

R.Radha Krishnan vs Mr.A.R.Murugadoss on 25 September, 2013

Equivalent citations: AIR 2014 MADRAS 25, (2013) 8 MAD LJ 574 (2013) 5 MAD LW 429, (2013) 5 MAD LW 429

Author: R.Sudhakar

Bench: R.Sudhakar

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.9.2013

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR

Original Application Nos.710 and 711 of 2013
in
C.S.No.639 of 2013

R.RADHA KRISHNAN
SON OF LATE S.RAMASAMY IYENGAR
NO.10, JAWAHARLAL NEHRU ST T.NAGAR,
CHENNAI 17

... Petitioner

..VS..

1. MR.A.R.MURUGADOSS
9E, 3RD BLOCK SHYAMALA GARDENS
SALIGRAMAM,
CHENNAI 93

2. THE FILM AND TELEVISION PRODUCERS GUILD OF SOUTH INDIA REP.BY ITS SECRETARY HAV
NO.15/7, 6TH CROSS ST, LAKE AREA,
CHENNAI 34

...Respondents

For Petitioner : Mrs.M.Christella

For Respondents : Mr.S.Vijayaraghavan

Original Application Nos.710 and 711 of 2013
in
C.S.No.639 of 2013

R.SUDHAKAR, J.

O.A.No.710 of 2013 is filed under Order XIV Rule 8 of Original Side Rules read with Order XXXIX Rules 1 and 2 and Section 151 CPC praying to grant an order of interim injunction, restraining the first respondent, his heirs, legal representatives, agents and any other person authorized by him, from releasing the film Titled "RAJA RANI" starring Arya, Jai, Nayanthara, Nasriya or any other actor or actresses and Directed by Atlee and proposed to be released on 27th September 2013 or any other future date.

2. O.A.No.711 of 2013 is filed under Order XIV Rule 8 of Original Side Rules read with Order XXXIX Rules 1 and 2 and Section 151 CPC praying to grant an order of ad-interim injunction, restraining the first respondent, his heirs, legal representatives, agents and any other person authorized by him, from using the Title of the Plaintiff's short film 'RAJA RANI' to the Defendant's feature film starring Arya, Jai, Nayanthara, Nasriya or any other actor or actresses and Directed by Atlee and proposed to be released on 27th September 2013 or any other future date.

3. Heard Mrs.M.Christella, learned counsel appearing for the applicant/plaintiff; Mr.R.Krishnamoorthy, learned senior counsel representing Mr.S.Vijayaraghavan, learned counsel appearing for the first respondent/first defendant; Mrs.Maimoona Badsha, learned counsel appearing for the third respondent/third defendant and Mr.R.Gandhi, learned senior counsel representing Mr.G.K.Muthukumaran for M/s.GMS Law Associates, learned counsel appearing for the fourth respondent/fourth defendant.

4. The Civil Suit is filed for the following relief:-

"for permanent injunction restraining the Defendants, their heirs, legal representatives, agents and any other person authorized by them, from using the title of the plaintiff's short film "RAJA RANI" to the 1st Defendant's feature film, Directed by Atlee, starred by Arya, Jai, Nayanthara and Nasriya or any other actors or actresses morefully described in the schedule to the plaint .

5. Applicant/Plaintiff Thiru R.Radha Krishnan claims to be a public spirited citizen. In order to eradicate evils of the society he has been undertaking several projects producing short films touching upon social issues that affect the society. In that endeavour he proceeded to shoot a short

film by name and title "Raja Rani". The concept of the movie is to highlight the deplorable treatment meted out to Aravanis(Transgender). For the said short film, the applicant/plaintiff registered the name "Raja Rani" with the second respondent/second defendant Film and Television Producers Guild of South India, Chennai-600 034 on 15.10.2009, vide plaint document No.3. Thereafter, the applicant/plaintiff has made an application to the Central Board of Film Certification by application dated 1.6.2011, vide plaint document No.5. The said application was in respect of a documentary running upto 22 minutes and 40 seconds and produced in Digital Video Disc (in short DVD) Format. Censor Certificate was issued on 6.6.2011 by the Government of India, vide plaint document No.6 for video film titled Raja Rani (Tamil) Colour running upto 22 minutes and 40 seconds.

