs.

2. The brief facts of the case of the plaintiff is as follows :

2.1. The case of the plaintiff is that they are carrying on business in film productions. The first defendant informed the plaintiff that he was having a subject and requested the plaintiff to take up production of the film and also stated that he would write a story, screen play, dialogues etc. for the plaintiff on the basis of the story-line of a novel 'Thalaimuraigal' which was written by one Neela Padmanaban and also offered to direct the said film. The plaintiff agreed to produce the said film and the first defendant agreed to write the screen play, dialogue etc. for the film which was named 'Mahizhchi'. The defendant's letter dated 26.01.2004 confirmed the opportunity which was given to him by the plaintiff. On the assurance of the first defendant, the plaintiff registered the name of the film titled as 'Mahizhchi' with the Tamil Film Producers' Council on 19.01.2005 and an agreement was entered into between the plaintiff and the first defendant on 10.03.2005 under which the first defendant agreed and undertook to write the story, screen play, dialogue, etc. on the basis of the story written by Neela Padmanaban. The plaintiff has given a sum of Rs.10,000/- to the first defendant for the said contract. It was further agreed that in the event of the project being a commercially viable project, the first defendant would be entitled

to 40% share of other language rights. The plaintiff paid a further sum of Rs.25,000/- to one Aditya Sundaresh, a relative of the said Neel Padmanabhan on behalf of Mr.Neela Padmanabhan towards the advance payment for the said novel 'Thalaimuraigal'.

2.2. The first defendant has screen played 27 parts and handed over the same to the plaintiff. The plaintiff also advanced payments to other technicians, music directors etc. However, while shooting was to be fixed and schedule was to be arranged, the first defendant insisted that he should play the main role in the film, which gave rise to dispute between the plaintiff and the first defendant. In the above circumstances, the plaintiff on 18.01.2006 agreed to transfer the copyright in respect of the screen play, dialogue etc. of the proposed film 'Mahizhchi' to any other person provided all the expenses which were incurred by the plaintiff herein until then were fully settled. The first defendant agreed for the same and also received the letter dated 18.01.2006 from the plaintiff and acknowledged the same. The plaintiff had incurred an expenditure of Rs.30,85,823/- towards artistes payment, costumes purchase, location hunt/visits made, commission, entertainment, furniture etc. The defendant having agreed to reimburse entire expenses made by the plaintiff and started producing the movie with the second defendant. It is the contention of the

plaintiff that the plaintiff is the owner of the copy right in respect of story, screen play, dialogue etc. which were written by the first defendant for the plaintiff under the contract of employment vide agreement dated 10.03.2005. Hence the suit.

3. Brief contention of the written statement is as follows :

Both the defendants filed the written statement to the effect that the plaintiff has no copy right over the story play of the film 'Mahizhchi' as on the date of filing of the suit. As a matter of fact, the plaintiff and the first defendant entered into an agreement dated 10.03.2005 whereunder the first defendant had agreed to direct the film based on the story of Neela Padmanaban. The first defendant has obtained copyright of the story of Neela Padmanaban and written the screen play and dialogue for the film 'Mahizhchi' and directed the same as cinematographic film. Subsequently, on 08.01.2006, the plaintiff has relinquished his right over the story, screen play and dialogue created by the first defendant under the title 'Magizchi' on an agreed compensation. Therefore, the copy right over the film has been relinquished in favour of first defendant under the said letter of arrangement dated 18.01.2006. From 18.01.2006, the first defendant is the absolute copy right owner of the screen play of the movie titled 'Mahizhchi'. Further, the plaintiff failed to claim the compensation as agreed between the plaintiff and the defendants under the letter dated 18.01.2006 within

3 years from the date of 18.01.2006. Therefore, the plaintiff is not entitled to claim any compensation. Hence, prayed for dismissal of the suit.

4. On the basis of the above pleadings, following issues have been framed :

1. Whether the plaintiff is entitled to claim the copyright over the film 'Mahizhchi'?
2. Whether the plaintiff is entitled for permanent injunction restraining the defendants from infringing the copyright of the story, screen play, dialogues of the Tamil film 'Mahizhchi'?
3. What other relief or reliefs, the plaintiff is entitled to?

5. On the side of the plaintiff, plaintiff examined himself as P.W.1 and marked Ex.P.1 to Ex.P.14. On the side of the defendants, the second defendant was examined as D.W.2 and no document was marked on the side of the defendants.

