

BOMBAY HIGH COURT

N.T. Raghunathan

Vs.

All India Reporter Ltd

A.F.O.O. No. 2 of 1957

(Kotval, J.)

29.12.1956. 08.03.1957

JUDGMENT

Kotval, J.

1. This is a defendants' appeal against an order granting a temporary injunction to the plaintiff in a suit in which a permanent injunction for infringement of copyright, was claimed.
2. The circumstances under which the action in the trial Court was commenced may now be stated. The plaintiff, the All India Reporter Limited, Bombay, publishes a monthly law journal known as the All India Reporter. Apart from reports of judgments of various High Courts in India and of the Supreme Court of India it publishes at the head of the reports, notes and headnotes on points decided in those judgments. In 1955 the plaintiff commenced the practice of reporting in addition to the judgments and their respective head-notes, only notes and head-notes without the original judgments. These it published separately in the monthly parts of its publication and called "Notes of Unreported Cases" or "N.U.C." as they were repeatedly referred to at the Bar and as I shall hereafter refer to them.
3. According to the plaintiff, the preparations of the notes and head-notes involved the plaintiff in considerable expense in employing lawyer editors to prepare the notes, and when prepared, such notes constituted original literary work in which the plaintiff had a copyright.
4. The plaintiff also publishes Digest of Law cases and in that Digest publishes the "NUC"s in conjunction with another Digest known as the Madras Law Journal Digest.
5. The defendant No.1 who is the editor of the law journal called Madras Weekly Notes recently published an "All India Digest, 1951-55, Civil, Criminal and Revenue." In this Digest he has pirated the notes and head-notes published by the plaintiff in his "NUC"s. The notes published in

the defendant's Digest are copied from the plaintiffs head-notes by making imitations or alterations and by "paraphrasing, shortening or otherwise" of the head-notes of the plaintiff. The plaintiff appended to the plaint a list of such imitations or copies which constituted infringement of the plaintiff's copyright. The defendant No. 2 was added as a party to the suit since he was the publisher of the defendant No. 1's Digest.

6. On 13-12-56 the defendant No. 1 filed a written statement wherein he denied that he had infringed the plaintiffs copyright in the head-notes. According to the defendant there was no copyright in respect of those head-notes because they were merely reproductions or shortened extracts of judgments of Courts of law which were public property and in which the plaintiff could not claim any copyright. The defendant denied that his notes were imitations or substantial reproductions of the plaintiffs notes or head-notes but that they were the defendant's own original abridgments, and the only thing common between the plaintiffs and the defendant's Digests were the ideas in respect of which there could be no copyright. He alleged mala fides on the part of the plaintiff in bringing the action as the plaintiff was really interested in suppressing the Madras Weekly Notes which was a journal competing with the plaintiffs journal the All India Reporter.

7. Pending the suit, an application for temporary injunction was moved by the plaintiff, praying that the printing, publication and sale of the All India Digest, 1951-55, should be restrained by the issue of a temporary injunction. The defendant substantially raised in answer to this application the defence already adverted to in his written statement and further alleged that he had brought to bear upon his Digest his own labor and skill and that in any event the number of "NUC"s digested in the defendant's Digest was insignificant when compared to the total volume of cases reported in the entire Digest and therefore injunction ought not to be granted. At the hearing other contentions of law were also raised one of them being that the Copyright Act of 1914 which applied the English Copyright Act of 1911, had upon the coming into force of the Constitution of India ceased to apply as there was no law applying it to this country after the Constitution, nor was the provision saved by any other provision of law.

8. The Third Additional District Judge who heard the application for temporary injunction overruled the contentions of the defendant and granted the temporary injunction as prayed.

9. Now, the principles upon which a Court grants temporary injunction are well settled, and they are that there must be a *bona fide* contention between the parties and that on the facts before the Court it must be satisfied that there is a probability that the plaintiff is entitled to the relief, or in other words, that he has a prima facie case. If there is a prima facie case then the Court has to see on which side in the event of success will lie the balance of inconvenience if the injunction does not issue. On each of these questions counsel have made lengthy submissions, extending over the best part of a day.

10. The first point argued on behalf of the appellant was that no copyright can be claimed in the

matter of notes and head-notes of the plaintiff. According to counsel the notes and head-notes do not constitute any original work at all but are mere abridgments of the original judgments. The plaintiff has not filed any original judgment to prove that the notes prepared on the basis of that judgment constituted an original literary work. Now, upon the defendant's own showing, the notes or head-notes of the plaintiff were abridgments of the original judgments. In law, there is no doubt that a copyright does exist in a genuine and just abridgment for as has been observed in an English case, an abridgment may with great propriety be called a new book and therefore is an original literary work.

