

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 09.02.2021

Judgment delivered on : 16-04-2021

Coram:

The Honourable Mr. Justice R.Subbiah
and

The Honourable Mr. Justice Sathi Kumar Sukumara Kurup

O.S.A.No.75 of 2020

and

C.M.P.Nos.2945, 2946 and 9420 of 2020

Deepa Jayakumar ... Appellant

Versus

1. A.L. Vijay
2. Vishnu Vardhan Induri
3. Gowtham Vasudev Menon ... Respondents

Original Side Appeal (O.S.A) filed under Order XXXVI Rule 1 of the Original Side Rules of Madras High Court, read with Clause 15 of the Letters Patent against the Order dated 12.12.2019 passed by the learned Single Judge, in O.A.No.1102 of 2019 in C.S. No. 697 of 2019 on the file of this Court.

Prayer in O.A.No.1102 of 2019:

Original Application praying that this Court be pleased to grant ad-Interim Injunction restraining the Respondents 1 to 3/Defendants 1 to 3, their men, Servants, agents etc., from in any manner what so ever making, releasing Publishing, exhibiting Publicity or privately selling promoting or advertising or entering into film festival or otherwise producing in any format any film, drama, serial tele serial, web serial or any other literary or artistic expression in respect of the life of Dr.J.Jayalalitha the Former Chief Minister of TamilNadu and/or her family members and their direct descendants without the consent of the Applicant/Plaintiff pending disposal of the above suit.

Prayer in CS No.697 of 2019:

(a) For a declaration declaring that the defendants do not have any legal right power or authority to make release to publish exhibit publicly or privately sell enter into film festival promote, advertise or produce in any formate or medium wholly or partially the film or any teleserial or web serial in the name of Dr.J.Jayalalitha the Former Chief Minister of Tamil Nadu or otherwise drama serial or any other literary or artistic expression in respect of the life Dr.J.Jayalalitha and/or her family members and their direct descendants without the consent of the plaintiff.

b)For a Permanent injunction restraining the defendants, their men, agents, servants, etc., from in any manner whatsoever making, releasing publishing, exhibiting publicly or privately selling promoting or advertising or entering into film festival or otherwise producing in any format any film, drama, serial, teleserial, web serial or any other literary or artistic expression in respect of the life of Dr.J.Jayalalitha, the Former Chief Minister of Tamil Nadu and/or her family members and their direct descendants without the consent of the Plaintiff;

c) Costs of the suit; and

d)grant such further or other relief or reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justis.

For appellant : Mr.Arun C.Mohan for Mr. P. Saikumaran

For respondents: Mr. P.S. Raman, Senior Counsel for
Mr.Vijaya Subramanian for R1 & R2

Mr. Satish Parasaran, Senior Counsel
for Mr. A.K. Raghavulu for R3

JUDGMENT

R.SUBBIAH, J

This Original Side Appeal (O.S.A) has been filed as against the order dated 12.12.2019 made in O.A.No.1102 of 2019 in C.S.No.697 of 2019 by the learned Single Judge dismissing the Original Application filed by the appellant herein for interim injunction to restrain the respondents 1 to 3 from in any manner making, releasing, publishing, exhibiting publicly or privately

selling, promoting or advertising or entering into film festival or otherwise producing in any format, any film, drama, serial, tele-serial, web serial or any other literary or artistic expression in respect of the life of Dr.J.Jayalalitha, the former Chief Minister of Tamil Nadu and/or her family members and their direct descendants without the consent of the applicant/plaintiff, pending disposal of the suit which has been filed for declaration and permanent injunction.

2. The brief facts which are necessary for disposal of this appeal are as follows.

3. It is the case of the appellant that she is the brother's daughter of former Chief Minister of Tamil Nadu late. Dr.J.Jayalalitha, a well known public personality and who had acquired very good name, image and reputation in the midst of the people of Tamilnadu and all over India as a political leader. She had established a great name for the political party - All India Anna Dravidar Munnetra Kalagam (AIADMK) founded by Late.Dr.M.G.Ramachandran, former Chief Minister of the State of Tamil Nadu. Further, Late Dr.J.Jayalalitha is the aunt of the appellant/Deepa Jayakumar. As a family member of Late.Dr.J.Jayalalitha, the appellant/plaintiff acquainted herself in various parts of her life and has been present along with her on important occasions.

4. According to the appellant, the respondents 1 and 2 herein have announced through Press and Media that they are producing a film on the biography of late. Dr. J. Jayalalitha titled as "Thalaivi" in Tamil and "Jaya" in Hindi. They have planned to produce and release the said films on the life story of Dr.J.Jayalalitha as a bi-lingual film for their commercial and monetary benefits, without the consent of the appellant/plaintiff.

5. The third respondent has come forward to make a Web series on the life story of Dr.J.Jayalalitha. The third respondent has planned to produce the web serial on the life story of Dr.J.Jayalalitha for his commercial and monetary benefits, without the consent of the appellant/plaintiff. The life story of Dr.J.Jayalalitha cannot be filmed without adding the life of the appellant/plaintiff and her relatives as part of the film. In such an event, the same would amount to invading into the privacy of the appellant/plaintiff, more so, the appellant/plaintiff was not aware of the story, script or screen play and dialogue prepared by the respondents in the process of producing the said movie and for the web serial. The appellant/plaintiff apprehends that while the respondents/defendants portray Dr.J.Jayalalitha and her personal life in the life story, the plaintiff's part in the life story,

may also be depicted by the respondents/defendants in their own version, which may affect the family privacy of the appellant/plaintiff. Therefore, the appellant/plaintiff contended that the personality rights of her aunt Dr.J.Jayalalitha and the interest of her family's privacy, had to be safeguarded. Hence, it is absolutely necessary that, in the absence of any consent and approval of the story, script, screenplay etc., by the appellant/plaintiff, the respondents/defendants should not be permitted to proceed with the production of the said film or web serial or releasing the same for public exhibition.