6. It is a case of the applicant/plaintiff that he has applied to Government for Financial Assistance and the Government is considering his claim. In the meanwhile, coming to know that the first respondent/first defendant is endeavouring to shoot a film by name and style Raja Rani , the applicant/plaintiff caused a notice on 8.11.2012 vide plaint document No.8 which it is stated as returned as refused.

7. Applicant/Plaintiff relies upon the second respondent's/second defendant's Rules and Regulation of the Guild, particularly, Clause 8, 10 and 11, vide plaint document No.10 for protection of the title. It provides for safeguard of the title name by members of the second respondent/second defendant.

8. Learned counsel for the applicant/plaintiff issued a notice to the first respondent/first defendant on 29.8.2013 complaining about the use of name Raja Rani in the proposed movie. This was served on the first respondent/first defendant. The first respondent/first defendant through his counsel by reply dated 13.9.2013, refuted the claim and also stated that the name Raja Rani has been registered by the first respondent/first defendant with the Tamil Film Producers Council as early as on 13.10.2012, vide first respondent/first defendant document No.3 and refuted plaintiff's claim on various issues. Thereafter, after exchange of notices as above, the present suit has been filed by the applicant/plaintiff for the above stated relief.

9. When an application for ad-interim injunction was sought for, the caveator, the first respondent/first defendant objected to the grant of interim injunction stating that great prejudice and hardship will be caused as the film is complete in all respects and is ready for release. At the same time, other persons interested in the movie sought the permission of the court to implead themselves in the suit proceedings. Accordingly, in Application No.4444 of 2013 one Mr.S.Shanmugam, S/o Mr.A.N.Sunderavinayagam, Alwarpet, Chennai-18 a co-producer of the movie Raja Rani along with Mr.A.R.Murugadoss, the first respondent/first defendant has been impleaded as the third respondent/third defendant. Mrs.Fox Star Studios India Pvt. Ltd., Star House, Urmi Estate, Mumbai, claiming to be another co-producer along with the first defendant A.R.Murugadoss has been impleaded as the fourth defendant.

10. The suit has been filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of Civil Procedure Code, 1908 and Sections 51, 55, 58 and 62 of the Copy Right Act, 1957.

11. Learned counsel for the applicant/plaintiff based on the registration of the name with the second defendant, vide plaint document No.3, Censor Certificate issued by the Central Board of Film Certification, vide plaint document No.6, the sponsored programme already telecast in Pothigai Channel, vide plaint document No.1, contended that the applicant/plaintiff is entitled to protection under the Copyright Act, 1957. Therefore, the interim injunction was sought for against the defendants from using the name *Raja Rani* in respect of the movie produced by the first respondent/first defendant along with the defendants 3 and 4.

12. Learned counsel for the applicant/plaintiff relied upon Section 51 of the Copyright Act, 1957 to state that the action of the respondents 1, 3 and 4/defendants 1, 3 and 4 amounts to infringement of copyright. She relied upon Section 55 of the Copyright Act which provides for civil remedies for infringement of copyright. She, therefore, sought for an injunction against release of the movie. She pleaded that as a copyright holder, the applicant/plaintiff is entitled to all the rights of the owner against persons possessing or dealing with infringing copies under Section 58 of the Copyright Act. Section 62 of the Copyright Act deals with jurisdiction of court with which we are not concerned at present.

13. Based on the provisions of the Copyright Act as above, and the registration of the movie, by name *Raja Rani* with the second respondent/second defendant, learned counsel for the applicant/plaintiff canvassed the present application for interim injunction.

