

V. Elango Vs. Susi Ganesan, Film Director and Others

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Court : Chennai

Decided On : Jan-27-2017

Judge : C.V. Karthikeyan

Appeal No. : CS.No. 36 of 2009

Appellant : V. Elango

Respondent : Susi Ganesan, Film Director and Others

Judgement :

(Prayer:- This Civil Suit is filed under Order VII Rule 1 of CPC read with Order II Rule 1 of the Original Side Rules and Sections 55 and 62 of the Copyright Act, for the reliefs as stated therein.)

This civil suit had been filed to pass a judgement and decree against the Defendants:-

a. granting declaration, declaring that the Plaintiff is alone entitled to exploit all Audio Compact Discs and Digital Versatile Discs copyrights inclusive of Satellite Television Broadcast rights, Direct to Home Broadcast, Direct Satellite Service, Terrestrial Television Broadcast and all other rights connected therewith to the titles for a period of fifteen years pertaining to the schedule below.

b. granting permanent injunction restraining the Defendants from in any manner exploiting, making, selling or offering to sell and exhibiting or infringing the Indian

Audio / Video rights towards VCD, LCD to the Schedule as mentioned in the Plaint inclusive of Satellite Television Broadcast rights, Direct to Home Broadcast, Direct Satellite Service. Terrestrial Television Broadcast and all other rights connected therewith including exhibiting the titles by means of wireless diffusion and by wire for communication to public through all medium including television medium.

c. directing the Defendants to render true and proper accounts to the Plaintiff in respect of the exploitation made to the titles in Schedule and consequently, directing the Defendants to pay damages to the Plaintiff all such sum determined upon such enquiry.

d. for costs of the suit.

2. The Plaintiff, an Advocate, had stated that he is working with a reputed Indian Multinational Company and has a passion towards poem, pseudonymous literary, writing lyrics for cinematograph film song and research in Tamil language. He had stated that the 3rd Defendant had called him on 8.7.2007 and requested him to contact the 1st Defendant in connection with entrusting lyrics for the Tamil Film KANDASAMY. The 1st Defendant was the Director, 2nd Defendant was the Music Composer and the 3rd Defendant was the Producer of the said film KANDASAMY. The Plaintiff had contacted the 1st Defendant to come to Hotel Park Sheraton to brief him about the situation of the song to be composed for the said film. They had a meeting on 9.7.2007 at 6.00 p.m. The situation for the song and its lyrics are narrated as follows:-

The hero of the film is an income tax officer. The heroine of the film is a daughter of a leading industrialist or a very rich man. The heroine's family is affected in some way by the hero's family. Therefore, the heroine wants to attract the hero's attention and make him fall in love with her. In pursuance of her motive, she blocks the hero who is in a traffic signal on his bike with her Mercedes Benz.

The hero who hesitated is forced to go with her for a coffee. The car is driven by the heroine directly to the airport tarmac, where the hero asks the heroine, why is that for a coffee, he has been brought to the airport. The heroine replies saying that he for his status may sip a coffee at the doorstep of the income tax office, but

she even for sipping a cup of coffee flies down to Italy.

Subsequently both of them reach an island in Italy by a private plane. There the heroine offers coffee to the hero. The hero refuses to have the coffee saying that there is dicotion, milk, sugar in the coffee but no love. The hero tries to leave the place.

Now the heroine calls him back. The song starts here and it should be song where each of them accuse the other. Less of love, more of cute fight should be visible between the two.

