

# Nav Sahitya Prakash And Ors. vs Anand Kumar And Ors. on 16 July, 1980

**Equivalent citations: AIR1981ALL200, AIR 1981 ALLAHABAD 200**

## JUDGMENT

K.C. Agrawal, J.

1. These two first appeals arise from the judgments and decrees of the District Judge Sultanpur, dated 30th October, 1974, disposing of two suits Nos. 6 of 65 and 8 of 66.
2. The relevant facts briefly stated are these. Late Sri Ram Naresh Tripathi was an eminent scholar of Hindi and a poet of repute. He wrote a number of books. He was carrying on business at Allahabad in the name and style of Hindi Mandir Prayag. Ram Naresh Tripathi died in January, 1962 leaving behind his three sons and his widow Smt. Udaiwanti devi. On his death, the business was shifted to Sultanpur. Amongst others, one of the books which had been written by late Sri Ram Naresh Tripathi was SAPNA 'Khandkavya'. This book had gained reputation and popularity in the market. It had also been prescribed by the Delhi University as a Text Book for the Degree of Bachelor of Arts.
3. On 7-9-65. Anand Kumar and Jayant Kumar, the two sons of Pt. Ram Naresh Tripathi, brought suit No. 17 of 67 against three defendants. The defendants 1 and 2 were the Printers and Publishers of the book named SAPNA whereas the third defendant was their own brother Basant Kumar. The allegations made in the plaint were that on 25th August, 1965, the defendant No. 1 without any right and consent of the plaintiffs clandestinely got the book printed by defendant No. 2 and dishonestly wrote "Hindi Mandir Prayag" with a view to cheat the public. By having published the said book, the defendants 1 and 2 had infringed the copyright of the plaintiffs of the aforesaid book SAPNA and were liable to make good the loss suffered by them. The allegations made further were that Basant Kumar defendant No. 3 had colluded with defendants 1 and 2 and had given them licence to publish and sell the book SAPNA written by Ram Naresh Tripathi, Defendant No, 3, according to the plaintiffs, had no power or authority to grant licence to the defendants 1 and 2 for publication and sale of the book. On these pleadings, the plaintiffs claimed the relief of injunction, damages and accounting.
4. The suit was contested by the three defendants. Defendants 1 and 2 filed a joint written statement denying that they had committed any breach of copyright. They alleged that on the representation of Basant Kumar, defendant No. 3, that he was the owner of the book SAPNA, that, the defendants 1 and 2 printed and published 3,000 copies. Basant Kumar defendant No. 3, filed a separate written statement and denied that the plaintiffs had any cause of action to bring the suit. According to him, the suit was motivated by dishonest intention. He claimed that defendant No. 1 was a licensee on his

behalf and the impugned publication had been done in good faith. The plea that the suit was not maintainable was also taken.

5. Suit No. 3 of 66 had been filed by the plaintiffs of suit No. 17 of 65 for the same reliefs on similar allegations. They claimed that their father Ram Naresh Tripathi had exclusive copyright in the books SAPNA and PATHIK and other books numbering 30, as mentioned in list A attached to the plaint. Basant Kumar defendant No. 3 had no right to give the licence to print the same to defendants 1 and 2.

6. Suit No. 8 of 66 was also contested on the same lines as the other suit.

7. On the pleadings aforesaid, the trial court framed six issues in suit No. 17 of 65 and four issues in suit No. 8 of 66. Out of these issues, those material for the purpose of the present appeals, are:--

Suit No. 17 of 1965.

1. Whether defendant No. 3 permitted defendant No: 1 to print, publish and sell 3,000 copies of the book in question as alleged in Para 11 of the written statement by defendant No. 1? If so, is the authority for publishing valid?
2. Whether the plaintiffs have right to sue?
3. Whether the defendants have infringed the copyright of the plaintiffs as alleged? If so, effect?

Suit No. 8 of 1966.

1. Whether the plaintiffs and defendant No. 1 are owners of the copyright of the books as alleged?
2. Whether the defendants have infringed copyright of the book in question as alleged? If so, to what amount if any are the plaintiffs entitled to get from all or any of the defendants in the case?
3. Whether the suit is not maintainable?

8. Both the parties filed evidence in support of their respective cases. The trial court held that the defendant Basant Kumar having permitted the printing, publishing and sale of 3,000 copies of the book SAPNA, that defendants 1 and 2 had exceeded their right and had committed infringement of the copyright of the plaintiff. It also found that the plaintiffs had a right to restrain the defendants from printing, publishing and sale of the books. The plea, raised on behalf of the defendants that the suit was not maintainable, as the copyright had not been registered under Section 44 of the Indian Copyright Act, was also repelled. The fact of non-registration of copyright by the plaintiffs, or the original author R, N. Tripathi, according to the trial court, could not operate as a bar to the filing of the present suit. The plea that one co-owner or co-sharer could not bring a suit against another co-sharer for the infringement of copyright was also repelled. On these findings, the trial court

decreed the suit and issued an injunction restraining Basant Kumar from using and licensing the right of printing and publishing the books SAPNA and others. The defendants were directed to render the accounts of books. Thus, the two suits were decreed.

