

# MADRAS HIGH COURT

V. Govindan

Vs.

E.M. Gopalakrishna Kone

Appeal No. 59 of 1951

(Panchapakesa Ayyar, J.)

01.12.1954

## JUDGMENT

### **Panchapakesa Ayyar, J.**

1. The appellant in this case is one V. Govindan, the first defendant in O.S. No.5 of 1948 on the file of the District Judge, Madurai. He was the proprietor of Sakti Karyalayam of Madras, and published an English-English Tamil Dictionary, Ex. A.2, in 1947. The second defendant one T.N. Subramanian of Madras (who has not appealed) was its compiler. The plaintiff E.M. Gopalakrishna Kone, a publisher of Mathurai, had published in 1932 itself, an English-English Tamil dictionary called the Excelsior Junior School Dictionary, the predecessor of Ex. A.1, compiled by one K.V. Subba Iyer, a retired District Educational Officer. He sued the appellant and T.N. Subramanian, the second defendant, who compiled Ex. A.2 for the appellant, for an injunction restraining them and their servants from editing, publishing or selling any of the copies of the Dictionary, Ex. A.2, and for directing them to render true and proper accounts regarding the publication and sale of the dictionary, Ex. A.2, alleged to constitute an infringement of his copyright in Ex. A.1, and for costs.

2. The defendant set up various defences, like Ex. A.2 being an original compilation by the second defendant for the first defendant and not amounting to any infringement of Ex. A.1; Ex. A.1 itself being a common mechanical thing not capable of having any copyright; an injunction being unthinkable, in the circumstances, seeing the commonness of dictionaries and inevitable sameness of most of the words and meanings in all the dictionaries; the unjustifiability of asking for accounts in such matters, etc.

3. The lower Court framed the following issues:

1. Is the defendants' book a piratical reproduction of the plaintiff's dictionary?

2. Has there been any infringement of plaintiff's rights, as alleged in the plaint?
3. Is the plaintiff entitled to an injunction?
4. Is the plaintiff entitled to accounting, and, if so, what is the basis of accounting?
5. To what relief is the plaintiff entitled?

4. The plaintiff examined P.W.1 on his behalf and filed Ex. A.1 to A.12. P.W.1, a B.A. L.T. spoke to his comparing Exs. A.1 and A.2 in detail and finding Ex. A.2 to be a piratical reproduction of Ex. A.1. He filed Exs. A.7 to A.12 to prove it. The defendants examined D.W.1, the second defendant, on their behalf and filed Exs. B.1 to B.13. D.W.1 admitted that he was never a teacher, and had never compiled any dictionary and that he did not know the Tamil meanings of several common English words, and yet he had given in Ex. A.2 the very meanings given in Ex. A.1.

5. After discussing the entire evidence, the lower court came to the conclusion, on issue (1), that the defendants' book, Ex. A.2, was a piratical reproduction of the plaintiff's dictionary Ex. A.1. It went through the books Ex. A.1 and A.2 minutely, and found page after page, word after word, slavishly copied, including the errors, and found the sequence, the meanings, the arrangement and everything else practically the same, except for some 'deliberate differences' introduced here and there in order to cover up the piracy. It rejected the argument of the defendants that Ex. A.2 was an original work of defendant 2, and found that it was merely a slavish copy of Ex. A.1 with deliberate differences introduced to cover up the copying. It rejected the argument of the defendants that the second defendant had copied only from the earlier Tamil-English dictionaries of Percival and Swaminatha Iyer from which Mr. K.V. Subba Iyer, the author of Ex. A.1, had also copied, and held that the second defendant had copied in Ex. A.2 almost everything from Ex. A.1, though he might have copied a few words and their meanings, out of the 1,2654 words in his Dictionary. On issue (2), it found that the plaintiffs' right in Ex. A.1 had been infringed by the defendants' publishing Ex. A.2. On issue 3 it found that the plaintiff was entitled to an injunction. On issue (4), it found that the plaintiff was entitled to accounting. It found that the defendants had printed and published 5500 copies of Ex. A.2, and had prized each copy at Rs.5, and that the actual cost of printing and paper came only to Rs.5428-13-6, and that all the copies were said to have been sent to Ceylon for sale, and that nothing could be ascertained as to what exactly the plaintiff would be entitled to, by way of accounting, till the actual accounting was taken by a Commissioner to be appointed thereafter. In the end, it granted the plaintiff an injunction restraining the defendants, their agents and servants from editing, publishing or selling any of the copies of their English-English Tamil dictionary, Ex. A.2, and directing the defendants to account to the plaintiff for the profit made on the 5500 copies of Ex. A.2 already printed and published, in infringement of the plaintiff's copyright, allowing the plaintiff to ask for a commissioner, in due course, to take the accounts. It also directed the defendants to pay to the plaintiff Rs.536-2-0 for his costs of the suit, and to bear their own costs. The suit had been valued at Rs.4,000 for injunction and damages. The first defendant alone has appealed. The second defendant has been made the second respondent in the appeal.

