

(2011) 12 CAL CK 0076

Calcutta High Court

Case No: F.M.A.T. No. 1817 of 2009 With C.A.N. 10746 of 2009

Santra Publication and Another

APPELLANT

Vs

Jibesh Guha and Others

RESPONDENT

Date of Decision: Dec. 22, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 151, 151
- Copyright Act, 1957 - Section 17, 55

Citation: (2012) 1 CHN 383

Hon'ble Judges: Subhro Kamal Mukherjee, J; Md. Abdul Ghani, J

Bench: Division Bench

Advocate: Shamba Chakraborty, Mr. Sayantan Bose, s/defendant Nos. 1 and 2 in F.M.A.T. No. 1817 of 2009, Mr. Bidyut Kumar Banerjee, Ms. Shila Sarkar, Mr. Somnath Bose, for the plaintiffs/respondent Nos. 1 and 2 in F.M.A.T. No. 1817 of 2009, for the appearing parties; Syama Prasanna Roy Choudhury, Debasish Roy, Pran Gopal Das for the defendant No. 3/respondent No. 3 in F.M.A.T. No. 1817 of 2009, Mr. Syama Prasanna Roy Choudhury, Debasish Roy, Pran Gopal Das for the Appellant/defendant No. 3 in F.M.A.T. No. 1838 of 2009, Mr. Bidyut Kumar Banerjee, Ms. Shila Sarkar, Somnath Bose, for the plaintiffs/respondent Nos. 1 and 2 in FMAT 1838 of 2009, Mr. Shamba Chakraborty, Sayantan Bose, for the respondent nos. 3 and 4/defendant Nos. 1 and 2 in F.M.A.T. No. 1838 of 2009, for the Appearing Parties

Judgement

Subhro Kamal Mukherjee, J.

F.M.A.T. 1817 of 2009 is tendered against judgment and order dated November 24, 2009 passed by the learned Judge, Eighth Bench, City Civil Court at Calcutta in Title Suit no. 3292 of 2009. The defendant nos. 1 and 2 are the appellants in this appeal.

2. The defendant no. 3, also, prefers an appeal against the said order, which is tendered under F.M.A.T. no. 1838 of 2009.

3. Both the appeals are heard analogously to avoid conflicting judicial opinions. By impugned order dated November 24, 2009, the learned trial judge allowed an application under Order 39, rules 1 and 2 read with Section 151 of CPC filed by plaintiffs in Title Suit no.3292 of 2009 and restrained the defendants from publishing, releasing, selling, distributing, advertising and/or to deal with the book "Adhunik Jibavidya" for Class XII in any manner till disposal of the suit.

4. The plaintiffs in the said suit, inter alia, prayed for declaration that plaintiff being author and copyright holder of the book "Jiba Vidya" in respect of Botany part/portion of the said book, was alone entitled to release his book through publisher and the said part/portion of the book could not be published, sold, distributed, advertised for sale by other publisher by making any variation of the name of the book containing the said Botany part/portion or any portion relating to Botany part/portion.

5. The plaintiffs, further, prayed for declaration that the book "Adhunik Jibavidya" for class XII published by defendants, violated copyright of plaintiff no. 1 in respect of said Botany part/portion of the book "Jiba Vidya" written by plaintiff no. 1 in 1985 and published by the plaintiff no. 2. The plaintiff/respondent no. 1 contended that Botany part/portion of "Jiba Vidya" was originally written by plaintiff no. 1 and published in 1985 by plaintiff no. 2. Sometime in the month of May 2009, the plaintiff no. 1 came to know that defendant no. 1, Santra Publication, had published a book for class XII under the name and style of "Adhunik Jibavidya" which, also, contained Botany part said to be authored by one Dr. Ardhendu Sekhar Nandy. The Botany part/portion of the said "Adhunik Jibavidya" was mostly verbatim reproduction of Botany part/portion of "Jiba Vidya", first published in 1985 and, since, then marketed. That plaintiff no. 1 was the sole and absolute copyright holder of Botany part/portion of "Jiba Vidya", which was his intellectual property. The plaintiff no. 2 was sole and absolute publisher.

6. The plaintiffs, further, stated that immediately after coming to know about publication of "Adhunik Jibavidya", as aforesaid, containing extensive reproduction of Botany part/portion of the "Jiba Vidya", the plaintiff no. 1, by letters addressed to defendant nos. 2 and 3, informed each of them that plaintiff no. 1 was the author of different books in botany and the book "Jiba Vidya" was published by Mallick Library of 18B, Shyamacharan Dey Street, Kolkata and the said Mallick Library, subsequently, published revised edition according to revision made in Higher Secondary syllabus. The "Jiba Vidya" containing Botany section/part was published by plaintiff no. 2 in the year 1985 and he had never transferred his right of publication of his work to any publisher, but plaintiff 2. The defendant no. 1, by publishing the book under the name of "Adhunik Jibavidya" for class XII, wanted to smuggle out his Botany part/portion said to have been authored by Dr. Ardhendu Sekhar Nandy incorporating Botany part/portion of "Jiba Vidya" in the said "Adhunik Jibavidya" in gross violation of the original publication by plaintiff 2 in the year 1985

