



Order dated 08.04.2024
in A.No.384 of 2024
in C.S.(Comm Div).No.31 of 2021

Appln.No.384 of 2024
in
C.S.(Comm Div) No.31 of 2021

P.VELMURUGAN, J

This application is filed by the first defendant to issue a Commission to a Forensic Expert or a Forensic Laboratory to conduct an examination of the documents which are marked as Exs.A-1, A2, A8 by the plaintiff in the above suit, which are morefully described in the schedule herein by comparing the signatures said to be of Mr.P.K.R.Pillai in all pages of the said documents with contemporary documents provided under Section 45 read with Section 73 of the Indian Evidence Act, 1872, so as to determine the genuineness of the signature, period of execution of the documents by determining the age of the print done on the said documents and the age of the papers on which the documents are printed.

2. The suit is filed for the following reliefs:

(a) to declare that the plaintiff is the legal owner of the Copyright as mentioned in Schedule-A (films);

(b) to grant mandatory injunction directing the defendants or any person claiming through them to remove all the respective URL (Uniform Resource



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Locator) as provided in Schedule-B links of the plaint from www.youtube.com, leading to the respective Schedule-A (films);

(c) to grant permanent injunction restraining the defendants, their partners/proprietors/directors, heirs, representatives, successors in business, assigns, distributors or any person claiming through them from uploading, downloading, streaming, camcording or freebooting the Schedule A (films) on www.youtube.com or any other website, without proper licence from the plaintiff, which would violate/infringe the plaintiff's copyright over the Schedule-A (films);

(c-a) to order rendition of accounts of profits, directly or indirectly earned by the respondents by views, likes and/or advertisements made on playing the respective Schedule-A (films) in www.youtube.com and thereby, pass a decree for the amount earned by the aforesaid infringing acts in favour of the plaintiff; (amended as per the Order of Court, dated 11.03.2022 in Appln.No.578 of 2022).

3. Pending the suit, this application is filed by the first defendant (for short, "D1") and in the affidavit filed in support of this application, it is averred that the suit itself is not legally maintainable and factually not sustainable. The averments made in the plaint clearly and cogently indicate that the suit is



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directed against the alleged infringement of the copyright, and the copyright is claimed in relation to the movies mentioned in the suit based on the agreement allegedly executed by the producer of the films under dispute. It is specifically stated that the name of the producer as is evident from Ex.A-1 agreement is "P.K.Ramakrishna Pillai", whereas the name of the original owner is "P.K.Ramachandran Pillai". Further, the suit itself is based on forged and fabrication of documents and the same apparently seems to have taken place outside the jurisdiction of the Court to register the crime and conduct investigation, which exclusively deals with the jurisdictional Police and that the sanction of the Court is unnecessary for such investigation, and this aspect had to be dealt with separately.

4. It is further stated in the affidavit by the applicant/D1 that during cross-examination, it had come out that there are discrepancies in the documents produced by the first respondent/plaintiff, regarding the contents of the agreement and also the name of the executant. The plaintiff's witness being not a party to the said document, is not competent to swear the contents of the said document, and according to the plaintiff, the said document(s) is/are concocted and fabricated.



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5. It is further stated by the applicant/D1 that Ex.A-1 (being the first document) produced is agreement, dated 05.12.2000 allegedly executed by P.K.R.Pillai being the original producer of the plaint-schedule-movies. The next agreement, which was marked as Ex.A-3, is dated 08.12.2000. The third assignment marked as Ex.A.4 is dated 12.02.2021. Further, according to the D1, this is a case where the first respondent/plaintiff, while committing forgery, could not even understand the correct name of the so-called owner. The signature that has been occurring in the document, dated 05.12.2000, marked as Ex.A-1 as that of P.K.Ramachandran Pillai, is forgery. The signature has no resemblance with signature proved before the Court of Law. The divulgence of the signatures in the different pages, clearly shows the forgery. It is also under suspicion that they might have obtained some papers signed by P.K.R.Pillai from one Mr.Shajikumar, who is in fact a 'financier' for financing/producing of the films in question. Moreover, the above document(s) would have been prepared on such papers only subsequently.

6. In order to determine the exact facts, it is necessary that the document(s) which are marked as Exs.A-1, A2 and A8 by the plaintiff, have to be sent for forensic analysis, so as to determine as to whether the signature(s) seen in all the pages of the said documents are the original signature(s) of the said



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P.K.Ramachandran Pillai and also to determine as to when was the said documents executed, by determining the age of the print done on those document(s) and also the age of the papers on which those document(s) were printed. As the said P.K.Ramachandran Pillai is now no more, the applicant/D1 will be able to produce the certified copy of prior documents filed by the said P.K.Ramachandran Pillai before the High Court of Kerala or the District Court(s) at Ernakulam in Kerala State, for comparison.

7. It is the further case of D1 in the affidavit filed in support of the application that the originals of the above documents are produced by the plaintiff only now at the time of evidence and hence, the applicant/D1 is unable to file the application to send the original of the document(s) for forensic examination even earlier. Thus, only upon production of the original document(s) the applicant/D1 could seek to send the same for expert examination. According to applicant/D1, there is wilful latches/negligence on the applicant in not preferring this application earlier. Further, the D1 has taken his stand that the document(s) are forged/fabricate, and the same had also been averred in the written statement. Unless this application is allowed, the applicant/D1 would be put to irreparable injury/loss.



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8. The respondent/plaintiff has filed counter affidavit stating that the allegations mentioned in the affidavit filed in support of this application, is a matter of record. Further, the allegations contained in paragraph 3 of the said affidavit are denied by the plaintiff. The contention of the applicant/D1 that the present suit is not legally maintainable and factually sustainable, is without substance.