14. Learned counsel for the applicant/plaintiff relied upon the decision of the Delhi High Court in *Kanungo Media (P) Ltd., vs. Rgv Film Factory and others* reported in (2007) 34 PTC 591 Delhi = 138(2007) Delhi Law Times 312. Para 34 of the decision reads as follows:-

4.In *International Film Service Co. Ltd. v. Associated Producers Inc.* (supra) it was held that The plaintiff succeeds as soon as he shows an audience educated to understand that the title means his play . I am conscious of the argument of the learned Counsel for the plaintiff that only because the plaintiff is a small time producer and, therefore, could not commercially release the film earlier, though he intends to do it now, title of his film should not be hijacked by those who consider themselves mighty and have reach in the film industry. There is a lot of substance in this argument. However, it is stated at the cost of repetition that such an argument would have been worth its weight had the plaintiff approached the Court earlier and taken action to nip in the bud the attempt of the defendants in choosing this title for their film. In fact, knowing his limitations viz., if he allows the defendants to publicise their film with title 'Nishabd' he would lose out, should have made him more vigilant in promptly approaching the Court. By delay it has has allowed the damage to be caused to itself inasmuch as, today overwhelming section of public associate this title with the defendants' film. Based on the above decision, she pleaded that there should be no attempt on the part of the defendants 1, 3 and 4 to hijack the name of the applicant's/plaintiff's movie, titled *Raja Rani* .

15. Per Contra, Thiru R.Krishnamoorthy, learned senior counsel appearing for the first respondent/first defendant contended that there is no copyright insofar as title is concerned and further contended that the registration of the title Raja Rani in the name of the first respondent/first defendant for the movie Raja Rani is with the Tamil Film Producers Council in which the first respondent/first defendant is the member. The first respondent/first defendant is not a member of the second respondent/second defendant. Therefore, such registration will be of no consequence. Thiru R.Gandhi, learned senior counsel appearing for the fourth defendant submits that censor certificate has been issued in respect of the movie Raja Rani . Both the learned senior counsel pleaded that the defendants' movie is a full length feature film. Therefore, the case of the applicant/plaintiff differs with that of the defendants 1 and 4. There is a lot of difference between the short DVD movie of applicant/plaintiff and the full length feature film of the defendants 1 and 4.

16. Smt.Maimoona Badsha, learned counsel appearing for the third respondent/third defendant states that the third respondent/third defendant is a co-producer of the movie along with the first respondent/first defendant. She relies upon the very same decision of the Delhi High Court in Kanungo Media (P) Ltd., vs. Rgv Film Factory and others reported in (2007) 34 PTC 591 Delhi = 138(2007) Delhi Law Times 312 to plead that there is no copyright in respect of title and the suit is not filed in an action for passing off. Paras 11, 12 and 33 of the decision reads as follows:-

1. It is common, rather imperative, to give title to literary or entertainment works. Like human beings, literary work produced by the author or the work of entertainment produced by a producer needs a name. It is only then such work would be identified. The term 'literary title' is used to encompass titles of books, periodicals, newspapers, plays, motion pictures, television series, signs, phonograph records, cartoon features and the like [McCarthy on Trademarks and Unfair Competition, Third Edition (1995) Vol.I] 2. American Courts have taken uniform view that title alone of a literary work cannot be protected by Copyright Law. Coining of a title alone, and not the plot, characterization, dialogue, song etc. is not the subject of Copyright Law. Thus, a copyright on a literary work would not include exclusive right to use the title on any other work. What, therefore, follows is that if a junior user uses the senior user's literary title as the title of a work that by itself does not infringe the copyright of a senior user's work since there is no copyright infringement merely from the identity or similarity of the titles alone. Same is the position under Copyright Law in India.

