

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.11.2019

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.759 of 2011 &

O.A.No.969 of 2011

1. Mr.N.Chandran

2. Mr.N.Krishnamoorthy

.. Plaintiffs

Vs.

1. Mrs.Jayanthi

2. M/s.Saraswathi Film Circuit,
No.59, Amman Sannadhi Street,
Madurai – 625 001.

.. Defendants

Civil Suit filed under Order IV Rule 1 of O. S. Rules read with Section 62 of the Copyright Act for the following reliefs :

[a] To declare that the second plaintiff is the exclusive copyright holder of Television rights in Tamil pictures titled 1. "Thirudathe", 2.Chakravarthi Thirumagal", 3. "Ambikapathi", 4. "Sabash Meena", 5. "Kalyanam Panniyum Brahmachari", 6. Kandan Karunai and 7. "Sivagangai Seemai", which are suit

pictures and as copy right holder of the same he alone is entitled to telecast the suit pictures in all Media including Doodarshan Kendra of Madras.

[b] Granting permanent injunction restraining the 1st defendant or her servants, agents, men, assignees or anyone else claiming through, from or under her from in any manner in infringing the 2nd plaintiff's copyright of Television rights in the suit pictures by telecasting the same or the song sequences of the suit pictures.

[c] Directing the defendants to pay cost of the suit to the plaintiffs

For Plaintiffs : Mr.P.Sreenivasulu

For defendants : Mr.C.R.Ezhilkumar

JUDGMENT

This suit has been filed for declaration that the second plaintiff is the exclusive copyright holder of Television rights in the suit schedule pictures and for permanent injunction restraining the defendants from infringing the copyright of the movie and for costs.

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

2.1. One A.L.S. Productions were the producers and World Negative Right Holders of Tamil Talkie Pictures titled 1. "Thirudathe", 2.Chakravarthi Thirumagal", 3. "Ambikapathi", 4. "Sabash Meena", 5. "Kalyanam Panniyum Brahmachari", 6. Kandan Karunai and 7. "Sivagangai Seemai". Mr.A.L.Srinivasan is the proprietor of the said A.L.S. Productions. The said A.L.S. Srinivasan died leaving behind his wife, Smt.S.Alagammai and son A.L.S.Kannappan as his heirs and on the death of the said A.L.Srinivasan, the said S.Alagammai and A.L.S.Kannappan have inherited and succeeded the aforesaid pictures including the negative rights in the above said pictures. The said Alagammai and A.L.S.Kannappan by agreement dated 19.03.1978 entered and executed between themselves and M/s.Saraswathy Film Circuit have assigned the world negative rights in the aforesaid 7 Tamil Talkie Pictures for a total sum of Rs.5,50,000/- in favour of M/s.Saraswathi Film Circuit and they assigned the World Negative Rights in the Tamil Pictures titled :

1. "Thirudathe" for a period of 99 years
2. "Chakravarthi Thirumagal" for a period of 29 years, i.e., upto 30.12.2007
3. "Ambikapathi" for a period of 99 years

4. "Sabash Meena" for a period of 30 years, i.e., upto 01.09.2008
5. "Kalyanam Panniyum Brahmachari" for a period of 26 years upto year ending 31.03.2004
6. "Sivagangai Seemai" for a period of 99 years
7. "Kandan Karunai" for a period of 99 years

2.2 As per the agreement, the second defendant has to pay a total sum of Rs.5,50,000/- as consideration for the said seven films to the said Mrs.Alagammai and Mr.A.L.S.Kannappan. The second defendant entered into an agreement assigning the rights in the seven pictures in favour of the first plaintiff on 20.12.1979. In respect of the film "Ambikapathi", "Kandan Karunai", "Thirudathe", "Sivagangai Seemai" for a period of 99 years, "Sabash Meena" upto 01.09.2008, "Chakravarthi Thirumagal" upto 31.12.2007 and "Kalyanam Panniyum Brahmachari" upto 31.03.2004 in favour of the first plaintiff. Thereafter, a suit in C.S.No.219 of 1978 came to be filed before this Court and in the above suit, this Court directed Mrs.Alagammai and A.L.S.Kannappan to transfer all rights under agreement dated 19.03.1978 to Mr.K.Munusamy Naidu, who is one of the nominee of the said M/s.Saraswathi Film Circuit along with physical possession of the picture negatives and sound negatives of the said 7 pictures from Vijaya Productions Pvt. Ltd. & Laboratory and Gemini Colour

Laboratory. The said Munusamy Naidu as the nominee of M/s.Saraswathi Film Circuit on 11.01.1995 wrote a letter to M/s.Saraswathi Film Circuit, the second defendant herein agreeing and undertaking to honour the commitments made by them to Mr.Chandran, who is the first plaintiff herein for lab letters for making U Matic Tape for World TV Telecast and Satellite Rights subject to the condition of the negatives and the said Mr.N.Chandran, has to make his own arrangements at his risks and costs.