Witnesses examined on the side of the plaintiff:

P.W.1. - Mr.Jeevanandham

Witnesses examined on the side of the defendants

D.W.1 – Mr.D.Manivannan

Exhibits produced on the side of the plaintiff:

2.	19.01.2005	Receipt issued by Tamil Film Producers' Council for registration of film titled 'Mahizhchi'	P-2
3.	10.03.2005	Agreement between the plaintiff and the first defendant	P-3
4.	June 2005	Receipt issued by Aditya Sundaresh for Rs.25,000/-	P-4
5.	18.01.2006	Letter by the plaintiff to the first defendant	P-5
6.	07.11.2006	Complaint given by the plaintiff to Tamil Film Producers' Council	P-6
7.	12.12.2007	Complaint given by the plaintiff to Tamil Film Producers' Council	P-7
8.	30.11.2008	Complaint given by the plaintiff to Tamil Film Producers' Council	P-8
9.	12.06.2007	Income Tax Returns for the assessment year 2006 – 2007	P-9
10.	28.10.2009	Publication in Dina Thanthi	P-10
11.	30.10.2009	Publication in Dina Thanthi	P-11
12.	02.11.2009	Publication in Dina Mani	P-12
13.	13.12.2009	Publication in Dina Mani	P-13
14.	30.11.2009	Telegram issued by the first defendant to the plaintiff	P-14

Exhibits produced on the side of the defendants: Nil

6. The learned Senior Counsel appearing for the plaintiff would submit that admittedly the first defendant was engaged by the plaintiff to write story and

the plaintiff is the owner of the copyright. He has paid amount to the original owner. In view of the same, the plaintiff has incurred expenses more than 35 lakhs. Such being the position, the first defendant has produced the movie with the help of the second defendant on the copyrights of the plaintiff. The evidence adduced on the side of the plaintiff clearly proves that the plaintiff is the copyright owner of the film. The letter dated 18.01.2006 did not assign any right to the defendant. The same is subject to payment of money. As no amount has been paid, he has filed the suit.

7. During the pendency of the suit, injunction has also been granted and this Court, by an Order dated 20.09.2010, directed release of the movie subject to deposit of Rs.20 lakhs by the defendants. Therefore, it is his contention that the copy right always vested with the plaintiff. The first defendant has released the movie and violated copy rights and now cannot contend that the money deposited in the Court has to be refunded to the first defendant. It is his contention of the learned Senior Counsel that the money deposited in the Court has to be paid to the plaintiff and the plaintiff is also ready to pay necessary Court fee in this regard.

8. Whereas, it is the contention of the learned counsel for the defendant

that the suit is not filed for recovery of money and the suit has been filed only for bare injunction. The suit ought to have been filed within a period of three years. Now the relief cannot be granted for return of money deposited to the credit of the suit. When the relief itself is in respect of injunction, the plaintiff is not entitled to any amount. Admittedly, by letter dated 18.01.2006, the plaintiff assigned the copyright of the film in favour of the first defendant. Therefore, as on the date of the suit, the plaintiff did not have the copyright. It is their contention that the suit has become infructuous and the amount lying in the credit of the suit is to be Order to be returned only to the first defendant. In support of his contentions, he relied on the judgment in **Emgeeyar Pictures Pvt. Ltd. Vs. O.K.Films and others** reported in **2009 (8) MLJ 1149**.

9. Issues Nos.1 to 3

The suit has been filed on the basis of the copyright of the story 'Mahizhchi'. The specific case of the first defendant is that he was engaged to write story for the film "Mahizhchi" by the plaintiff. The same is not in dispute. Further, the plaintiff has also pleaded to the effect that the story belong to one Neela Padmanaban and he has paid Rs.25,000/- to him and has become copyright owner of the story. The first Defendant in the written statement has admitted that the defendant has entered into an agreement dated 10.03.2005 to

direct the film titled "Mahizhchi" on the basis of the story of the said Neela Padmanaban. Whereas, it is his contention that he has obtained copyright of the story and written the screen play. Subsequently, on 08.01.2006, the plaintiff has relinquished his right over the screen play of the film titled "Mahizhchi" on agreed compensation. Moreover, it is the contention of the defendant that he has obtained copyright of the film. But, absolutely there is no materials whatsoever placed before this Court to prove the same. Whereas, their own pleadings clearly indicate that the first defendant has become copyright owner of the film based on the letter dated 08.01.2006.

