

Karnataka High Court
Munikrishna vs Venkaat on 30 January, 2017
Author: B.Veerappa

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JANUARY, 2017

BEFORE

THE HON' BLE MR. JUSTICE B. VEERAPPA

MISCELLANEOUS FIRST APPEAL No. 4684/2016 (CPC)

BETWEEN:

1. MUNIKRISHNA,
S/O VENKATASWAMY,
AGED ABOUT 45 YEARS,
2. VENKATESH,
S/O VENKATASWAMY,
AGED ABOUT 50 YEARS,
3. KRISHNUDU,
S/O RAMAIAH,
AGED ABOUT 27 YEARS,
4. DODDA HANUMA,
S/O VENKATAPPA,
AGED ABOUT 50 YEARS,
5. LAKSHMAMMA
W/O DODDA HANUMA,
AGED ABOUT 45 YEARS,
6. VENKATARAMA,
S/O VENKATESHAPPA,
AGED ABOUT 30 YEARS,

ALL ARE PRESENTLY AT
CENTRAL PRISON,
BELGAUM.

... APPELLANTS

(BY SRI T. PRAKASH., ADVOCATE)

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AND:

1. VENKAAT,
S/O A CHINNASWAMY,
AGED ABOUT 34 YEARS,

PRODUCER,

2. SRINIVASA RAJU,
SRI HANUMANTHRAJU,
AGED ABOUT 40 YEARS,
DIRECTOR,

RESPONDENT NO.1 & 2 AT
KARNATAKA FILM CHAMBERS
OF COMMERCE,
NO. 28, 1ST MAIN, CRESCENT ROAD,
NEAR SHIVANANDA CIRCLE,
HIGH GROUND, BANGALORE - 560 001.

3. POOJA GANDHI,
D/O PAWAN GANDHI,
AGED ABOUT 27 YEARS,
CINE ACTRESS R/AT PRESTIGE
GROUP OF APARTMENT
HOSAKEREHALLI AREA,
HOSAKEREHALLI, BANGALORE - 560 085.

ALSO AT
KARNATAKA FILM CHAMBERS OF
COMMERCE, NO. 28, 1ST MAIN,
CRESCENT ROAD,
NEAR SHIVANANDA CIRCLE,
HIGH GROUND, BANGALORE - 560 001.

... RESPONDENTS

(BY SRI S. S. RAVISHANKAR, ADVOCATE FOR
G.R. LAW FIRM ADVOCATE)

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THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER
ORDER 43 RULE 1(r) OF CPC, AGAINST THE ORDER DATED
17.06.2016 PASSED ON I.A.NO.1 IN O.S.NO.3223/2016 ON THE
FILE OF THE 42ND ADDITIONAL CITY CIVIL AND SESSIONS
JUDGE, BENGALURU, DISMISSING I.A.NO.1 FILED UNDER
ORDER 39 RULES 1 & 2 R/W SECTION 151 OF CPC.

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THIS MISCELLANEOUS FIRST APPEAL COMING ON FOR
ADMISSION THIS DAY, THE COURT DELIVERED THE
FOLLOWING:

JUDGMENT

The appellants, who are plaintiffs before the trial Court have filed the present Miscellaneous First Appeal against the order dated 17th June, 2016 passed on I.A.1 in O.S.No. 3223/2016 by the II Additional City Civil and Sessions Judge, Bengaluru City (CCH No.43) dismissing the application for temporary injunction restraining defendant Nos. 1 to 3 from producing, directing, screening and releasing the move 'Dandu Palya 2' in Kannada and Telugu languages.

2. The plaintiffs had filed a suit for permanent injunction restraining defendants from claiming through them from producing, directing, screening and releasing the movie 'Dandu Palya 2' in Kannada and Telugu languages contending that at the present, they are in judicial custody in Belagavi Central Prison and also have filed criminal appeals before this Court which are pending consideration; that defendant No.1, is the Film Producer of 'Dandu Palya 2', defendant No.2 is Director of the said film, defendant No.3 - Pooja Gandhi is doing a leading role of a female character portraying appellant No.5 Lakshamma in the said movie. It is their contention that the defendants are producing the said film by portraying them as hard core criminal and also have used their names in the said film by qualifying them as 'Dandupalya Ganga' etc. They had also filed an application for temporary injunction restraining the defendants from producing and releasing film 'Dandu Palya 2' reiterating the averments made therein.