3. The Plaintiff had claimed that he had prepared a part of the lyrics and on 10.7.2007, read out a few lines to the 1st Defendant. On 11.7.2007, the 1st Defendant sent a CD containing the tune. Thereafter, it is claimed that the lyrics of the Plaintiff were used in the CD by the Music Composer, the 2nd Defendant. On 12.7.2007, the Plaintiff wrote several options for the 'pallavi' and 'saranam' for the song and handed over it to the 1st Defendant in the presence of the 2nd Defendant. It had been stated that the 1st Defendant had suggested the Plaintiff to include lot of sex in the song and also the words KAARUKULLA KASAMUSAA PANNALAAMA. The Plaintiff was shocked by this suggestion and on 13.7.2007, he added more lyrics and handed it over to the Defendants 1 and 2 at the Residence cum Office of the 2nd Defendant. It had been further stated that thereafter, the Defendants 1 and 2 did not contact the Plaintiff. The Plaintiff had contacted the 3rd Defendant, who promised that he will help to request the 1st Defendant about this issue. The Plaintiff had also contacted the hero of the Tamil Film KANDASAMY, Vikram and requested him to return the lyrics. However, in spite of several telephone calls, the Plaintiff did not receive any positive response. The Plaintiff then had sent a letter to the 1st Defendant with a copy marked to the 3rd Defendant on 29.8.2007, asking to return the original lyrics and there was no reply.

4. The Tamil Film KANDASAMY was opened on 23.9.2007 and was telecasted in the SUN TV, where the following lyrics of the Plaintiff were telecasted:-

Female: excuse me Mr.Kandasamy

Oru coffee kudippom

Come with me

Hot 'aa' cold 'aa' Neeyae thotu paaru (you now touch and see)

Female: excuse me Mr.Kandasamy

Oru long drive pogalam

Come with me

Slow 'aa' speed 'aa' Neeyae Oti paaru (you now drive and see)

This was also published in the 'Dinakaran' Tamil Newspaper dated 5.9.2008 and the Family Weekly Magazine 'Ananda Vikatan', dated 7.11.2007. The 2nd Defendant had claimed that the lyrics were written by him. The Plaintiff had stated that he has the exclusive copy right over the said lyrics and consequently, has filed this suit, seeking the reliefs as stated above.

5. In the suit, the Defendants did not file a written statement. Consequently, the Defendants 1 to 3 were set exparte on 22.9.2016. Thereafter, the Plaintiff was asked to lead evidence. The Plaintiff was examined as PW.1 and Ex.P1 to Ex.P6 were marked. The Plaintiff in his proof affidavit reiterated the averments made in the plaint.

6. I have carefully considered the documents and the evidence of the Plaintiff.

7. There is no proof furnished by the Plaintiff that he had actually written the lyrics claimed by him. Ex.P1 is the copy of the lyrics. However, the said document has not been authenticated by any third person. It is also seen that the Plaintiff has not obtained any certificate from any third party that he alone had written the lyrics. There is no proof that the Plaintiff has written the lyrics in Ex.P1.

8. Ex.P2 is the letter written by the Plaintiff dated 29.8.2007 and Ex.P3 is the proof of service. Ex.P4 is the extract from the Tamil Weekly Magazine Ananda Vikatan and Ex.P5 is an article in the Dinakaran Tamil Newspaper. However, these

documents again have not proved the authorship of the Plaintiff for the said lyrics.

9. The Plaintiff has claimed that he is an Advocate, practising in the High Court of Madras and that before, practising law, he had completed his Engineering Degree and utilized his engineering skills for a reputed Indian Multinational Company. He is not some one who can be categorised as being gullible enough to be defrauded so easily, as claimed by him, by the Defendant. He should have been more vigilant to protect his rights. He cannot seek the assistance of this Court in this regard. He has come to court seeking reliefs, and he should establish the same by legally acceptable evidence. The very fact that though he is an Advocate, he has not taken any steps to expedite obtaining relief and has waited for more than six years for the suit to be posted without exhibiting urgency, also leads the court to conclude that bona fide is lacking in the claim of the Plaintiff.

10. I, therefore, hold that there being no independent proof for the claim of the Plaintiff, there is no other alternative except to hold that the Plaintiff has not proved his case. Even though the Defendants did not enter appearance and file a written statement, I am not inclined to grant the relief sought for by the Plaintiff, in the absence of valid evidence to prove the suit claim. Consequently, this civil suit is dismissed. No costs.

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