11. It is not the case of the defendant that the head-notes in plaintiff's Digest were verbatim extracts from the judgments of Courts. Therefore they must necessarily have been prepared by the exercise of some human ingenuity and intellect and a reading of them indicates the same also. In *Sweet v. Benning*¹, which was an almost identical case on facts, Mr. Justice Crowder observed at page 851: "The head-note or the side or marginal note of a report is a thing upon which much skill and exercise of thought is required, to express in clear and concise language the principle of law to be deduced from the decision to which it is prefixed or the facts and circumstances which bring the case in hand within some principle or rule of law or of practice. The question, according to my notion, is whether that is not something substantial in which the law gives the author or proprietor a copyright. It seems to me that although the object of the defendants was simply to put together after a manner of their own, and for a purpose quite different from that for which the plaintiffs published their work, these marginal notes, with others derived from other similar sources, nevertheless they do avail themselves, to an extent which the law does not warrant of the labour and skill and capital of the plaintiffs, and have appropriated to their own use that which is substantially the property of the plaintiffs, and a property of a description which the statute intended to secure to them. I have, therefore, though with great reluctance and difficulty, come to the conclusion, that however useful and meritorious the defendant's work may be they were not justified, in making the use they did of the plaintiffs' work, but were guilty of piracy within the meaning of this Act of Parliament." That a genuine abridgment is an original work and can be the subject of infringement of a copyright is also established by the following cases in this country. See *Govindan v. Gopalakrishna*², where the Court held that that is so even if the amount of originality is very small, and *Marshall v. Ram Narain*³, at p. 926 and *G.G. Harrap and Co. v. Harbans Lal*⁴,

12. The defendant No. 1's case is not that he prepared the head-notes contained in his Digests from the original judgments. On his own admission his notes were prepared only from the matter contained in the "NUC"s. He had no other source from which he could get the points contained in the original judgments. This is clear from paragraphs 5, 6 and 8 of defendant No. 1's written statement and from paragraphs 7 and 8 of the affidavit of defendant No. 1 in reply to the application for temporary injunction.

13. Now, of the examples of alleged piracy quoted by the plaintiff. I have compared a number of instances and I quote only one such instance below. In column 1592 of the defendant's Digest,

AIR 1955 NUC (Assam) 3635 is cited as case no. 8111 as follows :

"Appellate Court cannot make out a case not covered by pleadings."

The corresponding head-note in the plaintiff's Digest AIR 1955 NUC (Assam) 3635, is as follows :-

"Appellate Court cannot make out case not covered by pleadings."

¹(1855) 139 ER 838

³ AIR 1934 All 922

² AIR 1955 Mad 391

⁴ AIR 1935 Lah 282

This prima facie amounts to piracy in my opinion. Not merely is the thought copied but even the language. It is obvious that the note in the defendant's Digest is nothing but a verbatim copy of the plaintiff's head-notes except for the dropping of the word "a". Other instances are not so exactly copied but are, in my opinion, substantially similar. Prima facie then - and I advisedly use that expression so as not to prejudice the ultimate decision of the suit - it does appear that not only were the ideas borrowed from the plaintiffs head-notes or notes, but in considerable measure the style of abridgment and the form in which they are expressed or abbreviated are also borrowed. No doubt, the copyright law does not protect ideas but only the particular expression of ideas. But in the instant case it seems to me prima facie proved that the defendant copied not only the ideas but also the expression of ideas and the form in which they were expressed in the plaintiff's Digest.

14. Then it was urged that the defendant's Digest contains a large mass of cases reported and that the references to the "NUC"s is most insignificant as compared to the total volume of matter in the defendant's Digest, and therefore, the Court ought to have exercised its discretion against the grant of the injunction. Where a part of a work has been copied and the part which has been copied from the plaintiff's work can be separated from that which has not been copied, no doubt an injunction may be limited to the objectionable part or parts. But even where a large proportion of the defendant's Digest may unquestionably be original, the parts which have been copied are, in my opinion, impossible to separate from the original matter. Counsel urged that the injunction as granted is of the widest possible amplitude because it extends to restraining "the printing, publishing and selling of their entire book the All India Digest, 1951-55" and an injunction in that form was unjustified. He urged that even the plaintiff did not claim this relief, for in paragraph 7 of the application the plaintiff clearly confined his claim to "a permanent injunction restraining the defendant from selling the publication 'All India Digest' which contains the matter infringing the copyright of the plaintiff....." (underlining is mine). Counsel offered to give an undertaking that the defendants would omit all references to the "NUC"s from their Digest, and if so, there should be no objection to their publication and the injunction preventing its wholesale publication and sale can never be justified.

