

Madras High Court

Mr.B.Pradeep vs Mr.K.Thirugnanam on 27 November, 2017

C.S.No.38

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 01.02.2023
Pronounced on 24.05.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.S.No.38 of 2020
(Comm. Suit)

Mr.B.Pradeep
Proprietor of Diya Movies,
66/70, Palani Andavar Koil Street,
Vadapalani, Chennai - 600 026.

... Plaintiff

Vs.

1.Mr.K.Thirugnanam,
Proprietor of 24Hrs Productions,
Kodhandapani Legacy, Gatala Towers,
2nd Floor, 75 Arcot Road,
Saligramam, Chennai - 600 093.

2.Raviprasad Film Labs Pvt. Ltd.,
No.8-11, VOC Main Road,
Kodambakkam, Chennai - 600 024.

... Defendant

Civil Suit filed under Order VII Rule 1 of Civil Procedure
1908 and Order IV Rule 1 of O.S. Rules, 1956 read with Sections 18,
19A, 51, 55 & 62 of the Copyright Act, 1957 and the Copyright
(Amendment) Act, 2012, and Section 10 of the Specific Relief Act, 19

<https://www.mhc.tn.gov.in/judis>

Page No. 1 of 22

C.S.

read with Section 7 of the Commercial Courts, Commercial Division and
Commercial Appellate Division of High Courts Act, 4 of 2016, to grant
Judgment and Decree on the following terms:-

a) declaration declaring that the plaintiff is the sole and absolute
owner of the rights to dub the Tamil cinematograph film

“PARAMAPADHAM VILAYATTU” into Hindi and other north Indian languages;

- b) direct the defendants to forthwith deliver the materials pertaining to the Tamil cinematography film “PARAMAPADHAM VILAYATTU”, a list whereof is mentioned in Schedule – A to the plaint;
- c) granting a permanent injunction restraining the first defendant his men, agents, successors-in-business, through or under him, from alienating, releasing, exhibiting, distributing, assigning, transferring, selling, offering for sale and otherwise using in any manner whatsoever, the rights to dub the Tamil cinematography film “PARAMAPADHAM VILAYATTU” into Hindi and other north Indian languages to any third-party in any manner whatsoever;
- d) for costs; and
- e) for such other and further reliefs as the nature and circumstances of the case may require and thus render justice.

<https://www.mhc.tn.gov.in/judis>
Page No. 2 of 22

For Plaintiff : Mr.Arun C Mohan

For D1 : Mr.V.Ramamurthy

JUDGMENT

The present Civil Suit has been filed by the plaintiff for the following reliefs:

(a) For a declaration that the plaintiff is the sole and absolute owner of the rights to dub the Tamil cinematography film “PARAMAPADHAM VILAYATTU” into Hindi and other north Indian languages.

(b) For a direction to the defendant to forthwith deliver the materials pertaining to the subject film, a list whereof is mentioned in scheme-A to the plaint

(c) For Grant of a permanent injunction restraining the first defendant his men, agent, successors-in-business, assigns, representatives or any persons claiming through or under him, from alienating releasing, exhibiting, distributing, assigning, transferring, selling, offering for sale and otherwise the rights to dub the subject film into Hindi and other North Indian languages to any third party in any manner whatsoever

(d) For costs

(e) For such other and further reliefs as the nature and circumstances of the case may require ad thus render justice.

_____ <https://www.mhc.tn.gov.in/judis> C.S.No.38 of 2020

2. The plaintiff claims to have obtained dubbing rights in a Tamil cinematograph film named “PARAMAPATHAM VILAYATTU” from the first defendant in Hindi and other North Indian languages. The said film has been directed by the first defendant.

3. It is case of the plaintiff that the said Tamil Film is complete and is ready for commercial release. However, the first defendant has refused to part with the necessary materials for the plaintiff to exploit the aforesaid dubbing right in Hindi and other North Indian languages.

4. It is the specific case of the plaintiff that first defendant assigned, transferred, conveyed and granted the sole and exclusive dubbing rights over the subject film in Hindi and other north Indian languages to the plaintiff for a consideration of Rs.15,00,000/- which was paid in two instalments by the plaintiff to the first defendant.

