



C.S.No.205 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.S.No.205 of 2011

and

A.No.1579 of 2022

Asianet Star Communications Private Limited,
Represented by its Authorized Signatory,
Star House, Urmi Estate,
95, Ganpatrao Kadam Marg,
Lower Parel (West), Mumbai - 400 013.
(Amended as per order dated 10.11.2021
in A.No.3883 of 2021)

... Plaintiff

Vs

1.Mr.S.Parthasarathy (Deceased)

2.Mr.S.S.T.Lakshmanan

3.M/s.Evershine Release,
Represented by its Partner
Mr.S.S.T.Subramaniam,
P.B.No.3534, Ernakulam,
Kochi - 682 035.



C.S.No.205 of 2011

4.M/s.Evershine Productions,
Represented by its Partner
Mr.S.S.T.Lakshmanan,
No.72, Habibullah Road,
T.Nagar, Chennai - 600 017.

5.M/s.Pals Communications Private Limited,
Represented by its Chairman
Mr.C.H.Noushad,
Kadakkadan Buildings,
Downhill, Malapuram,
Kerala - 676 519.

6.M/s.Prasad Film Laboratories,
A unit of Prasad Productions Limited,
Arunachalam Road, Saligramam,
Chennai - 600 093.

7.Mrs.Vijaylakshmi

8.Mr.Jayadev

9.Mr.Vasudev

... Defendants

(Defendants 7 to 9 brought on record as
Legal Heirs of the deceased First Defendant
as per order dated 19.01.2022 in
A.No.77 of 2022)

Prayer: This Civil Suit is filed under Sections 55 & 62 of the Copyright Act, 1957 read with Order IV Rule 1 of the Original Side Rules and Order VII Rule 1 of C.P.C, prayed for a Judgment and Decree:-



C.S.No.205 of 2011

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i) Declaring that the plaintiff is the absolute owner of the world satellite television rights in the suit schedule pictures;

ii) Declaring that the Agreement dated 10.06.2004 entered into between the first defendant and the second defendant is not valid and enforceable;

iii) Grant a permanent injunction restraining the defendants, their men, agents, servants, persons acting on their behalf and assigns from in any manner infringing the plaintiff's copyrights in the suit pictures by assigning, exhibiting or exploiting the suit pictures through any satellite television channel or by any other means;

iv) Directing the defendants to the costs of the suit.

For Plaintiff : Mr.K.Harishankar

For Defendants :
For D1, D3, D5 & D6 : No appearance

For D2 & D4 : Mr.V.Praveen Kumar

For D7 to D9 : Ex-parte



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C.S.No.205 of 2011

JUDGMENT

The plaintiff has filed this Civil Suit for the following relief:-

i) To declare that the plaintiff is the absolute owner of the world satellite television rights in the suit schedule pictures;

ii) To declare that the Agreement dated 10.06.2004 entered into between the first defendant and the second defendant is not valid and enforceable;

iii) Grant a permanent injunction restraining the defendants, their men, agents, servants, persons acting on their behalf and assigns from in any manner infringing the plaintiff's copyrights in the suit pictures by assigning, exhibiting or exploiting the suit pictures through any satellite television channel or by any other means;

iv) To direct the defendants to the costs of the suit.

2. The plaintiff claims rights over the following Malayalam Films as detailed in the schedule to the plaint namely

(i) Ayushkalam

(ii) Onnum Mindatha Bharya



C.S.No.205 of 2011

- (iii) Boeing Boeing
- (iv) Cheppu
- (v) Edavelakku Sesham
- (vi) Sayam Sandhya
- (vii) New Year

3. The rights over the aforesaid Malayalam Films is based on the Agreement-Ex.P2 dated 01.12.1998 executed between the plaintiff and the third, fourth and fifth defendants. The agreement was to be in force for a period of ten years from the date of agreement and would have expired on 30.11.2008.

4. It is the specific case of the plaintiff that even before the period in Agreement-Ex.P2 expired, the third and fourth defendants (represented by the second defendant) executed Agreement-Ex.P3 on 27.11.2004 in favour of the fifth defendant by assigning rights in respect of first five Malayalam Films as above and in the Schedule to the plaintiff apart from the two other movies namely "Thoovalsparsam" and 'Sandesam". The further case of the plaintiff is that the fifth defendant,



C.S.No.205 of 2011

to whom rights were assigned by the third and fourth defendants in turn executed by the Agreement-Ex.P4 dated 15.11.2004, which was to be in force for a period between 30.11.2008 and 29.11.2033.

5. The further case of the plaintiff is that the first defendant (since deceased) vide a collusive proceedings before this Court in C.S.No.480 of 2009 obtained an ad-interim *ex-parte* injunction against all the defendants which suit was eventually decreed as *ex-parte* on 29.04.2011. It is further submitted that the plaintiff was not party to the suit proceeding. It is submitted that after an *ex-parte* injunction was passed by this Court in O.A.No.604 of 2009 in C.S.No.480 of 2009 on 28.07.2010. Ex.P7-Legal Notice dated 04.09.2010 was issued by the first defendant (since deceased) to the plaintiff. The plaintiff immediately issued a Legal Notice to the fifth defendant vide Ex.P8 dated 19.10.2010 and called upon the fifth defendant to settle the dispute with the first defendant and other defendants or in the alternative if the fifth defendant was not able to get the interim order vacated within a reasonable period, the fifth defendant was to assign similar rights in respect of any other five films.



