Deepak Printery Vs. the Forward Stationary Mart and ors.

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Court : Gujarat

Decided On : Feb-06-1975

Reported in : (1976)17GLR338

Judge : M.P. Thakkar, J.

Appellant : Deepak Printery

Respondent : The Forward Stationary Mart and ors.

Advocate for Pet/Ap. : Shri. Kanu Desai. The Learned Counsel

Judgement :

M.P. Thakkar, J.

1. A dispute between two rival manufacturers of calendar date-pads (Dattas) has given rise to this appeal by the original plaintiff whose suit claiming copyright in the date-pad manufactured by him and complaining of infringement on the part of the respondents-defendants was dismissed by the learned judge presiding other 6th Court in the City Civil Court, Ahmedabad. By his judgment and order dated June 15, 1974. The appeal arises from a suit of 1972 which has been expedited by reason of the fact that even though the respondents-defendants have succeeded in the trial court, they have been restrained by way of interim injunction from manufacturing the date-pads. It has been expedited because if the appellant-plaintiff fails to establish that he has a copyright, a temporary copyright for an

interim period cannot be granted by the court by granting an interim injunction restraining the other side from manufacturing date-pads which he has a right to manufacture in case there is no violation or infringement of the alleged copyright of the appellant-plaintiff.

2. Before coming to grips with the facts, a few general observations require to be made. It does not appear to be very clear as to (1) exactly in what right the appellant-plaintiff claims his copyright and (2) precisely in what matter the appellant-plaintiff claims his copyright. It is not clear from the averments in the plaint. And the evidence has not thrown much light on the question. We will, however, have to do the best on the present state of pleadings and the material on record. The date-pad manufactured by the appellant-plaintiff has a peculiar shape. The shape is that of a lotus turned upside down. In other words, if the date-pad is turned upside down, and one looks at it, it will appear to be the shape of a lotus. There are 365 leaves corresponding to each date of the samvat year in the date-pad. On the edge of each page there is a coloured border. Different pages have borders of different colours. On the left hand side the Gujarati Tithi is mentioned. On the top of the tithi, the Gujarati month is mentioned. And along side the relevant fortnight is indicated by the expression sud or vad as the case may be. Beneath the Gujarati figure the date of the week is mentioned in Gujarati. On the right hand side on the top the English month, just beneath it the English date, and just beneath it the day of the week in English are indicated. In the very centre of the page, between the Gujarati date on the left hand side and the English date on the right hand side there is either a portrait of a national leader or a picture indicating the significance of the day or a mythological figure. In some pages the central piece instead of being a portrait or photograph is a decoration. At the bottom the Islamic date and the Paris date are mentioned in Gujarati. Beneath that a Gujarat proverb is printed. Different proverbs are printed on different pages. At the bottom the gregorian year is mentioned. That is the scheme of the plaintiffs date-pad. In the plaint it has not been specified as to in what features of the date-pad copyright is claimed. Nor does the plaintiff make it clear whether he is himself the author of the work or is an assignee claiming his rights from the author of the work. It appears from the evidence that the date-pad has been designed with the co-operation of a well-known artist, namely, Shri Kami Desai. He provided the

basic idea for the different components of the date-pad and it appears that he has himself designed the central pieces of decoration or portraits or pictures as the case may be. Now, it is not made clear in the plaint as to whether copyright is claimed in the pictures, paintings and decorations prepared by Shri Kanu Desai. The Learned Counsel for the appellant-plaintiff in the course of the arguments said that copyright is claimed in the date-pad as a whole.