on the basis of manuscript of plaintiff 1. The Botany part/portion published by Santra Publication, showing name of Dr. Ardhendu Sekhar Nandy as author of the said Botany part/portion, was in violation of copyright of the plaintiff no. 1 and, accordingly, plaintiff no. 1 requested the said Dr. Ardhendu Sekhar Nandy not to sell, publish and distribute the book "Adhunik Jibavidya" containing part or portion of Botany, which apparently a verbatim reproduction of Botany part/portion written by him and since published in the year 1985 and revised edition was published from time to time till 2004.

7. The defendant no. 3, by his letter dated May 26, 2009, acknowledged that there were violations, but, in order to protect himself, stated that total Botany segment of the book-in-question was not authored by him. The defendant/appellant no. 2, did not, however, give any reply.

8. In spite of acknowledgement by defendant no. 3 that there was violation of plaintiff's copyright in respect of substantial portion of Botany section/part and in spite of his assurance not to deal with the book "Adhunik Jibavidya" containing the disputed Botany section, no action was taken; on the contrary, the defendants continued to publish, sell and distribute the said "Adhunik Jibavidya". In such circumstances, plaintiffs were compelled to institute the said suit complaining commission of such offence.

9. In connection with the said suit, plaintiffs, also, filed an application for temporary injunction, inter alia, praying to restrain the defendants and their men, agents and servants, book sellers and distributors from publishing, releasing, selling, distributing, advertising for sale and/or dealing in any manner with the said book "Adhunik Jibavidya" containing Botany part/portion of "Jiba Vidya".

10. The defendants contested the said application for injunction by filing objection, inter alia, challenging the contentions of plaintiffs and, further alleged that plaintiffs had no sole or absolute copyright and "Adhunik Jibavidya" was published for class XII students as per new Higher Secondary syllabus of 2004-05 by Dr. Ardhendu Sekhar Nandy, Dr. Trilochan Mirdha and Dr. Dulal Chandra Santra in the year 2005.

11. Dr. Ardhendu Sekhar Nandy, also, contested the said application for injunction, inter alia, alleging that in the book "Adhunik Jibavidya" published in the year 2005, there was no similarity in Botany part/portion of the book "Jibavidya" and, further, the book did not contain any portion/part or Botany of the said book, "Jibavidya".

12. The learned trial judge, inter alia, found that Botany part of "Jiba Vidya" was authored by plaintiff no. 1 and published by plaintiff no. 2 while "Adhunik Jibavidya" was authored, inter alia, by defendant no. 3 and published by defendants nos. 1 and 2, but the learned judge held that there was violation of copyright and as such granted injunction as impugned in these appeals.

13. Mr. Bidyut Kumar Banerjee, learned senior advocate, inter alia, submits that the plaint is defective inasmuch as all the authors were not made parties in the suit and, further, submits that copyright claimed by plaintiff no. 1 not being registered under the Copyright Act, 1957, alleged violation cannot be claimed. Mr. Banerjee submits that letter written by Dr. Nandy, in reply to the letter written by plaintiff no. 1, cannot be treated as an acknowledgement of violation of copyright. Mr. Banerjee submits that plaintiffs not having been able to make out a *prima facie* case, they are not entitled to any injunction, as granted by the court below. No part of Botany of "Jiba Vidya" published in 1985 can be said to have been copied by the author of Botany part/section in the book "Adhunik Jibavidya", which is published by defendants nos. 1 and 2 for class XII students according to new Higher Secondary syllabus for 2004-05. The plaintiff no. 1 has no literary work within the meaning of the Copyright Act, 1957, and as such not entitled to get any relief inasmuch as pre-condition for such relief under the said Act is registration of one's literary work under the provisions of the said Act, which is absent in the instant case.

14. Mr. Syama Prasanna Roy Choudhury, the learned senior advocate, submits that copyright according to the Copyright Act, 1957, means exclusive right to print or authorise others to print copies in relation to literary, dramatic, musical or artistic work etc. Basically, copyright means right to copy or reproduce the work in which copyright subsists, which has been illustrated in Section 17 of the said Act. The exclusive right for doing respective acts extends not only to the whole work, but, also, in substantial part thereof or any translation thereto.

15. Mr. Roy Choudhury, further, submits that copyright will encourage authors of literary, dramatic, musical or artistic work as creator of original work to be rewarded with exclusive right for the benefit of the public. Mr. Roy Choudhury submits that the defendants never alleged that copyright of the plaintiff no. 1 has expired and the work, now, belongs to public domain and anyone may reproduce his work without permission.

