Mt. Savitri Devi vs Dwarka Prasad Bhatya And Anr. on 29 November, 1938

Equivalent citations: AIR1939ALL305

JUDGMENT

Iqbal Ahmad, J.

1. The dispute in the present litigation is about the copyright of a Hindi book named Abhinava Nighantu, a book on the Indian Materia Mediea. The book wan written in the nineties of the last contrary by a resident of Muttra District, named Chaubey Datt Ram, the predecessor-in-title of Savitri Devi, plaintiff-appellant. The first edition of the book was printed and published by Datt Ram in the year 1893 and a second and enlarged edition of the book was printed and published by him in the year 1899. Datt Ram died in the year 1907 leaving Narain Dutt, his son, as his sole legal representative. The suit giving rise to the present appeal was filed by Narain Datt and he prayed for a perpetual injunction restraining the defendants from printing and publishing the book, for accounts and for damages, etc. on the allegation that the defendants had infringed his copyright in the book. Narain Datt died during the pendency of the suit in the Court below leaving a will by which he bequeathed all his properties, moveable and immovable, to Savitri Devi and Savitri Devi was accordingly substituted as plain, tiff in place of Narain Datt.

2. There were two defendants in the suit. Defendant 1 was one B. Kishan Lal who was the proprietor of a press in Muttra called Bombay Bhushan Press, and defendant 2 was "Shridhar Shiv Lai, Gyan Sagar Press," a firm of printers and publishers in Bombay. This firm was sued through one Pt. Janak Prasad Bajpai on the allegation that Janak Prasad had been, appointed receiver of the firm by a Court of law. Kishan Lal died during the trial in the Court below, and his son Dwarka Prasad was substituted in his place. It is a matter of admission that in the year 1929-1930 a fresh edition of the book was printed by Kishan Lal in his press and was published either by him or by defendant 2. The plaintiff's case was that the printing and the publication of this edition constituted an infringement of the copyright that he had in the book. The suit was con-tested by both the defendants mainly on the allegation that Datt Ram had assigned the copyright in the book in favour of Shridhar Shiv Lal, defendant 2, by means of an unregistered sale deed dated 4th September 1905. The defendants therefore maintained that the plaintiff had no copyright left in the book and was not entitled to sue. Both the defendants alleged that Kishan Lal had printed the book in pursuance of an order given by defendant 2 and that the book was published by defendant 2, the assignee of the copyright.

3. The plaintiff denied the alleged assignment of the copyright by Datt Ram and maintained that the sale deed relied upon by the defendants was "fraudulent and fictitious" and "without any consideration." Further, the plaintiff contended that the assignment of the copyright could in law be effected only by means of a registered instrument and as the sale deed relied upon by the defendants

was unregistered, it was inoperative and ineffectual to convey the copyright. The Court below found that the sale deed relied upon by the defendants was executed by Datt Ram and that Its registration was not compulsory. It accordingly held that the copyright in the book was validly assigned by Datt Ram to defendant 2 and on that ground dismissed the plaintiff's suit. On the question as to whether defendant 1 or defendant 2 was the publisher of the 1929.30 edition, the finding of the Court below was that defendant 1 had published that edition. In our judgment t his finding cannot be supported. Janak Prasad was called as a witness in the case and he deposed that the edition in dispute was printed by defendant 1 in pursuance of an order given by him (Janak Prasad) and that defendant 2 was the publisher of the book. The relevant portion of his evidence is as follows:

> ...I had given order for the printing of 2000 copies of Abhinav Nighantu. He (Kishan Lal) had printed these books. I got 1500 books and 500 of the books were given in lieu of the printing charges. B. Kishan Lal also carried on the business of a book-seller.... Kishan Lal was only the printer of the book and not publisher of it. Firm Shridhar Shiv Lal are the publishers of the book.

4. No satisfactory reason was assigned by the learned Judge of the Court below for rejecting this evidence. It appears that on the outer cover of some of the copies of the book printed in 1929-30, Kishan Lal is mentioned as publisher But on the inside cover he is referred to merely as a printer and the firm Shridhar Shiv Lal is mentioned as the publisher of the book Further, on the reverse of the inside cover, there is a notice printed in which it is stated that defendant 2 was the assignee of the copyright in various books from Datt Ram It is also a fact that even on the outer cover of numerous copies, defendant 2 and not Kishan Lal is mentioned as publisher. It is therefore impossible to hold that Kishan Lal and not defendant 2 was the publisher of the edition in dispute. The question is however of no importance for, if the plaintiff is not proved to be the owner of the copyright, it is immaterial as to whether defendant 1 or defendant 2 published the book.