9. It is the further averment of the respondent/plaintiff in this application that in the plaint, he has only sought for the remedy against the infringement of Copyright by the applicant/D1, but also for rendition of accounts of profits earned by the applicant/D1 through the commercial exploitation of the schedule-films in www.youtube.com. The alleged actual name of the said P.K.Ramachandran Pillai is nothing but a mistake blown out of proportions by the applicant/D1. Further, the contentions regarding forgery, fabrication, etc., are baseless, unsubstantiated and devised only for the purpose of the so-called affidavit.

10. The statement of the applicant/D1 that D1 had not understood the correct name of the so-called owner while committing forgery, is incorrect. The said Ex.P-1 was executed more than 23 years before and that the signature in



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Ex.P-1 of P.K.Ramachandran Pillai, is the forgery to the core, has no resemblance with the signature proved before the Court of law, and the same is nothing but assumption of D1 made for the purpose of the affidavit. Moreover, there is no signature of the said P.K.Ramachandran Pillai, proved before any Court of Law, and the averment made by the applicant/D1 on that aspect is apparent falsehood. Further, the contention of the applicant/D1 that the signatures in different pages indicate forgery, is devoid of merit made only for the purpose of procrastinating the present proceedings.

11. It is the further complaint of the first respondent/plaintiff in the counter affidavit that he had obtained some papers signed by P.K.R.Pillai from one Mr.Shajikumar who is a financier, is nothing but hypothesis of the applicant/D1 and the same is without any evidence. The further averment that the plaintiff's title documents relating to the schedule A (films) might have been prepared after obtaining the same from the said Mr.Shajikumar, is a permutation provided by the D1, which is without any proof.

12. It is unwarranted on the part of the applicant/D1 to state that Exs.P-1, P-2 and P-8 are to be sent for "forensic analysis" to find out as to whether the signature(s) in all the pages of the document(s) are the original signature(s) of



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the said P.K.Ramachandran Pillai and also to determine the age of the print with the papers, and the same are sought only for delaying the present suit proceedings endlessly. In fact, the applicant/D1 did not make out any case for sending the document(s) for forensic analysis of the above-said document(s). The further contention of the D1 that P.K.Ramachandran Pillai is no more, due to which the D1 will provide the certified copy of the prior document(s) filed by the said P.K.Ramachandran Pillai before the Kerala High Court or even the District Court, Ernakulam, apparently establishes that D1 is not directly acquainted with the signature(s) of P.K.Ramachandran Pillai. Without noting the ante-litem-motam (before the suit is filed) signatures of the said P.K.Ramachandran Pillai, had resorted D1 to raise the allegation(s). Furthermore, the complaint regarding forgery of the signature(s) is made only as an after-thought and the same is without even knowing the actual signature(s) of the said P.K.Ramachandran Pillai. After the death of the said P.K.Ramakrishnan Pillai, the applicant/D1 had conveniently filed the present application, but no original signature(s) could be obtained. Admittedly, the applicant/D1 is not in possession of the original signature(s) of the said P.K.Ramakrishnan Pillai, and the D1 cannot seek for forensic analysis to compare the signature(s) of the said P.K.Ramakrishnan Pillai.



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13. According to the plaintiff, there is no merit in the averment of the D1 that since original documents are produced only at the time of evidence, and D1 unable to file an application to send the document(s) for forensic analysis. Further, based on the mere allegations/averments, etc., of the applicant/D1 in the affidavit, the document(s) in question cannot be sent for forensic examination.

14. Further, the applicant/D1 failed to prove the discrepancy and doubts in the signature(s) of the said P.K.Ramachandran Pillai. Thus, there is no cause or necessity to send the document(s) for forensic analysis with regard to the signature(s) of P.K.Ramachandran Pillai.

15. It is further alleged by the first respondent/plaintiff in his counter affidavit is that the said P.K.Ramachandran Pillai is a widely known person in the Malayalam Film industry, and there, he is commonly known as P.K.R.Pillai and at this juncture, it is stated by the first respondent/plaintiff that the agreement, dated 05.12.2000 only states his name as P.K.R.Pillai and within the brackets, his abbreviated name is provided as "P.K.Ramakrishnan Pillai". Based on the same, the depiction of the name "P.K.R.Pillai" is in the agreement itself, makes the plaintiff to strongly believe that the said agreement was executed by the said



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P.K.R.Pillai, and mere wrong mentioning of the abbreviated name in the agreement, will not vitiate the agreement in-toto.

16. Further, as the applicant/D1 also claims title to the A-schedule (films) based upon the subsequent assignment agreement, dated 05.01.2012, and D1 has resorted to divert the present suit proceedings, alleging forgery upon the plaintiff regarding forgery, are only based upon the mere presumption of the applicant/D1, and the averments in relation to the same deserves not to be considered, in-limine. Hence, for all the reasons stated above, the plaintiff prays to dismiss the present application seeking to refer Exs.P-1, P-2 and P-8 for forensic analysis.

17. Heard both sides and perused the materials available on record.

18. Though the written statement was filed in the year 2022 itself, the applicant/D1 has taken out this application for expert opinion after two years. Therefore, the purpose of the Commercial Courts Act, 2015, itself, is defeated.

19. However, in order to give an opportunity to the parties to get the expert opinion, though it is not the conclusive proof which could aid the Court to



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arrive just decision, this application is allowed on payment of costs Rs.1,00,000/-
(Rupees one lakh only), to be paid by the applicant/D1, on or before 25.04.2024,
to the first respondent/plaintiff.

20. List this application in the caption "for reporting compliance" on
29.04.2024, along with the suit, for hearing.

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