3. Prima facie, as of today the claim of the plaintiff's movie's title 'Nisshabd' appears to be blurred in comparison with the defendants' movie's title 'Nishabd'. For the same reason, as the defendants' forthcoming movie has acquired much publicity, there is hardly any question of confusion. One cannot, in the process, lose sight of the fact that the plaintiff's film is a documentary and in Bengali language whose viewership would be substantially less than a Hindi movie. Further, no doubt, the plaintiff's movie has achieved critical acclaim but only in the Film Festivals where not only the viewership is limited but of a particular category. Therefore, in today's context in so far as the question of granting temporary injunction is concerned, the

plaintiff has not been able to meet the above requirements. Therefore, the applicant/plaintiff has no case on copyright in respect of the title Raja Rani .

17. In the same manner, learned senior counsel appearing for both the defendants 1 and 4 placed reliance on para 11 of the unreported decision dated 2.7.2012 rendered in I.A.No.6010/2012 (u/O 39 R 1 & 2 r/w Sec.151 CPC) in C.S.(OS)865/2012 (Godfrey Phillips India Ltd., vs. Dharampal Satyapal Ltd., and another) and it reads as follows:-

1. The next question which is to be delved upon is whether the slogans and/or phrases are copyrightable or not. As per learned senior counsel for the defendants, the slogan Shauq Badi Cheez Hai is wholly and totally common phrase and embodies commonly used words in the Hindi language. There is nothing original in this slogan which is not copyrightable. As per Nimmer on Copyright, Article 20.01 (B) at Page 2-15 words and short phrases such as names, titles and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering or coloring; mere listing of ingredients or contents are not subject to copyright . CS(OS) No.865/2012 Page 9 of 19. In the above decision, the learned single Judge has relied upon the Nimmer on Copyright, Article 20.01(B) at page 2-15 to state that there is no copyright on titles, slogans, familiar symbols or designs, etc.

18. It is the further case of the learned senior counsel for the defendants 1 and 4 and the learned counsel for the third defendant that entire movie has been completed long before. The exhibition rights have been entered into with third parties and the worldwide release of the movie is fixed for tomorrow (i.e.) 26.9.2013. The applicant/plaintiff has come to this court as a last moment to stall the release of the movie with ulterior motive. If the movie is stalled great prejudice will be caused to the defendants 1 and 4 and they will suffer huge loss. The financial implication will ruin the entire production team. The applicant/plaintiff has come to this court with no legal right and on a wrong legal plea.

19. Learned senior counsel appearing for the defendants 1 and 4 states that the notices exchanged between the applicant/plaintiff and the first respondent/first defendant and the censor certificates issued by the Government of India would clearly show that the movie produced by the applicant/plaintiff is a Tamil short film/documentary running upto 22 minutes and 40 seconds whereas the movie produced by the defendants 1, 3 and 4 is a Tamil feature film running upto 2 hours 44 minutes and 23 seconds. There is a vast difference between the two movies. The story line and script of the defendants 1, 3 and 4 movie and the applicant's/plaintiff's short film is not claimed as one and the same.

20. Before we proceed to consider rival submissions, the relevant provisions of the Copyright Act has to be considered. Section 13 of the Copyright Act deals with works in which copyright subsists and it reads as follows:-

"13. Works in which copyright subsists:- (1)Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the

following classes of works, that is to say:-

(a) original literary, dramatic, musical and artistic works;

(b) cinematograph films; and

(c) sound recording.

(2) Copyright shall not subsist in any work specified in sub-section (1), other than a work to which the provisions of section 40 or section 41, apply, unless,-

(i) in the case of a published work, the work is first published in India, or where the work is first published outside India, the author is at the date of such publication, or in a case where the author was dead at that date was at the time of his death, a citizen of India;

(ii) in the case of an unpublished work other than a work of architecture, the author is at the date of the making of the work a citizen of India or domiciled in India; and

(iii) in the case of an work of architecture, the work is located in India.

Explanation:- In the case of a work of joint authorship, the conditions conferring copyright specified in this sub-section shall be satisfied by all the authors of the work.

(3) Copyright shall not subsist:-

(a) in any cinematograph film if a substantial part of the film is an infringement of the copyright in any other work;

(b) in any sound recording made in respect of a literary, dramatic or musical work, if in making the sound recording, copyright in such work has been infringed.

