



C.S.No.262 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	12.01.2023
Pronounced on	08.02.2023

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

Civil Suit No.262 of 2020

M/s.Sree Devi Video Corporation
Rep.by its Partner,
Mr.Ghanshyam Hemdev

... Plaintiff

vs.

1.M/s.TKP Pictures,
No.4, Salim Crescent Park,
No.2 & 3, First Cross,
Kamaraj Street,
Gandhi Nagar, Saligamam,
Chennai 600 093.

2.M/s.Vijayacolour Laboratory,
No.9A, Kumaran Colony Main Road,
Vadapalani,
Chennai 600 026.

3. B. Thenmozhi

.. Defendants

PRAYER : Civil Suit filed under Sections 55, 62 & 63 of the Indian Copyright Act, 1997 r/w Order IV Rule 1 O.S. Rules and Order VII Rule 1



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CPC Read with Section 2(1)(C)(xvii) First Proviso to Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 praying to pass :

a) Declaring that the plaintiff is the absolute owner of all the copyrights as set out in the Agreement dated 27.11.2004, in the film titled “MALLU VETTY MINOR”.

b) For a permanent injunction restraining the defendants, their men, agents, servants or persons acting on their behalf or claiming through them from in any manner infringing the plaintiff's copyrights by taking prints or by exploiting any copyrights in the film titled “MALLU VETTY MINOR”

c) For costs of the suit

d) For such further or other relief.

For Plaintiff : Mr.K.Harishankar

For Defendants : Mr.S.Sivakumar

J U D G M E N T

The plaintiff has filed the suit for the following reliefs:-

- a. Declaring that the plaintiff is the absolute owner of all the copyrights in the film titled “MalluVettyMinor”as set out in the agreement dated 27.11.2004;



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- b. For a Permanent Injunction restraining the Defendants, their men, agents, servants of persons acting on their way up or paving to them from in any manner infringing The Plaintiffs copyright by taking prints of exploiting any copyrights in the film titled “MalluVetty Minor”;
- c. For cost of the suit;
- d. For such further or other relief as this Honourable Court may deem fit and proper and the circumstances of the case and thus render justice.

2. After the suit summons was served on all defendants, only the 1st defendant entered appearance and has filed written statement. The 2nd and the 3rd defendant failed to enter their appearance and thus chose to remain *exparte*. They therefore forfeited their right to file written statements.

3. On 5.11.2021, following issues were framed by this Court:-

- i. Whether the plaintiff derived the ownership over the copyright in respect of the film titled “MalluVetty Minor” through the document and lab letters dated 27.11.2004 [Exhibit P3 and P4]



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- ii. Whether the 3rd defendant was entitled to assign the copyright in respect of subjects suit movie in favour of the 1st defendant?
- iii. Whether the charge created by the producer in favour of the defendant included the copyright which was not in existence on the date of creating a charge?
- iv. Whether the plaintiff is entitled for a declaratory relief as prayed for?
- v. Whether the plaintiff is entitled for a permanent injunction has prayed for?
- vi. What are the relief?

4. Both the plaintiff and the 1st defendant have produced one witnesses each. On behalf of the plaintiff, Mr Ghanshyam Hemdev, the partner of the plaintiff filed proof affidavit and had tendered evidence. On behalf of the 1st defendant Mr.P.Ashok filed proof affidavit and had tendered evidence.

5. On behalf of the plaintiff, Exhibits P-1 to P7 were marked as and are hereunder mentioned:-



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S.No.	Date	Exhibits	Description of Documents
1	11.09.1979	Ex.P.1	Copy of Certification of Registration of Plaintiff Firm
2	01.04.1998	Ex.P.2	Copy of Partnership Deed
3	27.11.2004	Ex.P.3	Copy of Agreement between P.Kalaimani, the producer of the Film, Proprietor of M/s.Everst Films and the plaintiff for the movie
4	27.11.2004	Ex.P.4	Copy of Lab Letter fom Everest films to 2 nd defendant
5	27.11.2004	Ex.P.5	Copy of Lab Confirmation Letter from the 2 nd defendant to the plaintiff
6	07.11.2016	Ex.P.6	Copy of Legal Notice from the plaintiff to the defendants
7	24.08.2019	Ex.P.7	Copy of Legal Notice from the plaintiff to the defendants with A/ D card