5. This brings us to the consideration of the question whether the sale-deed relied upon by the defendants was proved and whether the copyright in the book was validly assigned by that deed. The sale deed, as stated above, is dated 4th September 1905, and is to be found at p. 27 of the printed record. It purports to have been executed by Pt. Datt Ram and by it copyright in the book in question and 36 other books was assigned by Datt Ram in favour of defendant 2 in consideration of a sum of Rs. 1000. The deed is attested by two witnesses named V.M. Mone, a vakil of Bombay, and Ram Pratap. Mr. Mone was called as a witness by the defendants and he duly proved the execution of the deed by Datt Ram. He also proved a deed of agreement executed by Datt Ram by virtue of which Datt Ram agreed to transfer his copyright in the books referred to in the sale deed to defendant 2. The plaintiff' though given an opportunity to cross-examine the witness did not cross-examine-him and his evidence remained entirely unchallenged and unrebutted at the trial. The Court below was therefore right in holding that the execution of the sale deed) by Datt Ram was proved.

6. It appears that in an earlier litigation between Narain Dutt and Kishan Lal, defendant 1, this sale deed was put forward by Kishan Lal, but the Court held that the-sale deed was not proved. In that case Mr. Mone was not called as a witness. Moreover defendant 2 was not a party to that suit and

further that suit was tried by a Munsif and the suit giving rise to the present appeal was triable by the District Judge. The finding recorded by the Munsif in the earlier litigation is therefore of no avail to the plaintiff. The evidence in the present case shows that after the execution of the sale deed defendant 2 printed and published from time to time 13 or 14 books out of the 37 books, the copyright in which was assigned to defendant 2. This demonstrates that the sale deed was acted upon. It was alleged by the plaintiff that in the year 1921 Narain Datt had a third edition of Abhinava Nighantu printed and published, but there was no satisfactory evidence in support of this allegation. Not a single copy of this alleged edition was produced at the trial and the plaintiff's allegation, in our judgment, remained entirely unsubstantiated.

7. Reliance was placed by the plaintiff on» two letters (Exs. 7 and 8) written by defendant 2 to Narain Datt. It appears from these letters that 1000 copies of a book called Rasraj Sunder were printed by defendant 2 under the orders of Narain Datt. One of the books, the copyright of which was assigned by the sale deed referred to above, is a book named Jasraj Sunder. It was suggested on behalf of the plaintiff that the book Jasraj Sunder was the same book that is referred to in the two letters as Rasraj Sunder. This suggestion appears to us to be well founded. But the explanation offered by Janak Prasad about the two letters was that at the request of Narain Datt he had agreed to print and to supply to Narain Datt 1000 copies of Rasraj Sunder at cost price and this explanation is supported by letter Ex. 8. These letters there are do not in any way show that the sale deed was not acted upon. It is however necessary to examine the contention of the plaintiff that the copyright could be assigned only by means of a registered instrument. In support of this contention reliance is placed on Section 54, T.P. Act, which inter alia provides that a sale in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing can be made only by a registered instrument.

8. It is argued that copyright is an "intangible thing," and therefore it can be assigned only by a registered instrument. In our judgment there is no substance in this contention. There is no doubt abundant authority in support of the assertion that copyright is an intangible thing : vide Holland's Jurisprudence, Edn. 12, p. 213, and Salmond's Jurisprudence, Edn. 6, page 395. But it is equally clear that copyright is moveable and not immovable property, vide Salmond's Jurisprudence, p. 393, and in our judgment Section 54, T.P. Act, has no application to the sale of moveable properties. That this is so is manifest from an examination of the headings and sub-headings of the various chapters of the Transfer of Property Act.

