

(1991) 07 MAD CK 0012

Madras High Court

Case No: Original Application No. 416 of 1991 in Civil Suit No. 605 of 1991

Rathna Movies

APPELLANT

Vs

Muthu Enterprises, Madras-14,
Cine India, Madras-10

RESPONDENT

Date of Decision: July 22, 1991

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2
- Copyright Act, 1957 - Section 14(1), 14(1)(c), 2

Hon'ble Judges: Arumugham, J

Bench: Single Bench

Advocate: B.T. Seshadri, for the Appellant; A. Chidambaram, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Arumugham, J.

This is an application filed under O.14, Rule-8 of Original Side Rules read with order 39, Rule1-1 and 2 Civil Procedure

Code, seeking a permanent injunction restraining the respondents/defendants, their agents, servants, representatives and distributors from

interfering with the plaintiffs copyright in respect of the picture, "Meenava Nanban" by way of telecasting or by exhibiting the same through video

cassettes or by producing and marketing the video cassettes of the said picture, pending disposal of the suit and for another prayer seeking an

order for seizing the video cassettes of the suit picture, "Meenava Nanban" from the premises of the second defendant at No. 137, Purasawalkam

High Road, Madras-600 010, immediately and that for the second relief is concerned, it was the prayer formulated in Application No. 2671 of

1991 in the suit. The case of the applicant/plaintiff as gathered from the affidavit filed in support of the above two petitions and the plaint is as

follows:

The applicant/plaintiff, a proprietary concern represented by its sole proprietor, late S.R. Arul Prakasam, acquired an absolute ownership of the

negative rights in respect of the suit Tamil Talkie picture by name, "Meenava Nanban" from the first respondent/defendant herein under an

Agreement dated 16-1-1979 and that pursuant thereto, he wrote a letter to the laboratory by name "Film Center" where negatives are kept,

requesting them to transfer the ownership of the negatives in favour of the applicant/plaintiff herein and that accordingly, the abovesaid laboratory

transferred and confirmed the transfer of the negatives of the suit picture in favour of the applicant herein by their letter dated 19-6-1979 and thus

the applicant/plaintiff became the absolute owner of the negatives of the picture, "Meenava Nanban" and that accordingly, he has been exercising

the right of ownership by granting the distribution rights in respect of the said picture to various distributors on and after 18-8-1982 and that the

effect of the said ownership is that no one has got a right to take the print of the said picture and the negatives for the purpose of exploiting of the

same.

2. While that being so in or about 1989, on seeking a publication made in a Tamil Daily, stating that the second defendant had acquired the video

rights of the said picture, a (sic) telegraphic notice was issued to the second defendant and that thereby he was apprised of the ownership of the

negatives by the applicant herein and as such, the second defendant has no legal right at all and also, he was asked to desist from exploiting the

video picture and that for which, a reply was received from him claiming that the producer had granted the right to the 2nd defendant and that

consequently, the cassettes were released on 30-1-1989, it was followed by a telegraphic legal notice dated 7-12-1989 sent to both the

defendants herein referring the infringement of the copyright held by the applicant/plaintiff herein and that for which, there was no reply at all and

that subsequently, due to an unfortunate event of an accident having taken place in the family of the applicant and that in which the sole proprietor passed away and the other members of the family were admitted in the hospital it took a considerably long time for them to take any action and that thereafter, when the files relating to the suit picture were traced out, the Agreement and other legal notices were taken note of and that upon the perusal, the applicant came to know the legal right vested with the applicant/plaintiff.

3. It was alleged that after having parted with the negative rights and ownership of the suit picture of the applicant/plaintiff by virtue of an Agreement dated 16-1-1979, the first defendant has no manner of any right to transfer in favour of the second defendant by means of an agreement or otherwise with regard to the releasing of the video cassettes in respect of the suit picture and that after 18-8-1982, the plaintiff alone became entitled to deal with the suit picture and that as such, the plaintiff is the exclusive owner of the copyright in respect of the suit picture and that the first defendant has no manner of any right to confer with any right with regard to the suit picture, "Meenava Nanban" after having transferred the entire negative rights of the suit picture previously and that the first defendant has not reserved any right with him in respect of the suit picture and that therefore, either of the defendants had no right to exploit or release or sell the video cassettes of the suit picture in an area and if there is any, it amounts to clearly an infringement of the copyright of the plaintiff and that by releasing the said cassettes, he has been making the plaintiff to incur loss and that with a view to avoid the same, the reliefs asked for in the application are to be granted.