2.3. Thereafter, the first plaintiff has assigned the copyright of Satellite TV Broadcasting all other rights connected therewith including exhibition of the pictures by means of wireless diffusion and by wire for communication to the public Satellite TV Broadcast in the pictures namely 1. "Thirudathe", 2. Chakravarthi Thirumagal", 3. Kalyanam Panniyum Brahmachari" and 4. "Sivagangai Seemai" to M/s.Sumangali Publications Pvt. Ltd. absolutely. Thereafter, the plaintiffs on 03.10.2001 have entered into an agreement under which the first plaintiff assigned, transferred conveyed and granted All India Broadcasting Rights, World Television Telecast (TV) all rights, Video all Technology Rights and all method of present and future new inventions broadcasting rights in any manner in the Tamil Talkie pictures titled 1. "Ambikapathi" upto 99 years, 2. "Kandan Karunai" for 99 years, 3."Thirudathe"

for 99 years, 4. "Sivagangai Seemai" for 99 years, "Sabash Meena" upto 01.09.2008, "Chakravarthi Thirumagal" upto 31.12.2007 and "Kalyanam Panniyum Brahmachari" upto 31.03.2004 in favour of the first plaintiff. When the matter stood thus, the first defendant, who is the wife of A.L.S.Kannappan made arrangements through Doodarshan Kendra of Madras to telecast the Tamil Talkie film "Thirudathe" on 06.08.2011 for which she has no right. Hence, the suit.

3. The case of the first defendant is that she is the exclusive and absolute copyright owner of the plaint schedule feature films and any of her predecessors or herself had never transferred any of such rights to the second defendant or to the plaintiffs at any point of time. What the right transferred was the negative rights, which does not include the rights claimed by the plaintiffs in the above suit. Further, most of all the above rights are not at all available in those days and these are further developments. Therefore, the plaintiffs cannot claim to have obtained all or any of the afore mentioned rights. Hence, prayed for dismissal of the suit.

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

1. Whether the second plaintiff is the exclusive copyright holder of Television Rights in the suit mentioned Tamil pictures?

2. Whether the first plaintiff is entitled for permanent injunction as prayed for?

3. To what other reliefs, the plaintiffs are entitled to?

5. On the side of the plaintiff, P.W.1 was examined and Ex.P.1 to Ex.P.12 were marked. On the side of the defendants, neither oral evidence nor any documents have been marked.

Witnesses examined on the side of the plaintiff:

P.W.1. - Mr.N.Krishnamoorthy

Witnesses examined on the side of the defendants : Nil

Exhibits produced on the side of the plaintiff:

S.No.	Date	Description of the document	Exhibit
1	19.03.2008	Copy of the Agreement between Mrs.Alagammai and A.L.S.Kannappan and the second defendants	P-1

S.No.	Date	Description of the document	Exhibit
2.	19.03.1978	Copy of Receipt issued by A.L.S. Productions	P-2
3.	20.04.1978	Copy of Receipt issued by A.L.S. Productions	P-3
4.	20.12.1979	Copy of Agreement entered between second defendant and the first plaintiff	P-4
5.	09.04.1980	Copy of Order passed in A.No.3828 of 1979 in C.S.No.219 of 1978	P-5
6.	09.02.1995	Copy of the Agreement executed by the first plaintiff and M/s.Sumangali Publications Pvt. Ltd.	P-6
7.	09.02.1995	Copy of the letter issued by the 1 st plaintiff to M/s.Vijaya Vahini Studio	P-7
8.	23.02.1995	Copy of Agreement executed by 1 st plaintiff to M/s.Golden Eagle Communications Pvt. Ltd.	P-8
9.	09.05.2003	Copy of the Assignment Agreement executed by the first plaintiff in favour of M/s.Sun TV Pvt. Ltd.	P-9
10.	09.05.2003	Original Agreement of Rights executed by the first plaintiff in favour of the second plaintiff	P-10
11.	06.08.2011	Copy of Tamil daily namely 'Dina Thanthi'	P-11
12.	11.08.2011	Copy of letter issued by the first defendant to Doordharsan	P-12

Exhibits produced on the side of the defendants: Nil

6. Issue Nos.1 to 3 :

The main contention of the defendant is that only the negative rights have been transferred in the year 1978 and the satellite rights have not been transferred and therefore, the plaintiff cannot claim any right. Ex.A.2 and Ex.A.3

have been filed by the plaintiff to show that receipts were issued by ALS Productions in favour to the second defendant. Ex.A.5 Order of this Court in

Application in A.No.3828 of 1979 in C.S.No.219 of 1978 wherein this Court directed Mrs.Alagammai wife of A.L.Srinivasan and his son A.L.Kannappan to transfer the rights under the agreement dated 19.03.1978. All these facts have not been disputed. Now the plaintiff has acquired assignment in respect of seven pictures namely "Ambikapathi", "Kandan Karunai", "Thirudathe", "Sivagangai Seemai" for a period of 99 years, "Sabash Meena" upto 01.09.2008, "Chakravarthi Thirumagal" upto 31.12.2007 and "Kalyanam Panniyum Brahmachari" upto 31.03.2004.

