

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.S.NO.603 of 2014

Mr.Mohan C.Lazarus
Mr.A.Appadurai
Dr.R.Anburajan
J.Rathinaraj
K.David Baskaran
D.Maruthanayagam
S.Rajadurai
P.Selwyn
H.Devaraj
C.Arthur Selvam
D.Moses Sampath Kumar

Trustees,
Jesus Redeems Ministries,
A Trust Registered under the Trusts Act,
Nalumavadi, Tuticorin 628 211
(Amended as per the order dated 06.03.2018
passed in A.No.1943 of 2018) ... Plaintiff

Vs.

The Bible Society of India,
A Society registered under the Societies Registration Act,
marketing Department,
LOGOS, 206, Mahatma Gandhi road,
Bangalore 560 001
Also at 65, Evening Bazaar Road,
Park Town, Chennai 600 003,
Tamil Nadu. ... Defendant

PRAYER Civil Suit filed under Order VII Rule 1 of the Code of Civil Procedure read with Order by Rule 1 of Original Side Rules and Section 60 of the Copyright Act, 1957 to pass a decree and judgment against the defendant for

a) a declaration that the threat contained in the Cease and Desist notice dated 15.07.2014 issued by the defendant constitutes a groundless threat of legal action under Section 60 of the Copyright Act, 1957 ,

b) a permanent injunction restraining the defendant, their men, agents and others claiming through or under them from issuing such groundless threats of legal action and

c) a direction to the defendant to pay a sum of Rs.1,000/- to the plaintiff as token damages for issuing such a groundless threat of legal action,

d) and for costs. सत्यमेव जयते

For Plaintiff

: Mrs.Gladys Daniel

For Defendant

: Mr.Andrew Vivek

JUDGMENT

The suit has been filed for

- a) a declaration that the threat contained in the Cease and Desist notice dated 15.07.2014 issued by the defendant constitutes a groundless threat of legal action under Section 60 of the Copyright Act, 1957
- b) a permanent injunction restraining the defendant, their men, agents and others claiming through or under them from issuing such groundless threats of legal action and
- c) a direction to the defendant to pay a sum of Rs.1,000/- to the plaintiff as token damages for issuing such a groundless threat of legal action

2. The case of the plaintiff in nutshell is as follows.

The plaintiff is a Trust registered under the Trusts Act and it was established in the year 1986 for various objectives. One of the objects is to publish religious books, magazines, pamphlets etc., that will develop faith in Jesus Christ and love and humanity. In order to advance this objective, in the year 2013-2014, the plaintiff printed 10,000 copies of the Holy Bible in the Tamil language. At present, the Tamil Bibles are being printed and published by various persons, including the defendant. The plaintiff was able to provide printed copies of the Holy Bible (Tamil) at the price of

Rs.140/- as against the price of the Holy Bible (Tamil) printed by the defendant at Rs.160/-.

2.1 The defendant has sent a desist notice dated 15.07.2014 to the plaintiff alleging that the plaintiff is using the " Defendant's text" while printing the Tamil Bible and has threatened the plaintiff that he will take police action against the plaintiff under the provisions of the Copyright Act. The plaintiff has sent a reply to the said notice on 25.08.2014.

2.2. The Bible has been written by the Kings like David and Solomon, Fishermen like St. Peter and St. John, Lawyer like Paul and Warriors like Moses and Joshua. The history of the Bible translations into Tamil Language commences with the arrival of Bartholomaeus Ziegenbalg (10th July 1682 to 23rd February 1719) at Tranquebar in 1706. He was gifted with languages, being German, and he spent a few years learning Tamil and within five years he completed the translation of the New Testament of the Bible to Tamil. Thereafter, till the year of his death, he completed the translation of the Bible till the Book of Ruth.

2.3 Thereafter, Johann Philipp Fabricius, a German, revised the work of Ziegenbalg and others to produce the standard Tamil Version.

Subsequently, Reverend Charles Theophilus Ewald Rhenuius , the Apostle of Tirunelveli, was involved in the attempt to revise the Fabricius version of the Tamil Bible. He brought out the New Testament that of Rehnius.