5. The first defendant also admits to have received the aforesaid amount of Rs.15,00,000/-. However according to the first defendant, the aforesaid amount of Rs.15,00,000/- was only a part of the advance and _____ <https://www.mhc.tn.gov.in/judis> C.S.No.38 of 2020 since the plaintiff did not come forward to pay the balance, there was no assignment.

6. The first defendant has however vide Ex.P1 Letters dated 27.11.2017 addressed to the second defendant and six others, acknowledged that the first defendant has assigned dubbing rights to the plaintiff.

7. The second defendant has also addressed Ex.P2 Letter dated 13.12.2017 to the plaintiff confirming the receipt of a Letter dated 25.11.2017 of the first defendant regarding assignment of the dubbing rights to the plaintiff.

8. The plaintiff therefore issued Ex.P4 Legal Notice dated 19.12.2019 to the first defendant to furnish the required documents and material for the plaintiff to exploit the right.

9. The first defendant vide Ex.P5 Reply dated 14.01.2020 to Ex.P4 Legal Notice dated 19.12.2019 has stated that the plaintiff has assigned _____ <https://www.mhc.tn.gov.in/judis> C.S.No.38 of 2020 the dubbing rights over the subject film to said Manish Shah. The first defendant has filed Ex.D1 Deed of Assignment of Dubbing Right dated 26.04.2018 assigning the dubbing right in favour of one Manish Shah. The plaintiff has however failed to implead the latter as a defendant.

10. It is the contention of the plaintiff that the first defendant has assigned the rights to the plaintiff to dub the subject flim to Hindi and other North Indian languages after receiving full consideration of Rs.15,00,000/-. After, the completion of flim making, the first defendant failed to deliver the material pertaining to subject flim.

11. The first defendant denied the existence of any agreement or undertaking between the parties and claimed that no documents were executed in favour of the plaintiff.

12. The first defendant has stated that the plaintiff was a financier who provided financial assistance to the first defendant for production of the subject film and obtained signatures from the first defendant after receiving an initial advance of Rs.15,00,000/-. According to the first defendant, <https://www.mhc.tn.gov.in/judis> C.S.No.38 of 2020 defendant, dubbing rights for the subject film was agreed between them for a total consideration of Rs.1,50,00,000/- and not for a consideration of Rs.15,00,000/- as was alleged.

13. However, in Ex.P5 Reply dated 14.01.2020 to Ex.P4 Legal Notice dated 19.12.2019, the first defendant has stated that for assigning the dubbing rights to the plaintiff, the plaintiff was to pay to the first defendant, a total consideration of Rs.1,32,00,000/- and an amount of Rs.32,00,000/- towards advance.

14. The case of the first defendant is that the first defendant had agreed to assign the aforesaid copyright in favour of the plaintiff on receipt of the advance amount of Rs.32,00,000/-.

15. However, the plaintiff paid only a sum of Rs.15,00,000/- towards advance but failed to pay the balance advance of Rs.17,00,000/- out of Rs.32,00,000/-.

16. It is further stated by the first defendant that since the plaintiff failed to pay the balance amount of Rs.17,00,000/- towards the advance of <https://www.mhc.tn.gov.in/judis> C.S.No.38 of 2020 Rs.32,00,000/- and in all a sum of Rs.1,17,00,000 [Rs.1,32,00,000 – Rs.15,00,000] towards consideration, there was no assignment.

17. The explanation for giving letters to the third party that there was a valid assignment of dubbing rights to the plaintiff, it was stated that it was the industry practice to extract such letters when amounts are lent by film financiers like the plaintiff.

18. It is submitted that the plaintiff initially came forward as a money lender and later evinced interest to acquiring dubbing rights. However, the plaintiff failed to pay the amounts that was agreement upon.

19. It is submitted that since the plaintiff failed to pay the balance advance amount as was orally agreed and the total consideration, the dubbing right in Hindi was sold to a third party named Manish Shah.

