

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

**C.S.No.741 of 2006
and
O.A.No.765 of 2006**

C.Venkataraju,
Proprietor,
Gita Chitra International,
No.1/7, Masilamani Street,
T.Nagar, Chennai-600 017.

.. Plaintiff

-VS-

1.M.Kaja Mydeen, Proprietor,
M/s.Roja Combines,
No.4-A, 10th Avenue,
Ashok Nagar, Chennai-600 083.

2.D.Raj Verma, Proprietor,
M/s.Sri Venkateswara Cine Enterprises,
Rep., by its Proprietor,
Mr.D.Raj Verma,
No.1307, Ground Floor,
No.65, Jubilee Hills,
Hyderabad-500 034.

3.Mr.Manicam Narayanan, Proprietor,
M/s.7th Channel Communication,
No.121, Dr.Radhakrishnan Salai,
Mylapore, Chennai-600 004.

4.M/s.S.S.Communication,
Plot No.8-2-469,

Road No.5, Banjara Hills,
Hyderabad-500 034.

5.M/s.Prasad Film Laboratories,
No.58, Arunachalam Road,
Chennai-600 093.

.. Defendants

Civil Suit filed under Order IV Rule 1 of the Original Side Rules r/2 Sections 55, 56 and 62 of the Copyright Act, 1957 and Order VII Rule 1 of the Code of Civil Procedure, 1908 for the following judgment and decree:-

(a) Directing the 2nd defendant to pay the plaintiff a sum of Rs.20,10,000/- together with interest at 24% per annum on Rs.15,00,000/- from 05.05.2005;

(b) Declaring that all the transactions entered into by the 2nd defendant subsequent to 05.05.2005 in respect of the suit film "Magadeera", Telugu dubbed version of the Tamil Colour Film titled "Vettaiyadu Vilaiyadu" starring Kamalhassan directed by Gautham, without the approval of the plaintiff are null and void so far as the plaintiff is concerned;

(c) Granting permanent injunction restraining the first, second and third defendants, their agents, servants, each and every person or persons claiming through them or under them from entering into any further transaction or transactions in respect of distribution, exhibition, exploitation of the copyright in the suit film "Magadeera" Telugu dubbed Version of the Tamil Colour Film titled Vettaiyadu Vilaiyadu starring Kamalhassan directed by Gautham, interfering or infringing with the plaintiff's copyrights of the suit film inclusive of dubbing and remarking rights in Telugu Language and all other consequential rights

flowing out of the said Telugu version excluding the satellite territory of the said Telugu version of the Tamil film Vettaiyadu Vilaiyadu; and

(d) For Costs of the suit.

For Plaintiff : Mr.P.L.Narayanan

For Defendant-3 : Mr.R.Saravanan,
For M/s.Sai Bharath & Ilan

Defendants 1, 2, 4 and 5 set *ex-parte*, vide Court order dated 21.08.2018.

JUDGMENT

This suit has been filed for recovery of amount of Rs.20,10,000/- together with interest at the rate of 24% per annum; for a declaration that all the transactions entered into by the 2nd defendant subsequent to 05.05.2005 are null and void; and for a permanent injunction.

सत्यमेव जयते

2.The brief facts leading to the case of the plaintiff are as follows:-

The 2nd defendant has received a sum of Rs.15,00,000/- from the plaintiff as additional advance for producing the suit film and it is also agreed to share 40% of the profit and agreed to pay the amount

before the release of the suit picture "Magadeera" Telugu Version of the Tamil film "Vettaiyadu Vilaiyadu" on or before 01.11.2005, with interest at the rate of 24% and it is also agreed to get the approval of the plaintiff for area wise selling lease rights to distributors before finalization. As a result, an agreement was entered between the plaintiff and the 2nd defendant on 05.05.2005. As the 2nd defendant has not adhered to the terms of the contract dated 05.05.2005, a legal notice has been sent for recovery of the amount. Except the 3rd defendant, all other defendants remained *ex-parte*. Even though the main relief sought for was only against the 2nd defendant for recovery of amount, apart from seeking relief of declaration and injunction in the suit, the learned counsel for the plaintiff fairly submitted that so far as the 3rd defendant is concerned, Ex.P1 cannot be pressed into service, since the terms specified therein cannot be used for enforcement as against the 3rd defendant, since he is not a party. He fairly submitted that he is satisfied with the decree for recovery of money from the 2nd defendant and also the 4th defendant (though no specific relief was sought for against the 4th defendant) in view of the subsequent development and compromise deeds between the parties in C.S.Nos.168, 683 and 691 of 2006 wherein the 4th defendant

undertook his responsibility and liability to make good any claims that may be made by the plaintiff in the present suit in respect of the Telugu version of the copyrights of the suit film.