3. It will be convenient to refer to certain aspects of the Copyright Act 1957, arid the law relating to copyright before tackling the facts of the case. Section 13 of the Act specifies in what works copyright can subsist. Copyright can subsist in (a) Original Literary, Dramatic, Musical and Artistic Works; (b) cinematograph films and (c) records. In order to gather the content of the expression artistic work employed in Section 13 a reference may be necessary to the dictionary provided by the copyright Act itself. Section 2(y) defines work inter alia as a literary, dramatic, musical or artistic work. It is not necessary to refer to the other part of the definition for the purposes of the present case. Section 2(c) defines the expression artistic work as under:

(i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), atweaving or a photograph, whether or not any such work possesses artistic quality;

(ii) an architectural work of art; and

(iii) any other work of artistic craftsmanship;

The plaintiff must, therefore, show that the work in which he claims copyright is an artistic work as defined in Section 2(c) read with Section 13 of the copyright Act. Section 18 of the Act provides for assignment of the copyright by its owner. Chapter x deals with registration of a copyright. Now. There is no express provision in the Act which makes it obligatory for the owner of a copyright to get it registered under the copyright Act. The copyright Act is substantially modelled on the corresponding copyright Act of the United Kingdom, namely, copyright Act of 1956. It may incidentally be mentioned that previously there was a copyright Act of 1900 in India which corresponded to the copyright Act, of 1911 which obtained in

the United Kingdom. It may also be remarked that the central purpose of the copyright Act is to protect authors and artists from being exploited. So far as the commercial and industrial designs and rights are concerned, the legislature has enacted the patents Act and the designs Act. Turning now to the copyright Act, it is necessary to realise that 'ideas', can never be the subject matter of copyright. Copyright can subsist in a material in which the idea has been executed. In other words, there can be copyright in a material object but not in an idea the purpose of the copyright is not to create a monopoly in respect of ideas but the purpose is only to extend protection to the authors and the artists in the field of literature and fine arts and to artists and craftsmen. This is abundantly clear from the definition of the expression artistic work which refers to paintings, sculptures, drawings and photographs etc. and the architectural work of art and the work of artistic craftsmanship. What is sought to be achieved is to protect the author and artist from an unlawful reproduction of his works and exploitation of his art by others. What is frowned at is piracy of the art or the work of the artist and not the piracy of the ideas of the author or the artist. The extract from copinger and skone james on copyright, eleventh edition, paragraphs 1 and 2, may be quoted in support of the aforesaid proposition:

1. Copyright law is, in essence, concerned with the negative right of preventing the copying of physical material existing in the field of literature and the arts its object is to protect the writer and artist from the unlawful reproduction of his material it is concerned only with the copying of physical material and not with the repro duction of ideas and it does not give a monopoly to any particular form of words or design. It is thus to be distinguished from the rights conferred by patent trade mark and design legislation, which give to the registered proprietor an exclusive right to the registered material, even as against a person who has reproduced such material innocently and from an independent source.

2. The claim is not to ideas, but to the order of words and this order has a marked identity and a permanent endurance...the order of each mans words is as singular as his countenance, and although, if two authors composed originally with the same order of words, each would have a property therein, still the probability of such an occurrence is less than that there should be two countenances that could

not be discriminated. The permanent endurance of words is obvious by comparing the works of ancient authors with other works of their day; the vigor of their words is unabated; the other works have mostly perished. It is true that property in the order of words is a mental abstraction, but so also are many other kinds of or party; for instance, the property in a stream of water, which is not in any of the atoms of the water, but only in the flow of the stream. The right to the stream k not the less a right - property, either because it generally belongs to the riparian proprietor, or because the remedy for a violation of the right is by Action on the case, instead of detinue or trover.

4. It is now time to turn to the facts of the case giving rise to the present appeal. The case of the plaintiff as disclosed in paragraph (6) of the plaint is in the following terms:

(6) the plaintiffs aver and assert that by the publication of the said date-pads hero was the first and bold attempt by the plaintiff to print such attractive artistic date-pads in various colours and designs and that they have a copyright therein.

