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C.S.No.767 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.06.2023

PRONOUNCED ON : 14.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.S.No.767 of 2011

1.V.Vijaya

2.V.Kavitha

3.V.Bagavathi Saran

... plaintiffss

VS

1.M/s. Lakshmi Shanthi Movies Pvt. Ltd.,
Having their registered Office at
No.11, Rajachari Street, T. Nagar,
Chennai-600 017.

2.S.Thiagarajan

3.Gemini Colour Lab,
No.28, New Bangaru Colony,
West K.K. Nagar,
Chennai-600 078.

... Defendants

Prayer: Civil Suit is filed under Order IV Rule 1 of the Original Side Rules and Order VII Rule 1 of Civil Procedure Code and Section 51(b), 55, 62 and 63 of Copyright Act, 1957, praying for,



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(a) directing the first and second Defendant to pay to the plaintiffss the sum of Rs.25,00,000/- as damages, with interest at the rate of 24% per annum from the date of the plaint till date of realization for infringing the copyright of the story “Malaiyoor Mambattiyan”.

(b) for a permanent injunction restraining the defendants 1 to 3 their agents, servants, or anyone acting on their behalf from in any way or in any manner releasing the said movie 'Mambattiyan' in theatres all over India or in any other country, produced by the first and second defendants, infrining the copyright of the story belonged to the plaintiffss.

c) Directing the defendants to pay the cost of this suit.

d) and to pass such relief or relief's as this Honourable Court may deem fit and proper under the circumstances of the case and thus render justice.

For plaintiffss : Mr.D.R.Sivakumar
for M/s.S.D.Ramalingam

For D1 and D2 : Mr.A.Prabhakara Reddy
along with
Mr.K.Senthilnaathan
Mr.V.G.Guhan Murugan

J U D G E M E N T

The plaintiffs herein filed the above suit seeking a direction to the defendants 1 and 2 to pay the plaintiffs a sum of Rs.25,00,000/- as damages with interest at the rate of 24% per annum from the date of plaint till the date



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of realization for infringing the copyright of the story 'Malaiyoor Mambattiyan' and also for permanent injunction restraining the defendants 1 to 3 from any way releasing the movie 'Mambattiyan' and infringing the copyright of the story belonged to that of the plaintiffs.

2. According to the plaintiffs, they are the wife, daughter and son of one Raghavan Thambi alias M.N.Venugopal, a renowned story writer of the film. The said Raghavan Thambi was the Author of the story 'Malaiyoor Mambattiyan' and the same was produced as a cinematograph film through Sri Devi Bagavathi Films. The 2nd defendant herein acted as a Hero in that film. In the title of the said film, the name of Raghavan Thambi was mentioned as Author of the story of the said film.

3. It was claimed by the plaintiffs that the partner of the producer of the film 'Malaiyoor Mambattiyan' namely Sri Devi Bagavathi Films were close friend and relative of Raghavan Thambi and hence, he had not entered into any written agreement with respect to transfer of his right of the story of the said film 'Malaiyoor Mambattiyan' in favour of the producer of the film. It was



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claimed that late Raghavan Thambi retained the copyright of the story 'Malaiyoor Mambattiyan'. Though he allowed production of the film by Sri Devi Bagavathi Films, the plaintiffs claimed that since the copyright of the story was retained by Raghavan Thambi, he was the owner of the story 'Malaiyoor Mambattiyan'. He died on 19.09.1998 leaving the plaintiffs as surviving legal heirs and hence, the plaintiffs are entitled to copyright of the said story.

4. It was averred by the plaintiffs that they came across an advertisement in Tamil and English dailies that the 2nd defendant had re-made the said film 'Malaiyoor Mambattiyan' through the 1st defendant which is owned by the 2nd defendant. The son of the 2nd defendant acted as a hero in the remake film. It was also averred that the producer of the remake film 'Mambattiyan' namely the 2nd defendant has not approached the plaintiffs and obtained any permission for remake of the film 'Malaiyoor Mambattiyan' in the name of 'Mambattiyan'. The act of remaking the film 'Malaiyoor Mambattiyan' in the name of 'Mambattiyan' by the defendants 1 and 2 would amount to infringement of the copyright of the plaintiffs over the story. The



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plaintiffs valued the damages for infringement of copyright nominally for using the story written by Raghavan Thambi at Rs.25,00,000/- and laid the suit for aforesaid relief.