4. The second respondent has filed a common counter-affidavit in the abovesaid two applications and thereby resisted the claim of the following main contentions.

5. It was contended in the counter-affidavit that the first respondent, represented by Mr. K.R. Sadayappan is the producer of the suit picture, "Meenava Nanban" and that the second respondent has acquired the video rights of the same for the entire India under a Letter of agreement

dated 7-1-1989 for a valuable consideration of Rs. 7,500/- and thus, he became the sole and absolute owner of the video rights of the suit picture

in respect of the entire Indian territory and that while being so, the claim made by the applicant, claiming ownership of the negative rights through

the first respondent and an agreement dated 16-1-1979 is not valid and that even so, the second respondent was not furnished with the copy of

the alleged letter dated 16-1-1979 and that the first respondent had granted only the negative rights of the lease rights of the suit picture in respect

of the distribution, exploitation and exhibition rights of the suit picture and that therefore, the second respondent is entitled to the video rights which

were assigned under the valid documents as aforesaid and that this was followed by a telegraphic legal notice given in the year 1989 itself with a

suitable reply by denying the same and that subsequently, for the reasons known to the plaintiff herein, no steps were taken, but, now he has come

forward with the suit as he had refused to pay a sum of Rs. 25,000/- demanded by the applicant by way of damages, the present vexatious

proceedings has been initiated and that therefore it was contended that if really they are interested in claiming any right over the video rights of the

suit picture, they would have taken immediate steps and that the laches on their part for quite a long time, show that the applicant/plaintiff has no

right whatsoever in respect of the video rights and so on and that therefore, the second respondent subsequently pleads that he had not committed

any laches or infringement nor cause any damaged to the applicant herein and claims that he had acquired the video negative rights absolutely from

the first defendant even in the year 1989 and from the date onwards, he has been exercising duly and that therefore, there are no merits in this

application warranting the granting of interim order as well as the appointment of the Advocate Commissioner to seize the video rights and that

therefore, it was argued that both the applications are to be rejected.

6. Upon the above pleadings, the only point which arises for consideration is,

Whether the applicant/plaintiff has got prima facie case warranting the interim injunction as well as the appointment of an Advocate Commissioner as claimed?

7. The suit itself was filed by the plaintiff/applicant for the relief of declaring the plaintiff's right and absolute ownership upon the copyright of the Tamil talkie film, "Meenava Nanban" and for permanent injunction and so on, against both the defendants. Admittedly, the first defendant/first respondent by name Muthu Enterprises is the producer of the suit picture, "Meenava Nanban" and that as such, he is the first owner of the copyright over the suit picture. But, unfortunately the first respondent/first defendant herein, viz the producer of the suit film, figures here as the person responsible for the entire trouble in the context that he has allegedly assigned the negative rights of the suit picture to the plaintiff herein by virtue of an Agreement dated 16-1-1979 and that subsequently on 7-1-1989, he has assigned the video cassette rights over the said picture in favour of the second respondent herein by means of the Letter of Arrangement dated 7-1-1989 for the valuable consideration of Rs. 7,500/- as claimed in para 2 of the Common Counter-affidavit filed by the second respondent herein. Even so, the first respondent/first defendant has not come forward with any specific plea even though he was added as the party in this proceeding and stood as the sole responsible person for the dispute now in hand. It has to be seen that by virtue of an Agreement of Lease entered into at Madras on 16-1-1979 between the first defendant herein as the Party of the First part and the plaintiff herein as the Second part, the suit picture, "Meenava Nanban" was produced by the first defendant and that by virtue of the said Agreement of Lease, it was leased out to the plaintiff herein for a period of 86 years from 18-8-1982 for the areas mentioned in Clause-2 for the various areas in Tamil Nadu, Kerala, Karnataka, Andhra Pradesh, North India and so on for various considerations referred to therein and that wherein it was also agreed that the first defendant agreed to intimate the leasehold negative rights of the plaintiff herein to the Film Center to transfer the negatives of the said picture and that by reserving the right for them to take any number of prints to enable them to supply to the distributors and that by virtue of clause-4 of the same, the plaintiff was given full liberty in any manner they like regarding the areas and period granted to them under the said Lease Agreement and that it was provided that the applicant was also entitled to

