

A.No.144 of 2020
in
C.S.No.301 of 2018

C.V.KARTHIKEYAN,J.,

Plaintiff has filed two memos pursuant to the impleading of the 5th defendant-Mr.J.Phanindra Kumar, Proprietor of M/s.Future Films, having address at Flat No.C-5 Karthik Flats, New No.16, Vijayaraghava Road, T.Nagar, Chennai - 600 017.

2. The first memo is dated 15.10.2019. The second memo has practically the same words and is dated 05.12.2019. They have both been signed only by the learned counsels by the plaintiff.

3. In the said memo, they have stated as follows:-

"I am the counsel for the plaintiff. The said suit was filed for declaration of that the plaintiff is the absolute owner of Audio copyright of the subject film "Haridas", "Endredrum Punnagai"and "Yaruku Yaaro". It is submitted that the 5th Defendant was impleaded by the 1st Defendant in relation to the audio copy right of the film titled "yaaruku Yaaro". I state the plaintiff has given up the part of claim in plaint paragraph 18a of the plaint "declaring that the plaintiff is the absolute legal owner of the audio copyright of the film "Yaaruku yaaro". Consequently the service of notice of summons to the 5th Defendant is not necessary. It is therefore prayed that this Hon'ble Court may take on record this memo and thus render justice."

4. Insofar as the memos are concerned, they had been taken up for consideration by my learned predecessor on 02.12.2019. The memos assume significance because the rights in the movie mentioned in the said memos "Yaaruku Yaaro", is now claimed by the first defendant. The first defendant claims such rights owing to assigh from the 5th defendant. The first defendant has raised a counter claim along with the written statement.

5. Quite apart from that, the first defendant has also filed the present application seeking to pass a summary judgment in terms of the counter claim. It has now emerged that the 5th defendant could not be served by the plaintiff and that the 5th defendant had transferred copyrights of the movie "Yaaruku Yaaro" to the first defendant.

6. These facts have to be established. In sofaras the first aspect is concerned, the Court has requested the plaintiff to file a memo detailing the steps taken sofar to serve the fifth defendant. In sofaras the second aspect is concerned even though the learned counsel for the first defendant stated that there are documents to prove that the first defendant has a copyright, that statement is denied by the plaintiff. Therefore, the first defendant has to prove his rights and this is a fact which cannot be assumed or decided on a reading of the documents. The documents will have to be put to examination and the witness who puts up the said documents will have to subject himself to cross examination. Only then it would be possible to establish any right in favour of

the first defendant. When the documents have to be proved in manner known to law, a summary judgment cannot be granted. Without going into the merits of the claim of the first defendant, I hold that the proper course of the first defendant would be to establish his rights in a proper manner during trial which will offer an opportunity to the first defendant to come to the witness box and speak about the rights and it will also offer an opportunity to the plaintiff and other defendants if they are so interested, in questioning such claim by the first defendant over the movie "Yaaruku Yaaro".

7. Therefore, I hold that A.No.144 of 2020 cannot survive and accordingly, it is dismissed.

8. It is made clear that the usage of the word dismissal does not mean that the claims of the first defendant over the movie "Yaaruku Yaaro" has been negated by the Court. The Court had only indicated that the right of the first defendant will have to be established during the trial neither the plaintiff nor the other defendants can take advantage of the order passed in this application today.

9. The issues raised in the counter claim remains for consideration during trial and the first defendant has to establish them during the course of trial for which I am confident ample opportunity would be granted.

C.V.KARTHIKEYAN,J.,

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10. The memos of the plaintiff are recorded and the suit is dismissed in sofaras the movie "Yaaruku Yaaro" is concerned. However the plaintiff will always have an opportunity to cross examine the witness of first defendant with respect to the averments in the counter claim.

11. It is also made clear that the plaintiff cannot traverse beyond the rights which the 5th defendant had established and cannot put up any further claim adverse to the 5th defendant also. The plaintiff will have to question the rights of the first defendant per se and not further.

12. With these observations, this application is dismissed. No costs.

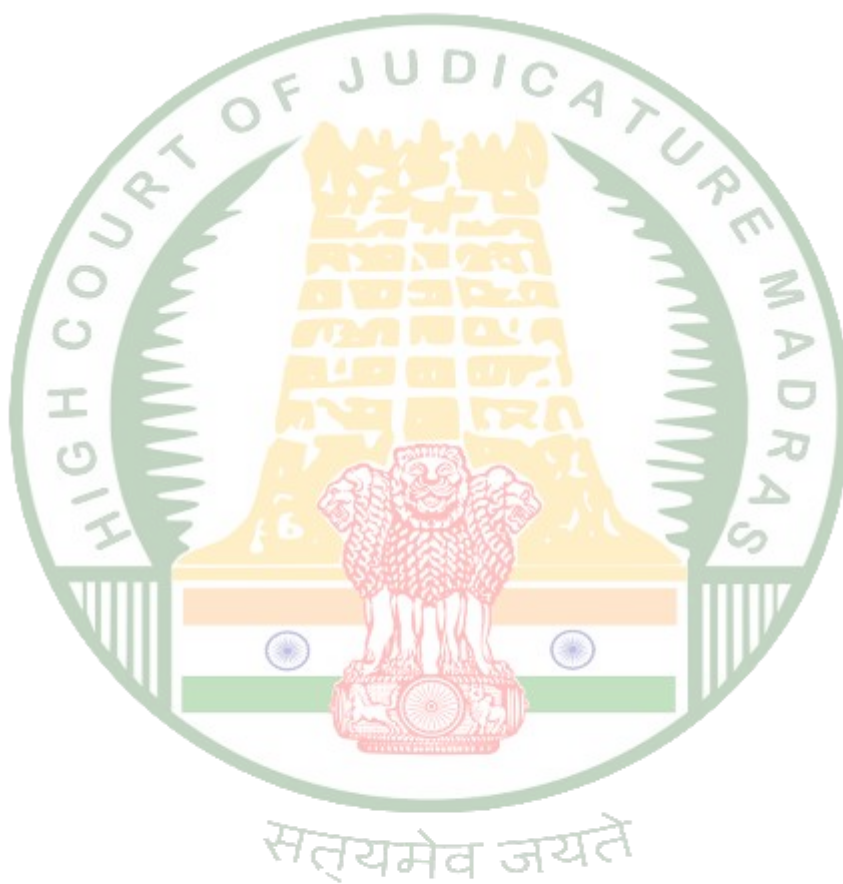
07.09.2020

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