



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 16th DAY OF DECEMBER 2021

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

A.Nos.3939 of 2021, 3940 of 2021, 2645 of 2021
and

O.A. No.461 of 2021

O.A. No.461 of 2021 and A.No.2645 of 2021:-

S.Kishore,
S/o Sethu,
Having office at
C Block, T-2,
Kumaran Colony, 2nd Street,
Vadapalani, Chennai 600 026.

... Applicant/Plaintiff

-Versus-

1.Mr.Jimmy Elias,
Son of Elias,
Pattasserril House,
Opp.Boys Higher Secondary School,
Thirupunithara, Ernakulam,
Kerala – 682 301.

2.Mr.Somam Pillai,
Son of not known,
Sakthi Kulangara,
Kollam,
Kerala – 691 003.

3.Movie World Visual Media Pvt Ltd,
Represented by its CEO,
Door No-66/947 B, Amal Complex,
C.P.Ummer Road,
Kochi Ernakulam,
Kerala 682 035.



4.M/s. Millennium Audios,
Represented by its Proprietor Sajith Pacht,
Puthiyedath Building,
Bank Road,
Calicut, Kerala 673 001.

5.Shot Formats Digital Productions Pvt Ltd,
Rep by its Director,
Unit No 409, 4th Floor, A-Wing,
Express Zone, Opp-Reliance Office,
Near Patel Vanika, Western Express,
Highway, Malad(East),
Mumbai, Maharashtra – 400 063.

6.Mr.Shamon,
Son of not known,
Parayil House, Seena Manzil,
Sreekala bye line,
Vennala (PO),
Ernakulam,
Kerala – 682 028.

7.Mr.Inshad,
Kerala Amal Complex,
Pulleppady Road,
Ernakulam,
Kochi, Kerala – 682 035.

8.Mr.Job Kurian,
Son of Kurian,
Al Jacob Road,
Ernakulam,
Kochi, Kerala – 682 035.

9.M/s Saina Video Vision,
Rep. by its Proprietor Mr.Bava PM,
No.35/40, NH Road, Palarivattom,
Kochi, Kerala – 682 025.



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A.No.2645 of 2021:-

Original Application praying that this Hon'ble Court be pleased to issue an Interim Direction, directing the respondents or any person claiming through them to remove all the respective URL as provided in Schedule B of this Application from www.youtube.com leading to the respective schedule A films during the pendency of this Suit.

A.Nos.3939 and 3940 of 2021:-

1.Mr.Jimmy Elias,
Son of Elias,
Pattasserril House,
Opp.Boys Higher Secondary School,
Thirupunithara, Ernakulam,
Kerala – 682 301. ... Applicant

-Versus-

1.S.Kishore,
S/o Sethu,
Millennium Enclave
C Block, T-2,
Kumaran Colony, 2nd Street,
Vadapalani, Chennai 600 026.

2.Mr.Somam Pillai,
Son of not known,
Sakthi Kulangara,
Kollam,
Kerala – 691 003.

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Kochi, Kerala – 682 035.

9.M/s Saina Video Vision,
Rep. by its Proprietor Mr.Bava PM,
No.35/40, NH Road, Palarivattom,
Kochi, Kerala – 682 025.

**A.No.3939 of 2021:-**

Original Application praying that this Hon'ble Court be pleased to Reject the plaint in C.S.(Comm) No.31/2021.

A.No.3940 of 2021:-

Original Application praying that this Hon'ble Court be pleased to revoke the leave granted dated 16.08.2021 in A.No. 2839 of 2021 in C.S.(Comm) No.31/2021.

This Application coming on this day before this court for hearing, the court made the following order:-

The issue involved in all these applications are common and interconnected and hence, all these applications are taken up together and this common order is passed.

2. Heard Mr.Anu Ganesan, learned counsel for the applicant in A.Nos.3939 and 3940 of 2021 and Mr.A.Palaniappan, learned counsel for the applicant in A No.2645 of 2021 and O.A.No.461 of 2021 and Mr.P.Mohan kumar, learned counsel appearing on behalf of respondent in A.Nos.3939 and 3940 of 2021 and Mr.E.M.Murugan, learned counsel for respondents in A No.2645 of 2021 and O.A.No.461 of 2021.

3. Application No.3940 of 2021 has been filed by the applicant



/1st defendant to revoke the leave granted to the 1st respondent / plaintiff by an order dated 16.08.2021. The 1st respondent has filed the present suit to declare him as the owner of the copyright in the movies mentioned in Schedule A to the plaint. The specific case of the 1st respondent is that he is having his place of residence at Chennai and he had entered into the assignment agreement dated 12.02.2021 only at Chennai and by virtue of this assignment deed, he became the owner of the copyright for the 22 movies mentioned in the agreement. The 1st respondent has filed the suit with a cause of action that the movies for which he got the assignment rights, had been uploaded in the youtube by the defendants without getting his permission. Therefore, the 1st respondent has sought for various reliefs against the defendants.