take any number of prints at their costs in the areas and the period mentioned therein. Thus, it was made clear that the entire negative rights of the suit picture was given on lease to the applicant for a period of 86 years for all the areas by the first defendant herein to the plaintiff by virtue of the said agreement and that thereafter, by virtue of a letter dated 25-2-1979, it appears that the first defendant had asked the Film Center, Colour Laboratory, Virugambakkam, Madras to transfer the ownership of the negative rights of the suit picture in favour of the plaintiff herein. Then it appears that by virtue of a Confirmation Letter dated 19-6-1979, the colour Laboratory by name, Film Center has addressed the plaintiff herein under Reference No. 768, referring the letter dated 25-2-1979 and the letter dated 18-6-1979 by the plaintiff and that accordingly, the negative rights of the suit picture has been transferred in favour of the applicant, subject to the conditions stipulated in the letter written by the first defendant on 25-2-1979 which was followed by the telegraphic notice given by the applicant/plaintiff through his counsel to the second defendant herein alleging the infringement of his copyright over the suit picture as evidenced by the certified copy of the telegram, telegraphic notice with the postal receipts given to the second defendant by the plaintiff through his counsel and that for which, a reply telegram was given by the second defendant stating that the video cassettes relating to the suit picture were already released and that the second defendant is the bona fide purchaser from the producers and that therefore, the plaintiff was asked to contact the producer. The xerox copy of the Agreement as well as the copy of letter written by the first defendant to the Film Center and that the Confirmation Letter Written by the Film Center and the certified copy of the telegraphic notice and the reply were all relied on by Thiru. B.T. Seshadri, the Learned Counsel appearing for the petitioner herein.

8. On the contrary, a xerox copy of the reply telegram given on behalf of the second respondent as well as a xerox copy of the letter dated 7-7-

1989 written by one Sadayappan to the Cine India, viz., the second respondent were relied on, wherein it has been stated that Mr. Sadayappan

has received a sum of Rs. 7,500/- by means of cheque being the realty amount in full settlement for his Tamil-35 mm Colour picture, "Meenava

Nanban" video rights for Indian territory granted for a perpetual period from this date, viz., 7-7-1989 onwards.

9. It appears from the Agreement dated 16-1-1979, entered into between the plaintiff herein and the first defendant with regard to the releasing of

the entire negative rights of the suit picture, "Meenava Nanban" is concerned, there is no dispute or challenging pleadings on behalf of the second

respondent herein. This document appears to have been entered into on 16-1-1979, i.e., 10 years prior to the Letter of Arrangement entered into

between the first defendant and the second defendant. It is also very clear from this Agreement that the period of lease stipulated is 86 years from

18-8-1982 for various districts and areas and other States and countries. Clause-2 of the said Agreement refers to what was transferred by way

of lease by the first defendant in favour of the plaintiff was the negative lease rights of the suit picture and that consequent to this Agreement, the

negative rights were transferred in the name of the applicant herein by virtue of the letter dated 25-2-1979 as was confirmed by the addressee,

viz., the colour laboratory in which the prints of the suit picture were lying, by means of a letter dated 19-6-1979 which was followed by the

exercising of his negative rights over the suit picture for all the areas covered under this Agreement till the year 1989. It was the case of the plaintiff

that in or about November 1989, through a publication made in a Tamil Daily, they came to know that the video rights over the suit picture was

claimed by the second defendant herein and that thereupon only, they issued notice by telegram and got the reply even in 1989 itself. But, till the

date of filing the suit, i.e., April 1991, no party pursued to establish their rights over the suit picture, but according to the plaintiff, that in view of the

unfortunate accident happened and that in which the proprietor of the plaintiff died and that in view of the said calamity, the matter could not be

pursued, but only after tracing the files, they have come forward with this suit proceedings. This aspect of the factual points have not been

controverted or denied in the counter affidavit filed on behalf of the second respondent herein and that in this context, I am inclined to accept the

explanation and the reasonings given by the plaintiff herein in the affidavit as well as in the plaint for the lapses. On a careful perusal, I am inclined to

accept the said explanation that there are no lapses on the part of the plaintiff herein as contended by the second respondent.