(4) The copyright in a cinematograph film or a sound recording shall not affect the separate copyright in any work in respect of which or a substantial part of which, the film, or, as the case may be, the sound recording is made.

(5) In the case of a work of architecture, copyright shall subsist only in the artistic character and design and shall not extend to processes or methods of construction."

(emphasis supplied) Section 13 of the Copyright Act clearly provides that the copyright will subsist throughout India in the following classes of work, namely, original literary, dramatic, musical and artistic works, cinematograph films and sound recording. The applicant's/plaintiff's case is not falling within this parameter and the applicant/plaintiff counsel fairly conceded to the said position.

21. Section 14 of the Copyright Act deals with Meaning of Copyright and it reads as follows:-

"14. Meaning of copyright:- (1) For the purpose of this Act, "copyright" means the exclusive right, subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:-

(a) in the case of a literary, dramatic or musical work, not being a computer programme, -

(i) to reproduce the work in any material form including the storing of it in any medium by electronic means;

(ii) to issue copies of the work to the public not being copies already in circulation;

(iii) to perform the work in public, or communicate it to the public;

(iv) to make any cinematograph film or sound recording in respect of the work;

(v) to make any translation of the work;

(vi) to make any adaptation of the work;

(vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

(b) in the case of a computer programme,-

(i) to do any of the acts specified in clause (a);

(ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental;

(c) in the case of an artistic work, -

(i) to reproduce the work in any material form including -

(A) the storing of it in any medium by electronic or other means; or (B) depiction in three-dimensions of a two-dimensional work; or (C) depiction in two-dimensions of a three-dimensional work;

(ii) to communicate the work to the public;

- (iii) to issue copies of the work to the public not being copies already in circulation;
- (iv) to include the work in any cinematograph film;
- (v) to make any adaptation of the work;
- (vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (vi);
- (d) in the case of a cinematograph film,-
 - (i) to make a copy of the film, including-
 - (A) a photograph of any image forming part thereof; or (B) storing of it in any medium by electronic or other means;
 - (ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the film;
 - (ii) to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;
 - (iii) to communicate the film to the public;
- (e) in the case of a sound recording,-
 - (i) to make any other sound recording embodying it including storing of it in any medium by electronic or other means;
 - (ii) to sell or give on commercial rental or offer for sale or for such rental, any copy of the sound recording;
 - (iii) to communicate the sound recording to the public.

Explanation For the purpose of this section, a copy which has been sold once shall be deemed to be a copy already in circulation."

22. Section 2(f) of the Copyright Act, 1957 provides the meaning of "cinematograph film" and it reads as follows:-

"(f) "cinematograph film" means any work of visual recording and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films;"

23. Section 2(y) of the Copyright Act, 1957 provides the meaning of "work" and it reads as follows:-

"(y) "work" means any of the following works, namely:-

(i) a literary, dramatic, musical or artistic work;

(ii) a cinematograph film;

(iii) a sound recording;"

24. Section 16 of the Copyright Act provides that no person shall be entitled to copyright or similar right whether published or otherwise than in accordance with the provisions of the Act. Section 16 of the Copyright Act reads as follows:-

"16. No copyright except as provided in this Act:- No person shall be entitled to copyright or any similar right in any work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act or of any other law for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence."

25. A conjoint reading of the above provisions makes it clear that what is protected under the Copyright Act is the work which is relatable to a cinematograph film that is to say visual recording, including sound recording produced by process of analogous to cinematography including video film.