4. It is seen from records that the 1st respondent at the time of filing the suit had invoked Section 62 of the Copyright Act, 1957 (herein after called as the “Act”) and the suit was also numbered based on the averments made in the plaint. Subsequently, for some reason, the 1st respondent was made to file an application under Clause 12 of the Letters Patent seeking for leave and this Court by an order dated 16.08.2021, granted the leave. The applicant has now sought for the revocation of the

leave given in favour of the 1st respondent. The main ground on which the



applicant has sought for the revocation of the leave is that all the defendants are residing or having office at Kerala and the applicant is also a native of Kerala and no cause of action had arisen within the jurisdiction of this Court.

5. In the first place, there was no requirement for the 1st respondent to seek for the leave of this Court once the 1st respondent satisfies the requirements under Section 62 of the Act. The law on this issue is well settled. Useful reference can be made to the Division Bench judgement of this Court in ***[Wipro Limited and another Vs. Oushadha Chandrika Ayurvedic India P Ltd, Kerala and others]*** reported in **2008 3 CTC 724**. The relevant portion in the judgement is extracted hereunder:-

14. It is, thus, seen that Section 62 of the Copyright Act and Section 134 of the Trade Marks Act prescribe an additional ground for attracting the jurisdiction of a Court over and above the normal ground, as laid down in Section 20 of the C.P.C. In other words, a special right is conferred on the proprietor of the registered trade mark to institute a Suit for infringement of any trade mark or copyright in the district within whose jurisdiction he resides or carries on business.



phrase “notwithstanding anything contained in the C.P.C., 1908 (5 of 1908) or any other law for the time being in force” is made with a view to give a overriding effect to the said provision. It is equivalent to saying that the provision would hold the field notwithstanding anything contained in the C.P.C. or any other law for the time being force. Moreover, by virtue of Section 120 of the C.P.C., the provisions of Section 20 are not applicable as far as High Court is concerned. Therefore, the scope of this Section cannot be curtailed by reference to Section 20 of the C.P.C. or Clause 12 of the Letters Patent. Therefore, in a case of infringement of trade mark or copyright covered by Section 134(2) of the Trade Marks Act or Section 62(2) of the Copyright Act, the question of plaintiff taking prior leave under Clause 12 of the Letters Patent does not arise and the plaintiff need not take leave of the Court under Clause 12 of the Letters Patent even if only a part of the cause of action or no part of the cause of action arose within the jurisdiction of this Court, if the plaintiff ordinarily resides or carries on business within the jurisdiction of the Court.



arisen within the jurisdiction of this Court, if the 1st respondent is able to satisfy that he comes within the scope of Section 62 of the Act, the 1st respondent can always maintain such a suit even without leave.

7. Taking into consideration the averments made in the plaint which satisfies the requirements under Section 62 of the Act, this Court does not find any ground to revoke the leave granted in favour of the 1st respondent.

8. A.No.3939 of 2021 has been filed for rejection of plaint by the applicant / 1st defendant. This application has been filed mainly on the ground that the 1st respondent / plaintiff has based the claim on forged and fabricated documents. That apart, the applicant has averred that the present suit is not maintainable without adding the owner of the copyright as a party, in line with Section 61 of the Act. Yet another ground that has been taken is that the original assignment took place in the year 2000 and the assignment in favour of the 1st respondent / plaintiff took place in the year 2021 and there is nothing to show as to whether the right was acted upon for the last 20 years. Therefore, according to the applicant, the 1st respondent / plaintiff has lost the right under Section 19(4) of the Act.



9. While considering an application for rejection of plaint, this Court can only look into the averments made in the plaint and the documents relied upon by the plaintiff. According to the plaintiff, the original copyright owner was one P.K.R.Pillai (P.K.Ramakrishnan Pillai). He assigned the copyright through the Transfer deed dated 05.12.2000 in favour of one Shaji Kumar. Thereafter, the said Shaji Kumar by a deed of assignment dated 08.12.2000 assigned the copyright in favour of one K.Sadhasivam. The said sadhasivam through a transfer deed of assignment dated 12.02.2021, assigned the copyright in favour of the 1st respondent / plaintiff. The plaintiff is thereby claiming ownership of copyright over nearly 22 movies.