10. It was the contention of the second respondent that he has acquired the video rights over the suit picture on the basis of the letter dated 7-7-

1989 executed by one Sadayappan, Door No. 24, Masilamani Mudaliar Road, Balaji Nagar, Madras. This letter clinches the fact that the video

rights for the picture, "Meenava Nanban" for Indian territory was granted to the second defendant herein for the perpetual period from the date of

this letter, viz., 7-7-1989. With regard to the proof and authenticity of this letter, I am having my own doubt over this letter which the second

defendant is bound to prove during the time of trial. But, however, suffice it for me at present to say that in the context of the conferring of the

video rights over the suit picture in favour of the second defendant and the Agreement entered into by the first defendant on 16-1-1979, we have

to see as to whether the first defendant has got any right to give the video rights over the suit picture to the second defendant herein.

11. Clause-2 of the Agreement dated 16-1-1979, clinches the fact that the negative lease rights were granted to the applicant herein by the first

defendant for a period of 86 years from the said date for the areas specified in the Agreement for valuable consideration and that accordingly, the

plaintiff/applicant is at liberty to deal with the same in any manner they like regarding the areas and period granted to him and that so much so, he is

entitled to take any number of prints at their cost and the complete realisations of the suit picture in the areas and during the period mentioned in the

Agreement belong to the applicant and that the producer, viz., the first defendant shall not have any claim over the said picture in any manner as

evidenced by the Clause-4 of the Agreement. It follows that the entire negative rights were leased out to the applicant herein and that thereby he is

having an absolute and full negative rights over the suit picture in question which in effect, the copyright for the suit picture comes under the purview

of the Copyright Act 1957. It has been fortified by the combined reading of Clauses-2 and 4 of the said Agreement dated 16-1-1979 and that

during the subsistence of the said Agreement, no one except the plaintiff has got any right whatsoever over the suit picture in question and that the

said legal aspects cannot be disputed by the respondent herein.

12. S. 2, Clause-(f) of the Copyright Act 1957, reads like this:

(f) "Cinematograph film" includes the sound track, if any and "cinematograph" shall be construed as including any work produced by any process

analogous to cinematography:

Then the Explanation for the said sub-Clause is as follows:

For the purpose of this clause, "Video films" shall also be deemed to be worked by any process analogous to cinematography;

13. A mere reading of the above provision of law with its Explanation means in pith and substance, the negative rights include all other rights which

are inherent with the cinematograph film inclusive of the sound track, if any, and with which, it shall be construed as inclusive of any work produced

by any process analogous to the cinematography and that it has to be seen further that the Explanation provided by the legislature to the abovesaid

section, is a complete codification of the meaning for the cinematograph film by providing a wider meaning to this clause which in every form

includes the video films as the work requires to produce the said video films is the same process analogous to cinematography and that was the

reason why the legislature has included the video films within the meaning of the cinematograph film. If that was the position as in the instant case,

the negative rights of the suit picture were completely leased out for a period of 86 years from 16-1-1979 onwards to the plaintiff and that

accordingly, it is apparent that the plaintiff has become the owner of the copyright over the suit picture in question.

14. Then it has become necessary for me to advert S.14(1), sub-clause (c) of the Copyright Act 1957 which reads as follows:

in the case of a cinematograph film, to do or authorise the doing of any of the following acts namely:

(i) to make a copy of the film;

(ii) to cause the film, in so far as it consists of visual images, to be seen in public and in so far as it consists of sounds, to be heard in public;

(iii) to make any record embodying the recording in any part of the sound track;

(iv) to communicate the film by broadcast.

15. The above provision of law has made it very clear that it is an infringement of copyright to do any of the said acts as defined in the above

section and that while a person who produces or makes a film may infringe upon the rights of others and that at the same time create independent

rights in himself which others may infringe either by copying of one or more of his individual photographs or by copying the film in such other way.

Therefore, it follows that a copyright in the film exists in it as a series of photographs and hence it is an artistic work. Thus, it was made clear that

the copyright means all the rights conferred by the Act upon its owner, viz., the applicant herein in respect of his literary, dramatic, musical and

artistic work of the suit picture which squarely comes under the definition of cinematograph films and that it does not essentially mean a right to do

something, but only the right to exclude others from doing such of the acts which are expressly mentioned in the section. This position of law has

not been disputed by the Learned Counsel appearing for the respondent herein. It is the well established principle of case laws that both the video

and television are cinematograph and that both jointly and severally become the apparatus for representation of movie pictures or series of pictures

and that the video is an appliance capable of use for the reception of signs, signals, images and sounds. When a Video Cassette Recorder is used

for playing pre-recorded cassettes, of movies on the television screen, it is certainly used as an apparatus for the representation of moving pictures

or series of pictures and comes within the definition of cinematograph as defined under the Cinematograph Act. Placing reliance upon a decision

held by the Division Bench of this Court, reported in *Entertaining Enterprises v. State* AIR 1984 Madras 278 = 1984 Writ L.R. 57, My learned

brother, Thiru Lakshmanan, J has also held in effect that the video of a cinema picture and the television will all perfectly come within the definition

of cinematograph, after elaborately discussed various case laws and that the said judgment was reported in *P. Thulasidas v. Vasanthakumari*