20. On 21.03.2022, the following issues were framed by this Court:-

i. Whether the first defendant assigned the dubbing rights for the Hindi version of PARAMAPATHAM <https://www.mhc.tn.gov.in/judis> C.S.No.38 of 2020 VILAYATTU movie in favour of the plaintiff? ii. Whether the plaintiff is entitled to a declaration that he is the sole and absolute owner of rights in respect of the Hindi version of the movie?

iii. Whether the suit is liable to be dismissed for non-

joinder of a necessary party?

iv. Whether the first defendant has infringed the rights of the plaintiff by selling dubbing rights in Hindi and other north Indian languages of the movie PARAMAPATHAM VILAYATTU to and in favour of one Mr.Manish Shah vide deed of assignment dated 26.04.2018?

v. Whether the plaintiff is entitled to the reliefs prayed for?

vi. Whether the parties are entitled to any other reliefs?

21. The second defendant has been set exparte. Both the plaintiff and the first defendant have dispensed with oral evidence. On behalf of the plaintiff, a proof affidavit was filed by the plaintiff himself. The plaintiff has marked Exs.P1 to P5 as detailed below:-

Sl. No.	Ex. No.	Date	Nature of the documents
1	Ex.P1	27.11.2017	Letters created by the plaintiff
2	Ex.P2	13.12.2017	Letter created by the plaintiff
3	Ex.P3	-	Screen Shot of Social Media posts

announcements pertaining to the release dates of the subject film 4 Ex.P4 19.12.2019 Legal Notice issued by the plaintiff to the _____ <https://www.mhc.tn.gov.in/judis> C.S.No.38 of 2020 Sl. Ex. Date Nature of the documents No. No. first defendant 5 Ex.P5 14.01.2020 Reply Notice issue by the first defendant to the plaintiff

22. On behalf of the first defendant, the first defendant himself filed a proof affidavit and has marked Ex.D1 as detailed below:- Sl. Ex. No. Date Nature of the documents No.

1 Ex.D1 26.04.2018 Deed of Assignment between 24Hrs Production and Manish Shah

23. I have considered the arguments advanced by the learned counsel for the plaintiff and the first defendant. I have also perused the Complaint and the Written Statement of the first defendant. I have also perused the Proof Affidavit and the Written Arguments and the Documents marked as Exhibits.

24. Although the Court has framed the above mentioned issues, the real issues that arise for consideration in the present suit are as follows-

i. Whether the suit is suitable to be dismissed for non- _____ <https://www.mhc.tn.gov.in/judis> C.S.No.38 of 2020 joinder of a necessary party?

ii. Whether there was a valid agreement/contract between the plaintiff and the first defendant? iii. If so, whether under the contract there was a valid assignment of dubbing rights in Hindi and other

North Indian Languages by the first defendant to the plaintiff for the Tamil Film “PARAMAPADHAM VILAYATTU” directed by the first defendant? iv. Whether the amount of Rs.15,00,000/- paid by the plaintiff to the first defendant was towards full consideration for such assignment of dubbing rights?

v. Whether the plaintiff is entitled for the relief as prayed for or whether the plaintiff is entitled for to any other alternate relief?

25. The case of the plaintiff is that the plaintiff has paid full consideration of Rs.15,00,000/- towards the assignment of the dubbing rights in two instalments of Rs.5,00,000/- and Rs.10,00,000/- to the first defendant. Whereas, according the first defendant, the plaintiff has paid only a part of the amount towards advance. Since the balance towards advance was not paid, the rights have been assigned to a third party named Manish Shah vide Ex. D1 Deed of Assignment dated 26.04.2018.

26. The plaintiff has been informed by the first defendant about execution of Ex.D1 Deed of Assignment dated 26.04.2018 in Ex.P5 Reply dated 14.01.2020 to Ex.P4 Legal Notice dated 19.12.2019. However, the _____ <https://www.mhc.tn.gov.in/judis> C.S.No.38 of 2020 plaintiff has not impleaded the said Manish Shah in whose favour Ex.D1 Deed of Assignment dated 26.04.2018 has been executed by the first defendant.

27. However, non impleading of the said Manish Shah to whom the first defendant has assigned the dubbing rights vide Ex.D1 Deed of Assignment dated 26.04.2018 cannot be said to be fatal as the plaintiff has admittedly paid a sum of Rs.15,00,000/- which has not been denied by the first defendant. Therefore, Issue No.(i) is answered in favour of the plaintiff.

