

**Reserved on : 19.09.2019**

**Pronounced on : 25.09.2019**

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

**THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

**Civil Suit No.33 of 2014**

Mr.Mohammed Niyamathullah

... Plaintiff

Vs

1. Mr.Mohammed Hidayathulla

2. Mr.K.R.Kannan

3. Mr.K.R. @ Kothandaraman Reddy

4. Reach Dread Media,  
Represented by its Proprietor/Partner/Director,  
Flat No.G1, Plot No.10 & 11,  
Regal Square, Periyar Street,  
Saligramam, Chennai – 600 093.

... Defendants

**Prayer :-** Suit filed under Order IV Rule (1) of the Original Side Rules and Order VII Rule 1 of C.P.C. Read with sections 2, 13, 14, 51, 55, 58 & 62 of the Copyright Act, 1957 for the following reliefs :

a. A permanent injunction restraining the defendant, his agents, distributors, negative right holders, men servants and all concerned from in any

manner infringing the plaintiff's copyright in the tamil feature film titled "Pongadee Neengalaum Unga Kadhalum" starring M.A.Ramakrishnan, Athmiya and Karunya in particular by distributing or exhibiting or releasing the same or communicating it to the public in any manner whatsoever on any date or by dealing with it in any manner whatsoever.

b. directing the defendant to pay the plaintiff, the cost of this proceedings.

For Plaintiff : Mr.Muthukumar  
for M/s.GMS Law Associates

For Respondents : Mr.R.Asokan – D1  
Mr.R.Suresh – D2  
D3 & D4 already set exparte

**JUDGMENT**

This suit has been filed for a permanent injunction restraining the defendants and his men from in any manner infringing the plaintiff's copyright in the Tamil feature film titled "Pongadee Neengalaum Unga Kadhalum" starring M.A.Ramakrishnan, Athmiya and Karunya in particular by distributing or exhibiting or releasing the same or communicating it to the public in any manner whatsoever on any date or by dealing with it in any manner whatsoever.

2. Brief facts of the plaintiff case is as follows :

The defendant is running a proprietor concern, a packaging business under the name and style of 'Wisdom Packers'. He has recently ventured into film production and distribution under the tile "Wisdom Pictures" and purchased, distributed films under the banner of "Maya Movies Banner". The defendant approached the plaintiff seeking financial assistance to the tune of Rs.70,00,000/- towards purchase of the copyright and all related rights in the Tamil feature film titled "Pongadee Neengalaum Unga Kadhalum" produced by Mr.K.R.Kannan. Accordingly, the plaintiff mobilized the fund of Rs.70,00,000/- and paid to the the defendant on 09.10.2013. It was agreed by the defendant that Rs.70,00,000/- shall be paid to the plaintiff on or before 31.12.2013 with the profit of Rs.5 lakhs and in the event of default, it is agreed that the entire copyright of the film and incidental and ancillary rights including, in particular, the negative, distribution and release rights in the said film stand assigned and transferred to the plaintiff on and from 31.12.2013. A deed of assignment of copyright has also been executed in this regard on 09.10.2013. The defendant purchased the entire copyright with all the rights from the producer Mr.K.R.Kannan. The first defendant also proceeded to audio launch of the film on 20.11.2013. However, having purchased the copyright, the defendant failed

to pay the amount. Therefore, as per the Assignment Deed, the plaintiff is entitled to the entire copyright of the film by way of assignment. Hence, the suit.

3. Denying the allegations, it is is contention of the first defendant that the plaintiff has no means to advance such huge funds. The defendant had finance for the film distribution. He never approached the plaintiff for financial assistance, since the plaintiff is a pauper. The plaintiff introduced one Habibur Rehman to the defendant and the said Habibur Rehman evinced interest in stock trading run by the first defendant and the first defendant has suffered huge loss in the stock trading done. Thereafter, the first defendant and the said Habibur Rehman mutually agreed to share the loss at 50 - 50 ratio and the first defendant had agreed to refund a sum of Rs.29 lakhs to the said Habibur Rehman within a period of one month and issued a blank cheque as a security for refund of the amount and the said cheque was misused by the plaintiff. It is his contention that the signature of the defendant in blank cheques have been utilized for filing the suit with false allegations. The Assignment Deed was not executed by the first defendant in favour of the plaintiff, which is sheer forgery and fabrication of the documents.