6. The apprehension of the appellant/plaintiff is that, during the production of the film, the respondents/defendants may interpolate the scenes which would affect the dignity and reputation of Dr.J.Jayalalitha, while narrating the story, for their commercial enrichment. Therefore, it is contended by the appellant/plaintiff that it is just and necessary to check the entire story, script and screen play inter-alia to direct the respondents/defendants to get the prior approval of the appellant/plaintiff before releasing the bi-lingual film on the life story of Dr. J. Jayalalitha. It is in those circumstances, the appellant has filed the suit, apart from interim injunction, also for a declaration to declare that the respondents have no legal right, power or authority to make the release, to publish, exhibit publicly or privately, sell, enter into film festival, promote, advertise or otherwise producing in any format any film, drama, serial, teleserial, web serial or any other literary or artistic expression in respect of the life of Dr.J.Jayalalitha, former Chief Minister of Tamil Nadu and/or her family members and their direct descendants without the consent of the appellant/plaintiff.

7. Pending the said suit in C.S.No.697 of 2019, the aforesaid Original Application in O.A.No.1102 of 2019 had been filed by the appellant/plaintiff, seeking interim injunction (stated supra).

8. On notice, the second respondent had filed a counter affidavit contending inter alia that the second respondent is a renowned film producer based from Hyderabad. He started the production unit in the year 2011. His first film is based on the life events of N.T.Rama Rao. His next production is a Hindi movie named "83" and the said film is about the 1983 world-cup played by Indian Cricket Team. His intention is to produce movies, which have a good inspiring content and the same should be cherished by the audience. He was looking for making the life event of former Chief Minister of Tamilnadu Dr.J.Jayalalitha from the information available in "public domain". He has done research for about two years and made a

public announcement in August 2018 and also in February 2019 and in the said process, the first and second respondents have studied various interviews of Dr.J.Jayalalitha, read books on her which are available in public domain. While so, the second respondent during April 2019, met the Publisher of Saaraansh Media Solutions Private Limited, engaged in publishing and advertising business, who has informed that he had purchased the copy-right of the book named "Thalaivi" from the author, named Ajayan Bala @ Balaji.B through an agreement dated 09.07.2018. Therefore, the second respondent requested the said Publisher to assign the copy-right of the book "Thalaivi" in his favour to produce it as a movie. After deliberations, an agreement dated 18.04.2019 was entered into between the second respondent and Saaraansh Media Solutions Private Limited, whereby the publisher has assigned and transferred the exclusive right of the book in favour of the second respondent, to enable him to produce the movie. Thus, it is the contention of the second respondent that he is having exclusive right over the contents of the book titled "Thalaivi", based on which, he decided to produce the movie. In fact, the shooting of the movie started in the month of November 2019 and the film was to be shot at different locations at Chennai, Mysore and Hyderabad. As the process of production of the film commenced 18 months ago and the feature film "Thalaivi" has a huge star cast of international technicians, the second respondent has incurred enormous expenses for the film. While so, when the production of the film was in the verge of completion, the instant application as well as the suit were filed by the appellant/plaintiff. The second respondent has no connection with the web-series named, "Queen", directed by the third respondent herein. The action of the appellant/plaintiff in combining two different disputes together, would cause grave prejudice to the second respondent. Therefore, the suit is also liable to be dismissed on the ground of mis-joinder of parties. Accordingly, the second respondent sought for dismissal of the application for interim injunction.

9. The third respondent, who is the Director of the web series 'Queen', has filed a separate counter affidavit stating that, the said web series is not intended to be a "biopic" on the life of Dr.J.Jayalalitha. It carries a "disclaimer", confirming that it is inspired by true events and it is only a dramatization and fictional recreation of events based on the book titled "The Queen" authored by Ms.Anita Sivakumaran and published and released on April 2017.

10. According to the third respondent, the appellant/plaintiff has filed a composite suit in respect of three different and distinct causes of action against three different parties, which is legally impermissible. The alleged cause of action does not arise from the same act or transaction

to enable the plaintiff to maintain the present single suit. The third respondent is a Director of the web-series "Queen", starring actress Ms. Ramya Krishnan in a titular role. On the other hand, the first and second respondents are producing and/or directing the film titled "Thalaivi" starring actress Ms. Kangana Ranaut in the titular role. Therefore, according to the third respondent, both the productions of the web-series "Queen" and the film directed by the respondents 1 and 2 titled "Thalaivi" are different, distinct and dissimilar with each other. Therefore, the present suit is vitiated by multifariousness and it is liable to be dismissed on this ground alone. Further, the body of the plaint does contain only stray averment about the web-series directed by the third respondent. The plaint does not disclose any cause of action as against the third respondent. Hence, the plaint is liable to be dismissed under Order VII Rule 11 of Civil Procedure Code (CPC). The third respondent is only a Director of the web-series titled "Queen" and he is not a producer of the said web-series as alleged in the plaint. Further, the third respondent is also not a holder of any proprietary right or intellectual property right or any other right in connection with the web-series, namely "Queen". Thus, the present Original Application is liable to be dismissed, in view of the failure of the appellant/plaintiff to seek leave to sue the necessary parties, especially when the producer is outside the jurisdiction of this Court. Furthermore, there is an inordinate delay in the appellant approaching this Court with the present suit. The appellant/plaintiff herself alleged that the cause of action for the suit arose on 24.02.2019 and inspite of the same, the appellant/plaintiff had chosen to wait for almost nine months to institute this suit with the full knowledge that the third respondent and more importantly, the producer were expending their time, money and other resources towards production of the web-series. Therefore, the suit is liable to be dismissed on the ground of acquiescence and laches/delay on the part of the plaintiff. At the fag end of the release of the film, only in order to enrich herself, the present suit as well as the Original Application have been filed by abusing the legal process. The real motive of the appellant/plaintiff is not to safeguard the reputation of the former Chief Minister of Tamil Nadu or protect the family privacy right, but otherwise. The appellant/plaintiff has no locus-standi at all to file the present suit, when she was not in close contact with the former Chief Minister of the State when she was alive. On the other hand, the relationship between Dr. Jayalalitha and the appellant/plaintiff had been strained, which was also admitted by the appellant herself in an article dated 18.12.2016, authored by the appellant herself. Therefore, for all the above reasons, the third respondent prayed for dismissal of the Original Application filed by the appellant/plaintiff.