9. Being aggrieved, the defendants filed the present two appeals.

10. First Appeal No. 8 of 75 is directed against the judgment of the trial court decreeing suit No. 17 of 65 whereas the other appeal No. 9 of 75 has been preferred against the judgment and decree of suit No. 8 of 66.

11. The learned counsel for the appellants raised three questions in these two appeals. The first point argued was about the maintainability of the suit. An issue on this question had been also framed by the trial court. The argument was that since Ram Naresh Tripathi did not get his copyright registered, the plaintiffs were not entitled to enforce the same. Reliance had been placed on Section 44 of the Indian Copyright Act (hereinafter referred to as the Act) in support of this argument. This section runs as under:--

"44. Register of Copyrights -- There shall be kept at the Copyright Office a register in the prescribed form to be called the Register of Copyrights in which may be entered the names or titles of works and the names and addresses of authors, publishers and owners of copyright and such other particulars as may be prescribed."

12. The submission was that a copyright in a book was accrued only if it had been duly registered according to the provisions of the said Act. If the copyright was not so registered, the author or his heirs or legal representatives did not acquire any right enforceable in the court of law.

13. For the above argument, the learned counsel relied on a decision of the Madhya Pradesh High Court reported in *Mishra Bandhu Karyalaya v. S. Koshel*. AIR 1970 Madh Pra 261. The relevant observations are as follows : --

"The Indian Copyright Act, 1914, had nowhere made any provision for the registration, of copyrights. Under the Copyright Act, 1957, it appears that under Sections 13, and 45, the registration of a book with the Registrar of Copyrights, is a condition for acquiring Copyright with respect to it. A plain reading of the several provisions of the Act, leaves no doubt in our minds that a copyright in a book now is only secured if it is an original compilation and has been duly registered according to the provisions of the 1957 Act. Once it is so registered, the author is deemed to acquire property rights in the book. The right arising from the registration of the book can be the subject-matter of civil or criminal remedy, so that, without it the author can have no rights, nor remedies in spite of the fact that his work is an original one. We are, however, concerned with the state of law prevalent under the Imperial Copyright Act, 1911, enacted by the British Parliament, subject to such modifications as stated in the Indian Copyright Act, 1914."

14. For a proper appreciation of the point it may be useful to refer to the relevant provisions of the Act. Before the enactment of the present Act, the existing law relating to copyright was contained in the Copyright Act, 1911 of the United Kingdom as modified by the Indian Copyright Act, 1914. The legislature felt that apart from the fact that the United Kingdom Act did not fit in with the changed constitutional status of India, it was necessary to enact a self contained Act on the subject of Copyright in the light of growing public consciousness of rights, consequently, the present act was enacted and the whole scheme of the Act was changed .

15. The English Copyright Act of 1862 provided expressly that no proprietor of any such copyright shall be entitled to the benefit of that Act until the same had been registered. This provision was, however, repealed by the English Copyright Act, 1911, with the result that even in England registration was not required. In the Indian Copyright Act of 1914, there was no provision for the registration. Section 44 of the present Act was, however, provided for registration of copyright. The object behind this section was:--

"Under the existing law there is no provision for the registration of copyright. Such registration could furnish useful information to interested members of public....."

S. O. R."

16. The object given shows that the Intention behind the enactment of Section 44 was not to make registration compulsory or mandatory for the purpose of enforcement of copyright. It provided an option. It was, therefore, (not) obligatory for an author to get the copyright registered under Section 44 of the said Act for the purpose of acquiring rights conferred by it. The registration only raised a presumption that the person shown is the actual author. The presumption was not conclusive but where contrary evidence was not forth coming, it was not necessary to render further proof to show that the copyright vested in the person mentioned in the register. Section 48 of the Copyright Act provides that the registration, of Copyright Act shall be prima facie evidence of the particulars entered therein and shall be admissible in evidence in all courts without further proof or production of the original. If the legislature intended to make the requirement, of registration mandatory, the language of Section 44 would have been different. It could be on the lines of Section 69 of the Partnership Act. There is no provision in the Act depriving an author of the rights conferred by this Act on account of non-registration of the copyright.

17. The use of word "may" in Section 45 is also helpful for interpreting Sections 44 and 45. In ordinary usage "may" is permissive and is not generally held to be mandatory unless the context requires to the contrary. In determining the meaning of any word, the first question to ask always is what is natural and ordinary meaning of the word. It is only when that meaning leads to some other result which cannot reasonably be supported to have been, the intention of the legislature that it is proper to look for some other possible meaning of the word. In the instant case, the context does not require to give a meaning different than the ordinary.

18. At this place reference may also be made to Section 13 of the Copyright Act which deals with "works in which copyright subsists." Section 17 lays down that subject to the provisions of this Act,

the author of a work shall be the first owner of the copyright. There is nothing in either of these two sections which provided for the registration of copyright as a condition precedent for acquiring a right in it. The common law right of property in literary or intellectual production exist independently of the statute. It belongs essentially to the owner. He has the sole and exclusive right over it. However, Sections 13 and 17 which confer and recognise the copyright do not lay down any condition for the infringement of which registration is mandatory.