4. The second defendant filed the written statement to the effect that he is the producer of the film titled “Pongadee Neengalaum Unga Kadhalum” and sold the entire rights to the first defendant. After purchase of the film from the second defendant, the first defendant has proceeded for audio launch on 20.11.2013. Even during the audio launch, the first defendant has confirmed that he has purchased the copyright of the film. It is his contention that the first defendant is the owner of the entire copyright in respect of the film.

5. Based on the above pleading, the following issues have been framed :

1. Whether the Deed of Assignment of copyright dated 09.10.2013, is binding on the parties?
2. Whether the plaintiff had acquired copyright in the feature film “Pongadee Neengalaum Unga Kadhalum”?
3. Whether the plaintiff is entitled for a decree of permanent injunction against the defendants from infringing the plaintiff's copyright in the Tamil feature film “Pongadee Neengalaum Unga Kadhalum”?
4. To what relief are the parties entitled to?

6. On the side of the plaintiff P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P.9 were marked. On side of the defendants, D.W.1 has been examined and Ex.D.1 to Ex.D.4 have been marked.

**Witnesses examined on the side of the plaintiff:**

P.W.1. - Mr.Mohammed Niyanmathulla (P.W.1)  
P.W.2 - Mr.H.Asmathullah (P.W.2)

**Witnesses examined on the side of the defendants**

D.W.1 – Mr.Mohammed Hidyathulla (DW1)

**Exhibits produced on the side of the plaintiff:**

| S.No | Date       | Description of documents                                                                                         | Exhibit |
|------|------------|------------------------------------------------------------------------------------------------------------------|---------|
| 1.   | 09.10.2013 | Original Deed of Assignment of Copyright entered into between the plaintiff and the first defendant              | P-1     |
| 2.   | 21.11.2013 | Original paper advertisement in 'Daily Thanthi' pertained to release of film "Pongadee Neengalaum Unga Kadhalum" | P-2     |
| 3.   | 04.12.2013 | Trademark Registration Certificate of the Mark "Dheepam"                                                         | P-3     |
| 4.   | 03.01.2014 | Original paper advertisement in "Daily Thanthi"                                                                  | P-4     |
| 5.   | --         | Audio Launch CD of the said film by the first defendant before releasing the picture                             | P-5     |
| 6.   | --         | Photographs pertaining to the audio launch                                                                       | P-6     |

| <b>S.No</b> | <b>Date</b> | <b>Description of documents</b>                                            | <b>Exhibit</b> |
|-------------|-------------|----------------------------------------------------------------------------|----------------|
| 7.          | 06.01.2014  | Copy of the cheque issued by the first defendant                           | P-7            |
| 8.          | 07.01.2014  | Photocopy of the cheque issued by the ICICI Bank                           | P-8            |
| 9.          | 07.01.2014  | Extract of bank statement of account bearing No.602001322396 in ICICI Bank | P-9            |

**Exhibits produced on the side of the defendants:**

| <b>S.No</b> | <b>Date</b> | <b>Description of documents</b>                                                      |
|-------------|-------------|--------------------------------------------------------------------------------------|
| 1.          | --          | Complaint against plaintiff and his friend Habibur Rahman @ Athipalli Police Station |
| 2.          | 02.01.2014  | Legal notice to Abdul Rahman                                                         |
| 3.          | --          | Returned postal cover                                                                |
| 4.          | --          | PAN Card of Mohamed Hidayathulla                                                     |

7. The counsel appearing for the plaintiff submitted that as per Ex.P.1 assignment deed, the plaintiff has advanced a sum of Rs.70 lakhs for purchase of the copyright of the film by the first defendant. It is seen that in Ex.P.1, the first defendant has specifically agreed that if the amount is not paid before December, 2013, all the copyright in the film stand assigned to the plaintiff. The evidence of P.W.1 and P.W.2 clearly prove execution of Ex.P.1. The defence taken by the first defendant is unbelievable and the inconsistent plea of the defendant clearly prove the case of the plaintiff. The second defendant, who is

the producer of the film has also filed a statement to the effect that only the first defendant is the absolute copyright owner of the film. Therefore, it is the contention of the plaintiff that he is certainly entitled for injunction.

8. Whereas, it is the contention of the learned counsel for the first defendant that whether the consideration is passed or not is not an issue in the suit. This suit has been filed for bare injunction. It is his contention that on the date of Ex.P.1, the defendant was not the owner of the film. Therefore, the question of assigning the film does not arise at all. The plaintiff has not established that the first defendant is the owner of the film on the date of Assignment Deed Ex.P.1. It is the specific case of the defendant that the Assignment Deed has been forged and infact, it is a result of forgery and coercion. Ex.D.1 has been filed to show that the First Information Report has been filed against the plaintiff. Therefore, merely on the basis of photographs and newspaper reports, it cannot be assumed that the first defendant has acquired the copyright of the movie. Therefore, as long as the first defendant's ownership has not been established, Ex.P.1 cannot be construed as an Assignment Deed. The film was released in the year 2014. There is no evidence to show that who has released the film. Hence, it is his contention that the injunction is not maintainable. Further, it is his contention that Ex.P.1 itself

has not been proved and the signature of the first defendant in the blank cheque has been used in creating Ex.P.1.