11. After hearing the learned counsel for the parties, the learned Single Judge declined to grant an injunction and dismissed the Original Application filed by the appellant. The relevant portion of the order passed by the learned single Judge reads as under:-

"15. The question that arises for consideration is whether the Applicant has made out a case for the grant of an interim injunction either against the first and second respondents or against the third respondent. As far as the first and second respondents are concerned, they contended that they acquired the cinema rights of a book titled "Thalaivi" which was published previously and is, in fact, the subject matter of a registered copyright. Moreover, in paragraph 13 of the counter affidavit of the second respondent, it is stated categorically that the proposed film would not cast a stigma on the applicant and that she would not be depicted in a single scene in the film. Thus, the privacy rights of the Applicant per se are addressed. Nonetheless, the Applicant asserts posthumous privacy rights and personality rights on behalf of her aunt. Given that the first and second respondent are engaged in the production of a biopic, it is pertinent to bear in mind that the release of the film would be subject to certification by the Central Board of Film Certification (CBFC). During such certification process, if any objectionable material is contained therein, the CBFC would raise objections and, if necessary, insist upon excising such objectionable footage as a pre-requisite for the grant of a certificate for the exhibition of the film. Therefore, as regards the first and second respondent, notwithstanding the assertion of posthumous privacy and personality rights, sufficient safeguards are in place both in the form of the undertaking and the requirement of certification. Further, it is stated that the production of the film and its subsequent release for public exhibition would take several months. For all these reasons, even without closely examining the legal issue, no case is made out for the grant of an interim injunction against the first and second respondents.

16. The facts with regard to the third respondent are distinct and, therefore, have to be dealt with separately. The third respondent has acquired the rights to make a web serial on the basis of a book titled "Queen", which was published in the year 2017, and the author appears to hold the copy

right thereto. It may be noted that the said book is stated to be inspired by true events. In other words, it is not an historical novel but merely one that draws inspiration from true events. The third respondent has taken a categorical stand that the web series would be based on the book and that it would be a fictional rendition. It is also stated that the protagonist of the web series is called Sakthi Seshadri. In these facts and circumstances, can it be said that the applicant is entitled to an order of prior restraint in respect of the proposed web series because it is probably inspired by the life of the former CM? Admittedly, the applicant is the niece of the former CM. On that basis is the applicant entitled to an interim injunction in the alleged posthumous exercise of the right to privacy or personality rights on behalf of her late aunt? As regards personality rights, even on a prima facie basis, it is difficult to accept that the applicant/plaintiff has inherited the personality rights of her aunt. Indeed, the question as to whether such rights are capable of being inherited would have to await trial and final disposal. The question as to whether the applicant is entitled to restrain the public exhibition of the web series of the posthumous right of privacy remains to be considered. In the R.Rajagopal case, the Hon'ble Supreme Court recognised that the right to privacy is both a fundamental right and a right under common law/Tort law. The Court further held that the consent or permission of a public figure is not required for the publication of a work on such public figure if it is based on public records. However, the said case did not deal with the question as to whether the right to privacy can be exercised posthumously by a relative of a deceased public figure. In this case, two important rights are at issue, namely, the right of freedom of expression, including artistic expression, and the right to privacy. It is the settled position that both the rights are fundamental rights, albeit the former is an enumerated right while the latter is derived and read into Article 21 authoritatively and conclusively in K.S.Puttaswamy vs. Union of India (2017) 10 SCC 1. Consequently, a balance has to be struck and the boundaries and contours of these two rights would have to be determined, both tentatively and definitively, for interlocutory and final disposal purposes, respectively, in light of the facts and circumstances of the case.

17. In this case, the Applicant/Plaintiff clearly and indubitably has both a fundamental and common law right as regards her privacy. With regard to the first and second Respondents, as stated earlier, there is an undertaking that not a single scene would depict the Applicant. The third Respondent, on the other hand, takes the position that the web series is fictional and that an undertaking is not warranted. Nonetheless, on balance, I am of the view that the web series of the third Respondent should not infringe the privacy of the Applicant (i.e. by demarcating and differentiating it from the assertion of posthumous rights) pending determination of the suit. The assertion of posthumous privacy rights on behalf of her aunt is, however, a different matter. The Applicant is not a near relative of the Former CM, i.e. she is not a daughter or even a member of the same household. In such circumstances, one has to test, for interlocutory purposes, her asserted right - to prior restraint of the exhibition of the web series without her consent or to insist that such series should not be made without including her in such web series - by weighing it against the Respondents' right to freedom of expression. The assertion that her aunt's life story cannot be told without including her role in it could be brushed aside as ingenuous and, in any event, it cannot be said that she has an actionable right to insist on being included as a character in the web serial. As regards her right to restrain the exhibition of the web series without her consent, at this juncture, the Applicant's right to posthumously exercise the right to privacy on behalf of her late aunt is contested fiercely by the Respondents, by citing precedent such as the Nakkeeran case, the Veerappan case, the Kamaraj case and the M.P. Raju case, in that regard, and such rights appear prima facie to be tenuous. I am unable to subscribe, in this regard, to the view expressed in the Jalaram Bapa case that any descendant is entitled to enforce prior restraint rights. In my view, if that principle were to be applied, agnates and cognates would emerge from the wood work and sound the death knell for the freedom of artistic expression. Nevertheless, definitive conclusions as to the posthumous exercise of the right to privacy and as to who can exercise such rights would have to await final disposal.

