

## **Newspapers Ltd. vs Ratna Shankar Prasad on 4 April, 1977**

**Equivalent citations: AIR1977ALL356, AIR 1977 ALLAHABAD 356**

**Author: R.B. Misra**

**Bench: R.B. Misra**

### **JUDGMENT**

R.B. Misra, J.

1. These three appeals are directed against the common judgment and decrees of the First Addl. District Judge, Allahabad dated 20th of April, 1974 in two connected suits and arise in the following circumstances.
2. Late Sri Jai Sankar Prasad was a voracious writer. He has written dramas, novels, Essay, stories and poetry. By 16th of Dec. 1936 he had completed 24 books, on which date he entered into an agreement with the Newspapers Ltd. Allahabad a public limited company, carrying on business of printing, publishing and bringing out a Hindi Daily Newspaper known as 'Bharat'.
3. Under the agreement it was stipulated that Newspapers Ltd. at its own risk and expense would produce and publish the 24 books mentioned in the agreement and any other book that might be written, compiled or edited by the author in question; that during the legal term, of restricted copyright the publishers shall have the exclusive right of producing and publishing the works and the author will not during the continuance of this agreement publish or permit to be published any other edition, translation or abridgement or extract of the works and the copyright of the works shall remain the property of the author. As a consideration of this agreement the publisher agreed to pay to the author a royalty of 20 per cent of the advertised retail price on all copies sold during the legal term of unrestricted copyright. The account was to be made up annually to 31st March and delivered on or before July 1st and settled in the ensuing September.
4. The agreement dated 16th of December 1936 was entered at a time when the Imperial Copyright Act of 1911 and the Indian Copyright Act 1914 based on the Act of 1911 were in force. The said Acts were, however, subsequently repealed by the Copyright Act No. XIV of 1957, which came into force with effect from 21st of January 1958.
5. Sri Jai Shankar Prasad died on 15th of November 1937 leaving behind his son Sri Ratna Shankar Prasad. Sri Ratna Shankar Prasad had been accepting the royalty after the death of his father for sometime but by notice dated 21st of July 1957 he asked the Newspapers Limited to stop publication

and sale etc. of the books of his father. By another notice dated 22nd of June 1964 he claimed to be the absolute holder of the Copyright. To give strength to his claim, Ratna Shankar Prasad also moved 25 applications for the registration of his name as a copyright holder. The Deputy Registrar, Copyright, New Delhi, allowed his application by Ms order dated 22nd of December 1971 and directed the entry of his name, but on appeal by the Newspaper Limited the order of the Deputy Registrar, Copyright dated 22nd of December, 1971 was set aside by the Copyright Board.

6. The difference as between the parties culminated in two suits, one being Suit No. 4 of 1972 filed by the Newspapers Ltd. Allahabad against Ratna Shankar Prasad and Hindi Pracharak Sansthan; the other was Suit No. 17 of 1972 filed by Ratna Shankar Prasad against Newspapers Ltd. Allahabad, In the former suit the plaintiff, Newspapers Ltd. sought a declaration that they had the exclusive right to bring publication and sale of the entire works of late Sri Jai Shankar Prasad under the agreement dated 16th of December, 1936 and the registration of the copyright in favour of Ratna Shankar is ineffective in exercise of the rights of the plaintiff. There was also a prayer for permanent injunction restraining defendants, their agents, servants and representatives and assigns from printing, publishing and selling the works of late Sri Jai Shankar Prasad and from interfering with the plaintiff's right of printing publishing and selling the works of late Sri Jai Shankar Prasad and from infringing the aforesaid rights of the plaintiff in any other manner.