28. A reading of the Plaint, Written Statement and perusal of the Exhibits marked by the plaintiff and the first defendant indicates that there was an oral agreement between the plaintiff and the first defendant to assign the dubbing rights over the aforesaid Tamil Film “PARAMAPADHAM VILAYATTU” in favour of the plaintiff in Hindi and other North Indian Languages.

29. Since an amount of Rs.15,00,000/- was received by the first _____ <https://www.mhc.tn.gov.in/judis> C.S.No.38 of 2020 defendant from the plaintiff and the terms of arrangement/agreement was not reduced in writing, it has to be construed that there was only an oral contract between the plaintiff and the first defendant. Issue No.(ii) has to be therefore answered in favour of the plaintiff.

30. Section 18 of the Copyright Act, 1957 deals with recognition of the right to have the copyright assigned to an assignee. Section 18 of the Copyright Act, 1957 reads as under:-

Section 18: Assignment of copyright

1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole of the

copyright or any part thereof: Provided that in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence.

2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of copyright and the provisions of this Act shall have effect accordingly.

3) In this section, the expression “assignee” as respects the assignment of the copyright in any _____ <https://www.mhc.tn.gov.in/judis> C.S.No.38 of 2020 future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence.

31. Though the first defendant in Ex.P1 Letter dated 27.11.2017 has acknowledged that the defendant has transferred the “Sole and Exclusive Dubbing Rights” for the above said film in Hindi and all North Indian Languages for the entire world including India and Overseas for a perpetual period of 99 years to the plaintiff, the fact remains that no assignment deed has been signed between the plaintiff and the first defendant.

32. Execution of an Assignment Deed/ Agreement is a sine qua non under Section 19 of the Copyright Act, 1957. The assignment deed should also specify the consideration that is payable and the period of assignment. Section 19 of the Copyright Act, 1957 reads as under:-

Section 19:Mode of assignment –

1) No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorised agent.

2) The assignment of copyright in any work shall identify such work, and shall specify the rights assigned and the duration and territorial extent of _____ <https://www.mhc.tn.gov.in/judis> C.S.No.38 of 2020 such assignment.

3) The assignment of copyright in any work shall also specify the amount of 3[royalty and any other consideration payable], to the author or his legal heirs during the currency of the assignment and the assignment shall be subject to revision, extension or termination on terms mutually agreed upon by the parties.

4) Where the assignee does not exercise the rights assigned to him under any of the other subsections of this section within period of one year from the date of assignment, the assignment in respect of such right shall be deemed to have lapsed after the expiry of the said period unless otherwise specified in the assignment.

5) If the period of assignment is not stated, it shall be deemed to be five years from the date of assignment.

6) If the territorial extent of assignment of the rights is not specified, it shall be presumed to extend within India.

7) Nothing in sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) or sub-section (6) shall be applicable to assignments made before the coming into force of the Copyright (Amendment) Act, 1994.

8) The assignment of copyright in any work contrary to the terms and conditions of the rights already assigned to a copyright society in which the author of the work is a member shall be void.

_____ <https://www.mhc.tn.gov.in/judis> C.S.No.38 of 2020

9) No assignment of copyright in any work to make a cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable in case of utilisation of the work in any form other than for the communication to the public of the work, along with the cinematograph film in a cinema hall.

10) No assignment of the copyright in any work to make a sound recording which does not form part of any cinematograph film shall affect the right of the author of the work to claim an equal share of royalties and consideration payable for any utilisation of such work in any form.

33. However, based on the Proof Affidavit of either of the parties or Ex.P1 Letters dated 27.11.2017, it cannot be concluded that the amount of Rs.15,00,000/- admittedly received by the first defendant from the plaintiff, was towards the full consideration and/or towards the part consideration for the proposed assignment of dubbing rights in Hindi and other North Indian languages.

34. If Rs.15,00,000/- was the full consideration paid and received, the plaintiff would have ensured that that an Assignment Deed was duly executed in accordance with Sections 18 and 19 of the Copyright Act, 1957.