18. Meanwhile, it appears that 9 months have elapsed since the third Respondent commenced production of the web series and a sum of about 20

crores is stated to be expended on such production. The said web series is stated to be a fictional rendition, which would carry a disclaimer that the resemblance to real persons is purely coincidental and not intentional. Given these facts and circumstances, I am of the view that, subject to the rider specified earlier as regards the privacy of the Applicant, the balance of convenience is in favour of the third Respondent and the right to freedom of expression of the third Respondent cannot be curtailed at the instance of the Applicant, whose assertion of posthumous privacy and personality rights for and on behalf of her late aunt are tenuous and amorphous at this stage. If an interim order is granted, it would be difficult to compensate the Respondents in case they succeed in the suit, whereas the Applicant can always re-apply at a later juncture if there is a change in circumstances on the basis of the first series of episodes of the web series. As regards the first and second Respondents, as stated earlier, the undertaking in paragraph 13 of the counter affidavit coupled with the certification requirement constitute adequate safeguards.

19. Therefore, the Application is hereby disposed of by denying interim injunctive relief, as requested, subject to the rider that the first and second Respondents shall adhere to the undertaking in paragraph 13 of the counter affidavit of the second Respondent and the third Respondent shall adhere to the commitment of providing a disclaimer that it is a work of fiction and that resemblance to real persons is coincidental and not intentional and also ensure that no character closely resembling the Applicant is depicted in the web series pending adjudication of the suit."

12. Aggrieved by the above order passed by the learned Single Judge, dismissing the Original Application, the present Original Side Appeal is filed by the appellant/plaintiff, before this Court.

13. The learned counsel for the appellant/plaintiff submitted that the appellant is the Class I legal heir (as per Hindu Law) of late. Dr.J.Jayalalitha as per the order dated 27.05.2020 passed in O.P.No.630 of 2018 by the Division Bench of this Court. Therefore, as a Class I legal heir, she is entitled to institute the present suit to safeguard the "posthumous right of privacy" and to protect the dignity and legacy of her Late aunt Dr.J.Jayalalitha. However, the learned Single Judge, on an

erroneous consideration, concluded that the appellant/plaintiff is not a close relative of Dr.J.Jayalalitha and therefore, she cannot exercise any posthumous right on behalf of her Late aunt. Such a finding of the learned Single Judge runs contrary to the declaration of her status as Class I legal heir made by the Division Bench of this Court in O.P.No.630 of 2018. To buttress such submission, the learned counsel for the appellant/plaintiff relied on a decision of the Apex Court in the case of R.Rajagopal Vs. State of Tamil Nadu, reported in AIR 1995 SC 264 = 1994 (6) SCC 632, wherein, the Apex Court, while summarising the principles therein, in paragraph 26(i), observed that, a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education, among other matters and none can publish anything concerning the above matters without his consent--whether truthful or otherwise and whether laudatory or critical, and if he does so, he would be violating the right of privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy. Thus, the learned counsel for the appellant/plaintiff assertively submitted that the appellant/plaintiff has "locus-standi" as Class I legal heir and is entitled to protect the right of privacy of her close family member, i.e. in this case, her aunt Dr.J.Jayalalitha. Further, Dr.J.Jayalalitha, during her life time, successfully defended her privacy rights when there was a threat or violation of right to her privacy and has even obtained restraint order from this Court. Without considering these aspects, the learned Single Judge had accepted the submissions made by the respondents herein (defendants) who argued by relying on the judgment of this Court in the case of The Managing Director, Makkal Tholai Thodarpu Kuzhumam Limited vs. Mrs. V. Muthulakshmi, reported in 2007 (6) MLJ 1152 = 2007 (5) CTC 694, wherein in Para Nos.17 and 18, it was held that right to privacy of late forest brigand, Veerappan did not subsist after his death in view of the undertaking that the right of privacy of Veerappan's wife and daughters would not be affected and thus refused to grant injunction therein to restrain the release of the serial "Santhana Kaadu". But the said judgment cannot be made applicable to the facts of the instant case, inasmuch as Late.Dr.J.Jayalalitha, during her life time was pro-active in protecting her privacy, dignity and legacy in a manner known to law. In fact, in the very same judgment, it has been held in Para No.18 that right to privacy of Veerappan does not subsist after his death because he never opposed any such publication made against him during his life time, whereas, the aunt of the appellant late. Dr.J.Jayalalitha has successfully defended her private right whenever there was a threat to her privacy right and has even obtained restrain orders from this Court.

Therefore, the said Veerappan's case is factually distinguishable to the case on hand and the same ought not to have been relied on by the learned Single Judge.

14. As next fold of submission, the learned counsel for the appellant/plaintiff submitted that the case of the respondents/defendants that the film and web-series are 'fictional' works based on the books namely "Queen" written by Anita Sivakumaran and another book by name "Thalaivi", is incorrect. This defence has been accepted by the learned Single Judge, but the fact remains that, the respondents 1 and 2 admitted that the impugned film "Thalaivi" is based on the life of late. Dr. J. Jayalalitha. They have also admitted in their counter affidavit that the impugned film is completely being produced based on the information available in public domain about Late.Dr.J.Jayalalitha only. Therefore, the contention that the web series or film are fictional work based on the book namely "Queen" or "Thalaivi", cannot be accepted.

15. So far as the third respondent is concerned, under the pretext of fiction, he has portrayed several personal life instances of Late.Dr.J.Jayalalitha, which are untrue and demeaning to the dignified life led by her aunt. According to the learned counsel for the appellant/plaintiff, on viewing the web-series, one can notice that the third respondent went to the extent of casting aspersions about her aunt and portrayed her as if she was in a relationship with another actor. The story further unfolds that her aunt was begging her male co-star to marry her and her co-star threatens and insults her by refusing to accede to her request. Later, the story proceeds as though her aunt pursues another man, a movie director, who also rejects her after succumbing to her initial advances. These scenes projected in the web-series, according to the learned counsel for the appellant, are not only untrue, but they are disturbing to be viewed. The aunt of the appellant/plaintiff, was also seen to have been cutting her wrists in the movie and she was recommended to approach a Psychiatrist for help. Further, in the web-series, the father of the appellant, brother of Dr.J.Jayalalitha, was depicted as a drug addict and thereby slandered the family member of her aunt. According to the learned counsel for the appellant/plaintiff, these are not the real instances and rather, they are exaggerated for unlawful enrichment and thereby, portrayed her aunt and her family members in poor light in the web-series. By trampling upon the personal life of late.Dr.J.Jayallaita in such a grossly disrespectful manner, the defence of it being wholly fiction, is a smoke-screen, as it seeks to sensationalize the personal life of her aunt Dr.J.Jayalalitha, which is a matter that is outrageous to her dignity and legacy.

