

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2019

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

O.S.A.No.232 of 2019

1 A.JOHN CHARLES
S/O A.ALBERT,
NO.1 JESUPADAM STREET,
RADHANAGAR, CHROMPET,
CHENNAI 600 044. ..PETITIONER

Vs.

1 K.V.ANAND
FILM DIRECTOR,
NO.11/10 JEEVARATHNAM NAGAR,
ADYAR CHENNAI 600 020

2 PATTUMOTTAI PRABHAKAR
ATHMA HOUSE 37/1 CANAL BANK ROAD,
KASTURIBAI NAGAR ADYAR CHENNAI 600 020

3 LYCA PRODUCTIONS PRIVATE LTD.
REP BY ITS CHAIRMAN MR.SUBASH KARAN,
NO.55, 4TH FLOOR VIJAYA RAGHAVA ROAD,
NEAR VANI MAHAL, T.NAGAR, CHENNAI 600 017

4 SUBASH KARAN
THE CHAIRMAN,
LYCA PRODUCTIONS PRIVATE LTD.,
NO.55 4TH FLOOR VIJAYA RAGHAVA ROAD,
NEAR VANI MAHAL,
T.NAGAR CHENNAI 600 017

...RESPONDENTS

Prayer: Original side Appeal filed under Order XXXVI Rule 9, of O.S.Rules r/w Cl.5 of Letters Patent, against the order, dated 12.9.2019 made in O.A.No.778 of 2019 in C.S.(Comm.) No.500 of 2019 on the file of this Court.

For Appellant : Mr.Manivasagam Associates

For Respondents : Mr.Sathishparasaran, Sr.Counsel
for R-3/Caveator

J U D G M E N T

(The order of the Court was made by
D.KRISHNAKUMAR, J.)

The appellant/plaintiff filed a suit for permanent injunction restraining the defendants their men, agents, subordinates, representatives, successors in office or anybody claiming through the defendants from in any manner describing, depicting or displaying the name of the defendants 1 and 2 as Story Writer in the movie ''Kaapaan'' at all places either by way of theatrical exhibition, in satellite or digital exhibition throughout the world in any of world languages in any way either by satellite, relay, online relay, digital relay of original, dubbing or any remake version except that of the plaintiff's name Mr.A.John Charles, B.B.A. as the story writer in the proposed movie ''Kaapaan'' and directing the defendants 3 and 4 jointly and severally to pay initially an amount of Rs.10,00,000/- (Rupees ten lakhs only) to the plaintiff out of fees payable to the first and second defendants by the third and fourth defendants for story writing and balance as may be decided by this Court.

2 The case of the appellant/plaintiff is as follows:
The appellant/plaintiff is a Writer and social thinker. Out of his own imagination, deep thinking, the appellant has scripted a story in which hero narrates the importance of common sharing of National river water in an interview with Prime Minister. The story is themed in the field of agriculture, thereby giving awareness to the public about the importance of agriculture and common sharing of river water. The appellant has titled his story in the name of ''Saravaedi'' and the same was presented for Registration in the Copyright office, Ministry of Commerce & Industry, Department of Industrial Policy and Promotion, Govt. of India, New Delhi vide his application dated 20.9.2016 and the same was registered with Registration No.L-67483/2017. The appellant/plaintiff had also contacted the first respondent/1st defendant Mr.K.V.Anand in the year 2017 and the story was discussed with the first respondent. On listening the theme of the story by the first respondent assured that the first respondent will give an opportunity to the appellant to present the story, if directed by the first respondent. But there is no response. He was shocked to see the teaser of the movie titled ''Kaapaan'' on 2.8.2019, in which hero emphasize about the importance of common sharing of river water in an interview, which is on the same line of the theme and plot of the literary/script of the appellant registered as ''Saravedi''. Therefore, he sent notice to the respondents by stating that the movie titled ''Kaapaan'' directed by the respondent is a film and story of the appellant and the same was registered as

'Saravedi'. Therefore, the action of the first respondent violates the Copyright act, 1957. Reply notice, dated 19.8.2019 was received by the appellant on 20.8.2019 wherein the respondent stated that the movie titled 'Kaapaan' is not about the importance of irrigation and agriculture and denied the averments of the appellant. Therefore, the appellant has filed the aforesaid suit before this Court. Along with the suit, the appellant has also filed an application in O.A.No.778 of 2019 for grant of interim injunction against the respondents from screening the movie 'Kaapaan' pending disposal of the suit. After hearing the parties concerned, the application was erroneously dismissed. Assailing the aforesaid order, the appellant has preferred the appeal before this Court.