10. According to the applicant, the documents relied upon by the plaintiff are forged, since the original owner was actually one P.K.Ramachandran Pillai. The applicant in fact is claiming copyright by way of a deed of assignment dated 05.01.2012 over 12 movies. The applicant had also filed a suit against the said P.K.Ramachandran Pillai in O.S.No.9 of 2012 before the District Judge, Ernakulam and obtained an exparte decree. Therefore, the applicant has taken a stand that the 1st respondent/ Plaintiff do not have any right and the documents relied upon



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11. In the considered view of this Court, the nature of documents that is relied upon by the 1st respondent cannot be gone into by this Court at the stage of rejection of plaint. It requires letting in evidence and appreciation of evidence and that exercise cannot be undertaken in this application. Therefore, the plaint cannot be rejected on this ground.

12. The next ground taken is with regard to non joinder of the original owner of the copyright. In the present case, the 1st respondent is the owner of the copyright by virtue of the assignment agreement dated 12.02.2021. The earlier assignment agreements of the predecessor in interest is of the year 2000. The requirement to add the owner of the copyright as a party will arise only where proceedings for infringement is instituted by an exclusive licensee. In the present case, the 1st respondent is the owner of the copyright and Section 61 of the Act will not apply to the case of the 1st respondent. Therefore, this Court holds that there is no requirement to add the original owner of the copyright as a party in the present suit.

13. Insofar as the bar under Section 19(4) of the Act is concerned, the said ground can be taken only by the assignor and a third party cannot take this ground. Therefore, this bar contained under Section 15(4) of the



Act cannot be put against the 1st respondent and there is no bar in law for the 1st respondent to institute the present suit. In view of the same, this Court does not find any ground to reject the plaint as sought for by the applicant / 1st defendant.

14. There is already an order of interim injunction passed in favour of the applicant / plaintiff in O.A.No.461 of 2021. This Court took into consideration the fact that the applicant was tracing his right from the predecessor in interest from the year 2000 onwards and that the applicant had the copyright for his right, the Schedule mentioned films as an assignee.

15. The 1st defendant has filed the counter affidavit on the ground that P.K.R.Pillai had assigned the rights over movies by a deed of assignment dated 05.01.2012 and since he is the absolute owner of the copyright, the 1st defendant cannot be prevented from exploiting the copyright. It is clear from the above that the applicant / plaintiff and the 1st respondent / 1st defendant are independently claiming copyrights based on transfer deeds. There is also a dispute with regard to the actual name of the original owner of the copyright.

16. The plaintiff states that the original owner of the copyright is



one P.K.Ramakrishnan pillai. The 1st defendant claims that the name of the original owner is P.K.Ramachandran Pillai. Doubts have also been raised on the genuineness of the documents relied upon by the plaintiff. That apart, The 1st defendant had also filed a suit in the year 2012 and obtained a decree against P.K.Ramachandran Pillai and a decree was passed by the District Judge, Ernakulam dated 18.09.2015 declaring the 1st defendant as the owner of the copyright with regard to 17 movies and also granted permanent injunction in favour of the 1st defendant.

17. While the interse rights of both the applicant and the 1st respondent / 1st defendant are in question and both of them are relying upon documents, it will be more safer to decide the rights in the suit rather than in the interlocutory application.

18. Even though, the applicant has made out a *prima facie* case through the documents relied upon to establish the right, this Court does not find the balance of convenience in favour of the applicant. Even if the applicant ultimately succeeds, he can be compensated in terms of damages. This can be ensured by directing the 1st defendant to maintain the books of accounts showing the income earned by exploiting the copyrights in the movies. The income ascertained can always be directed to be paid as



damages to the applicant. On the other hand, if the plaintiff ultimately fails in the suit and in the meantime, the 1st respondent is injuncted, the loss that will be suffered by the 1st defendant will be disproportionate and will cause more hardship to the 1st defendant. It must be kept in mind that both the parties are claiming rights and are relying upon documents and in a case of this nature, the Court must be very slow in granting an order of interim injunction.

19. The comparative inconvenience which is likely to arise from withholding an injunction will be greater than that which is likely to arise from granting it in favour of the applicant. In which case, there will be more irreparable harm caused to the 1st defendant.

20. In view of the above discussion, this Court is not inclined to continue with the order of interim injunction granted in favour of the applicant. In view of this finding, no further orders are required to be passed in Application No.2645 of 2021.

21. In the result, the application Nos.3939 of 2021, 3940 of 2021 filed by the applicant / 1st defendant are dismissed. Similarly, O.A. No.461



are also dismissed.

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22. Taking into consideration the facts and circumstances of this case, there will be no order as to costs.

Sd./-NAVJ.

16/12/2021

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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EVK 16/06/2022