6. On behalf of the 1st defendant, exhibits D1-D3 are hereunder mentioned:-

S.No.	Date	Exhibits	Description of Documents
1	15.03.2014	<i>Ex.D.1</i>	Copy of Agreement entered between the 3 rd defendant and the 1 st defendant
2	15.03.2014	<i>Ex.D.2</i>	Copy of letter issues by the 3 rd defendant to the 2 nd defendant
3	18.03.2014	<i>Ex.D.3</i>	Copy of letter issued by the 2 nd defendant to the 1 st defendant



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7. The dispute in the present case pertains to a Tamil film “Mallu Vetty Minor” produced in the year 1989. The said film starred Sathyaraj, Seetha, Shobana as actors in the lead with other artists from the Tamil film industry. The said Tamil film was produced by Mr.P.Kalaimani, Proprietor, M/s.Everest Films.

8. Plaintiff claims to have obtained copyright over the aforesaid film from the said producer in terms of Ex. P3 Agreement dated 27.11.2004. It is the case of the plaintiff that the aforesaid producer had issued Letter Ex.P.4 dated 27.11.2014 to the second defendant whereby the second defendant Lab was informed about the lease agreement entered between the plaintiff and the aforesaid producer. The plaintiff was given the sole, absolute, exclusive and irrevocable copyright over the aforesaid film in the territories listed for the period as per the Producer's Link Agreement of Copyrights.

9. Recitals from the Ex.P3 Agreement dated 27.11.2004 are extracted below:-



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Entire World Including India: Exclusive right to make, sell or let out for hire copies of the cinematograph film in Exclusive right including but not limited to make sell or let out or hire copies of the cinematograph on Cable V rights, Satellite Television rights, Terrestrial Television rights, Video copyrights, VCD, DVD etc., High seas rights, Airborne rights, DTH rights, Pay per view rights, Video on Demand, Near video on Demand, able Pay TV rights, exploitation on web/internet based networks, Internet, Terrestrial pay TV rights, Satellite pay TV rights, Direct to User(DTH) rights, laser discs, video copyrights, DVD rights, Multimedia rights, Mechanical , Synchronization, publishing, Merchandising, Advertising, Hotel Rights, Surface Transport Rights, Movie Character based game development rights etc., exclusive right to cause the cinematograph film to be seen in public (the public performance right) and all other rights as mentioned in the agreement.

The rights so granted and conveyed include all rights and system known or yet to be know, invented or made feasible. During the tendency of the lease period, the lessee firm or their authorised agents or representative is hereby authorised to take any number of prints as when needed, at cost to them and without recourse to us. Further, we also instruct you to note than no one else, including ourselves shall be permitted to order or take delivery of prints for the said



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territory during the said lease period unless authorised in writing by the said M/s.Sree Devi Video Corporation, and also to allow the said M/s.Sree Devi Video Corporation to use the Negatives to transfer on to U-Matic/Beats or any other format of their choice.

10. It is a further case of the plaintiff that the second defendant had also issued Ex.P5 Lab Confirmation Letter dated 27.11.2004 to the plaintiff confirming the negatives to be made available for both picture and sound for Umatic/Beta or on any other format to the plaintiff as and when the plaintiff required it. The plaintiff was to return the same to the second defendant after the transfer was over.

11. The plaintiff issued Legal Notice Ex.P6 dated 7.11.2016 on defendants 1-3 after one of their distributors purportedly informed the plaintiff that the first defendant was claiming Satellite Television Rights on the Internet for the Tamil film“MalluVetty Minor” and that the first defendant was claiming the copyrights acquired from the third defendant assigned by the second defendant.