5. The defendants 1 and 2 filed a written statement and denied the plaint averment that the plaintiffs were copyright owners of the story. The contesting defendants claimed that the 1st defendant purchased the negative right of the film, screenplay, dialogue, lyrics of the film 'Malaiyoor Mambattiyan' from its producer Sri Devi Bagavathi Films. The said rights of the film were purchased from original producer namely Sri Devi Bagavathi Films by 1st defendant by an Agreement dated 28.09.2007. It was also claimed by the contesting defendants that the story of the original film 'Malaiyoor Mambattiyan' was based on the true-life history of a bandit in the said name. It was claimed by the contesting defendants that late Raghavan Thambi was neither the original creator of the character 'Malaiyoor Mambattiyan' nor it was his original idea to adapt and write a story based on the said character. During the early 80's, the 2nd defendant initiated the production of the said movie through Sri Devi Bagavathi Films. In order to encourage the said late



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Raghavan Thambi and also to give him an entry into the film industry, the said Raghavan Thambi's name was mentioned in the title of the film as if, he was the story writer. The averment in the plaint that Raghavan Thambi was the original writer of the film 'Malaiyoor Mambattiyan' was specifically denied in the written statement. It was further averred that the original film 'Malaiyoor Mambattiyan' was remade in Hindi as 'GANGVAA' and the said right to remake the film in Hindi was given only by the above mentioned Sri Devi Bagavathi Films and the said late Raghavan Thambi had no part to play in respect of the Hindi remake. In the absence of any proof to show that the said late Raghavan Thambi owned the copyright of the disputed story, the plaintiffs herein are not entitled to maintain the present suit for the relief prayed for.

6. It was specifically averred by the contesting defendants that the remake rights were purchased by them from the original rightful owner of the film 'Malaiyoor Mambattiyan' namely producers of the film Sri Devi Bagavathi Films under an agreement dated 28.09.2007. Having purchased the remake rights from the original producer of the film, the defendants are



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entitled to proceed with the remake of the film and consequently, the suit filed by the plaintiffs is liable to be dismissed.

7. Based on the pleadings of the parties, the following issues were framed by this Court on 13.11.2019:-

- “(i) *Whether Mr.Raghavan Thambi is the author and first owner of the copy right in the story for the movie "Malaiyoor Mambattiyan" was made?*
- (ii) *Whether the plaintiffss are entitled to claim the rights over the story "'Malaiyoor Mambattiyan' as the legal heirs of the said Mr.Raghavan Thambi?*
- (iii) *Whether the 2nd defendant purchased the remake rights of the movie "'Malaiyoor Mambattiyan' from its producers for making the movie " MAMBATTIYAN"*
- (iv) *Whether the plaintiffs is entitled to the reliefs prayed for in the suit?*
- (v) *To what other relief, the plaintiffs is entitled to?"*

8. During the trial, on behalf of the plaintiffs, the 3rd plaintiff was examined as PW.1 and 9 documents were marked on behalf of the plaintiffs



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as Exs.P1 to P9. The Manager of the 1st defendant-company was examined as DW.1 and through him 3 documents were marked on behalf of the defendants as Exs.D1 to D3.

9. The learned counsel for the plaintiffs submitted that the husband of the 1st plaintiff and father of the plaintiffs 2 and 3 namely Raghavan Thambi was the Author of the story 'Malaiyoor Mambattiyan' and he allowed Sri Devi Bagavathi Films to produce the film Malaiyoor Mambattiyan based on the story authored by him. He never transferred his copyright over the story in favour of the producer of the film 'Malaiyoor Mambattiyan' and hence, he retained copyright over the story of the film 'Malaiyoor Mambattiyan'. In such circumstances, the 1st and 2nd defendants are not entitled to remake the film 'Malaiyoor Mambattiyan' in the name of 'Mambattiyan'. The remake of the original film 'Malaiyoor Mambattiyan' without getting any permission from the copyright owner of the story would amount to infringement of the plaintiffs' copyright in their capacity as legal representatives of Raghavan Thambi.



10. The learned counsel by taking this Court by evidence of DW.1

submitted that Raghavan Thambi was the Author of the story was admitted by defendants witness and hence, there is no dispute with regard to that fact. In such circumstances, in the absence of any permission from Raghavan Thambi or his legal representatives namely the plaintiffs, the defendants are not entitled to remake the film which is based on the story written by Raghavan Thambi.