26. It is not the case of the applicant/plaintiff that his cinematograph film, said to be a copyright work, has been copied by the defendants 1, 3 and 4 in the production of the movie "Raja Rani". If the applicant/plaintiff claims the video film as work as defined under Section 2(y) of the Copyright Act, 1957 in relation to a cinematograph film as defined under Section 2(f) of the Copyright Act, 1957 is a copyright within the meaning of Section 14 of the Copyright Act, 1957 that alone will be entitled to the benefit of Section 16 of the Copyright Act which provides that no person will be entitled to copyright in respect of a work whether published or unpublished otherwise than in accordance with the provisions of the Copyright Act. The applicant/plaintiff has to establish that what is infringed by the defendants 1, 3 and 4 is the work as defined in Section 2(y) of the Copyright Act in relation to a cinematograph film as defined under Section 2(f) of the Copyright Act and it is a copyright within the meaning of Section 14 of the Copyright Act. That is not the case of the applicant/plaintiff. What is complained by the applicant/plaintiff is that the title Raja Rani is used by the defendants 1, 3 and 4. The word Raja Rani is commonly used while referring to the King and Queen in a movie, short play, drama, etc., and it is a word used in common parlance to refer to a ruler and his spouse. The said word in common parlance to denote the King or the Queen cannot be protected under the law of Copyright. Section 13 of the Act makes that clear that title is not a copyright but the entire work. Therefore, under no stretch of imagination, the provisions of the Copyright Act, more particularly, Sections 51, 55 and 58 would get attracted to the facts of the present case. We are not dealing with a dispute with a work in relation to a cinematograph film as

defined under the Copyright Act.

27. In this case, there is a distinct difference between short film produced by the applicant/plaintiff and the regular feature film produced by the defendants 1, 3 and 4. It is not the case of the applicant/plaintiff that the story line, script, etc. of the applicant/plaintiff have been copied by the defendants 1, 3 and 4 in the proposed movie. The action complained of by the applicant/plaintiff in relation to the title alone does not attract the provisions of the Copyright Act. This will be amply cleared if we traverse the various provisions of the Copyright Act as also the decisions of Court from time to time for the past several decades.

28. The plea that the title has no copyright protection has been clearly explained in number of decisions, more particularly, in the case of *E.M.Forster and another v. A.N.Parasuram* reported in AIR 1964 Madras 331 (Vol.51, C.99) (*ANANTANARAYANAN AND RAMAMURTI.JJ*). The case relates to novel "A Passage to India" written by the English novelist E.M.Forster as a text book for the students taking the B.A. Degree. One Mr.A.N.Parasuram, the respondent in that case published a guide book to that novel for the students. The guide was styled as E.M.Forster, A Passage to India, Everyman's guide. In that suit the court clearly held relying on various provisions of the Copyright Act that there was no copyright in respect of title. Paras 5 and 8 of the decision reads as follows:-

"5. Copyright is thus a statutory claim, and the complaint must be established within the strict provisions of the Act. Questions have come up before courts whether an abridgment of an original work would constitute an infringement of copyright; equally, whether such abridged work could upon its own statute, claim the protection of copyright. Questions : have arisen whether there could be copyright in a title to a work; and whether there could be copyright in a title to a work; and whether there could be copyright in a particular arrangement of a pre-existing non-copyright material, or the pre-existing non-copyright material, or the publication verbatim of speeches delivered by another. *Macmillan v. Suresh Chander Deb*, ILR 17 Cat 951 is of particular interest, since the point involved was whether the selection and arrangement of non-copyright poems in such a work as *Palgrave's "Golden Treasury"* could claim protection. The principle was enunciated that protection could 'be claimed, for, as Lord Eldon laid down in *Longman v. Winchester*, (1809)16 Ves 269 "..... a work consisting of a selection from various authors, two men might perhaps make the same selection; but that must be by resorting to the original authors, not by taking advantage of the selection already made by another."

1900 AC 539 is also of interest, because it related to the publication of verbatim transcripts of the speeches of another; it was held that such a person was an "author" of the report within the meaning of the Copyright Act and entitled to protection. It has been clearly laid down that there is no copyright in a 'title' as such, since this is not substantially enough to merit the claim to protection. It may be capable of protection only in a "passing off" actions; See *Dicks v. Yates*, (1881) 18 Ch D 79 and other authorities listed in *Halsbury (Simonds Edn.) "Vol.8, p.377, 'under paragraph 691. What is of more relevance to the present matter is that an abridgment is not an infringement of copyright, and, in itself, could be a source of copyright. Thus, there could be copyright in notes, even though*

the matter contained therein might be found. In standard works; see 8 Halsbury page 375, paragraph 6SS; Copinger, pages 53 and 154, Russell-Carks page 23; 46 Mad LJ 637 : (AIR 1924 PC 75). See also Gyles v. Wilcox, (1941)2 Atk. 141."