_____ <https://www.mhc.tn.gov.in/judis> C.S.No.38 of 2020

35. The plaintiff cannot feign ignorance of law to claim that there was an assignment even in absence of a execution of an Assignment Deed. Applying the principle of preponderance of probability, it has to be construed that the amount of Rs.15,00,000/- that was paid by the plaintiff to the first defendant was only a part payment of the amount towards advance.

36. In Indian Performing Right Society Vs. Eastern India Motion Association, AIR 1977 SC 1443 : [1977] 2 SCC 820: [1977] 2 SC J 55, it was held that existing work and future rights of music composers and lyricists in their respective 'works' as defined in the Act is capable of the assignment subject to the conditions mentioned in Section 18 of the Copyright Act, 1957, as also in section 19 of the Act which requires an Assignment to be in writing signed by the assignor or by his duly authorised agent.

37. A written deed of assignment as is required by Sections 19 of the Copyright Act, 1957 is a sine non qua. As there is no deed of _____ <https://www.mhc.tn.gov.in/judis> C.S.No.38 of 2020 assignment signed between the plaintiff and the first defendant, it has to be held that there was no assignment of the dubbing rights in favour of the plaintiff in the eye of law in accordance of Sections 18 and 19 of the Copyright Act, 1957.

38. In the absence of a written deed of assignment, the plaintiff cannot be said to have acquired any dubbing rights in the Tamil cinematographic film 'PARAMAPADHAM VILAYATTU'. Therefore, Issue Nos. (iii) and (iv) is answered against the plaintiff.

39. At the same time, the plaintiff is entitled for a restitution of the amount of Rs.15,00,000/- paid in two instalments by applying the principle applicable to Quasi contracts Nemo debet locuspletari ex aliena jactura which means 'No man should grow rich out of another person's loss'.

40. The plaintiff has the right to claim compensation for the _____ <https://www.mhc.tn.gov.in/judis> C.S.No.38 of 2020 assumed loss incurred on account of the money given to the first defendant. Therefore, Issue No.(v) is answered in favour of the plaintiff.

41. The transaction between the plaintiff and the first defendant being commercial in nature, the plaintiff is also entitled to normal commercial rate of interest. Hence, the plaintiff is entitled to interest at 18% per annum on the aforesaid amount of Rs.15,00,000/- from 25.11.2017 being the date mentioned in Ex.P2 Letter dated 12.12.2017 till the date of realization.

42. The plaintiff is therefore entitled for a decree for a sum of Rs.15,00,000/- from the first defendant. On the aforesaid sum of Rs.15,00,000/-, the plaintiff is also entitled to receive simple interest at 18% per annum from 25.11.2017 till the date of realization.

43. In the result, this Civil Suit is partly decreed. The parties to bear their own cost.

_____ <https://www.mhc.tn.gov.in/judis> C.S.No.38 of 2020 24.05.2023 Internet :
Yes/No Index: Yes/ No jen Plaintiff's witness:

Mr.B.Pradeep : P.W.1

First Defendant's witness:

Mr.K.Thirugnanam : D.W.1

Documents exhibited by the Plaintiff:

Sl. No	Ex. No.	Date	Nature of the documents
1	Ex.P1	27.11.2017	Letters created by the plaintiff
2	Ex.P2	13.12.2017	Letter created by the plaintiff

3	Ex.P3	-	Screen Shot of Social Media posts showing announcements pertaining to the release dates of the subject film
4	Ex.P4	19.12.2019	Legal Notice issued by the plaintiff to the first defendant
5	Ex.P5	14.01.2020	Reply Notice issue by the defendant to the plaintiff

Documents exhibited by the First Defendant:

Sl. No	Ex. No.	Date	Nature of the documents
1	Ex.D1	26.04.2018	Deed of Assignment between 24Hrs Production and Manish Shah

<https://www.mhc.tn.gov.in/judis>

C.S.No.38 of 2020

C.S.N., J.
24.05.2023

<https://www.mhc.tn.gov.in/judis>

C.S.No.38 of 2020

C.SARAVANAN, J.

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Pre-Delivery Judgment made
in
C.S.No.38 of 2020
(Comm. Suit)

24.05.2023

<https://www.mhc.tn.gov.in/judis>