9. Issue Nos.1 to 4 :

The plaintiff has filed the suit mainly on the basis of the Assignment Deed dated 09.10.2013. It is the main contention of the plaintiff in his plaint that the first defendant had approached him for financial assistance and he had parted a sum of Rs.70 lakhs for purchase of entire copyright of the film "Pongadee Neengalaum Unga Kadhalum" and he has acquired such right from the producer, the second defendant herein. Further, it is agreed to pay the amount with a profit of Rs.5 lakhs before 31.12.2013 and in the event of default, the copyright stands assigned in favour of the plaintiff. Further, the first defendant also proceeded for audio launch and declared that he is the owner of the film. In the entire written statement, except making bald allegations of denial, no specific denial, whatsoever, has been made with regard to the specific facts stated in the plaint. The specific pleadings in the plaint that Rs.70 lakhs was advanced on 09.11.2013 is not denied specifically except bare and vague denial in the written statement. Whereas in the written statement, it is admitted by the first defendant that he has finance for film distribution. The specific allegations in the plaint to

the effect that the first defendant has ventured into film production and distribution in Wisdom pictures is not specifically denied.

10. At this juncture it is relevant to extract Order VIII Rule 2, 3, 4 and 5 of Code of Civil Procedure, and the same reads as follows :

“Rule 2 : New facts must be specially pleaded : The defendant must raise by his pleading all matters which show the suit not be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

Rule 3 : Denial to be specific – It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

Rule 4 - Evasive denial - Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but

answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

Rule 5 - Specific denial : (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability :

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

(2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.”

11. From a conjoint reading of Rule 2 to 5 of Order VIII of Code of Civil Procedure, the same makes it clear that unless every allegation of the facts in the plaint is not specifically denied by necessary implications, the same shall be taken to be admitted, except a person under disability. The entire written statement of the first defendant when carefully perused, the mobilization of funds by the plaintiff, request for such amount for acquiring the copyright of the movie, is not specifically denied. Whereas, his entire defence is in the nature of evasive denial. It is also specifically pleaded in the plaint to the effect that the defendant has acquired the entire copyright in the movie, namely “Pongadee Neengalaum Unga Kadhalum” and in the event of default of payment to the plaintiff, after 31.12.2013, the entire copyrights acquired to the first defendant stand assigned

to the plaintiff. These facts have not been specifically denied except stating that the assignment deed was not executed by the first defendant and was sheer forgery and fabrication of documents. Execution of the document as pleaded in the plaint has not been specifically denied by the first defendant. It is also relevant to note that the person who pleads forgery of the document, has to establish the same.

12. It is also relevant to extract Order VI Rule 4 of Code of Civil Procedure, which reads as follows :

**Rule 4 Order VI of Code of Civil Procedure 1908 "Particulars to be given where necessary"**

In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

But no particulars as to the fraud, forgery has been pleaded in the written statement. In the entire written statement, it is not even shown as to how the document is a result of forgery and fabrication. Whereas, in his chief

examination, the first defendant as D.W.1 has introduced the theory as if the plaintiff and one Habibur Rehman had kidnapped him and obtained blank signatures and cheques under coercion etc. These facts are subsequently introduced for the first time in the chief examination, without any pleadings. Therefore, this Court cannot give much importance to the chief examination of the first defendant without any pleadings.

13. Be that as it may. The plaintiff has clearly spoken about the execution of Ex.P.1. Besides, P.W.2 one of the witness to Ex.P.1 Assignment Deed also spoken about the execution of the document by the plaintiff. Whereas, the defendant also in his cross examination admitted his signature found in Ex.P.1. In view of the above discussions and evidence of P.W.1 and P.W.2 and also evasive denial of the first defendant in the written statement, this Court holds that the plaintiff has established Ex.P.1.