It will be observed that copyright is claimed in the date-pad which is prepared in various colours and designs as regards the infringement of the. Part of the respondents-defendants, the relevant averments in paragraphs 9 and 14 of the plaint are in the following terms:.(9) under the circumstances, the defendants got prepared and printed similar date-pads as per layout, size, shape, cutting, printed matter, and configuration of the date-pads of the plaintiff for samvat year 2029.

(14) if the defendants are allowed to print and/or publish and/or sell and/or put in market such date pads which bear almost an exact imitation, sets of the date pads and/or colourable imitation of the same, the plaintiff will be put to irreparable injury for which there will be no effective remedy by way of compensation....

In other words, the grievance seems to be that the defendants should not be permitted to place in the market date-pads similar in layout, size, shape, cutting, printed matter etc. In the plaint no grievance is made that any of the decorative pieces, portraits or pictures prepared on their behalf or at their instance by Kanu Desai have been copied by the defendants or that there is any piracy in regard to

art of Kanu Desai in any of those ornamental drawings, pictures or portraits.

5. It will be recalled that it is settled position in law that no copyright can subsist in an idea and there cannot be any infringement in respect of any idea. Yet what the plaintiff says in his evidence makes interesting reading from this point of view. Says the plaintiff under cross-examination:

The breach of copyright consists in borrowing the idea of putting appropriate pictures on particular dates. Beyond that, there is no breach in the pictures on the dates shown by me above. According to me, the defendants have borrowed the idea of putting such pictures from our date-pads.

There cannot be a copyright in the idea of placing the picture of a national leader or a deity on a date-pad. It is not the grievance of the appellant-plaintiff that there is a piracy of the art embodied in any of these pictures or portrait is. Further onwards the plaintiff has this to say:

I agree that the pictures are not same but they are similar.

What sheds considerable light on this evidence is the evidence of P.W. 2 Kanubhai Desai, who appears to be a well-known artist of long standing. This is what he has to say in the course of his evidence:

I claim my copyright in the very placing of the frame round the picture on the date-pad.

This will again show that the impression persists with the plaintiff and the witness that copyright can subsist in regard to an idea as to whether a picture or portrait should be printed in the middle of a date-page. Proceeding a little further he has deposed that the portraits of political leaders drawn by him were prepared by him either from his own impression or from the photograph of the person concerned. In fact according to him excepting the pictures of Jawaharlal Nehru, the rest were prepared by him from the photographs. He also admits that the pictures of mythological personalities and avthar published by the defendant in his date-pads are not identical as those drawn by me, but those of the defendant are with some difference. Now, his evidence also has a great significance from the point of view

of what he does not say. What I mean is that he does not say that any of the pictures or portraits utilized by the defendants are copied from the portraits or pictures prepared by him or that the work utilized in the defendants date-pad is a piracy of his Article All the while emphasis is on the user of photographs and paintings on the date-pads and not on user of the portraits or pictures copied from the pictures and portraits prepared by kanu desai by stealing his Article The complaint is about the theft of the idea to use portraits and not the theft of the Article Of kanu desai. But even in regard to the idea it has had to be conceded by kanu desai that the pictures and portraits which were utilized by the defendants in the date-blocks he proposed to publish in S.Y. 2029 were being utilized by the defendants in the earlier date-pads prepared by them much before s, y. 2021. This is what he has to say:

It is true that the portraits, and pictures appearing on the defendants date pads have also been printed on date-pads earlier than S.Y. 2021.

Be it realised that S.Y. 2021 has a significance because it is the case of the plaintiffs that they started giving a shape to their idea to use their portraits and pictures in the date-pads in S.Y. 2021 and it is the evidence of Kanu Desai that he did so in S.Y. 2021. The admission of kanu desai that even prior to S.Y. 2021 not only others but the defendants were employing this idea in the date-pads manufactured by them is a matter of considerable significance under the circumstances.