2.4 The Jaffna translation called the Tentative Version was brought out in 1850. Since the Jaffna version had failed to gain general acceptance, another version called for and after prolonged negotiations, a revision committee, which is a representative of several missions working in South India with Dr.H.Bower as chief translator, was appointed in 1857. Henry Bower (1812-1885) was an Anglo Indian Missionary of the Society of the propagation of the Gospel, who was known for his scholarship over Tamil and he headed the Bower Committee. A mutually accepted version of the whole Bible called as Union Version is popularly called as Bower Version among the Tamil Christians.

2.5. The plaintiff is also publishing the Tamil Bible in this Bower/Union Version and no copyright subsists in this work of joint authorship. The copyright subsisting in a work of joint authorship, is only for a period of 60 years, after the death of the last surviving author. Therefore, there is no existing copyright in the Tamil Translation of the Holy Bible.

2.6. The Copyright Act allows a person, who faced a groundless threat of legal action to approach the Civil Court for injunctive relief and other consequential reliefs. The defendant has not taken any legal action against other third parties, who are also printing the Bower Version of the Tamil Bible. The plaintiff is not printing the Thiru Vivilliyam (Common Tamil version) which was printed for the first time in 1995. The plaintiff is printing the Bower Version of the Tamil Bible, which was first published in 1871. Hence the suit.

3. The defendant resisted the suit on the following grounds:-

i) The defendant had found that the plaintiff was printing Bibles using their text and the entire 1462 pages of their Bible are identical with defendant's Bible. Therefore, the defendant sent a notice to the plaintiff to stop printing the Bibles.

ii) The defendant has not claimed monopoly for the Holy Bible, however it should be borne in mind by the plaintiff that they shall not steal the text of the Bible published by the defendant from time to time.

iii) The defendant would not have objected, if the plaintiff translates the Bible from Hebrew or Greek and publish it in their name.

iv) The defendant appointed Dr.Henry Bower as the head of the translation committee for translation work of the Tamil Bible. The translation was done by the defendant and the first copy of the Tamil Bible was published in the year 1840 itself.

v) With regard to the Copyright interpretation, after the period of 60 years, the updation, translation, correction and editing of texts of the Bible has been continuously going on till date and as such, the defendant can legitimately claim copyright protection for such a translation of the Bible.

vi) The defendant has not made any groundless threat of legal action against the plaintiff and only after comparing the Bible printed by them with the Bible published by the plaintiff, a letter was sent to the plaintiff requesting them to stop printing the Bibles using the defendant's text.

vii) The plaintiff themselves have purchased the Bible from the defendant for Rs.120/-. Hence the statement of the plaintiff that the defendant is unable to print and circulate sufficient copies of the Tamil Bible to meet the ever growing demand, is vehemently denied by the defendant.

viii) The plaintiff is not entitled to print the Bower Version, since it has not been translated by them on their own. Hence, the suit is liable to be dismissed.

4. The following issues are framed for consideration in the suit

(i) Whether the suit is maintainable in law?

(ii) Whether there is proper cause of action and whether prima facie case is made out?

(iii) Whether any Copyright subsists in the Tamil translation of the Holy Bible, which was created between the years 1682 A.D. and 1871 A.D?

iv) Whether the defendant (Bible Society of India), a member of United Bible Societies, having a membership of 146 Bible Societies around the world with the objective to translate, publish, edit and distribute God's word in different Indian languages, have got a right to claim the text patent?

v) Whether the plaintiff has published the Tamil Bible of last and accepted translation of Bower/Union Translation version?

vi) Whether Dr.Henry Bower was appointed by the defendant Society as the head of the translation committee in 1857 for the translation work of Tamil Bible? and whether the translation was done by the defendant's society and was published by them as their own?

vii (a) Whether the updation, translation, correction and editing of texts of the Bible continuously till date with necessary corrections made without diluting the very meaning of the text, amounts to intellectual property?

b) Whether, as such, intellectual property of hard work in translating the Tamil Bible prepared by the defendant, can legitimately claim copyright protection?

viii) Whether the defendant is the owner of the Copyright in the Tamil translation of the Tamil Bible?

ix) Whether the threat contained in the notice dated 15.07.2014 amounts to a groundless threat of legal action under Section 60 of the Copyright Act, 1957?

x) Whether the plaintiff is entitled to restrain the defendant from making further groundless threats of legal action permanently?

xi) Whether the plaintiff is entitled to the token damages of Rs.1,000/-

xii) To what other reliefs the plaintiff is entitled?