7. The stand taken by the plaintiff was that late Sri Jai Shankar Prasad transferred his rights of publication and sale of all his existing work and also other work that might be subsequently written, compiled or edited by the author by virtue of the agreement dated 16th of December, 1936. The agreement was for consideration and is binding on the defendant for the legal term of copyright. Thus plaintiffs own and possess exclusive rights of publication, production and sale in all works of late Sri Jai Shankar Prasad during the legal term of copyright and during the legal term of unrestricted copyright and the author has no right to publish or permit to be published any other edition, translation, abridgement or extract of his work without the consent of the plaintiff. The plaintiff had agreed to pay towards consideration the royalty @ 20 per cent of the advertised retail price of each work which they had been paying to the author and after his death to the defendant No. 1 Ratna Shankar Prasad. The plaintiff invested a huge amount for attaining the goodwill in the market for the works of late Sri Jai Shankar Prasad and some of them have also been prescribed as text books upto the standard of University.

8. Under the Copyright Act of 1957 a copyright in a literary work exists during the lifetime of the author and until fifty years from the death of the author. After the death of Jai Shankar Prasad on 15th of November, 1937 his son Ratna Shankar Prasad, defendant No, 1 continued to recognise the plaintiffs in terms of the agreement and he received royalty upto the year 1971. In the year 1964 the defendant No. 1 construed himself to be the absolute holder of copyright in the works of his late father but he subsequently waived his claim by accepting royalty and he did not make any interference into the rights of the plaintiff. Again when some differences accrued in the month of June 1971 between the plaintiff and defendant No. 1 the defendant No. 1 by notice dated 1-7-1971 illegally and wrongly attempted to forbid the plaintiff from printing, publishing, or selling the work of his father to which the plaintiff replied but the defendant No. 1 got his name registered by order dated 22nd of December, 1971. The same was, however, set aside on appeal by the Board of

Copy-rights. The agreement dated 16th December 1936 is not an agreement between the parties relating to the disposition of the reversionary interest and the proviso of Sub-section (2) of Section 5 of the Indian Copyright Act cannot be invoked specially because that Act had already been repealed by Act No. XIV of 1957. The defendant No. 1, however, threatened the plaintiff by his advertisement in the month of October 1971 in Prakashan Samachar to publish the unpublished works of late Sri Jai Shanker Prasad in collaboration of defendant No. 2. Hindi Pracharak Sans-than. Under the circumstances the plaintiff has claimed to file the suit for the reliefs aforesaid.

9. The claim was resisted by defendant No. 1 on various grounds; the main being that the legal term of restricted copyright for the plaintiff ended after the expiry of 25 years of the death of the author, that he had always been the owner of the copyright and had never waived his right by accepting the royalty; that of the four books viz. Indrajai, Imwati, Prasad Sangeet and Kavya Aur Kala Tatha Anya Nibandh written by the author after 16th of December 1936, the book Prasad Sangeet being a compilation of selected poems and Kavya aur Kala tatha Anya Nibandh being the compilation of selected literary essays were not the subject matter and could not be a subject-matter of the agreement dated 16th of December 1936; that the agreement dated 16th of December 1936 was not an assignment of copyright in the 24 books named therein or any future works of the author; that late Sri Jai Shankar Prasad was suffering from tuberculosis for a considerable time prior to his death and he was not in a fit condition to write any literary work for more than one year prior to his death and so the agreement remains inoperative for any future works of the author; that the agreement of 1936 was without consideration; that the Copyright Act of 1914 was in force at the time of the agreement and at the time of the death of the author and as such the rights of the parties would be governed by the Act of 1914; that in view of Section 5 of the Act of 1914 assignments made in favour of the publisher became inoperative and ineffective after 25 years of the death of the author and the reversionary right in the copyright thereafter devolved on defendant No. 1; that the agreement in so far as it purports to have made a disposition of such reversionary interest is null and void. The jurisdiction of the court was also questioned.