1991-1-L.W. 220. In the context of the abovesaid proposition of law enunciated by this Court as well as other High Courts, there is no need for

me again to make an emphasis on the question of law as per the specific provisions of the Copyright Act 1957 as hereinbefore referred.

16. I have carefully perused the entire gamut of the negative rights leased out to the plaintiff/applicant herein for a period of 86 years by the first defendant himself upon the suit picture by virtue of an Agreement dated 16-1-1979 and that accordingly, he has been enjoying, which would virtually mean that the entire rights include the video cassette rights as well as the broadcasting of the said picture programme through television or video cassette recorder and that therefore, the first defendant has no existing right to transfer or assign the video rights over the suit picture in the name of the second defendant by means of a Letter of Arrangement dated 7-7-1989 and that if so, it is not valid in law and binding on the plaintiff herein.

17. One other important aspect in this case was that when the Copyright Act 1957 came into force, the video cassette recording system or the broadcasting of any cinematograph film through television, was not in vogue and that under the circumstances, the relevant provisions of S. 2, Clause-V with its Explanation and S. 14(1)(c) were provided by the legislature which virtually mean, that it was the intention of the legislature to give a wider meaning to the words, cinematograph films, so as to include the video cassettes as well as the other broadcasting systems. That apart, the first defendant, the producer of the suit film has not reserved, nor expressed any contra opinion in the Agreement itself with regard to the video cassette rights as was assigned by him in favour of the second defendant and that was the reason why the plaintiff was kept quiet from 1979 onwards for a period of 10 years till the second defendant has come forward with the so-called Letter of Arrangement dated 7-7-1989.

18. It has to be seen that on coming to know of the infringement of the copy right over the suit picture, the plaintiff has given a telegraphic notice even as early as 1989 and that for which, a reply was given on behalf of the second defendant, but wherein also it was made clear that the second respondent who made his claim on the basis of a letter of Arrangement dated 7-7-1989 has not even referred to in the reply telegram, but on the other hand, he has simply informed the plaintiff to contact the producer but wherein also, it was made clear that the second respondent who made

his claim on the basis of a Letter of Arrangement dated 7-7-1989 has not even referred to in the reply telegram, but on the other hand, he has

simply informed the plaintiff to contact the producer, viz., the first defendant herein which clearly betrays his claim, made on the basis of the letter

dated 7-7-1989, as an after thought as was adverted to by me hereinbefore.

19. Having considered the entire pleadings taken on behalf of the respective parties, rival contentions, I am fully satisfied to hold that the plaintiff

has acquired the absolute and full copy right over the suit picture by virtue of the Agreement dated 16-1-1979 and that accordingly, he has been

exercising his right till today as an absolute negative right owner for the period covered under the said Agreement and that while being so, the first

defendant has no right to segregate the video rights alone and to assign in favour of the second defendant by virtue of Letter of Arrangement dated

7-7-1989 and that thereupon, the second defendant is not entitled to claim any video rights over the suit picture during the subsistence of the

absolute negative rights of the plaintiff herein and that in this context, I am able to see that the applicant plaintiff has established the prima facie case

inherent in his pleadings with the result, the infringement of his copyright by manufacturing the video cassettes by the second defendant for the suit

picture is quite manifest, which the second defendant is not entitled under law or on facts. Therefore, I am of the firm view that the

applicant/plaintiff has established his case and that consequently, he has succeeded in this application, with the result, both the

defendants/respondents, their agents, servants, representatives and distributors from in any way interfering with the copyright of the plaintiff in

respect of the suit picture, "Meenava Nanban" either by telecasting or by exhibiting the same through video cassettes or by producing the video

cassettes containing the said picture during the pendency of the suit by means of a temporary injunction immediately and that accordingly, the

application is allowed, but, under the circumstances, no costs.