15. The argument in theory appears plausible, but I am unable to see how it can be given effect to in practice, and if an injunction is limited as urged. In the first place, I am unable to see how the

defendant can now remove the references to the "NUC"s altogether from the Digest unless he prints and publishes fresh copies. In the second place, it is admitted that volume I of the defendants' Digest has already been printed, published and sold. It was also admitted before me that some copies of the second volume have been sold. Should any copies containing the references to "NUC"s be now sold, it would be impossible to detect such sales because some copies have already been sold and are in circulation. It will be difficult, if not impossible, to ascertain whether a particular copy found to have been sold in the market was sold before or after the injunction. The injunction in the qualified form in which the defendants urge it should have been passed, cannot therefore be issued, and if issued, it will be impossible to superintend its implementation.

16. Turning to the balance of convenience or inconvenience, counsel for the appellants urged that prohibiting them from selling their entire Digest is causing them such irreparable injury as cannot be compensated subsequently and it would be impossible to ascertain the measure of damages afterwards. He urged that the balance of convenience lies in allowing the defendants to sell their Digest subject to an account being kept of the number of copies sold so that the plaintiff would be enabled later to assess his damages should he succeed in his suit. According to counsel if the sales are prohibited now, the defendant No. 1 will not be able to assess damages at all because it would be impossible for him to prove hypothetically how many copies might have been sold. No doubt, there is this difficulty in the way of the defendants, but it is not impossible to prove damages in spite of that because evidence can always be adduced to prove what would have been the probable number of copies which the defendant could have sold if the injunction had not been granted. There is at least some standard to go by in the sales which have already taken place. But as against this inconvenience to the defendants by the grant of the injunction, there is also the inconvenience to the plaintiff by not granting the injunction. The plaintiff's Digest has been published and if the defendant's Digest prima facie containing the pirated matter is also allowed to be sold, it will be impossible for the plaintiff to prove how much it has suffered as in the shape of copies which could not be sold. I hold that in all circumstances it is the plaintiff who would be more inconvenienced if the injunction does not issue. Even if the convenience or inconvenience were equal, the defendants who have been prima facie proved to have offended must suffer the inconvenience.

17. It was then urged that the Indian Copyright Act of 1914 which substantially applied the English Copyright Act of 1911 to India is no longer an operative law since the Constitution because it has never been applied by any provision of law after the coming into force of the Constitution. The answer to that part of the argument is that the Acts are applicable by virtue of the provisions of Article 372 of the Constitution which continues in force all existing laws and their adaptations.

18. It was, however, urged on the analogy of the decision of their Lordships of the Supreme Court of India in Menon's case 1955 SCR 280 that the Indian Copyright Act cannot be operative

law after the coming into force of the Constitution because it was not "law in force" within the meaning of Article 372. In Menon's case, 1955 SCR 280 the Fugitive Offenders Act of 1881 was held not to be law in force in India because Section 12 of the Act only applied it to a group of British possessions mentioned in an Order in Council and their Lordships held that after Independence India was not one of a group of British possessions and that concept was repugnant in the context of a sovereign democratic republic. In the instant case, however, the applicability of the Copyright Act of 1911, depends upon the provisions of Section 3 thereof read with the First Schedule and Section 1 (2) applies it to the whole of India except the State of Jammu and Kashmir. In the English Act also the words used in defining the limits in which copyrights are to prevail are "throughout the parts of His Majesty's dominions"- (See section 1(1), Section 25(1)). In the context of the Indian Independence Act, read with the provisions of the Constitution these words are not necessarily repugnant to the independent sovereign status of India. Therefore, the decision of their Lordships of the Supreme Court in Menon's case, 1955 SCR 280 cannot apply to the present case. There is obviously a difference in applying a law by an order in council to a group of British possessions which concept, as the Supreme Court pointed out, became repugnant to the concept of a Sovereign Democratic Republic which our country became upon the passing of the Constitution and in applying an English Act like the Copyright Act which was applicable to "His Majesty's Dominions" to the whole of India. Reference was also made to Bill No. XV of 1955 wherein provision has now been made for the repeal of the Indian Copyright Act, 1914, and the English Copyright Act of 1911 passed by the British Parliament, vide Clause 82 of the Bill. It was urged on behalf of the respondent that this shows that the two Acts are still in force in India. The argument is unsound. The Bill is not law and therefore nothing can turn upon the provisions of the Bill.

19. Looking at it from every point of view, I am satisfied that the injunction granted by the trial Court was correct. The appeal is dismissed with costs. Leave refused.
Appeal dismissed.