C.S.No.205 of 2011

WEB COPY

6. It is submitted that the fifth defendant also replied to the aforesaid Legal Notice in Ex.P8 dated 19.10.2010 vide Ex.P9 dated 08.11.2010 wherein, the fifth defendant has admitted to the execution of Ex.P4 Agreements dated 15.12.2004 pursuant to Ex.P3 Series Agreements dated 27.11.2004 along with the Lab Letters dated 21.02.2005.

7. In the present suit, before the demise of the first defendant, a Written Statement was filed. In the Written Statement, a reliance was placed on an Agreement dated 10.06.2004 which is said to have been executed by the contesting defendants namely the second and fourth defendants in favour of the first defendant (since deceased) allegedly transferring the rights in favour of the latter in the films. After the first defendant died during the pendency of the suit, after filing of the Written Statement, his Legal Representatives namely the seventh, eighth and ninth defendants have not marked the said Agreement as an exhibit. They remained *ex-parte* despite being impleaded in the suit.



C.S.No.205 of 2011

WEB COPY

8. Thus, the aforesaid Agreement dated 10.06.2004 has not been marked as an Exhibit in this suit. The Legal Representatives of the deceased first defendant namely the seventh, eighth and ninth defendants though were impleaded pursuant to the order passed on 19.01.2022 in A.No.77 of 2022 failed to participate in the proceedings and thus remained *ex-parte*.

9. The remaining contesting defendants namely the second and fourth defendants have filed a Written Statement wherein, they have merely stated that by virtue of the aforesaid Agreement dated 10.06.2004, the rights in respect of the films were transferred in favour of the first defendant and that later the first defendant (since deceased) has perfected the title to the aforesaid five movies in terms of the Judgment and Decree passed in C.S.No.480 of 2019 on 29.04.2011.

10. On 24.10.2016, this Court has framed the following issues for trial and adjudication:-



C.S.No.205 of 2011

WEB COPY

"(i) Whether the plaintiff is the absolute owner of the World satellite television rights in the suit schedule pictures?

(ii) Whether the plaintiff is bound by orders passed in C.S.No.480 of 2009 when the plaintiff is not a party to the same?

(iii) Whether the agreement dated 10.06.2004 entered into between the first and second defendant is not valid and enforceable?

(iv) Whether the present suit is barred by the principles of *res judicata*?

(v) Whether the defendants have colluded to defeat the rights of the plaintiff?

(vi) Whether the plaintiff is entitled to the declaratory reliefs as prayed for?

(vii) Whether the plaintiff is entitled to permanent injunction as prayed for?

(viii) To what other reliefs, the plaintiff is entitled to?"

11. The Court had permitted the plaintiff to mark the documents without presence of the witnesses. The Court record indicates that at the beginning after the Commercial Division was notified, the Court followed a peculiar practice of allowing the parties to mark the



C.S.No.205 of 2011

documents without presence of the witnesses and without filing of any Proof Affidavit on the strength of Statement of Admission and Denial of Documents.

12. Thus on 18.11.2021, Ex.P1 to Ex.P9 were marked on behalf of the plaintiff before the learned Additional Master-II without a Proof Affidavit of the plaintiff as detailed below:-

<i>Sl.No.</i>	<i>Date</i>	<i>Details</i>	<i>Exhibit</i>
1.	04.02.2000	Certificate of Incorporation of the Plaintiff Company	Ex.P1
2.	01.12.1998	Agreement between the plaintiff and third and fourth defendants	Ex.P2
3.	27.11.2004	Agreement between the fifth defendant and the third and fourth defendants along with letter dated 21.02.2017	Ex.P3
4.	15.12.2004	Agreement between the plaintiff and the fifth defendant	Ex.P4
5.	21.02.2005	Lab Confirmation Letter issued by the sixth defendant to the plaintiff	Ex.P5
6.	28.07.2010	Order of Interim Injunction	Ex.P6



C.S.No.205 of 2011

<i>Sl.No.</i>	<i>Date</i>	<i>Details</i>	<i>Exhibit</i>
		passed by this Hon'ble Court in O.A.No.604 of 2009 in C.S.No.480 of 2009	
7.	04.09.2010	Legal Notice issued by the first defendant to the fifth defendant	Ex.P7
8.	19.10.2010	Legal Notice issued by the plaintiff to the fifth defendant	Ex.P8
9.	08.11.2010	Reply Notice issued by the fifth defendant to the plaintiff	Ex.P9

13. The contesting defendants namely the second and fourth defendants also did not choose to cross-examine the plaintiff witness. However, on behalf of the contesting defendants namely the second and fourth defendants, Proof Affidavit was filed by the second defendant. The second defendant deposed the evidence on behalf of the defendants as DW1, who was also cross-examined.