6. Now, what holds true of pictures and portraits and symbols also holds true of decorative pieces which are printed on the different pages of the date-pad of the plaintiff. Here also it is not the case of the plaintiff that any of the decorative pieces prepared by kanu desai has been copied by the defendants. Nor does kanu desai himself say that his art reflected in those decorative pieces has been stolen or that any infringement in respect of this decorative pieces has taken place. Again, so far as the border is concerned, on every page of the date-pad there is a border in different colour. No copyright is claimed in the colour concerned. Nor in the fact that a border is made. Besides, the colours used by the defendants in their date-block are different and there is also a decorative border which runs along side with

the coloured border. Turning now to the proverbs, surely there cannot be any copyright in the idea of using proverbs on the different pages of the date-pad? Nor is such a copyright claimed. The proverbs were not invented by the plaintiff or by kanu desai. Nor is the plaintiff in a position to contend that there was any special scheme in relation to the user of proverbs on different dates. No such special scheme is pleaded in the plaint or disclosed in the evidence. One can conceive of some justification for the grievance if it was the case of the plaintiff that by the investment of his genius and labour he had used particular proverbs on particular pages with some significance. Or it might have been shown that there was some significance in the order in which the proverbs were placed or in the selection of the proverbs. Such is not the case of the plaintiff. This is what the plaintiff has to say in his evidence:

We have not claimed any copyright in any of the proverbs used by us it is true that we have utilised the proverbs old and new.

What is more, it is admitted by the plaintiff that even the idea of use of the proverbs was very old and there is nothing new or original in it. Says the plaintiff further onwards:

The proverbs are used by other persons in newspapers, periodicals, books etc. It is true that different proverbs are used on different pages on both the sides.

So also plaintiffs witness No. 2 Kanubhai Desai has this to say in this connection:

It is true that in the date-pad of the plaintiff, the arrangement about the month, the date, the day, the Muslim and the Jarthos days and the proverbs are similar to other date-pads which were in existence earlier than the date-pad of the plaintiff. The placing of the vikram month, the tithi and the day on the left and the placing of the month, date and the day of the gregorian calendar on the right is not new. It is possible that the order in which the month, the day, the date (both Gujarati and English) and the Muslim and the parsi dates, the proverbs and the year are placed has been common to date-pads published before the date-pad of the plaintiff.

It appears that sun-rise and sunset were indicated in the date-pad devised by the plaintiff. But here also the plaintiff admits that it was not an original idea of his but that they were being used by others even earlier. So also he has to admit that the showing of the month, date etc. In Gujarati and English as also the Mohammedan and parsi dates are all features of a calendar-pad which are being used from a very long time and that it was not for the first time that this idea was implemented by them in relation to a date-pad. The following extract from his deposition may be quoted in this connection:

Sun rise and sunset might have been shown in the earlier date pads. It is also true that the month, the date and the day might have been shown in Gujarati and English in earlier calendars. So also, the Mohammedan dates. So also, the proverbs and the religious days might have been shown in some earlier calenders.

Then a reference to another feature of the date-pad, namely, that there are symbols or pictures showing the significance of a particular day, for instance, for a sankranti day there is a picture of a boy flying kite. On ramnavmi day there is a picture of the deity of Shree Ram. In regard to these features also it has been admitted by the plaintiff that it is not for the first time that he started using these pictures on his calendar-pad and that this practice was in vogue since long. Says the plaintiff:

It is true that there is a picture of Shree Ram on Ramnavmi. So also, in exh. 201 of S.Y. 2019, 170 of S.Y. 2019, exh. 168 of S.Y. 2017 etc. it is true that in earlier calendars there are pictures showing the significance of particular days, as for example Uttarayan or the Gandhinirvan.

A very small point was also sought to be made in regard to the place where the pictures were placed. But here also the plaintiff had to admit that the systems adopted by the defendants was different from the system adopted by him as is shown by the following extract from his testimony:

It is true that the picture of moon is on the left hand side in the defendants date-pad and it is in the centre in the plaintiffs date-pad. It is true that the plaintiff had used the pictures consistently in the centre while the defendant has used the

pictures either on the right side or on the left side.