6. I have perused the entire records, and heard the learned counsel on both sides. The learned counsel for the appellant raised several contentions.

7. The first was that the plaintiff had not proved that the copyright in Ex. A.1 vested in him by a proper assignment of such a right by the author, K.V. Subbier, a retired District Educational Officer, since dead. This point had not been taken in the written statements of the defendants, though the plaintiff had expressly alleged, in paragraph 4 of the plaint, that the entire copyright in Ex. A.1 had been sold and parted with in favour of the plaintiff by the said Subbier and that the plaintiff had become entitled to all the proprietary rights in the said dictionary. But, in view of this legal contention being raised in appeal, Mr. T.M. Krishnaswami Aiyar, for the plaintiff, put in a petition for admitting as additional evidence in this appeal a document executed by Subbier assigning the copyright in Ex. A.1 in favour of the plaintiff. In C.M.P. No.10331 of 1954, after hearing both sides, I admitted that assignment of copyright as additional evidence in the appeal, under Order 41 Rule 27(1)(c), C.P.C., as it was essential for me to deliver a correct and proper judgment, and marked it as Ex. A.13. Learned counsel for the appellant had nothing to say regarding this contention after the marking of Ex. A.13, as it concluded the matter.

8. The next contention was that Ex. A.2 was an independent and original production by the second defendant, a well known Philologist and a person whose knowledge of the Tamil language was so great that the Education Minister of the day, Mr. Avanasilingam Chettiar, asked him in 1947 to reform the Tamil script itself, and that Ex. A.2 was produced by D.W.1 by using his own brains, skill and labour, and was in no way an imitation or copying of Ex. A.1, whose compiler was not better qualified than D.W.1, and that the lower Court took a wrong view. I cannot agree. Subbier, the compiler of Ex. A.1, was an M.A.L.T. and a District Educational Officer with a very considerable experience in teaching school boys for whom the dictionary Ex. A.1 was intended. A perusal of Ex. A.1 has convinced me that he had good qualifications for compiling such a dictionary and had spent much skill and labour in compiling that dictionary. The 2nd defendant, on the other hand, was a failed Intermediate with no experience whatever of schools or teaching. Whatever his qualifications for reforming the Tamil script, he had little qualification for compiling such a school dictionary himself. He could not give the Tamil meanings of simple English words found in Ex. A.2, when he was questioned in Court as D.W.1, and he admitted that the Tamil meanings of those words given in his own dictionary, Ex. A.2, were exactly the same as the meanings given in Ex. A.1, even though he could not give the Tamil meanings in Court. He added that he published his book 'in haste'. I have little doubt that he was able to compile Ex. A.2 with such haste because he copied most of it from Ex. A.1 as the lower Court has found. I am convinced of it after comparing Exs. A.1 and A.2, like the lower Court. No doubt, there are a few differences here and there, and some words in Ex. A.1 are not found in Ex. A.2, and some words in Ex. A.2 are not found in Ex. A.1, and a stray meaning here and there is given differently in Ex. A.2, obviously in order to cover up the copying. Exhibit A.7 shows that even errors were carried over, from Ex. A.1 and the other dictionaries consulted by D.W.1, into Ex. A.2. Exhibit A.8 shows the sequence of words in Ex. A.1 being slavishly copied in Ex.

A.2. The matter is important because Subbier had only chosen certain words considered by him to be suitable for students of the first to sixth forms in the dictionary, Ex. A.1, which did not, therefore, purport to be a complete dictionary of all English words. The words in Ex. A.8 are not such as would commend universal acceptance or approval as words suitable for high school boys. Words like Apostrophizs, aperture, apothecary are not quite the words one would think suitable for such students, but even they were copied, like the errors, by D.W.1, in Ex. A.2, in his haste to produce his dictionary, Ex. A.2, from Ex. A.1. Some words like cadence, macrocosm, etc., not likely to be of much use to such high school-boys, in Ex. A.1 were copied out with indefatigable fidelity by D.W.1, in Ex. A.2. The meaning of most of the words were copied out from Ex. A.1, and even the sequence of the Tamil words given as meanings is the same. Many peculiar idioms were taken over bodily from Ex. A.1 to A.2. There is absolutely no doubt that D.W.1, in compiling Ex. A.2, had as his main quarry Ex. A.1, with minor quarries like Percival's dictionary and Swaminatha Aiyar's dictionary. It was finally admitted by appellant's counsel that D.W.1 copied everything in Ex. A.2 from some dictionary or other. He is said to have copied from 12 dictionaries.