10. In suit No. 17 of 1972 filed by Ratna Shankar Prasad against the Newspapers Limited the plaintiff claimed a relief for permanent injunction restraining the defendant Newspapers Limited from printing, publishing or selling any literary works of late Sri Jai Shanker Prasad published or unpublished and to call upon the defendant to render full and complete account of the printing, publishing and sale of the publication of late Sri Jai Shanker Prasad and to pass a decree for such amount as may be found due and also for directing, the defendant to surrender the unsold copies of all the publications of late Sri Jai Shanker Prasad together with all blocks, pictures, manuscript, negative and other things used in connection with the printing and publication of the books. It is not necessary to refer to the pleadings of the parties in detail inasmuch as the defence set up by Sri Ratna Shanker Prasad in Suit No. 4 of 1972 is virtually the plaintiff's allegation in this suit and vice versa,

11. The pleadings of the parties gave rise to a number of issues. The issues in the two suits being similar were taken up and disposed of by the trial court together. The trial court came to the following conclusions on the issues involved in the two suits;

1. The Newspapers Limited has been assigned the copyright of all the works of the Author late Sri Jai Shanker Prasad vide agreement dated 16th December 1936 upto 14th of November 1962 and they had an exclusive right of publication, production and sale of all the works of the author.
2. The agreement dated 16th of December 1936 is legal, valid, binding and is for consideration and effective upto 14th of November, 1962.
3. The provision of Section 5 (2) of the Act, 1914 are applicable to this case and the repeal of that Act has no effect on the rights of the parties.
4. The ingredients of estoppel had not been made out in this case nor has the waiver or acquiescence on the part of the defendant is proved.
5. The agreement in question does not amount to a partial assignment simply because the rights of drama etc. are not given by the author.
6. The order dated 13th July 1972 passed by the Board of Copyrights on the appeal filed by the Newspapers Limited could not be a bar in the decision of the rights of the parties,
7. The agreement dated 16th of December 1936 has the effect of disposition of reversionary interest within the meaning of Section 5 of the Copyright Act of 1914.
8. Ratna Shanker Prasad is entitled to royalty of 15 per cent on text books and 20 per cent on the rest of the books of the author.
9. The accounts of the defendant were furnished to him by the plaintiff upto 31st of March 1973 and as such Ratna Shanker Prasad is not entitled to any accounting.
10. Suit No. 17 of 1972 for accounting was not barred by time.
12. In the result Suit No. 4 of 1972 was dismissed with costs while Suit No- 17 of 1972 was decreed for injunction and the Newspapers Ltd. Allahabad was restrained from printing, publishing or selling any literary work of late Sri Jai Shanker Prasad whether published or unpublished. Other reliefs claimed by the plaintiff were however rejected.
13. The judgment and decree of the First Additional District Judge, Allahabad, gave rise to three appeals. First appeals Nos. 140 and 141 have been filed by Newspapers Limited against the decrees on Suit No. 17 of 1972 and in Suit No. 4 of 1972 respectively and First Appeal No. 153 of 1974 has been filed by Sri Ratna Shanker Prasad against that part of the decree whereby the plaintiff's claim for accounting and mandatory injunction has been dismissed.
14. We first take up Appeals Nos. 140 and 1.41 of 1974. Sri Shanti Bhushan, appearing for the Newspapers Limited contends that the Imperial Copyright Act of 1911 which, was the basis of Indian Copyright Act of 1914, and the Indian Copyright 1914 having been repealed by the Copyright

Act XV of 1957, the rights of the parties would be governed by the New Act of 1957 which came into force with effect from 21st of January 1958 and in view of Section 22 of the Copyright Act of 1957 the Copyright shall subsist in the work published during the lifetime of the author until 50 years from the beginning of the calendar year next following the year in which the author dies, and, therefore, the appellant was entitled to this right until 50 years from the death of the author Sri Jai Shanker Prasad, in view of the agreement dated 16th of December, 1936.

15. Sri Rajeshwari Prasad appearing for the respondent Sri Ratna Shanker Prasad on the other hand argues that the rights of the parties would be governed by the old Act of 19-14, which was in force on the date of the agreement and also on the date of the death of the author. He relies on proviso to Section 5 (2) of the Copyright Act 1914.