16. The learned counsel for the appellant/plaintiff further proceeded to contend that late.Dr.J.Jayalalitha was also a public official and is entitled to right of privacy. In this regard, he relied on the judgment of the Supreme Court in R.Rajagopal's case (mentioned supra) and contended that the appellant's aunt was a public official and she is also standing on par with common man so far as the "right to private life" is concerned. Such right to privacy of life of an individual, should not be invaded by any one in any manner. The perversion of the personal life of the aunt of the appellant and her family members, is the primary ground raised in the "lis", but the learned Single Judge did not deal with the consequences of invasion of the private life of the aunt of the appellant.

17. The learned counsel for the appellant/plaintiff also submitted that it is true that the respondents/defendants have the right to freedom of speech and expression, but such right has to be exercised cautiously without violating the right of others or at the cost of privacy of the aunt of the appellant, which is guaranteed under Article 21 of The Constitution of India. In this regard, reliance is also placed on the decision of this Court in the case in Selvi.J.Jayalalitha Vs. Penguin Books India, reported in (2013) (54) PTC 327 (Mad), wherein it was held that "right of privacy" is an individual right guaranteed under Article 21 of The Constitution of India and it is a right to be let alone. Late.Dr.J.Jayalalitha was immensely pro-active in protecting her legacy during her life time and the same has already been protected by this Court in the past. Therefore, the relief sought for by the appellant is with a slight variation to protect the posthumous right of her aunt. In fact, the life of the appellant's aunt prior to the entry into public life, has not been verified by the respondents. But, without conducting any private verification or consulting the appellant herein, prior to production of the web series and movies, sought to sensationalize the same by all manner of sleazy and scandalous imputations, to rouse public interest in their works. It is in those context, obtaining prior consent of the appellant is mandatory, which the respondents did not obtain. The respondents/defendants, without impunity, scandalized and sensationalized, the personal life of late.Dr.J.Jayalalitha and her family. This manner of garnishments on a visual medium is causing mental strain to the appellant, besides it will embolden others to trample upon the legacy of the appellant's aunt. Further, due to the death of late.Dr.Jayalalitha, the consent for portraying her personal life ought to have been obtained from the appellant, as has been held by the Supreme Court in R.Rajagopal's case (mentioned supra), but no such consent was obtained by the respondents/defendants from the appellant/plaintiff.

18. The learned counsel for the appellant further submitted that the learned Single Judge held that the film produced by the respondents 1 and 2, is subject to verification process by the CBFC and if any objectionable material and footage is noticed, it will be verified by the Board. However, the learned Single Judge did not note that the manner of review and censorship done by CBFC, will not in any manner protect the legacy of the appellant's aunt or it will preclude her "right of privacy". Therefore, such an observation of the learned Single Judge to refuse the relief of injunction is legally not sustainable. In support of the contentions raised in this appeal, the learned counsel for the appellant/plaintiff relied on a judgment of this Court in the case of Shivaji Rao Gaikwad (also known as Mr.Rajinikanth) Vs. M/s.Varsha Producers, reported in 2015 (1) LW 701, relevant portion of which reads as follows:-

"23. From the reading of the above said judgments, it is seen that if any person uses the name of a celebrity without his/her permission, the celebrity is entitled for injunction, if the said celebrity could be easily identified by the use of his name by the others. As observed earlier, in the instant case, on seeing the name of Rajinikanth in the title of the impugned movie, the persons, who are coming across the title of the impugned movie, are identifying the name only with the plaintiff herein, which is evident from the website pages hosted by different persons. Therefore, in my opinion, even assuming for a moment that the impugned movie is not a biopic of the plaintiff, since the name found in the title of the impugned movie is identifiable only with the plaintiff, who happens to be a celebrity and not with any other person, the defendant is not entitled to use the said name without the permission of the plaintiff/celebrity, particularly when he had chosen to advertise the movie with a title 'Hot Kavita Radheshyam As Sex Worker For Rajinikanth'."

19. The learned counsel for the appellant/plaintiff therefore prayed for setting aside the impugned order of the learned Single Judge and to allow the appeal.

20. Countering the above submissions, Mr.P.S.Raman, learned Senior Counsel appearing for the respondents 1 and 2 contended that the first respondent is the Director of the film "Thalaivi" and the second respondent is the renowned film producer based at Hyderabad. During August 2018, the second respondent announced the making of the film "Thalaivi", based on the life events of former Chief Minister Late.Dr.J.Jayalalitha from the information

available in the public domain. The second respondent had also come to know that one Saaraanash Media Solutions Private Limited is the copy right holder of the book named "Thalaivi" from the original author, by name Ajayan Bala @ Balaji.B through an agreement dated 09.07.2018. Therefore, after deliberations, the second respondent evinced interest to get the copy-right assigned and/or transferred in his favour. Ultimately, an agreement dated 18.04.2019 was entered into, by which the second respondent had become exclusive assignor and/or copy-right owner of the book. Thereafter, the second respondent commenced the production of the film "Thalaivi" during April 2019 and also commenced the shooting of the film by spending Rs.60 crores. The entire shooting of the film was completed and it is in the pre-production stage awaiting Censor Certificate. Even the teaser of the film "Thalaivi" was released on 23.11.2019 itself which was watched by more than a crore people through social media. While so, the appellant/plaintiff, after considerable delay, has filed the instant suit and the application, which are hit by the principles of latches.