9. Chaptor 2 deals with the "Transfers of Property by act of Parties" and is subdivided into two portions. Sub-heading (A) deals with the Transfer of Property, whether moveable or immovable" and under this sub-heading are Sections 5 to 37. The next sub-heading is with respect to "Transfer of Immovable Property" and under this sub-heading are Sections 38 to 53-A. The heading of Chap: 3 is "Of sales of immovable property" and this chapter comprises Sections 54 to 57. The heading of Ch. 4 is "Of mortgages of immovable property and charges." Similarly Chapter 5 deals with "Leases of immovable property." Chap. 6 provides about "Exchanges" and Ch. 7 deals with "gifts." The headings of Chs. 3, 4 and 5 put it beyond doubt that provision has been made in those chapters only with respect to sales, mortgages and leases of immovable properties. The headings of these chapters stand in special contrast to the heading of Ch. 7 which deals with gifts. By that chapter the

Legislature has made provision not only with respect to gifts of immovable but also with respect to gifts of moveable properties.

10. The Preamble of a statute has always been regarded as a good means of finding out its meaning and the headings prefixed to Sections or sets of Sections in statutes are regarded as Preamble to those Sections and therefore a safe guide in interpreting those Sections: vide Maxwell on the Interpretation of Statutes, Edn. 7, pp. 37 and 44 and Janki Singh v. Jagannath Das (1918) 5 A.I.R. Pat. 398. But the headings or sub-headings cannot either restrict or extend the scope of the Sections when the language used is free from ambiguity. In Section 54 the words "or other intangible thing" are preceded by the word "reversion" and this shows that the words "intangible thing" have been used ejusdem generis with the word "reversion." The word "reversion"is ordinarily used to denote some right in immovable property. It therefore follows that the words "intangible thing" in Section 54 have reference only to immovable property. This conclusion becomes irresistible when one proceeds to consider the terms of Sections 55, 56 and 57, T.P. Act. Sections 55 and 57 deal specifically with sales of immovable property and Section 56 provides about marshalling by subsequent purchaser. The doctrine of marshalling can be applied only when there is a mortgage of immovable properties. If the Legislature had intended to provide for sales of moveable properties also by Chap. 3, one would have expected some provision in that chapter as regards the rights and liabilities of the buyer and seller of such properties, but that chapter is conspicuous by an absence of any such provision. We have, therefore no hesitation in holding that Section 54 has no application to the present case and that the copyright in dispute could be validly assigned by an unregistered instrument.

11. In England copyright is regarded as a "chose in action" : vide Halsbury's Laws of England, Edn. 2, Vol. 4, paras. 785 and 787, and Colonial Bank v. Whinney (1885) 30 Ch. D. 261 at p. 283. It was observed in this case that there being no word to denote incorporeal personal property, the meaning of the "expression chosen in action" was gradually extended for the purpose of denoting it, and Mr. Joshua Williams in his work on 'Personal Property' treats it as including even copyrights and patents.

12. On the basis of these authorities, it was urged by the respondents' counsel that copyright falls within the category of actionable; claims and can therefore in view of the provisions of Section 130, T.P. Act, be assigned by an unregistered instrument. It is doubtful if these authorities will apply in India to "actionable claims" which have been defined by Section 3, T.P. Act, as meaning inter alia.

any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant....

13. Copyright is no doubt beneficial interest in moveable property but the order of the right has actual or constructive possession of the same and therefore copyright hardly comes within the purview of "actionable claim" sis defined by the Act.

14. But the conclusion arrived at by us that copyright can be assigned by an unregistered instrument is supported by the provisions contained in the Acts dealing with copyrights. The first Act that dealt

with such right; was Act 20 of 1847. The right to assign copyright was implied in that Act and though provision was made by Sections 0 and 5 of that Act about entries being made in a book of registry, there was nothing in the Act to suggest that copyright could not be assigned except, by a registered instrument. Till the year 1847, there was no law in this country providing for compulsory registration of documents of transfer though there were regulations that have the option of getting such document a roistered. For the first time in 1864, provision was made by an Act about certain kinds, of transfer being made only by moans of registered instruments, but there was nothing in that Act that made the assignment of copyright compulsorily registrable . Act, 20 of 1847 was replaced by the English Copyright Act of 1911 and certain modifications and additions were introduced in the Act of 1911 by the Indian Copyright Act (3 of 1914). Section 5(2) of the English Act provides about the assignment of copyright by "writing signed by the owner of the right...or by his duly authorized agent."

15. There is no provision in the English Act making the registration of a deed of assignment compulsory. If the Indian Legislature had intended to depart from the provisions of the English Act, one would have expected some provision as to compulsory registration being made by Act 3 of 1914, but there is no such provision in that Act. We have therefore no hesitation in holding that the registration of a deed of assignment of copyright is not compulsory. Accordingly we dismiss this appeal with costs.