5. On the side of the plaintiff, one witness was examined as PW1 and Ex.P1 to Ex.P22 and M.O.1 to M.O.8 were marked. No oral and documentary evidence was adduced on the side of the defendant.

6. It is admitted by both the parties that the plaintiff and the defendant are publishing the Tamil Bibles in Bower Version. It is also not disputed by them that the work of Tamil translation of the Bible was started

in the 19th Century and the first publication of the whole Bible in the Bower Version/Union Version, was in the year 1871. In this regard, the details of the life and work of various persons, namely Bartholomaeus Ziegenbalg, Johann Phillip Fabricius, Charles Theophilus Ewald Rhenius and Henry Bower, who worked a lot in translating the Bible into Tamil language, are marked as Ex.P18 to Ex.P21.

7. The contention of the defendant is that they appointed Rev. Henry Bower as the Chief Translator for the translation work of Tamil Bible and the translation of Tamil Bible was done by them as the owner. The further contention of the defendant with regard to the copyright interpretation is that, after the period of 60 years, the updation, translation, correction and editing of texts of the Bible, has been continuously going on till date, as such, they can legitimately claim copyright protection for such a translation of the Bible. Therefore, they issued a legal notice Ex.P15 to the plaintiff alleging that the plaintiff was using the "defendant's text" while printing the Tamil Bible. The plaintiff also replied to the said notice, vide notice Ex.P16, asking the agreements between the defendant and the authors, relinquishing the copyright in favour of the defendant.

8. As per Section 22 of the Copyright Act, 1957, the period of copyright in published literary, dramatic, musical and artistic works should be the lifetime of the author until 60 years from the beginning of the calendar year next following the year in which the author dies. When the defendant society themselves admitted in their website that the translation of the Bible into Tamil language in Bower Version was published in the year 1871, vide Ex.P22, now, they cannot claim that they are the owner of the copyright of such translation of the whole Bible into Tamil language in Bower version. If at all any copyright is available to the said version in favour of the defendant, it would have expired, after the death of such author namely Rev.Henry Bower. Therefore, no one can claim exclusive right over the translation work of the Tamil Bible in Bower version or copyright protection for such translation of Tamil Bible, which was published by many publishers in various fonts. When the defendant society themselves admitted that the last author, namely Henry Bower had already expired, issuing legal notice to the plaintiff alleging that they are using the defendant's Text in printing the Tamil Bible, is certainly a legal threat, as per Section 60 of the Copyright Act.

9. It is the contention of the plaintiff that they are not printing the Thiru Vivilliyam (Common Tamil Version), which was printed for the first

time in 1995 and they are printing the Tamil Bible in Bower Version, which was first published in the year 1871 and hence, they are entitled to print the Tamil Bible in Bower version, which is in the public domain. The defendant neither disputed the above said contentions nor filed any contra evidence for disputing the same. Further, no documentary evidence was filed by the defendant society to show that they are the copyright holder of the Translation work of the whole Bible and they appointed Rev. Henry Bower for translation work and he was the contractor of the defendant at any point of time. When no copyright subsists, the contentions of the defendant that the translation of Tamil Bible was done by them and they published the Tamil Bible in Bower version as the owner are baseless. In fact, the defendant has no exclusive copyright for printing the Tamil Bible in Bower version, which is in the public domain. It is admitted by both the parties that Rev. Henry Bower passed away in the year 1988 and thereafter, many translation works have taken place and many Tamil Bibles are printed and published by various persons, including the defendant. Such being the position, no one can claim absolute copyright over the translation work. In view of the same, the claim of copyright made by the defendant by way of issuing legal notice to the plaintiff, is certainly a groundless threat of legal action and Section 60 of the Copyright Act provides remedy for such groundless threat. Therefore, the contention of the defendant that the

plaintiff has falsely claimed the copyright of the text, cannot be countenanced and no evidence whatsoever is available in this regard. Accordingly, all the issues are answered against the defendant and in favour of the plaintiff.