9. The next contention was that no originality can be claimed in Dictionaries compilations, guide books, maps etc., as they involve no brains, skill and labour, and the compilation by one man will be exactly the same as the compilation by any other man. I cannot agree. Many men have not got the brains, skill and labour to compile dictionaries, gazetteers, grammars, maps, almanacs, encyclopedias and guide books. Nor are all of such compilations of the same nature. Then it will be obvious that only one dictionary gazetteer, grammar, map, almanac, encyclopedia or guide book will sell, and not the rest. Any man who refers to the Oxford Dictionary, Webster dictionary and Chambers dictionary can easily find out the difference between these dictionaries. There is considerable difference in dealing with the subject-matter. That will be specially so when the dictionary is not of all the words in the language, but of 'select words' considered suitable for high school boys, where the very same words in one dictionary being taken over to another and later dictionary will certainly prove piracy.

10. In Copinger and James on Law of Copyright, 8th Edn., at page 124, the law has been neatly summarized as follows:

"In the case of compilations such as dictionaries, gazetteers, grammars, maps, arithmetics, almanacs, encyclopedias and guide books, new publications dealing with similar subject-matter must of necessity resemble existing publications, and the defense of 'common source' is frequently made where the new publication is alleged to constitute an infringement of an earlier one."

It is clearly recognized that all these books are capable of having copyright in them. In law books and books of the above description, the amount of 'originality' will be very small, but that small amount is 'protected by law', and no man is entitled to steal or appropriate for himself the result

of another's brain, skill or labour even in such works.

11. The next contention was that the words and meanings in Ex. A.2 were not copied from Ex. A.1, though both contain the same words and meanings, but from the earlier dictionaries of Percival and Swaminatha Aiyar and others, who alone can sue the defendants, if their copyright has been infringed, and not the plaintiff, who also borrowed from those dictionaries and committed infringement of copyright regarding them. Regarding this plea of "common source", it is well-known that a person relying on it must show that he went to the common source from which he borrowed, employing his skill, labor and brains and that he did not merely do the work of the copyist, by copying away from a work like Ex. A.1, as D.W.1 has done here. So, the plea of common source will not help the defendants in this case.

12. I may add here that the argument of the appellant's counsel that never can there be any right to a book involving an infringement is not countenanced by modern law. Even an unauthorized translator of a well-known book covered by copyright, like one of Bernard Shaw's plays, cannot be said to have no right to maintain an action against a person who simply takes his book and copies it bodily and prints and sells it in the market. The original owner of the copyright may have a right to proceed against the translator, for breach of his copyright. But the translator, it seems to me, is not without any right whatever against the pirate printer of his translation. The Penal Code goes even further, and holds that even stolen property in the possession of a thief can be stolen by another thief. Though the copyright law does not go so far, it does go to some extent in the same direction, as stated above.

13. The next contention was that the defendants had the same right to the words of the English and Tamil languages as Subba Iyer, and could use them just like the plaintiff and Subbier. That is so, but a man is not allowed to appropriate for himself the arrangement, sequence, order, idiom, etc., employed by another, using his brains, skill and labour. Even in law reports, containing only approved reports of cases decided by Courts, there is copyright. In modern complex society, provisions have to be made for protecting everyman's copyright, whether big or small, whether involving a high degree of originality, as in a new poem or picture, or only originality at the vanishing point, as in a law report. So, I have no doubt whatever that the lower Court was right in holding that Ex. A.2 constituted an infringement of copyright of the plaintiff in Ex. A.1 and in granting an injunction.

14. It was then urged by the appellant's counsel that instead of laboriously taking accounts regarding these books, which have been sent to Ceylon and sold at about Rs.3 per copy, instead of at the published price of Rs.5, that low price also not having been recovered in many cases. I might fix some reasonable sum as damages, in full quit, and put an end to this litigation, without the need for the appointment of a commissioner, and without taking any accounts. Mr. T.M. Krishnaswami Iyer for the plaintiff was quite agreeable to this, as he said that his client was more interested in getting an injunction and some 'reasonable damages', instead of carrying on

litigation without end, and chasing the books all over Ceylon, and, in the end, not getting anything more than what he would get under the appellant's offer. The appellant's counsel says that after allowing for trade commission, transit charges, etc., only a profit of Rs.5,000 was made. After carefully considering the point, I agree with the learned counsel for the appellant that a consolidated sum of Rs.5,000 would be reasonable damages in respect of the 5500 copies printed and published, in infringement of copyright, by the defendants. Mr. T.M. Krishnaswami Aiyar, on behalf of the plaintiff respondent, agrees to this sum being awarded as damages in full quit.

15. In the end, therefore, while confirming the lower Court's decree regarding the injunction, I substitute a decree for damages of Rs.5,000 (in the plaint the damages were provisionally valued at Rs.3,000) with interest at 6 per cent. per annum thereon from the date of plaint (19-11-1948) till the date of payment, for clauses (2) to (4) of the decree. The lower Court's decree regarding costs is confirmed. The plaintiff will, of course, pay the court-fee on the excess of Rs.2,000, now decreed, in the lower Court and here. In this appeal, the appellant will pay the costs of the plaintiff respondent. The appellant will also pay the plaintiff, as costs, the excess Court fee he has been directed to pay on the Rs.2,000 in the lower Court and here.

Decree modified.