19. Chapter XI deals with infringement of copyright. In this respect, reference may be made to Section 51 of the Act which lists the various grounds on which copyright in a work shall be deemed to be infringed. Section 55 provides the remedies for infringement of copyright. Reading these sections together, one would find that there is nothing in these provisions which makes registration compulsory for availing the remedy provided for.

20. The view taken by me is supported by the decision given in *A. Sundarasan v. A. C. Thirulokchandar*, (1973) 2 Mad LJ 290. In this case, the Madras High Court held that both under the Copyright Act of 1957 and the Copyright Act, 1914, regardless of registration an author acquires a copyright in his work and non-registration thereof does not disable the owner of a copyright for bringing an infringement action. Registration is not a prerequisite for acquisition of a copyright.

21. In *Satsang v. Kiron Chandra Mukhopadhyay* AIR 1972 Cal 533, the controversy raised was the same as before me. In that case also the Calcutta High Court held that there was no section in the Copyright Act of 1957 to the effect that the author could have no right or remedy unless his work was registered. It held, that a person had an inherent copyright in a general composition without the necessity of its registration.

22. Great reliance was placed by the learned counsel for the appellants on a decision of the Madhya Pradesh High Court given in *Mishra Bandhu Karyalaya v. S. Koshel* (AIR 1970 Madh Pra 261) (supra). There is no doubt that the submission of the appellants' counsel is supported by the said decision. But with great respect to the learned Judges, I find it difficult to subscribe to the view taken therein. To me, it appears difficult to hold that an author will have no right or remedy unless the work was registered. The provisions of the Copyright Act, 1957 do not call for such an interpretation.

23. This case has been referred in both the decisions of Madras and Calcutta High Courts. Both the Courts could not agree with the view taken therein. They were of the opinion that the observations made in the *M. P.* case laying down that the requirements of registration was mandatory as obiter. I am in respectful agreement with the said view. The Madhya Pradesh High Court was not called upon to go into the controversy of registration. The actual decision turned on another fact.

24. Reliance had also been placed on another decision reported in *V. Errabhadrarao v. B. N. Sarma*, AIR 1960 Andh Pra 415. This was a suit under Hyderabad Copyright Act (2 of 1934). In the Hyderabad Act, there was a clear provision that a copyright in a book was only secured if an original compilation had been duly registered according to the provisions of the Act. Since there is no such provision in the Copyright Act of 1957, this decision is of no assistance to us. For the view taken by

me in this Court that registration was not a prerequisite for acquiring copyright. Reference has also been made to another decision of the Kerala High Court found reported in Kumari Kanaka v. Sundaraian, 1972 Ker LR 536. The view taken is that, "under the Act the registration of a work is not necessary. No section in the Act enacts that the author can have no right or remedy unless his work is registered."

25. The second argument was that it is admitted case of the parties that Basant Kumar was a co-owner and as such the suit for injunction or for accounting was not maintainable either against him or against the publisher and printer. This submission is devoid of merit. A joint owner can not, without the consent of the other joint owner, grant a licence or interest in the copyright. If a licence is granted by one joint owner without the consent of the other, it does not bind the former and the other joint owner can sue the licensee for infringement (Powell v. Head) (1879) 12 Ch D 686.

It is, therefore, not correct to say that a co-owner cannot sue a licensee for infringement of copyright. Connected with this, the argument further was as every co-owner is a joint owner along with others no suit could be filed against him for infringing the copyright. The submission is not correct. The right in the copyright having not been divided each one of them was entitled to the same right as the other. Therefore, Basant Kumar, only being a co-owner, had no right without the consent of others to give a licence and since he had indulged into an illegal (dealing) and by indulging into it committed an infringement, he was guilty of infringement. That being so, the plaintiffs were entitled to the reliefs against Basant Kumar as well.

26. In Halsburys Laws of England 3rd Edition, Vol, III, para 738, the law laid down is as follows ;--

"One joint author cannot reproduce the work himself, or grant licence to others to reproduce it, without the consent of other author or authors, but may by himself take proceedings for infringement against third party."

27. The only other argument that remains to be considered is about non-joinder. The submission was advanced on the basis of the plea taken in para 22 of the written statement. Counsel urged that due to the non-joinder of the minor son of Basant Kumar as a party, the suit was liable to be dismissed. It has been alleged that Pt. Ram Naresh Tripathi had executed a will dated 19-4-56 in respect of his entire property and under that will Vijai Kumar had been made entitled to all assets of Hindi Mandir Prayag. Since, however, the will had not been proved, the question of non-joinder did not arise and was rightly repelled by the trial court. Section 99 of the Code of Civil Procedure lays down that no decree shall be reversed or substantially carried in appeal on account of non-joinder of the parties not affecting the merits of the case. The non-joinder of Vijai Kumar does not affect the merits of the case. It is true that this Section 99 does not apply to a case of non-joinder of necessary party but to my mind, Vijai Kumar was not even a proper party what to say of necessary party. Hence, non-joinder was inconsequential.

28. No other point was argued.

29. In the result, the two appeals fail and are dismissed, But in the circumstances, I direct the parties to bear their own costs.