12. In the aforesaid Ex.P6 legal notice dated 7.11.2016, the plaintiff informed the third defendant that the claim made by the third defendant was holding a Negative Right over the Copyright of the Tamil cinematograph film “MalluVetty Minor”. In Ex.P6 legal notice dated 7.11.2016, it was stated that the third defendant at his best had only charged over the delivery of the release of prints and the negatives of the aforesaid film under a finance agreement entered between the third defendant and the said producer of the film. However, the copy of the finance agreement entered between the producer and the third defendant has not been marked as an evidence.

13. It was further stated by the plaintiff in Ex.P6 - legal notice dated 7.11.2016, that mere charge over the delivery of the release of the prints and negatives in favour of the third defendant cannot be confused with the copyright ownership over the negatives in the Tamil cinematograph film “MalluVetty Minor”.

14. Under these circumstances, the plaintiff called upon the first defendant to cease and desist from infringing the copyright in the Tamil



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cinematograph film “MalluVetty Minor” based on the assignment of copyright in favour of the third defendant.

15. Ex.P6 legal notice dated 7.11.2016 was followed by Ex. P7 - legal notice dated 24.8.2019 on behalf of the plaintiff to the defendants wherein content of Ex.P6 legal notice dated 7.11.2016 was reiterated.

16. The learned counsel for the plaintiff submitted that first defendant did not respond to legal notices - Ex.P6 and Ex.P7 dated 07.11.2016 and 24.08.2019 respectively but continued to hold out copyrights over the film “MalluVetty Minor” in the cine market.

17. It is submitted that the plaintiff was left out with other remedies except to file the present suit for declaration of absolute copyright over the film as per Ex P3 Agreement dated 27.11.2004 and for a permanent injunction to restrain the defendants, their men, agents, servants, or persons acting on their behalf or claiming through them from in any manner infringing the plaintiff's copyrights under Ex P3 Agreement dated 27.11.2004 in the suit film and to restrain the second defendant from parting



with the negatives in favour of any other third parties for any kind of exploitation of the suit film.

18. It is further submitted that the third defendant may have the charge only over the said film as against the producer, i.e. M/s.Everest Films. However, the third defendant did not have any right to assign the copyright in favour of the first defendant.

19. Further, assignment of rights in favour of the plaintiff is also confirmed by the second defendant lab and on the date on which the first defendant has claimed to have acquired the rights, there was already a prior assignment of copyright in favour of the plaintiff and the plaintiff had been exploiting the said rights openly.

20. It is submitted that the plaintiff is the sole and absolute owner of all the copyrights as set out in the Ex.P3 Assignment Agreement dated 27.11.2004 in the suit film and therefore, the defendants should be restrained from infringing and enriching themselves from the rights that lawfully belongs to the plaintiff.



21. In support of the above the learned counsel for the plaintiff

placed reliance on the following two decisions:-

i. Mrs A. Padmini and others versus Raj Telecom Network Ltd. (2015) 3 LW343;

ii. SreeGokulam Chit Finance Company (P) Ltd versus Johnny Sagariga Cinema Square and others Manu/TN/3563/2010

22. In the written statement, the first defendant has questioned the genuineness of Ex.P4 Letter dated 27.11.2004 which is said to have been issued by the aforesaid producer to second Defendant's Division Vijaya Colour Laboratory. Similarly the first defendant has also questioned the genuineness of Ex.P5 Lab Confirmation letter dated 27.11.2004 which is said to have been issued by the second Defendant's Division Vijaya Colour Laboratory.

23. It is submitted that the fact that these letters/exhibits were of the same date as that of the Ex.P3 Agreement dated 27.11.2004 raises a suspicion. It is the case of the first defendant that Exhibit P3, 4 and 5 are fabricated documents.



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24. It is submitted that Ex.P4 Letter dated 27.11.2004 is on a letter head of the producer Mr. P.Kalaimani of Everest Films. It is submitted that the address in Ex. P4 Lab Letter dated 27.11.2004 of the said producer was given as **20, Seethamamal Extn, III Cross Street, Teynampet, Madras-600 018** with a 6 digit telephone number **454120**.