7. The main contention of the defendant is that the negative rights alone has been transferred and the satellite rights always vested with them. It is to be noted that such contention cannot be countenanced. When the entire right has already been transferred, it cannot be said that the owners have retained some other rights. Merely because some technological development has happened subsequently, the owner cannot claim that some rights have been retained by them. Since the entire copyright has already been transferred in respect of the

above pictures, any future development will only devolve upon the assignee and not on the first owner. This view has been upheld in the judgment in **M.Padmini and others Vs. Raj Television Network Limited, rep. by its Chairman/Managing Director reported in 2015 – 3 – L.W. 43**, wherein it has been held that

“A reading of the above judgment would show that once the entire negative right was given absolutely there was no reservation with regard to any other right in the film and the assignee becomes absolute owner and he is free to deal with the picture in any manner he likes.”

Therefore, the contention of the defendants cannot be countenanced.

8. The plaintiff has filed the documents to show that they acquired the rights as early as on 1978. The defendants have neither entered into the box nor adduced any evidence. Such being the position, from the documents filed by the plaintiff, I am of the view that the plaintiff is certainly entitled to declaration in respect of the Tamil Talkie pictures titled 1. “Ambikapathi”, 2. “Kandan Karunai”, 3. “Thirudathe”, 4. “Sivagangai Seemai” alone which were assigned for 99 years. In respect of the other films “Sabash Meena” assigned upto 01.09.2008, “Chakravarthi Thirumagal” assigned upto 31.12.2007 and “Kalyanam Panniyum

Brahmachari” assigned upto 31.03.2004, the period of assignment has already come to an end. Therefore, the plaintiff is entitled for declaration and permanent injunction for the four films 1. “Ambikapathi”, 2. “Kandan Karunai”, 3.“Thirudathe”, 4. “Sivagangai Seemai” which are assigned for 99 years. The issues are answered accordingly.

9. In the result, the suit is decreed in favour of the plaintiffs for declaration and injunction in respect of the Tamil Talkie pictures titled 1. “Ambikapathi”, 2. “Kandan Karunai”, 3.“Thirudathe”, 4. “Sivagangai Seemai” which are assigned for 99 years. In respect of the other pictures, this suit is dismissed. Consequently, the connected application is closed. No cost.

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07.11.2019

Index : Yes/No
Internet : Yes/No

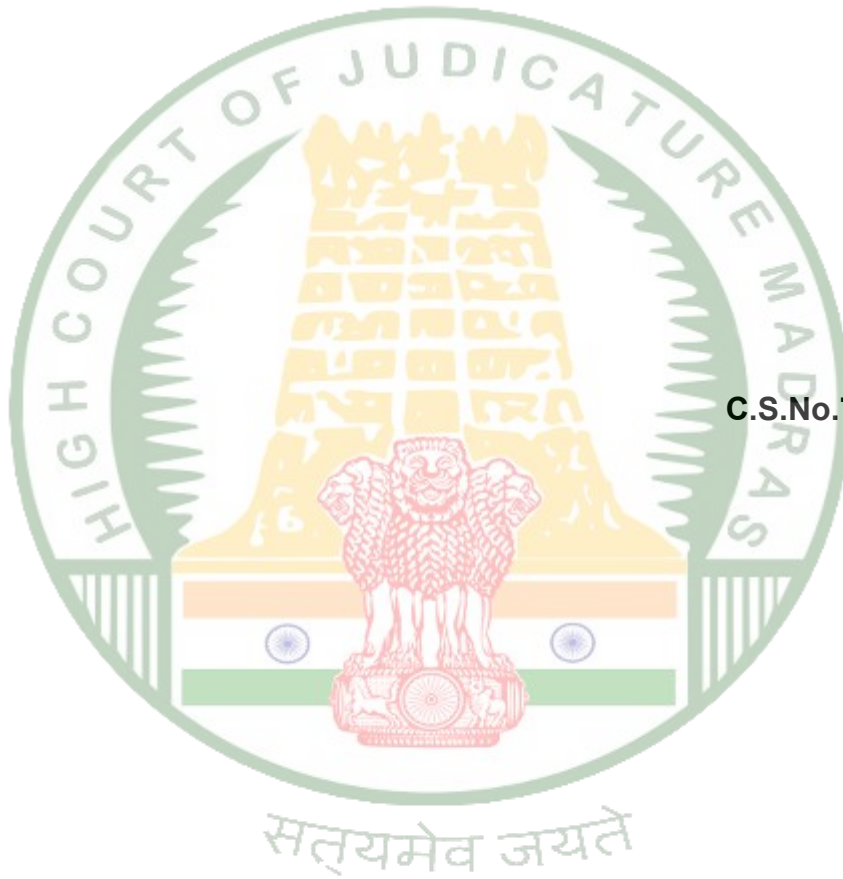
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