10. Be that as it may. Ex.P.1 filed by the plaintiff clearly indicate that first the defendant has written a letter dated 26.01.2004 to direct the movie for the plaintiff. Ex.P.2 has been filed to show that the plaintiff has registered the movie titled 'Mahizhchi' with the Tamil Film Producer Council. Ex.P.3 is the agreement entered between the plaintiff and the first defendant dated 10.03.2005. The same clearly indicate that only on the request of the plaintiff, the first defendant has written the story and also accepted to direct the film "Mahizhchi" and received Rs.10,000/- by way of cheque towards the said contract. It is also agreed between the parties in the event of the project being a commercially viable project, the first defendant would be entitled to 40% share of other

language rights. Ex.P.4 has been filed by the plaintiff to show that they have paid Rs.25,0000/- to the author of the story, Neela Padmanaban. Ex.P.5 letter dated 08.01.2006 filed by the plaintiff clearly indicate that the film could not be completed as there is dispute between the parties. The plaintiff infact, has agreed to assign the copyright of the story to the first defendant, provided the first defendant pay the entire expenditure incurred by the plaintiff towards the production of the movie. By Ex.P.8, the plaintiff has given a complaint against the first defendant to Producer Council wherein also it has been clearly indicated the nature of expenses incurred by the plaintiff. Ex.P.7 is also a similar complaint given with the Producer Council . Ex.P.9 is the Income Tax returns filed by the plaintiff. Wherein also, the expenses incurred by the plaintiff has been indicated.

11. The first defendant, who claims to have obtained the copyright from the plaintiff has not appeared before the Court. Only the second defendant was examined as D.W.1. It is to be noted that the main contention of the defendants is that on the date of the suit, the plaintiff did not have copy right in view of Ex.P.5 letter dated 18.01.2006. A careful perusal of Ex.P.5, indicate that the assignment has not been taken effect. What was intended in the above document was only the agreement to assign the copy rights subject to the

payment of the expenses incurred by the plaintiff. Therefore, Ex.P.5 cannot be considered as an assignment deed. It is only an agreement to assign the rights provided the entire amount has been paid. Therefore, mere agreement to assign the rights subject to the payment of consideration or expenses incurred, it cannot be said that there was a complete assignment of the story.

12. It is to be noted that for a valid assignment, the assignment must take place immediately. It is only the mere intention to assign the rights provided the first defendant reimburse the entire expenses made by the plaintiff. Such being the position, the contention of the defendants that the first defendant has become the owner of the story "Mahizhchi" under Ex.P.5 cannot be countenanced. Ex.P.5 is only a mere agreement to assign and is not a complete assignment. Therefore, the contention of the defendant that the first defendant has obtained the copyright of the story cannot be countenanced. Having pleaded in the written statement that under Ex.P.5 they got the assignment from the plaintiff, the defendant, infact, has admitted the rights of the plaintiff in the story. Besides, the plaintiff also filed various documents, particularly, payment to the original owner under Ex.P.4. He has also filed several complaints with the Producer Council against the first defendant. The first defendant has not entered into the box without any reason. Therefore, this

Court has no other option except to draw adverse inference against the first defendant.

13. When the documents filed by the plaintiff clearly establish the fact that he is the copyright owner of the story, the first and second defendants have no right to exploit the same without the consent of the plaintiff. Though the suit has been filed for permanent injunction, it is to be noted that the plaintiff has sought permanent injunction on the basis of his rights over the story. This Court has originally granted an Order of interim injunction. Thereafter, on the basis of the submissions made by the counsel appearing for the defendants that they will deposit a sum of Rs.20 lakhs before release of the movie, this Court has permitted release of the movie subject to the deposit of Rs.20 lakhs. Accordingly, a sum of Rs.20 lakhs has been deposited. Only on such deposit, the movie was released.

14. It is further to be noted that the plaintiff having established copy right over the subject, his relief for injunction no more survives in view of change in circumstances, particularly, when the movie has already been released. It is also to be noted that such exploitation was possible only due to the intervention of the Court by an Order dated 20.09.2010. It is to be noted that the relief of

permanent injunction no longer survives. The fact remains that the plaintiff has established his copy right over the story, screen play, dialogue of the Tamil film 'Mahizhchi'. Such being the position, when the movie was permitted to be released at the instance of the Order of this Court, the entire copyrights in the film has been exploited by the defendants. It cannot be now contended that the suit has to be dismissed as infructuous. But for the intervention of this Court, permitting the defendants to release the movie by an Order of interim injunction already granted, the plaintiff's rights would have been protected. When the defendants themselves made submissions to deposit the amount and the movie has been exploited, now it cannot be contended that the plaintiff has no right to claim that money. It is also to be noted that the act of the Court should not cause any prejudice to the party. But for the Order of the Court, the rights of the plaintiff could have been very well protected. Having released the movie, the defendants cannot now contend that the suit has to be dismissed in limini. This Court is of the view that in view of change in circumstances as narrated above, taking into consideration, the conduct of the defendants in exploiting the movie and taking advantage of the Court's Order, certainly entitle the plaintiff to get back atleast the amount which was already deposited in the Court.