In my opinion, even if it was otherwise, it would have made no difference and the plaintiff could not have lawfully made any grievance about it.

7. Then we turn to the shape of the date-pad of the appellant-plaintiff. In a way it is not necessary to consider this aspect because the shape of the defendants date-pad is altogether different. The defendants date-pad has a round shape with a small protrusion at the bottom it will be recalled that the shape of the plaintiffs date-pad is that of alotus turned up side down. It must be realised that we are not investigating a complaint as regards a passing off Action. We are considering the question as regards the infringement of a copyright. It is also not established that the design or shape of an inverted lotus was of an original artistic creation of Kanu Desai and that it was never used in calendars any where in India previously. Besides, there cannot be a copyright in a shape. It will not fall within the description of an original artistic work the case of the plaintiff is that the date-block falls within the description of artistic work as denned in Section 2(C)(i) or 2(c)(iii). Now, the block as a whole cannot fall under Section 2(c)(i) for it is neither a painting nor a sculpture nor a drawing nor an engraving nor photograph it is doubtful whether it would fall within the description of work of artistic crafts manship within the meaning of Section 2(c)(iii). We will examine this aspect in a moment. But so far as the shape is concerned, the design by itself cannot be the subject-matter of copyright though it can be the subject-matter of a design under the designs Act. Sub-section (2) of Section 15 provides that in a design which is capable of being registered under the Indian patents and designs Act, 1911, no copyright can be claimed. This is the view which the learned trial judge has taken and in my opinion rightly. Sofar as take design is concerned, it can be the subject-matter of registration under the designs Act. It would fall under the definition of design within the meaning of design as defined by Section 2(5) of the designs Act, inasmuch as a design means only features or shape, configuration, pattern or ornament applied to any article by any industrial process or means, whether manual, mechanical or chemical, separateor combined. In the present case this design of the date-pad has been obtained by application of the process of dye-cutting it was, however, argued by the Learned Counsel for the appellant-plaintiff

that the date-block taken as a whole should be considered to be a work of artistic craftsmanship. I have already dealt with the different features of the date-block and have expressed the opinion that no copyright can be claimed in regard to any of the features separately or in regard to the user of these features in relation to a date-block. It is difficult to comprehend how a copyright can be claimed by viewing the date-pad as a whole which consists of the separate features combined together in the project it is also doubtful whether it can be said to be a work of artistic crafts manship. It must be realised that so far as Clause (i) of Sub-section (2)(c) is concerned, a paintings culpture, drawing, engraving or photograph would fall within the description of artistic work whether or not any such work possessed artistic quality. This qualification, however, does not apply to second and the third clauses the product must be a work of artistic craftsmanship. Now, at the highest, all that seems to have happened is that the plaintiff borrowed the idea from Kanu Desai and with his collaboration incorporated pictures, portraits decorative pieces prepared by him in the date-block devised by him. The entire date-block is not even the product of kanu desai. Nor is it the product of the plaintiff. It is not their case that they arc the joint authors. The essential purpose of the copyright Act appears to be to protect an author and an artist from the reproduction, of his work. Which is the work of Kanu desai which is being reproduced by the defendants? This question is posed because it is nobodys case that the plaintiff himself is either an artist or an author of this product. Which is the product of artistic craftsmanship of Kanu Desai in respect of which copyright is being claimed? No prototype of such a date-block was ever prepared by Kanu Desai. All that he did was that he collaborated with the plaintiff and gave certain ideas to the plaintiff and he permitted the plaintiff to use his art as reflected in the various paintings, pictures and decorative pieces prepared by him. So far as these pictures, paintings and drawings are concerned, it is nobodys grievance that the art of Kanu Desai has been copied. As observed earlier, the grievance seems to be that similar pictures were incorporated by the defendants. But then it is also shown by the record that all the pictures were being used by calendar manufacturers since long before 2021. It is not shown to be an original idea or original product. There is nothing peculiar or special in incorporating all the pictures in the date-block and in the design. What is the product of artistic craftsmanship in respect of which copyright