16. Copyright is one form or right, which is commonly described in today's jargon as "Intellectual Property Right", which right has been claimed by plaintiff/respondent no. 1 in the suit. The defendants in effect, without sanction or licence by plaintiff no. 1, reproduced his work contained in Botany part of "Jiba Vidya" in material form in Botany part of the book "Adhunik Jibavidya". Copyright subsists as soon as the original work has been given a material form and, according, to Mr. Roy Choudhury registration under the Copyright Act, 1957, does not confer any special right. Copyright exists whether registration is done or not as registration is a mere piece of evidence indicating starting of claim of copy right in the work. The plaintiff no. 1 has categorically stated that his literary work first started in 1985, which was revised from time to time, and the literary work, which has been printed in the book "Jiba Vidya" 2004 edition, vested in him and he is the original creator of the literary work contained in Botany part of "Jiba Vidya" as published in revised edition of the said

book in 2004. "Adhunik Jibavidya", which includes Botany Section was first published in the year 2005, violating copyright of plaintiff no. 1. That one of surest and safest test to determine whether or not there has been violation of copyright is if the reader on going through the works is clearly of the opinion and gets an unmistakable impression that the subsequent work has been the copy of original.

17. Mr. Roy Choudhury in support of his contentions referred to the cases of R.G. Anand Vs. Delux Films and Others, , Lord Atkinson in Macmillan and Co. v. Cooper, AIR 1924 PC 75 and Satsang and Another Vs. Kiron Chandra Mukhopadhyay and Others,

18. The plaintiff no. 1 has restricted his grievance in respect of Botany section/part of the book "Jibavidya" revised edition, which was published in the year 2004, copied substantially in Botany section/part in the book "Adhunik Jibavidya", which was published in 2005. The plaintiff no. 1 cannot have any grievance against writers of Zoology or Physiology part/sections of "Adhunik Jibavidya". Therefore, question of making the writers of Zoology or Physiology in respect of both the said books as parties to the suit does not and cannot arise. In such circumstances, it cannot be said that the suit is bad for non-joinder of necessary parties.

19. Going through relevant provisions of the Copyright Act, 1957, it appears to us that the said Act denies appropriation by one person what the skill, labour and capital of others have produced. In this connection, Botany section/part of the book "Jibavidya" is the work of skill, labour and capital of plaintiff no. 1, which must not be appropriated either by defendants.

20. We find that plaintiff no. 1 has used expression by his labour, skill and capital in writing, that is to say, writing Botany section/part of "Jibavidya" and it is necessary that labour, skill and capital expended should be protected by civil remedies as provided in Section 55 of the said Act. Any publisher including defendants have no right to print, publish, advertise his Botany section/part in "Adhunik Jibavidya", which in effect substantial reproduction of the writing/manuscript of plaintiff no. 1 in respect of Botany part of "Jibavidya" and published by plaintiff no. 2.

21. Surest test in respect of violation of copyright laid down in R. G. Anand (supra) definitely establishes violation of copyright inasmuch as after reading Botany part/section of "Jibavidya", 2004 edition and first edition of "Adhunik Jibavidya" published in 2005 one can clearly form an opinion and gets an unmistakable impression that subsequent work appears to be copy of the original and as such plaintiffs have been able to make out a *prima facie* case to obtain injunction subject, however, subject to the modification hereinafter stated.

22. Lastly, having regard to provisions contained in the Copyright Act, 1957, it appears that person acquires copyright in any work, which is created by his independent labour, skill and capital. The primary function of the Copyright Act, 1957, is to protect from annexation by other of one man's work, which is a part of

his labour, skill and test. It is the work that is to be protected and not the idea. There is no provision in the Copyright Act, 1957, that author of a literary work cannot have any right or remedy unless his work is registered. The person has inherent copyright without necessity of registration. We accept the submissions advanced by Mr. Roy Choudhury that copyright subsists as soon as original work has been given material form and registration does not confer right and such a right subsists whether registered or not. Registration, however, is mere piece of evidence incorporating starting of claim of copyright in the work.

23. "Jiba Vidya" was published in 1985 and the revised edition of the said book was published in the year 2004.

24. Considering the provisions of Section 55 of the said Act, we are of the opinion that plaintiffs nos. 1 and 2 have been able to make out a *prima facie* case and are entitled to the order of injunction subject, of course, to modification to the effect that injunction will apply only in respect of Botany section of the book "Adhunik Jibavidya" when plaintiffs have no grievance of other part, that is, Zoology and Physiology portions contained in the said book "Adhunik Jibavidya".

25. With the aforesaid direction, the appeals and the connected applications stand disposed of.

26. We request the learned trial judge to dispose of the suit as expeditiously as possible.

27. However, by way of abundant caution, we make it clear that we have not gone into the merits of the claims and the counter-claims of the parties involved in the suit and all issues are left open and are to be decided by the learned trial judge in accordance with law.

28. We make no order as to costs.

Md. Abdul Ghani, J.

29. I agree.