21. The suit in C.S.No.697 of 2019 had been mainly filed on the allegation that the respondents 1 and 2, without approaching the appellant/plaintiff or without taking her consent, are proceeding to release the film "Thalaivi". Further, the life story of the former Chief Minister cannot be filmed without adding the life of the appellant as part of the film, as the same would interfere with the privacy right of the appellant/plaintiff. In fact, before the learned Single Judge, the second respondent has given an undertaking that the film "Thalaivi" will not have single scene portraying the appellant/plaintiff. Thus, the appellant's privacy will not be disturbed and her life is not part of the film. In fact, the second respondent had also obtained the right of the book "Thalaivi" on 18.04.2019 for production of the film "Thalaivi". The appellant/plaintiff had not objected for the publication of the book. The said book also depicts the life story of the former Chief Minister and it was registered under the Copy-right Act. Therefore, there is no question of privacy of the appellant/plaintiff being infringed, inasmuch as every one in Tamil Nadu is aware of the life story of former Chief Minister. It is a matter of "public domain" and the concept of privacy rights, will not arise at all. The life of Dr.J.Jayalalitha is in the public domain through newspapers, books and online for the past 50 years and the film is based on the book "Thalaivi" and also on the basis of the information available in the public domain. In any event, the biopic film of former Chief Minister will only glorify the former Chief Minister. The film will be an inspiration to the present and future generations to know about the struggles confronted by the "Iron Lady" (former Chief Minister Late.Dr.J.Jayalalitha). The film only depicts the

struggles faced by a lady and the manner in which she handled it, despite several hurdles.

22. The learned Senior Counsel appearing for the first and second respondents further placed reliance on the decision of the Supreme Court in the case of R.Rajagopal Vs. State of Tamil Nadu, reported in AIR 1995 SC 264, wherein the Supreme Court has held that the petitioners therein have a right to publish, what they alleged to be the life story or autobiography of Auto Shankar, insofar as it appears from the public records, even without the consent or authorisation of the State or its officials and therefore, the publication of the book cannot be prevented or restrained.

23. As regards the decision of this Court relied on by the learned counsel for the appellant/plaintiff in the case of R.Rajagopal @ R.R.Gopal @ Nakkheeran Gopal and another Vs. J.Jayalalitha and another, reported in 2006 (2) LW 377, the learned Senior Counsel appearing for the respondents 1 and 2 submitted that the Division Bench in that case has only held that in a democratic set up, a close and microscopic examination of private lives of public men, is the natural consequences of holding public offices. Therefore, the Division Bench even refused to direct prior verification of the respondents therein, namely J.Jayalalitha and N.Sasikala before publication of articles on the said public persons. Therefore, this judgment cannot lend support to the case of the appellant/plaintiff in the case on hand.

24. As regards the other judgment relied on by the learned counsel for the appellant/plaintiff in the case of The Managing Director, Makkal Tholai Thodarpu Kuzhuman Limited (mentioned supra), the learned Senior Counsel appearing for the respondents 1 and 2 submitted that in that case, it was held by this Court that right to privacy of the late forest brigand Veerappan did not subsist after his death and therefore, this Court permitted the release of the series "Santhana Kaadu" subject to the condition that the film should be based on the public records and field information. This case also does not support the case of the appellant/plaintiff.

25. By placing reliance on the above decisions, the learned Senior Counsel appearing for the respondents 1 and 2 submitted that the appellant cannot assert posthumous privacy right and personal right on behalf of her aunt late chief Minister. This is more so that the appellant did not enjoy a cordial or close relationship with her aunt during her life time. Above all, the learned Senior Counsel appearing for the first and second respondents contended that the film "Thalaivi" will be released subject to the certification to be given by the CBFC (Central

Board of Film Certification). During such certification process, if any objectional material is noticed, the CBFC itself would raise objections or if necessary, insist upon removal of such objectional materials as a condition precedent for grant of Censor Certificate. Therefore, sufficient safeguards are made to ensure that the film does not contain any material which will be detrimental to the posthumous personality right of the aunt of the appellant/plaintiff. Further, before release of the film in question, the appellant can very well view the film and she was not prevented from doing so in any manner. The learned Single Judge also rightly appreciated the aforesaid aspect and dismissed the Original Application. The appellant/plaintiff has not made out any prima facie case and the balance of convenience is not in her favour. The learned Senior Counsel therefore prayed for dismissal of this Appeal.

26. Mr. Satish Parasaran, learned Senior Counsel appearing for the third respondent submitted that the present appeal is an abuse of process of law and the same is liable to be dismissed, insofar as it relates to the third respondent. In fact, the Web-Series "Queen" had already been released on the One OTT platform MX Player on 14.12.2019 itself. Therefore, the relief sought for in this appeal as against the third respondent, has become infructuous. Furthermore, the third respondent is only a Director of the Web Serial titled "Queen" and he is not the producer of the Web Serial. When the Producer is not arraigned as a party, on that score also, the appeal cannot be maintained as against the Director/third respondent. Further, the learned Senior Counsel for the third respondent submitted that the Web serial is in fact an authorised adaptation and fictionalized and dramatized version of the book titled "The Queen" authored by Anita Sivakumaran and published/released on 28.04.2017. The web-series is inspired by true events and is a dramatization and fictional recreation of true events. The web-series also carries a "disclaimer" to the effect that the same is not a biography of any character. So far, no action had been initiated by the appellant/plaintiff, in spite of the fact that the book was in the public domain for over three years. Moreover, the "third party interest" had been created in the web series titled "Queen" (in India and internationally) by the producer of the Web Series. The alleged right sought to be enforced by the present appeal is the "posthumous right of privacy" to protect the dignity and legacy of the appellant's aunt. It is settled proposition of law that the right of privacy of an individual extinguishes with the human being. Accordingly, any action to exercise the "posthumous right of privacy" is not maintainable. To buttress this submission, reliance was placed on the judgment of the Supreme Court in the case of K.S. Puttaswamy and another vs. Union of India and others, reported in 2017 (10) SCC 1.