16. It would be appropriate at this stage to refer to the relevant provisions of the Act. Section 5 of the Indian Copyright Act 1914 in so far as it is material for the purposes of this case reads as under:

"5 (2) The owner of the copyright in any work may assign the right, either wholly or partially and either generally or subject to limitations, to the United Kingdom or any self governing dominion or other part of His Majesty's dominions to which this Act extends, and either for the -whole term of the copyright or for any part thereof, and may grant any interest in the right by licence, but no such assignment or grant shall be valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorised agent;

Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him (otherwise than by will) after the passing of this Act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author notwithstanding any agreement to the contrary devolve on his legal personal representative as part of his estate and any, agreement entered into by him as to the disposition of such reversionary interest shall be null and void, but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work."

17. Section 3 of the Act of 1914 however contemplates that the term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author and a period of fifty years after his death. Sri Shanti Bhushan relies on Section 3 and contends that even under the old Act of 1914 the copyright was to subsist for a period of fifty years after the death of the author.

18. Section 8 however is subject to the other provisions of the Act and as observed earlier proviso to Sub-section (2) of Section 5 of the Indian Copyright Act of 1914 provides that the copyright was to be operative only for a period of twenty-five years after the death of the author. This overrides Section 3

of the said Act.

19. On an analysis of the aforesaid provisions it is quite clear that if the rights of the parties were to be governed by the Act of 1914 then the copyright was to extend only for twenty-five years after the death of the author. Now the question is whether the present case would be governed by the old Act of 1914 or by the New Act of 1957. Section 79 of the Copyright Act of 1957 is a saving. Sub-section (5) of Section 79 provides:

"Except as otherwise provided in this Act, where any person is entitled immediately before the commencement of this Act to copyright in any work or any right in such copy right or to an interest in any such right, he shall continue to be entitled to such right or interest for the period for which he would have been entitled thereto if this Act had not come into force."

The saving clause also indicates that the rights and liabilities accrued and incurred under the old Act are not to be affected by the New Act.

20. The next contention of Sri Shanti Bhushan is that the legal term does not mean the legal term on the date of the agreement but legal term as extended from time to time by various amendments in the Act. Even assuming that at the time of agreement the legal term for which the copyright could be extended was 25 years after the death of the author but if before the expiry of that period the New Act came into force and extended the period of legal term from 25 years to fifty years, the appellant would be entitled to the benefit of that extended period.

21. The arguments though alluring cannot bear the scrutiny. The whole question hinges upon whether the New Act of 1957 would govern the rights of the parties or that of the Act of 1914. The saving Section 79 Sub-section (5) of the Act of 1957 leaves no room for doubt that the rights of the parties would be governed by the old Act and if that be so, the position under the old Act is quite clear. The legal term on the date of agreement in view of the provisions of Section 5 of the Act of 1914 was only twenty-five years.

22. There is yet another hurdle in the way of the appellant. The author could not have entered into any agreement with the publisher which would have affected the reversionary right of his son Ratna Shanker Prasad as provided by proviso to Sub-section (2) of Section 5 of the Act of 1914, as quoted above. The agreement, to the extent it affects reversionary interest in the copyright except on the termination of that period, is null and void and cannot be given effect to. Considered from any aspect, the appellant's case cannot succeed.

23. This leads to the other Appeal No. 153 of 1974 filed by Ratna Shanker Prasad. By this appeal, Ratna Shanker Prasad wants to have a decree for accounting. The trial court dismissed that part of the claim on the finding that it had already been accounted up to 1973. We have examined the record and we fully endorse the finding recorded by the lower appellate court. That finding is warranted from the various letters exchanged between the parties and the payment made from time to time to the defendant respondent. Likewise the plaintiff is not entitled to relief for mandatory injunction for

the refund of the books and other accessories lying with Newspapers Limited, Allahabad, inasmuch as the Newspapers Limited, Allahabad, had every right to publish the books of the author during the lifetime of the author and till 25 years after his death, For the reasons given above the aforesaid appeal therefore must also fail.

24. We accordingly dismiss all the appeals with costs.