10. In the result, the suit is decreed for declaration and permanent injunction as prayed for in the plaint prayer (a) and (b). However, considering the nature of work done by both the parties in publishing religious books, magazines, pamphlets, etc. which will develop faith in the Jesus Christ and love and humanity, there shall be no order as to damages as prayed for in the plaint prayer (c). No costs.

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Index: Yes/No

Internet: Yes/No

Speaking/Non Speaking order
mst

Plaintiff side evidence

PW1 Mr.A.Jeyaraja Samuel

Plaintiff side exhibits and Material objects

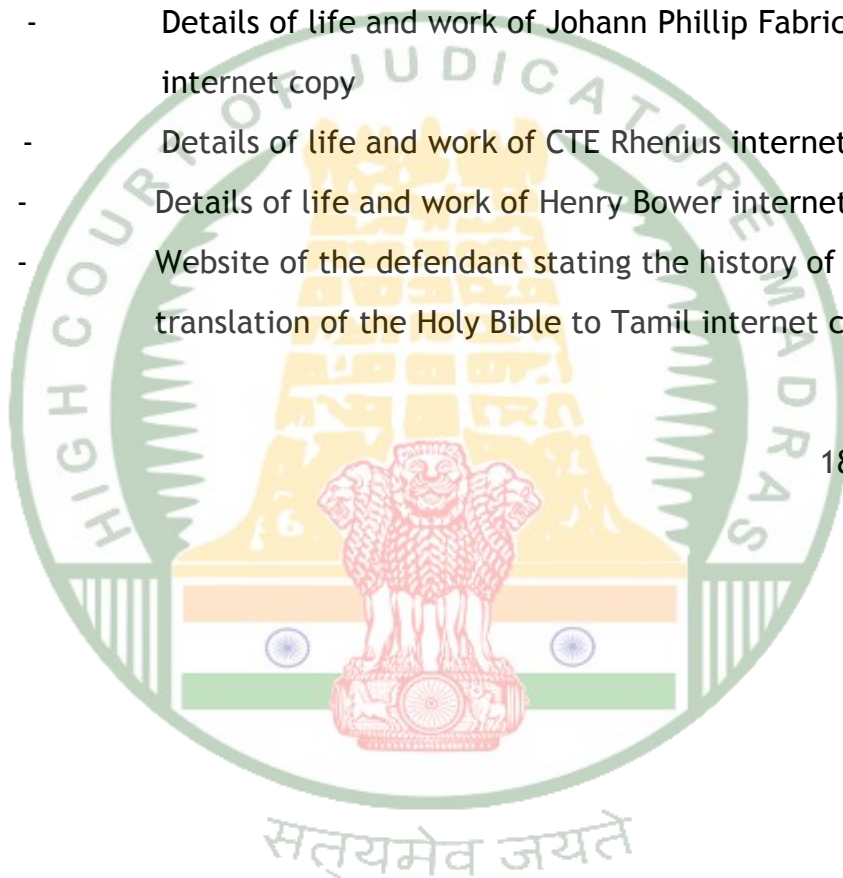
Ex.P1 27.08.2018 Authorization letter given to PW1