25. It is submitted that the name 'Madras' ceased to be in use after 1999 and that the 6 digit telephone number was no longer in use when Ex.P4 was alleged to be signed by the producer of the film Mr. P.Kalaimani of Everest Films. Therefore, it is submitted that the Ex.P3-P5 cannot be admitted in evidence as they are fabricated documents.

26. It is further the case of the first defendant that when Exs.P3-P5 were alleged to be signed on 27.11.2004, the third defendant had entered into an agreement with the first defendant who was holding the negative rights and copyright in all dimensions and sizes of cinematographic Tamil film "MalluVetty Minor". It is further submitted that the said agreement was assigned to the first defendant for a period of 99 years for a valuable consideration.



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27. I have perused the plaint, written statements and the proof affidavits filed by the plaintiff and the first defendant. I have also perused the exhibits filed on behalf of the plaintiff and the first defendant and the depositions. I have also considered the arguments advanced on behalf of the plaintiff and the first defendant.

28. Both the plaintiff and the first defendant claim copyright over the Tamil film “Mallu Vetty Minor” released in 1989 was on the strength of P3-P5 l dated 27.11.2004.

29. Exs.P3 dated 27.11.2004 is said to have been executed in favour of the plaintiff by the producer Mr.P.Kalaimani, Producer of the film i.e M/s.Everest Films. Ex.P4 Lab Letter dated 27.11.2004 was alleged to be issued by the producer of the aforesaid Tamil film “Mallu Vetty Minor” to the second defendant.

30. In Ex.P.4, the address of the said producer bears 6 digit telephone number and gives the name of city as ‘Madras’ and not ‘Chennai’. By 2004, the name ‘Madras’ ceased to be in use for the purpose of postal



address in communications. Similarly, the Chennai 6 digit numbers was no longer in use in 2004. It therefore raise a shadow of doubt as to whether the said letter was indeed issued by the producer of the aforesaid Tamil film “MalluVetty Minor” Mr.P.Kalaimani to the second defendant.

31. Ex.P5 dated 27.11.2004, Lab Confirmation Letter of the second defendant Vijaya Colour Laboratory gives eight digit telephone number of the second defendant as 23623483. It also gives the address as No.9A,Kumaran Colony Main Road, Vadapalani, **Chennai**-600026.

32. Both the telephone number and address in Ex.P5 Lab Confirmation Letter of the second defendant Vijaya Colour Laboratory dated 27.11.2004 are in tune with the usage during the aforesaid period. However, the author of Ex.P5 Lab Confirmation Letter dated 27.11.2004 has not been examined as a plaintiff, witness.

33. It was incumbent on the part of the plaintiff to have produced film the producer of the Tamil film “MalluVetty Minor” Mr.P.Kalaimani with whom the plaintiff had purportedly signed Ex.P3 Agreement dated



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27.11.2004 who had purportedly issued Ex.P4 Letter dated 27.11.2004 to the second defendant and an employee of the second defendant or its employee as a witness.

34. It was incumbent on the part of the plaintiff to have produced the second defendant or its employee who had purportedly issued Ex.P5 Confirmation letter dated 27.11.2004.

35. Second defendant or its employee should have also been examined as plaintiff witness. If the plaintiff had difficulty in getting them as his witness, he should have taken out summons through court on these two persons to be present to give evidence. However, the plaintiff failed to do so.

36. These factors do raise a reasonable doubt as to whether the rights claimed by the plaintiff was genuine or not.

37. Similarly, the first defendant claims rival right over the said film on the strength of Ex.D1 Agreement dated 15.3.2014 purportedly



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signed by the third defendant. Ex.D2 Lab Letter dated 15.3.2014 was purportedly issued by the third defendant to the second defendant. Ex.D3 dated 18.3.2014 is a Lab Confirmation Letter issued by the second defendant to the first defendant.

38. Though it was argued that the producer of the Tamil film “MalluVetty Minor” Mr P.Kalaimani had written a letter dated 23.6.1999 to the second defendant that he had entered into a finance arrangement with the third defendant and by virtue of it a charge was created over the delivery of the release of prints and the negatives of the aforesaid film in favour of the 3rd defendant.