3. The appellant/plaintiff raised a ground in the appeal by stating that the respondent has misled the court by stating that the movie titled 'Kaapaan' is not about the importance of irrigation and agriculture, the respondent made a statement in the counter affidavit that the subject matter of the said film is totally different and is all about Special Protection Group (SPG) to the Prime Ministers and not of river water and agriculture, but the line of story has been stolen from the appellant and modified in the proposed movie by the respondent. Appellant is ready to prove the factum of sharing of the story at the time of trial in the suit. Further, the appellant has filed along with plaint, Doc.No.1, registered copyright of the story 'Saravedi' registered by the appellant in the Ministry of Commerce & Industry, Department of Industrial Policy and Promotion, Govt. of India, New Delhi along with the plaint. The conversation and messages relating to agriculture and river water in the teaser of the movie 'Kaapaan' would prove that the respondent has violated the Copyright Act, 1957. Therefore, the learned Judge ought to have granted interim injunction from screening the movie 'Kaapaan' scheduled to be released on 20.9.2019.

4. Heard the learned counsel appearing for the appellant and the learned Senior counsel Mr.Sathishparasaran appearing for the caveator/ respondent No.3 takes notice and perused the materials available on record.

5. The appellant has seen the teaser of the movie titled 'Kaappaan' on 2.8.2019, wherein the hero speaks and emphasized the importance of common sharing of National river water in an interview with Prime Minister is the plot of the literary/script of the appellant in 'Saravedi', wherein the hero in an interview with Prime Minister, speaks about the importance of common sharing of river water. Hence, the allegation of the appellant that the first respondent being the Director and the respondents 3 and 4 producer of the film

'Kaapaan' infringed his copyright story which was discussed by the appellant with the first respondent. The first respondent released the teaser of a film titled 'Kaapaan' without the knowledge and consent of the appellant for making use of the literary/story of the appellant/plaintiff. The appellant is ready to prove that the respondent has stolen the story of the appellant, at the time of trial in the suit. The appellant relied upon the Doc.No.1 registration certificate of the story titled 'Saravedi' registered before the copyright office, Ministry of Commerce & Industry, Department of Industrial Policy and Promotion, Govt. of India. New Delhi. The teaser of the movie titled 'Kaapaan' in which hero identically speaks and emphasize about the common sharing of river water. The literary/story is on the same line theming the importance of agriculture and common sharing of river water is copy of the story registered as 'Saravedi'. Therefore, appellant/plaintiff caused notice to the respondents on 9.8.2019 by insisting the respondents to display his name at all places in satellite theatrical exhibition or digital exhibition throughout the world in any of world languages in any way either by satellite, relay, online relay, digital relay or any other mode of relay as a story writer in the proposed movie 'Kaapaan'. The respondent in the reply notice, dated 19.8.2019, denied the allegations of the appellant/plaintiff. According to the appellant/plaintiff, the entire subject story is his work 'Saravedi' which was plagiarized by the respondents in the film 'Kaapaan'. According to the appellant, he strongly relied upon Doc.No.1 registration of the story of the appellant/plaintiff filed along with the plaint to prove his claim. The appellant/ plaintiff made averments in the plaint, subsequent events taken place between the appellant/plaintiff and the respondents, but no concrete material has been placed before this court to substantiate his claim.

6. In the counter affidavit, the respondent/defendant denied the averments of the appellant/plaintiff by stating that the appellant/plaintiff made a false allegation against the respondents that by using the story of the appellant titled as 'Saravedi', thereby violated the Copyright act, 1957 and the same is also constitute criminal offence. According to the respondents, the appellant approached this Court with ulterior motive of stalling the movie 'Kaapaan' at the 11th hour. The release of movie is scheduled on 20th September, 2019. The teaser of the said movie is screened only for 90 seconds. The entire teaser speaks about terrorism, naxalites and the other problems faced by the country.

7. In the decision of the Hon'ble Supreme Court in R.G.Anand vs. Delux Films and others reported in MANU/SC/0256/1978, it is held as under:

"51. Thus, the position appears to be that an idea, principle, theme, or subject matter or historical or legendary facts being common property cannot be the subject matter of copyright of a particular person. It is always open to any person to choose an idea as a subject matter and develop it in his own manner and give expression to the idea by treating it differently from others. Where two writers write on the same subject similarities are bound to occur because the central idea of both are the single but the similarities or coincidences by themselves cannot lead to an irresistible inference of plagiarism or piracy. Take for instance the great poet and dramatist Shakespeare most of whose plays are based on Greek-Roman and British mythology or legendary stories like Merchant of Venice, Hamlet, Romeo Juliet, Jullius Caesar etc. But the treatment of the subject by Shakespeare in each of his dramas is so fresh, so different, so full of poetic exuberance. elegance and erudition and so novel in character as a result of which the end product be comes an original in itself. In fact, the power and passion of his expression, the uniqueness, eloquence and excellence of his style and pathos and bathos of the dramas become peculiar to Shakespeare and leaves precious little of the original theme adopted by him. It will thus be preposterous to level a charge of plagiarism against the great play-wright. In fact, throughout his original thinking, ability and incessant labour Shakespeare has converted an old idea into a new one, so that each of the dramas constitutes a master-piece of English literature. It has been rightly said that "every drama of Shakespeare is an extended metaphor". Thus, the fundamental fact which has to be determined where a charge of violation of the copyright is made by the. plaintiff against the defendant is to determine whether or not the defendant not only