is being claimed? It is not necessary to refer to various passages from that copyright Act, but it is clear that the copyright Act is concerned with the reproduction of either the painting sculpture, drawing, engraving or photograph or architectural work of art or product of artistic craftsmanship or a literary work of an author from being reproduced. It is not concerned with the commercial production of commercial articles with the help of idel is borrowed from an artist. The purpose of the copyright Act is not to prevent rival manufacturers form using the same idea or to prevent competition between them. It is not the case of the appellant-plaintiff that this is a literary, dramatic, musical or artistic work as denned in Section 2(y). It is his contention that it is an artiste work. The production itself is not the outcome of either the artistic urge or the artistic genius of Kanu Desai. The artistic genius is reflected only in the paintings, pictures and decorative pieces prepared by him about which no grievance has been made and in respect of which there is no theft of his art.

8. In the view that I am taking, the plaintiff has failed to establish that he has acquired copyright in respect of either the date-pad or in any of the features claimed by him or that there is a violation in respect of these features on the part of the defendants by placing on market date-pads similar to the one placed on the record of this case. Under the circumstances, it is not necessary to consider the other points raised in the course of the arguments, I will however briefly refer to them and indicate my opinion thereon for the sake of completeness of the judgment. It appears that the learned trial judge has taken the view that the plaintiff firm is not the same firm which is said to have acquired the copyright from artist kanu desai. Now, it appears that originally there were four partners in the plaintiff firm, namely, Jayanlilal, his brother Shantilal and the two sons of Jayantilal, namely, dependra and Jayant. Shantilal retired from the firm on December 31, 1967 and his wife ashumati joined as a partner in his place. A new document, ex. 254, was executed between the new partners on march 25, 1968. This clearly shows that whatever rights had been acquired by the firm before the retirement of shantilal and had subsisted on the date of his retirement continued to vest unto the firm. The mere retirement of shantilal makes no difference in the legal position. If, therefore, I had accepted the contention of the plaintiff that he had acquired a copyright and that his copyright, had been infringed by the defendants, I would

have decided this issue in his favour. So also in point regarding assignment of the copyright has been raised by the defendants and the trial court has taken a view in favour of the defendants. Reliance has been placed by the plaintiff on document ex. 60. This is a document executed by kanu desai in favour of the plaintiff and therein it has been clearly slated in paragraph 9 that the copyright in regard to the date-pad would vest upto the plaintiff. There is sufficient compliance with section 18 of the copyright Act and, in my opinion, if kanu desai had any copyright, the plaintiff can claim protection in regard to the said copyright as an assignee from the plaintiff. It is not necessary to consider the question as to whether copyright requires to be registered. It seems that the Madhya Pradesh High Court has made an observation in the course of its judgment in Mishra Bandhu Kanyalaya and Ors. v. Shirantanlal Koshal : AIR 1970 MP261 to the affect that under the copyright Act of 1957 a work is required to be registered. Reliance has been placed in this connection on the provisions contained in Sections 13 and 45 of the copyright Act. On a perusal of these provisions it is evident that neither Section 13 nor Section 45 enjoins that a copyright must be compulsorily registered. The view taken by the Madhya Pradesh High Court is based on some misconception. Basides, the point whether or not a work requires to be registered under the copyright Act was not directly in issue before the Madhya Pradesh High Court and it is merely an obiter dicta. In my opinion, there is no substance in the contention and I am fortified in the view that I am taking by a decision of Calcutta High Court in Satsang and Anr. v. Kiron Chandra Mukhopadhyay and Ors. .

In the result, there is no substancein th : AIR1972 Cal533 e appeal. It fails and is dismissed with costs.