11. The learned counsel for the defendants submitted that there is no evidence available on record to show that Raghavan Thambi was the original Author of the story 'Malaiyoor Mambattiyan'. The plaintiffs failed to prove the same by producing the script of the story. The learned counsel submitted that merely because the name of Raghavan Thambi was shown to be story writer in the title of the film Malaiyoor Mambattiyan, it cannot be said that he was the Author of the story. The learned counsel further submitted that the name of Raghavan Thambi was shown in the title of the film only to help him to get footage in the film industry but he was not the original author of the story.

12. The learned counsel by taking this Court to Section 17 (1)(b) of



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the Copyright Act, 1957 submitted that even assuming the story of 'Malaiyoor Mambattiyan' was written by Raghavan Thambi, in the absence of any contract contrary between him and the producer of the film by virtue of statutory presumption, the producer of the film 'Malaiyoor Mambattiyan' namely Sri Devi Bagavathi Films shall be treated as copyright owner and consequently, they are entitled to sell negative rights, remake rights and other rights over the film 'Malaiyoor Mambattiyan' as aforesaid in favour of the 1st defendant to enable him to remake the film. In other words, it is the submission of the learned counsel for the defendants that in view of the agreement between the producer of the film 'Malaiyoor Mambattiyan' namely Sri Devi Bagavathi Films and the 1st defendant dated 28.09.2007, the 1st defendant acquired a negative rights, remake rights and other rights over the said film and consequently, the present suit for aforesaid reliefs are not maintainable in law.

Issues Nos.1 and 2:-

13. It is the specific case of the plaintiffs that Raghavan Thambi was the author and first owner of the story 'Malaiyoor Mambattiyan' and in their



capacity as his legal representatives, they are entitled to claim copyright over the said story. The plaintiffs in order to prove that Raghavan Thambi was the original owner relied on Ex.P1 invitation for shooting of the film 'Malaiyoor Mambattiyan' dated 14.10.1982 wherein the name of story writer was mentioned as Raghavan Thambi. The interview of Raghavan Thambi published in Tamil Dailies was marked as Ex.P2. The death certificate of the Raghavan Thambi was marked as Ex.P3. The legal heirship certificate of Raghavan Thambi showing the names of the plaintiffs was marked as Ex.P4. The learned counsel for the plaintiffs by relying on Exs.P1 and P2 submitted that the plaintiffs proved Raghavan Thambi was the author of the story 'Malaiyoor Mambattiyan'. When Ex.P1 was shown to the defendants' side witness DW.1 and suggestion was put to him that Raghavan Thambi was the story writer of original film 'Malaiyoor Mambattiyan', he answered in affirmative. In such circumstances, there are some evidence available on record to show that Raghavan Thambi was the author of the story 'Malaiyoor Mambattiyan'.

14. It is the case of the plaintiffs that Raghavan Thambi allowed Sri



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Devi Bagavathi Films to shoot the film 'Malaiyoor Mambattiyan' based on his story without any written contract but however, he retained the copyright over the story. Though an averment to that effect was made in the plaint, the plaintiffs is unable to produce any acceptable evidence by examining any independent witness. Except the interested testimony of the plaintiffs, there is no other evidence available on record to support the case of the plaintiffs that the Raghavan Thambi retained copyright over the story 'Malaiyoor Mambattiyan'. As per the admitted case of the plaintiffs, Sri Devi Bagavathi Films was allowed to shoot the film 'Malaiyoor Mambattiyan' based on the story authored by Raghavan Thambi. Therefore, the said producer of the film is the copyright owner of the cinematograph film. In this regard, it would be appropriate to refer to Section 17(1)(b) of the Copyright Act, 1957 which reads as follows:-

“17(1)(b). Subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematograph film made, for valuable consideration, at the instance of any person, such person shall, in the absence of any agreement to the contract, be the first owner of the copyright therein.”

15. A perusal of Section 17(1)(b) of the Copyright Act, 1957 would



make it clear that in respect of the cinematograph film in the absence of any agreement to the contrary the producer of the film will become the first owner of the copyright. In the case on hand, though plaintiffs pleaded that Raghavan Thambi retained copyright over the story there is no acceptable evidence available on record to show that he retained copyright over the story. The fact remains that as per the admitted case of the plaintiffs Sri Devi Bagavathi Films was permitted to produce the film based on his story. In the absence of contract to contrary the producer of the said film shall be treated as first owner of the copyright. Therefore, the Issue Nos.1 and 2 are answered in negative against the plaintiffss.