27. The learned Senior Counsel appearing for the third respondent further submitted that, though the appellant/plaintiff claimed that she had a close relationship with Dr.J.Jayalalitha, former Chief Minister, it is an admitted position that the appellant/plaintiff was not even in contact with the former Chief Minister during her life time and has in fact herself written an article in this regard. By her own admission, the appellant got estranged from her aunt. In fact, "right of privacy" is not an "alienable right" and it cannot be inherited. In support of this contention, he relied on the judgment in The Managing Director, Makkal Tholai Thodarpur Kuhumam Limited (mentioned supra). The learned counsel also relied on the judgment reported in the case of Balakrishnan v. R. Kanakavel Kamaraj, reported in 1999 SCC Online Mad 563.

28. The learned Senior Counsel appearing for the third respondent also submitted that there is no infirmity in the order passed by the learned Single Judge and it is not liable to be interfered with. He contended that it is a settled proposition of law that an appellate Court would not interfere with the exercise of discretionary power by the Court of first instance, except where such discretion has been shown to be exercised arbitrarily, capriciously or perversely or where the Court had ignored the settled proposition of law regulating grant or refusal of interlocutory injunction. In this regard, he placed reliance on the decision of the Apex Court in Wander Limited and another Vs. Antox India Private Limited, reported in 1990 Supp SCC 727. For the very same proposition, reliance was also placed on the decision of Dhariwal Industries Limited Vs. M.S.S.Food Products reported in 2005 (3) SCC 63. In such circumstances, the learned Senior Counsel appearing for the third respondent prayed for dismissal of the O.S.A.

29. We have heard the learned counsel/Senior Counsel appearing on either side and perused the materials placed. As we have dealt with the factual matrix of the case at some required length, we refrain ourselves from referring to those aspects any further in this appeal and the facts which are germane alone, are discussed hereunder.

30. In view of the rival submissions made, the following question arise for consideration in this appeal namely-

"Whether the posthumous right of the former Chief Minister of Tamil Nadu is inheritable by the appellant to restrain the respondents from releasing the web series or film ?"

31. The case of the appellant is that she is the Class I legal heir (as per Hindu Law) of the former Chief Minister of Tamil Nadu Dr.J.Jayalalitha and therefore, she is having a legal right to safeguard the posthumous right of privacy and to protect the dignity of her late aunt. According to her, the first and second respondents herein are producing the film on the biography of late Dr.J.Jayalalitha titled as "Thalaivi" in Tamil and "Jaya" in Hindi, for their commercial and monetary gains without getting the consent from the appellant. So far as the third respondent is concerned, he has also produced the web-serial on the life story of Dr.J.Jayalalitha for commercial and monetary benefits without the consent of the appellant/plaintiff and the same had been released in the OTT plat-form showing Dr.J.Jayalalitha, the former Chief Minister of Tamil Nadu, in poor light. It is the further case of the appellant that the life story of Dr.J.Jayalalitha cannot be filmed, without adding the appellant and her relatives as a part of the film. In the absence of compliance of the aforesaid requirements, the production of the film would amount to invading into the privacy of the appellant.

32. But it is the reply of the respondents 1 and 2, who are the producers and Director of the movie titled "Thalaivi" that they are not invading into the private life of the appellant. The movie is based on the book "Thalaivi" authored by Ajayan Bala @ Balaji.B through an agreement dated 09.07.2018

33. Similarly, it is the reply of the third respondent - Director of the web series "Queen" that the Web series is the authorised, adapted and commercialised version based on the book "Queen" authored by Anita Sivakumaran and published on 28th April 2017. The web series is inspired by true events, dramatization and is a fictional recreation of true events. Further, the web-series carries a "disclaimer" that it is not a biography of any character. Moreover, the "right of privacy" of an individual extinguished with the human being and therefore it is not alienable and hence the appellant is not entitled for an injunction. In this regard, the learned Senior Counsel appearing for the third respondent relied on the judgment of the Supreme Court in the case of Puttaswamy and another Vs. Union of India and another, reported in 2017 (10) SCC 1, wherein, it has been held as follows:-

"557. In my considered opinion, right to privacy of any individual is essentially a natural right, which inheres in every human being by birth. Such right remains with the human being till he/she breathes last. It is indeed inseparable and inalienable from human being. In other words, it is born with the human being and extinguishes with human being."

34. In fact, this Court, in the case of Managing Director, Makkal Tholai Thodarpur Kuzhumam Limited Vs. Mrs.V.Muthulakshmi, reported in 2007 (6) MLJ 1152 = 2007 (5) CTC 694, held that the "right of privacy" of the Late forest brigand Veerappan, did not subsist after his death, in view of the undertaking that the "right of privacy" of Veerappan's wife and daughters, would not be affected. Therefore, in that case, it was held that no case is made out for grant of interim injunction to restrain the release of the serial "Santhana Kaadu". In that judgment, this Court categorically rejected the argument regarding inheritability of the "right of privacy" in para No.18 which reads as follows:-

"18. The contention of the learned counsel for the respondent Mr. Manoharan that right of privacy continues and takes the new turn after the death of Veerappan, who died on 19.10.2004 is also baseless because even during the life time of Veerappan himself, the publications have been made admittedly and he has not taken any steps for the purpose of opposing. The same question of continuation of privacy after his death is not at all an acceptable argument. In any event, it is true that the petitioner and the daughters have got right to privacy to be maintained but I do not understand as to how the right to privacy of the petitioner and her children are going to be affected especially in the circumstances when the Trial Court while deciding about the interlocutory application has in fact safeguarded the interest of the plaintiff and her daughters and further this Court while admitting the revision has also recorded the undertaking given by learned Senior counsel for the revision petitioner categorically stating that right to privacy of the plaintiff and her daughters will not be affected and there will not be humiliation to the plaintiff and her daughters."