15. The learned counsel for the defendant relied on the judgment in

Emgeeyar Pictures Pvt. Ltd. Vs. O.K.Films and others reported in **2009 (8)**

MLJ 1149. On a perusal of the above judgment, the same reveals that the same cannot be applied to the facts of the present case. In the above case, the assignment deed was supported by substantial consideration. Only a part of the consideration has not been paid. Taking note of the above fact, the Division Bench has held that the assignee has become owner of the copy right. Whereas, in this case, the so called letter is not an assignment deed. It is only an intention to assign the copyright subject to payment of the expenses incurred by the plaintiff. Such being the position, the above judgment cannot be applied to the facts of the case.

16. Though it is a normal rule that the suit would be decreed depending on the nature of the relief claimed, the Court is not power less to mould the relief to pass appropriate Order considering the change in circumstances during the pendency of the suit. Therefore, this Court is of the view that if the movie was not released at the instance of the court, the plaintiff's right would have been protected. But the fact remains that movie has been exploited and copyright has been violated. The defendants have reaped the harvest. Such being the position, the amount already deposited in the Court has to be paid only to the plaintiff. In such view of the matter, the question of limitation does not arise at all

in this case. Merely because no amendment is sought, it cannot be said that the amount has to be returned only to the defendant. What has to be seen is that the right of the plaintiff over the copyright. The plaintiff has established his right with specific pleadings and that he has incurred more than Rs.35 lakhs expenses in producing the movie by engaging the first defendant. The first defendant has not come to the box. Defendants conduct in exploiting the movie and reaping the benefits and also now attempting to take back the money deposited in the Court once again, clearly indicate that they do not deserve any relief by this Court. Accordingly, this Court is of the view that the plaintiff has to be compensated and the amount deposited in the Court has to be paid only to the plaintiff on payment of necessary Court fee. Hence, the issues are answered in favour of the plaintiff.

17. In the result, the suit is partly allowed and the suit is decreed in favour of the plaintiff for a sum of Rs.20,00,000/- [Rupees Twenty lakhs only] with accrued interest on payment of Court Fee by the plaintiff. However, considering the nature of the suit, there is no Order as to cost.

WEB COPY

23.10.2019

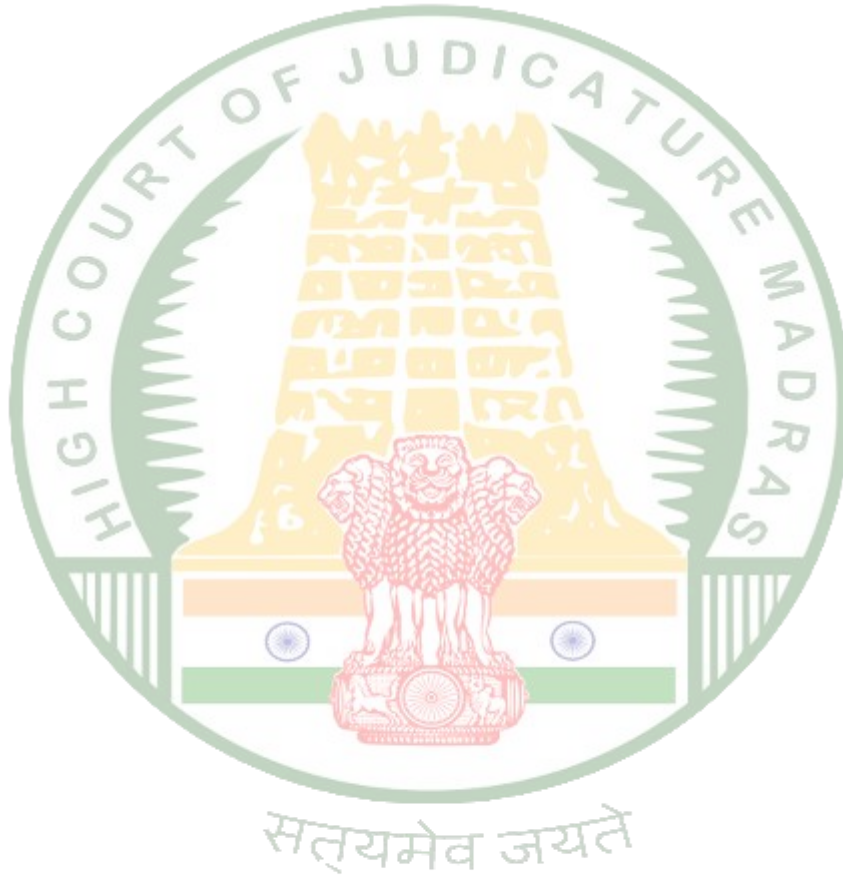
vrc

Index : Yes/No

16/18

Internet : Yes/No

Speaking/Non-Speaking Order



WEB COPY

C.S.No.500 of 2010

N.SATHISH KUMAR, J.

VRC



C.S.No.500 of 2010

WEB COPY

23.10.2019