Issue No.3:-

16. It is the specific case of the defendants 1 and 2 that they entered into an agreement on 28.09.2007 with producer of the film 'Malaiyoor Mambattiyan' namely Sri Devi Bagavathi Films. The said agreement was marked as Ex.D2. The Exhibit D2 is copy of agreement and the same was proved by DW.1-Manager of the 1st defendant. A perusal of Ex.D2 and evidence of DW.1 would make it clear that the said witness (DW.1) attested



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Ex.D2 as a witness. Therefore, the DW.1 is competent enough to prove

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17. A perusal of evidence of DW.1 and Ex.D2 would make it clear that the said documents marked without any objection by the plaintiffs. The learned counsel for the plaintiffs submitted that Ex.D2 was marked subject to the objection by the plaintiffs. A perusal of the endorsement made by the Master on 16.09.2022 on Ex.D2 would make it clear that the said document was marked through DW.1 without any objection by plaintiffs. Once a document is marked without any objection, it is not open to the plaintiffs to challenge the mode of proof. When DW.1 was examined, a suggestion was put to him by the learned counsel for the plaintiffs as if, the Ex.D2 was the forged documents and the same was denied by him. It was also suggested to the said witness that Sri Devi Bagavathi Films had 4 partners but Ex.D2 was signed only by one partner namely Sivaramadoss and therefore, it was a forged document. Under law of partnership all the partners are principal and agents for the other partners. If a document is signed by one of the partner that will bind all the partners, as one partner has got authority to represent the



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other partners. In Ex.D2 Sri Devi Bagavathi Films was represented by its Managing partner Sivaramadoss and the document was signed by said Managing Partner.

18. In such circumstances, there is no legal infirmity in the agreement and the same was proved by one of the attestor to the document namely DW.1 In these circumstances, this Court hold that by producing Ex.D2, defendants 1 and 2 proved that they got assignment of remake rights of the feature film 'Malaiyoor Mambattiyan' along with the negative rights and rights in respect of the main story, screenplay and dialogue etc., as described in the agreement. Therefore, the Issue No.3 is answered in affirmative in favour of the defendants 1 and 2 and against the plaintiffs.

Issue Nos.4 and 5:-

19. In view of the discussions made earlier and answers to the Issue Nos.1 to 3, this Court comes to a conclusion that the defendants 1 and 2 have got every right to remake the film 'Malaiyoor Mambattiyan' and such act of



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the defendants 1 and 2 would not infringe the rights of the plaintiffs.

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20. If at all, it is the producer of the film 'Malaiyoor Mambattiyan' namely Sri Devi Bagavathi Films is entitled to sue the defendants 1 and 2 for infringement of copyright. As discussed earlier, the 1st defendant acquired copyright of the aforesaid film under the agreement dated 28.09.2007 marked as Ex.D2. Therefore, this Court holds that the plaintiffs is not entitled to any relief in this suit.

In Nutshell:-

a) The suit is dismissed.

b) In the facts and circumstances of the case, the defendants 1 and 2 are entitled to cost from the plaintiffs.

14.06.2023

Index : Yes
NCC : Yes
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List of witness examined on the side of the plaintiffs:-

PW.1 - Mr.V.Bagavathi Saran – 3rd plaintiffs

List of documents marked on the side of the plaintiffs:-

Sl. No.	EXHIBTS	DATE	DESCRIPTION
1.	P1	14.10.1982	Invitation
2.	P2	09.07.1997	Paper Publication in Dinakaran
3.	P3	20.09.1998	Burial ground Death Report
4.	P4	21.05.1999	Legal heirship certificate
5.	P5	25.11.2011	THE HINDU
6.	P6	03.12.2011	THE HINDU
7.	P7		Brochure Download Print from Internet
8.	P8		Print out from the website www.mambattiyan.com
9.	P9		Compact disc for original film Malaiyoor Mambattiyan

List of witness examined on the side of the Defendants:-

DW.1 – Mr.Anand Kaniappan – Power of Attorney of the 1st and 2nd defendants.

List of documents marked on the side of the Defendants:-

Sl. No.	EXHIBTS	DATE	DESCRIPTION
1.	D1	28.09.2007	Agreement
2.	D2	28.09.2007	Agreement
3.	D3	24.05.2020	Certificate issued by Central Board of Film Certification



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Pre-delivery judgment
made in C.S.No.767 of 2011

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