adopted the idea of the copyrighted work but has also adopted the manner, arrangement, situation to situation, scene to scene with minor changes or super additions or embellishment here and y there. Indeed, if on a perusal of the copyrighted work the defendant's work appears to be a transparent rephrasing; or a copy of a substantial and material part of the original, the charge of plagiarism must stand proved. Care however must be taken to see whether the defendant has merely disguised piracy or has actually reproduced the original in a different form, different tone, different tenor so as to infuse a new life into the idea of the copyrighted work adapted by him. In the latter case there is no violation of the copyright.

8. Following the principles laid down by the Hon'ble Supreme Court, the appellant/plaintiff relying upon the Doc.No.1 registration certificate of the literary/story of the appellant filed along with the plaint for claiming exclusive right over the literary/story of the movie 'Kaapaan' and also relied upon the teaser of the movie Kaapaan runs only for 90 seconds, by relying upon the aforesaid document, as rightly observed by the learned Judge, interim injunction cannot be granted without establishing his right in the trial of the suit. Further, in the grounds of appeal, the appellant has stated that he can establish his case at the time of trial in the suit by exposing the respondents that the literary/story of the appellant has been stolen to prove the charge of plagiarism. Therefore, prima facie, no case has been made out for grant of interim injunction as prayed for by the appellant. Hence, we are not inclined to entertain the appeal and consequently, the appeal preferred by the appellant is liable to be rejected.

9. In view of the above, we are of the view that there is no error in the order passed rejecting the application of the appellant to interfere with the said order. In the facts and circumstances of the case and the decision cited supra, the appeal is dismissed. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

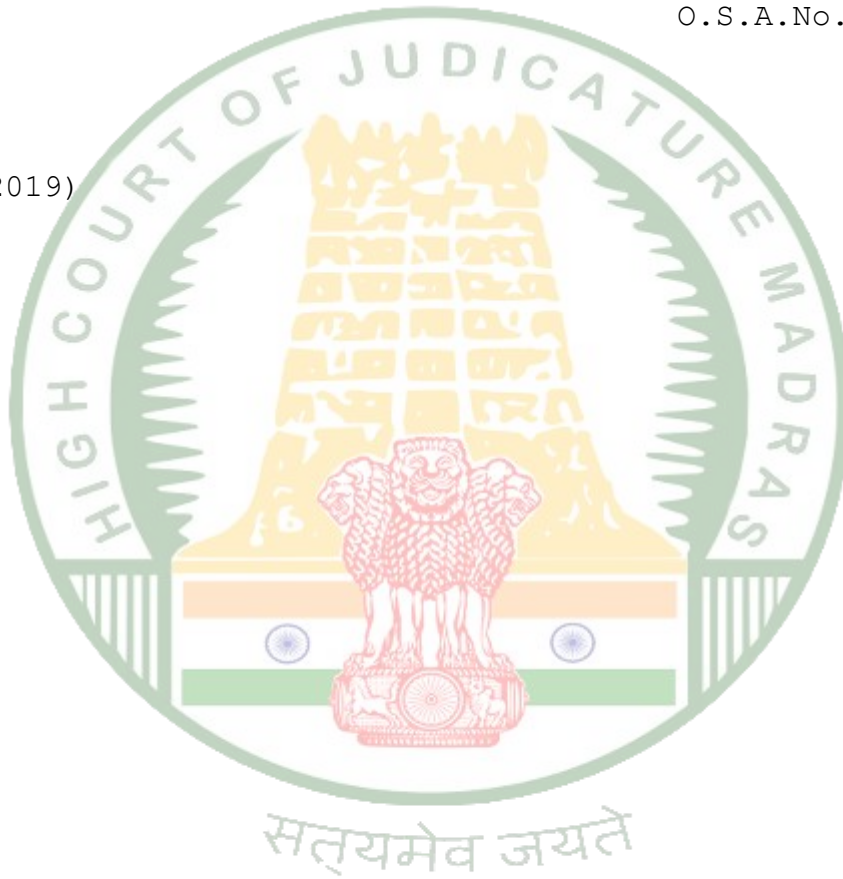
1.The Sub Assistant Registrar
Original Side
High Court, Madras 104.

+1 CC to M/s. Hema Srinivasan, Advocate sr 80847.

+1 CC to M/s. R & P Partners sr 80810.

O.S.A.No.232 of 2019

MP (CO)
SP (30/10/2019)



WEB COPY