Ex.P2 28.05.1986 Trust deed of the plaintiff photostat copy

- Ex.P3 - Opening page of the Book launched by the plaintiff trust **and the Book is marked as M.O.1**
- Ex.P4 - Opening page of the Book launched by the plaintiff trust **and the Book is marked as M.O.2**
- Ex.P5 21.05.2014 Minutes of board meeting of the trust photostat copy
- Ex.P6 23.11.1997 Extract of the minutes of board meeting photostat copy
- Ex.P7 13.03.2014 General Power of attorney
- Ex.P8 - Opening pages of Plaintiff's trust's Bible containing publishing details and **the Plaintiff's Bible Bower version is marked as M.O.3**
- Ex.P9 - Opening pages of the defendant's Bible containing publishing details and **the Defendant's Bible (common Tamil Version) is marked as M.O.4**
- Ex.P10 - Opening pages of the Bharath Bible Society's Bible (Bower version) **and the Bible is marked as M.O.5**
- Ex.P11 - Opening pages of the Tamil Bible society's Bible photostat copy **and the Bible is marked as M.O.6**
- Ex.P12 - Opening pages of the Blessing Bible (Bower version) **and the Bible is marked as M.O.7**
- Ex.P13 - Opening pages of the Word of Christ Ministries' Bible (Bower version) **and the Bible is marked as M.O.8**
- Ex.P14 - The details regarding the translation of the Bower version of the Tamil Bible internet copy
- Ex.P15 15.07.2014 Cease and Desist notice issued by the defendant to the plaintiff
- Ex.P16 25.08.2014 Reply notice by the plaintiff

- Ex.P17 - Wikipedia details of the Tamil translation of the Holy Bible internet copy
- Ex.P18 - Details of life and work of Bartholomaeus Ziegenbalg internet copy
- Ex.P19 - Details of life and work of Johann Phillip Fabricius internet copy
- Ex.P20 - Details of life and work of CTE Rhenius internet copy
- Ex.P21 - Details of life and work of Henry Bower internet copy
- Ex.P22 - Website of the defendant stating the history of the translation of the Holy Bible to Tamil internet copy

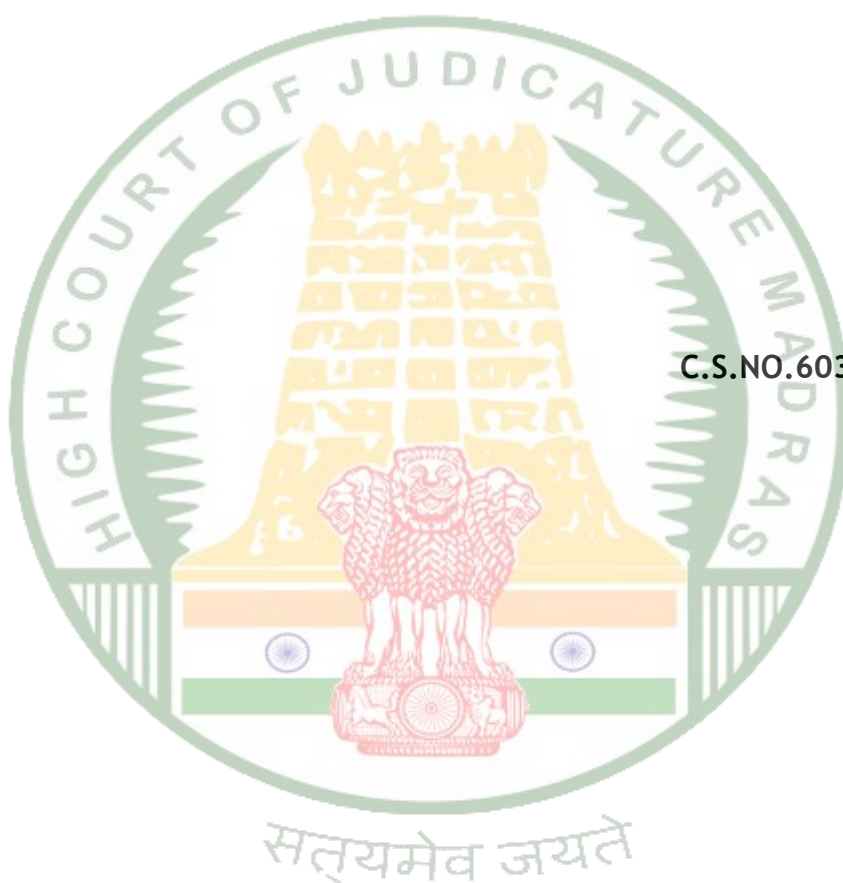
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