35. A reading of the above judgment clearly shows that the "right of privacy of an individual", cannot be inherited after his or her death by his legal heirs. It is the specific contention of the respondents 1 and 2 herein that they are producing the movie in question, based on the contents of the book "Thalaivi", but the appellant/plaintiff has not taken any action as against the publication of the above mentioned book, especially, when the book was in the public domain for more than three years. The respondents 1 and 2 also contended that "right of privacy of an individual" extinguishes with the human being. In this regard, useful reference can be made to the decision of the Apex Court in the case of Melepurath Sankunni

Ezhuthassan Vs. Thekittil Geopalankutty Nair, reported in 1986 (1) SCC 118, as relied on by the learned Senior Counsel appearing for the third respondent, wherein it was held as follows:-

"5. Under the common law, the general rule was that death of either party extinguished any cause of action in tort by one against the other. This was expressed by the maxim *actio personalis moritur cum persona* (a personal action dies with the person). However, by the Law Reform (Miscellaneous Provisions) Act, 1934, all causes of action vested in a person survive for the benefit of his estate except causes of action for defamation or seduction which abate on the death of such person. As the Law Reform (Miscellaneous Provisions) Act, 1970, abolished the right of action for seduction of a spouse or a child from January 1, 1971, the only cause of action which would abate in England on the death of a person suing would be now a cause of action for defamation.

6. So far as this country is concerned, which causes of action survive and which abate is laid down in Section 306 of the Indian Succession Act, 1925.....

Section 306 speaks of an action and not of an appeal. Reading of Section 306 along with Rules 1 and 11 of Order XXII of the Code of Civil Procedure, 1908, it is, however, clear that a cause of action for defamation does not survive the death of the appellant."

36. By relying on the above decision, it is submitted by the learned Senior Counsel for the third respondent that any action resorted to by the appellant to protect or safeguard the posthumous right of her aunt is not maintainable, since the right of privacy of an individual cannot be inherited.

37. On an analysis of the aforesaid judgment(s), it is clear that a privacy or reputation earned by a person during his or her life time, extinguishes with his or her death. After the death of a person, the reputation earned cannot be inherited like a movable or immovable property by his or her legal heirs. Such personality right, reputation or privacy enjoyed by a person during his life time comes to an end after his or her life time. Therefore, we are of the opinion that "posthumous right" is not an "alienable right" and the appellant/plaintiff is not entitled for an injunction on the ground that the "posthumous right" of her aunt is sought to be sullied by the respondents/defendants by reason of the release of the film titled as "Thalaivi". Further, the movie in question is yet to be released. Even prior to that, the appellant/plaintiff is not

entitled to seek for an injunction on the ground that her aunt has been depicted in the movie very badly and thereby her image and reputation is attempted to be brought down. Such a contention of the appellant/plaintiff cannot be countenanced before the movie is to be released. The release of the movie is subject to the certification to be given by the CBFC. The CBFC will have an opportunity to go through the contents of the movie.

38. As far as the web-series is concerned, it is alleged that, certain scenes in the web-series have portrayed the former Chief Minister in poor light. But it was not pleaded in the plaint. It is the assertive submission of the third respondent that the web series "Queen" is inspired by true events and it is dramatized and fictional reaction. Even otherwise, there is a "disclaimer" stating that it is not a biography depicting any character. Hence, we are of the view that even if the appellant is in any manner aggrieved by the portrayal of the former Chief Minister or her family members in the Web series, the only remedy now open to the appellant is to seek appropriate legal remedy for damages. When the web series was already released in the OTT platform and it was also viewed by scores of people, an injunction against the telecast of web series cannot be granted. The learned Single Judge has also given liberty to appellant/plaintiff to re-apply at a later juncture, if there is a change in the circumstances, on the basis of the first series of episodes of the web-series. The learned Single Judge is therefore right in refusing to grant an interim injunction, as claimed by the appellant. We do not find any infirmity in such an order of the learned Single Judge.

39. The right of freedom of speech and expression enshrined under Article 19 (1) (a) of the Constitution of India is not conditioned/restricted on the premise that a film maker must only portray one particular version of facts. Therefore, there is no obligation on the part of the respondents/defendants to take prior consent from the appellant/plaintiff. In this regard, it is appropriate to notice the below mentioned judgments:

(i) S. Rangarajan vs. Jagjivan Ram reported in 1989 (2) SCC 574, wherein, it was held that it is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression.

(ii) Ramesh Pimple Vs. CBFC reported in (2004) 5 Bombay CR 214, in which, it was held by the Bombay High Court that the "freedom of expression" guaranteed by Article 19(1)(a) is of cardinal value in a Democratic Government. Tolerance of a diversity of view point and the acceptance of freedom of speech

of those whose thinking may not accord a main stream, are the cardinal values, which lie at the very foundation of democratic form of government. Respect for and tolerance of a diversity of view point is what ultimately sustain a democratic society and government.

(iii) F.A. Picture International vs. CBFC reported in AIR 2005 Bombay 145, wherein also it was held by the Bombay High Court that the protection of the Constitution does not extend only to fictional depictions of artistic themes. Artists, film makers and play rights are affirmatively entitled to allude to incidents which have taken place and to present a version of those incidents, which according to them represents a balanced portrayal of social reality. The Constitutional protection under Article 19(1)(a) that a film maker enjoys is not conditional on the premise that he must depict something which is not true to life. The choice is entirely his. Those who hold important positions must have shoulders which are broad enough to accept with a grace a critique of themselves and critical appraisal is the cornerstone of democracy and the power of the film as a medium of expression lies in its ability to contribute to that appraisal and that the film-maker cannot be compelled that they must only portray one particular version of the facts in a web-series or movie.

40. Hence, for all the above reasons, we confirm the impugned order dated 12.12.2019 passed by the learned Single Judge in O.A.No. 1102 of 2019 in C.S. No. 697 of 2019. The Original Side Appeal is dismissed. No costs. Consequently, the C.M.Ps. are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

The Sub-Assistant Registrar,
Original Side, High Court, Madras.

+1cc to Mr.D.Sai Kumaran, Advocate Sr.23054

+1cc to M/s.Thondan Subramani, Advocate Sr.23916

OSA No. 75 of 2020

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