14. Further, it is relevant to note that the second defendant is the producer of the film and the producer of the film has sold the same to the first defendant even before audio launch. D.W.1, also in his evidence, has stated that he has also participated in the audio launch. All these facts clearly probabilize the plaintiff's case that the first defendant has acquired the copyright

in the film and as per Ex.A.1, whatever right acquired by him will stand assigned in favour of the plaintiff. The evidence of D.W.1 is totally contrary to the pleadings. The alleged coercion and kidnap is not even pleaded in the written statement. Further, even assuming that such an incident occurred, it is the evidence of D.W.1 that on 30.12.2013, he was kidnapped by the plaintiff and Habibur Rahman. But the First Information has been filed only on 09.01.2014. It is also relevant that on 02.01.2014, a legal notice has been sent only to Habibur Rehman. If really, the alleged story of the first defendant has occurred, there was no reason as to why he has not sent the legal notice to the plaintiff in this regard. Further, there is no reason as to why the complaint has not been given immediately after the alleged occurrence.

15. All these facts coupled with the bereft of all these facts in the written statement and inconsistency with the evidence of D.W.1, the defence of the first defendant is highly improbable. Whereas, the evidence adduced by P.W.1 and P.W.2 clearly prove the Assignment Deed and Ex.P.2, Ex.P.3 and Ex.P.4 clearly show that the advertisement is in the name of the first defendant's Wisdom Pictures. All these facts coupled with the very admission of the second defendant that he is the producer of the film and that he has already sold the film to the first defendant clearly probalilize the plaintiff case. Further, the evidence

of P.W.1 and P.W.2 clearly probalilize that the movie was sold to the first defendant prior to the audio launch i.e., before 20.11.2013. Therefore, as per the Assignment Deed, if payment is not made, the entire right stands assigned in favour of the plaintiff. In view of the above, the plaintiff is certainly entitled to the relief as prayed for in the suit and the issues are answered in favour of the plaintiff.

16. Accordingly, the suit is decreed as prayed for with costs.

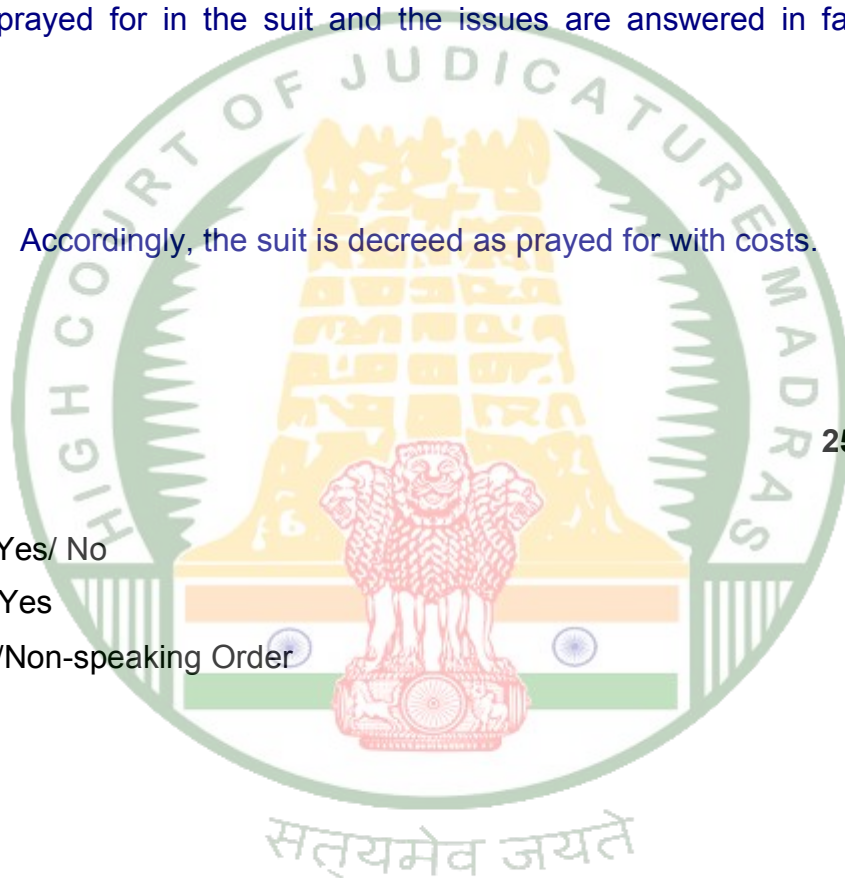
25.09.2019

vrc

Index : Yes/ No

Internet : Yes

Speaking/Non-speaking Order



WEB COPY

C.S.No.33 of 2014

**N.SATHISH KUMAR, J.**

vrc



Judgment in  
**Civil Suit No.33 of 2014**

WEB COPY

25.09.2019