39. These arguments cannot be countenanced as these documents were not marked. Therefore, Issue No.ii and iii are answered against the first defendant in absence of any credible document evidence to offer witness.

40 It was therefore incumbent on the part of the first defendant to have also produced the author/co-authors of Exs.D1 to D3 as his witnesses. In case, these persons had refused to appear as witnesses, the 1st defendant



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should have taken out summons through court on these persons to be present to give evidence. However, first defendant has also failed to do so.

41. Both the plaintiff and the first defendant have failed to produce the authors/ co-authors and signatory and the co-signatories to these pivotal documents as their witnesses to establish the genuineness of Ex.P3 to Ex.P5 and Ex.D1 to Ex.D3.

42. In the absence of the respective signatory and co-signatories and the authors/ co-authors of the above documents, the genuineness of these documents remain questionable. These persons should have been produced as witnesses to corroborate these document. It cannot be inferred either that the plaintiff or the first defendant have established their right over the Tamil film “MalluVetty Minor” based on Ex.P3 to Ex.P5 and Ex.D1 to Ex.D3.

43. These documents at best are to be construed as self serving documents of these parties. Both the plaintiff and first defendant cannot expect the court to give its verdict on their purported rights based on these



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documents in the absence of independent witnesses corroborating their rights, as there is a shadow of doubt as to whether any rights were conferred are in favour of either the plaintiff or that of the first defendant vide Exs.P3-P5 and vide Ex.D1 to Ex.D3. Therefore, on the strength of the Exs.P3-5, the rights of the plaintiff cannot be determined. Therefore, Issue No. i,iv, and v are answered against the plaintiff. Similarly, Issue Nos.ii and iii are to be answered against the first defendant.

44. The rights of the plaintiff to establish the exclusive right over the film Tamil film“MalluVetty Minor” is however preserved and left open in an appropriate case as and when a separate cause of action arises against any other person, provided plaintiff produces best evidence and presents the authors/co-authors of the letters and signatory and co-signatories of Exs.P3-P5 before the court trying such suit in and collateral proceeding. The plaintiff has failed to establish rights over the film Tamil film “ MalluVetty Minor”.

45. In the light of the above discussion, the suit is liable to be



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dismissed. Accordingly, the suit is dismissed. There shall be no order as to costs.

08.02.2023

Index : Yes/No
Internet : Yes/No
Speaking : Non-speaking order
kkd

Plaintiffs' witnesses :

Tr.Ghanshyam Hemdev : P.W.1

Defendants' witnesses :

Tr.Ashok : D.W.1

Documents exhibited by the Plaintiff:

S.No.	Date	Exhibits	Description of Documents
1	11.09.1979	Ex.P.1	Copy of Certification of Registration of Plaintiff Firm
2	01.04.1998	Ex.P.2	Copy of Partnership Deed
3	27.11.2004	Ex.P.3	Copy of Agreement between P.Kalaimani, the producer of the Film, Proprietor of M/s.Everst Films and the plaintiff for the movie
4	27.11.2004	Ex.P.4	Copy of Letter Everest films to 2 nd defendant
5	27.11.2004	Ex.P.5	Copy of Letter from the 2 nd defendant to



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S.No.	Date	Exhibits	Description of Documents
			the plaintiff
6	07.11.2016	Ex.P.6	Copy of Legal Notice from the plaintiff to the defendants
7	24.08.2019	Ex.P.7	Copy of Legal Notice from the plaintiff to the defendants with A/ D card

Documents exhibited by the Defendants:

S.No.	Date	Exhibits	Description of Documents
1	15.03.2014	Ex.D.1	Copy of Agreement entered between the 3 rd defendant and the 1 st defendant
2	15.03.2014	Ex.D.2	Copy of letter issues by the 3 rd defendant to the 2 nd defendant
3	18.03.2014	Ex.D.3	Copy of letter issued by the 2 nd defendant to the 1 st defendant

CSNJ

C.SARAVANAN, J.



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Pre-delivery Judgment in
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08.02.2023