14. On behalf of the contesting defendants namely the second and fourth defendants, only Ex.D1 to Ex.D3 were marked which are detailed as follows:-



WEB COPY



C.S.No.205 of 2011

<i>Sl.No.</i>	<i>Date</i>	<i>Details</i>	<i>Exhibit</i>
1.	11.08.1984	Censor Certificate issued by the Central Board of Film Certification for the film "Onnum Mindatha Bhariya"	Ex.D1
2.	16.08.1984	Censor Certificate issued by the Central Board of Film Certification for the film "Edavelukku Sesham"	Ex.D2
3.	09.12.1998	Letter issued by the second and fourth defendants to the sixth defendant.	Ex.D3

After the trial was completed, this case was listed for filing of the Written Arguments and Convenience Sets, pursuant to which, both the plaintiff and the defendants filed their Written Arguments. The learned Counsel for the plaintiff has filed the Convenience Sets.

15. On the previous occasion i.e., on 06.02.2023, when the case was listed before this Court, a representation was made on the contesting second and fourth defendants and that they did not wish to make any oral submission and that the Written Arguments filed on behalf of the second and fourth defendants be considered before passing the



C.S.No.205 of 2011

Judgment and Decree in the suit.

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16. I have considered the plaint, the plaint documents i.e., Exs.P1 to P9, the Written Statement of the first defendant, the Written Statement of the second and fourth defendants, the Proof Affidavit-DW1 filed by the second and fourth defendants and the three exhibits as detailed above which were marked through trial.

17. I have also perused the deposition that was recorded during cross-examination of the defendants witness. The contesting defendants also did not chose to summon and cross-examine the plaintiff witness.

18. A reading of the deposition of defendants witness indicates that the defendants witness (DW1) has resorted to contradictions. The Written Statement of the second and fourth defendants at the same time admits that the plaintiff had a right which was in existence for a period of 10 years in terms of Ex.P2-Agreement dated 01.12.1998. The arrangement was to be in force for a period of 10 years up to 30.11.2008. The contesting second and fourth defendants have also conceded that



C.S.No.205 of 2011

they have in turn transferred their rights to the first defendant on 10.06.2004 in favour of the first defendant. However, neither the first defendant nor the Legal Representatives of the first defendant have come forward to mark the same during trial to establish their rights. However, it is to be noticed that the first defendant during his life time had filed a suit before this Court in C.S.No.480 of 2009 and secured an interim order in O.A.No.604 of 2009 vide Ex.P6 dated 28.07.2010. The said suit is said to have been subsequently decreed on 29.04.2011.

19. That apart, the Court records also indicates that the first defendant had filed an application under Order VII Rule 11 of C.P.C to reject the plaint in A.No.3616 of 2011 on the ground that a prior suit had been filed before this Court in C.S.No.480 of 2009.

20. The aforesaid application filed by the first defendant (since deceased), whose interest was to be represented by his Legal Representatives namely the seventh to ninth defendants was dismissed on 15.03.2012. A further appeal before the Hon'ble Division Bench of this Court in O.S.A.No.92 of 2013 was also dismissed by an order dated



C.S.No.205 of 2011

23.12.2016.

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21. A reading of the cause title in Ex.P6 in O.A.No.604 of 2009 in C.S.No.480 of 2009 indicates that the plaintiff was not made a party to the aforesaid proceedings. If the plaintiff was a party to the aforesaid proceedings initiated by the first defendant, the plea of *res judicata* under Section 11 of the Code of Civil Procedure, 1908, would have been available to the defendants to non-suit the plaintiff in the suit. Admittedly, the plaintiff was not a party to the suit proceedings. Therefore, bar under *res judicata* would not apply. Thus, the plea of *res judicata* under Section 11 of the Code of Civil Procedure, 1908, is to be answered against the defendants.

22. The rival claim of the deceased first defendant based on the *ex-parte* Judgment and Decree in C.S.No.480 of 2009 is not binding on the plaintiff. In any event, the contesting second and fourth defendants are formal party and who have supposedly transferred their rights in favour of the first defendant (since deceased). The second and fourth defendants have really no say as they have transferred their rights.



C.S.No.205 of 2011

Considering the fact that the Legal Representatives of the deceased first defendant have also not come forward to dislodge the claim of the plaintiff, it has to be construed that the plaintiff has a valid right in its favour in terms of Ex.P4 dated 15.12.2004 executed by the fifth defendant which rights flows from Ex.P3 Agreement dated 27.11.2004 executed by the third and fourth defendants to the fifth defendant in respect of suit Malayalam Films. Therefore, the plaintiff is entitled to succeed.

23. The plaintiff thus succeeds. This Civil Suit is accordingly decreed as prayed for. No costs. Consequently, connected Application is closed.

10.02.2023

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-Speaking Order

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C.SARAVANAN, J.



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C.S.No.205 of 2011

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C.S.No.205 of 2011
and
A.No.1579 of 2022

10.02.2023