"8....As we have earlier affirmed, there is no copyright in the title and purchasers, whether of the original work or of the guide, are most unlikely to be illiterate, or unacquainted with English."

29. The Privy Council in the case of Francis Day & Hunter Ltd., - vs. - Twentieth Century Fox Corporation Ltd., and others reported in AIR 1940 Privy Council 55 came to hold that in general a title is not by itself a proper subject matter of copyright. As a rule a title does not involve literary composition and is not sufficiently substantial to justify a claim to protection. That statement does not mean that in particular cases a title may not be on so extensive a scale and of so important a character as to be a proper subject of protection against being copied. Where theme of a film is different from that of a song the use for the film of a title of a song is too unsubstantial to constitute infringement of literary copyright.

30. The provision of the Copyright law which has been set out above and the decisions of Courts, make it obvious that the suit per se for injunction on a plea of infringement of copyright cannot be justified. It is another matter if the suit is filed on a plea of passing off. But, admittedly, that is not the case on hand. The suit has been filed for mere injunction based on alleged infringement of the various provisions of Copyright Act. Suit for permanent injunction restraining the defendants from using the title is not maintainable and as a consequence no injunction as sought for can be granted.

31. The defendants have made out a case that the interim injunction as sought for by the applicant/plaintiff should not be granted as the defendants have completed the movie and have taken all steps for release of the movie shortly. They have expended huge amounts for production of the movie and spent on advertisement for release of the movie on 27th September, 2013 which is the day after tomorrow. On this prima facie ground the interlocutory order is resisted. This Court finds much force in this plea.

32. I am also not accepting the applicant's/plaintiff's plea for grant of injunction on the ground that the applicant/plaintiff has registered the name "Raja Rani" with the second defendant Film and Television Producers Guild of South India, as he is a member of the second defendant; whereas the first defendant has registered his full length movie with Tamil Film Producers Council, which is a totally different body. The registration of the applicant/plaintiff with the second defendant would not give a cause of action for him to claim as a matter of right the same title in respect of the movie produced by the defendant Nos.1, 3 and 4, who claim to be members of another council. The Rules as stated by the applicant's/plaintiff's counsel may not bind defendant Nos.1, 3 and 4. Rules of a particular council or a body can only bind those members and not members of another body. Therefore, I am not inclined to accept the first plea on registration of the film with the second defendant as a ground for grant of injunction.

33. Insofar as the plea on infringement of copyright, I have already held that no case of infringement is maintainable under copyright law on the title. At the best it could be a case of passing off and that is not the suit. Therefore, the injunction sought for is declined.

34. Learned counsel for the applicant/plaintiff at the time when the order came to be passed dismissing the original applications, pleaded that the applicant's/plaintiff's request for certain financial benefits from the Government of Tamil Nadu for the short film produced by the applicant/plaintiff should not be jeopardized by the respondents/defendants. Such a plea appears to be out of context in the present case. The learned counsel appearing for the defendants nevertheless states that since the nature of production of the applicant's/plaintiff's film is different from that of the defendants they could have no objection for any benefit that would flow out of the production of the short film of the applicant/plaintiff. They are not opposed with the right, title and claim with the State of Tamil Nadu as far as applicant's short film DVD Movie is concerned.

35. Both the Original Application Nos.710 and 711 of 2013 are dismissed.

25.9.2013

Index : Yes
Internet: Yes

Office to note:-

Issue copy immediately

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R.SUDHAKAR,J.

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Common Order in
O.A.Nos.710 & 711 of 2013

in

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