3.The plaintiff himself was examined as P.W.1 and Ex.P1 to Ex.P8 were marked, which are as follows:-

<i>S.No.</i>	<i>Date</i>	<i>Description</i>	<i>Exhibit</i>
1	05.05.2005	Receipt issued by the 2 nd defendant acknowledging payment of Rs.15,00,000/- by the plaintiff to him	P1
2	16.09.2006	Certificate issued by Oriental Bank of Commerce for clearance of the pay order for payment of R.10,00,000/-	P2
3	06.05.2005	Receipt issued by the 2 nd defendant acknowledging payment of Rs.15,00,000/- by the plaintiff.	P3
4	29.08.2006	Letter addressed to Telugu Film Producer's Council with copy to defendants 1 to 3 and 5	P4
5	31.08.2006	Acknowledgement Due card received from the 1 st defendant	P5
6	31.08.2006	Acknowledgement Due card received from the 3 rd defendant	P6
7	31.08.2006	Acknowledgement Due card received from the 5 th defendant	P7
8	30.08.2006	Unserved envelop sent to the 2 nd defendant	P8

4.P.W.1 evidenced the manner in which Ex.P1 existed and also spoken about the financial transaction and the payment of

Rs.15,00,000/- to the 2nd defendant. Ex.P1 is the agreement dated 05.05.2005. A perusal of the agreement dated 05.05.2005, makes it clear that the 2nd defendant has not acquired the copyrights of the picture "Vettiayadu Vilaiyadu" and sought financial assistance of Rs.15,00,000/- from the plaintiff and also agreed to give 40% share of profits along with the interest for Rs.15,00,000/- and it is subsequently, agreed that the payment will be made on or before 01.11.2005. Ex.P2 shows the consent for payment of Rs.10,00,000/- in favour of the 2nd defendant. The 2nd defendant has also issued a receipt acknowledging the payment of Rs.15,00,000/- and the same is marked as Ex.P3. The above documents and evidence of P.W.2 clearly show that the 2nd defendant has, in fact, borrowed a sum of Rs.15,00,000/- from the plaintiff. Though such a borrowal was made only for acquiring the Telugu copyrights of the picture "Vettaiyadu Vilaiyadu", there is no specific covenant in Ex.P1 to the effect that subsequent assignment will be invalid. The fact remains that Ex.P1 certainly has enforceable value, insofar as the payment of Rs.15,00,000/- by the plaintiff to the 2nd defendant is concerned.

5.As rightly pointed out by the learned counsel for the plaintiff Ex.P1 cannot be pressed into service to seek for any declaration or annulment of the subsequent transaction, but certainly could be enforced for recovery of money from the 2nd defendant. Hence, the evidence of P.W.1 remains unchallenged and the document Ex.P1 also corroborates the evidence. Therefore, this Court is of the view that the plaintiff is entitled to the decree for a sum of Rs.20,10,000/- along with 24% interest from the date of the suit till the date of finalization.

6.The 4th defendant though remained *ex-parte*, in C.S.Nos.168, 683, 691 of 2006, the parties have entered into compromise. Based on the compromise, a decree was passed and the suit was disposed of by this Court vide judgment and decree dated 16.03.2018, and in paragraph 5 of the said judgment and decree, the Court held as follows:-

"5.That the plaintiff in C.S.No.683 of 2006, Mr.V.Ramakrishna, Proprietor, S.S.Communications shall be entitled to withdraw the entire balance amount from the amounts deposited by the plaintiff in C.S.No.683 of 2006, lying to the credit of the suit in C.S.No.683 of 2006, pursuant to the order dated 12.09.2008 passed in M.P.No.1 of 2008 in

O.S.A.No.80 of 2007, including the interest that has accrued in the said amount and he undertakes the responsibility and liaibility to meet any claims that shall be made by Mr.D.Raj Varma, Proprietor, M/s.Venkateswara Cine Enterprises and/or any other persons claiming through him including one Mr.C.Venkatraju, Proprietor – Gita Chitra International (who has filed suit in C.S.No.741 of 2006) in respect of the Telugu version copyrights of the Tamil colour film, titled Vettaiyadu Vilayadu, which was subsequently released as "Raghavan" in Telugu."

7.A perusal of the above judgment makes it clear that the 4th defendant herein has specifically undertook his responsibility and liability to pay all the claims made by the plaintiff in the present suit, particularly, in respect of the film tilted as "Vettaiyadu Vilaiyadu", which is subject mater of the present suit and this is also subject matter of Ex.P1. Such being the position, though no separate relief was sought for against the 4th defendant, as he himself is bound to pay the amount payable to the plaintiff, this Court can mould the relief and make the decree as against the 2nd and 4th defendants to pay jointly the suit amount as prayed.

8. Accordingly, the suit is disposed of with costs as against the 2nd and 4th defendants. Insofar as the other defendants, viz., defendants 1, 3 and 5 are concerned, the suit is dismissed. Consequently, connected original petition is closed.

24.09.2019

Index : Yes/No
Speaking/Non-Speaking Order

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N.Sathish Kumar, J.

(abr)



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