3. Defendant Nos. 1 to 3 filed written statement specifically contended in para-6 that it is a fact that the said story is titled as '2' (TWO) and defendant No.1 has accordingly obtained registration in the said title '2' by Film Chamber of Commerce at Bangalore vide his application to the Film Chamber of Commerce dated 23.12.2014. He further contended that the said film '2' TWO is a story purely made on the creativity, imagination, literary, dramatic, musical and artistic work belonging to the defendants and the said film is based on the false story. He further contended that defendant No.2 indeed had obtained permission and No Objections for the making of film 'Dandu Palya' by the Dandu Palya gang members, who are housed in Belagavi Central Prison. They have specifically contended in para-16 of their statement of objections that the title of the film is not 'Dandu Palya 2' but it is only '2' TWO which is made on the creativity, imagination, literary, dramatic, musical or artistic work and concept belonging to defendant No.2. They have denied the entire plaint averments contending that they are making the film '2' TWO only on the basis of false story and it is not pertaining to the plaintiffs and they are not using the plaintiffs' names etc.

4. The trial Court considering the application and objections to I.A.I, recorded a finding that the plaintiffs have failed to prove that they are having prima facie case to get an order of temporary injunction against the defendants. The plaintiffs further have failed to prove that the balance of convenience and point of hardship is also in their favour and ultimately by the impugned order dated 17.6.2016 dismissed the application - I.A.I. Hence, the present appeal is filed.

5. I have heard the learned Counsel for the parties to the lis.

6. Sri T. Prakash, learned Counsel for the appellants-plaintiffs vehemently contended that the trial Court has failed to notice that the plaintiffs have made out a case and that they are entitled for an order of temporary injunction restraining the defendants from producing, directing, exhibiting, screening and releasing the movie 'Dandu Palya 2' in Kannada and Telugu languages. He further contended that respondent No.1 is producing the said movie by using film title as 'Dandu Palya 2' in Kannada and Telugu languages by involving the names of the appellants and showing them as hard core criminals involving in murdering the innocent people, on the basis of the police records without knowing the truth that majority of the criminal cases are already acquitted for want of material evidence and some of their criminal cases are still pending before this Court in Criminal Appeal No. 521/2011. The said aspects of the matter has not been considered by the trial Court. He further

contended that screening of the film 'Dandu Palya 2' in the name of the present appellants, showing them in negative role are shocking the consciousness of a person, who sees the movie and it is nothing but interfering with personal liberty and privacy of an individual guaranteed under Article 21 of the Constitution of India. Therefore, sought to set aside the impugned order passed by the trial Court.

7. Per contra, Sri S.S. Ravi Shankar, learned Counsel for defendant Nos. 1 to 3 sought to justify the impugned order passed by the trial Court and strenuously contended that the allegations made in the plaint is without any basis. The defendants have specifically contended in the written statement that the title of film is not 'Dandu Palya 2' but it is only '2' TWO which is made on the creativity, imagination, literary, dramatic, musical or artistic work and concept belonging to defendant No.2. The original suit is filed only on assumptions and presumptions without any basis and the defendants have never used the names of plaintiffs in the film nor shown their figure in the film and it is only the apprehension for wrongful gain. Therefore, sought to dismiss the miscellaneous appeal.

8. After hearing the arguments for some time, this Court directed the 1st defendant, who is present before the Court, to file an affidavit to the effect that they will release only Kannada Movie titled as '2' TWO and not 'Dandu Palya 2' as claimed by the appellants, in response to which, at the instance of the learned Counsel for the defendants, Sri Venkaat @ C. Venkatesh, Son of Sri A. Chinnaswamy, who is the Producer of the movie titled as '2' TWO and is before this Court has filed an affidavit dated 30.1.2017 which reads as under:

"AFFIDAVIT I, Venkaat @ C. Venkatesh S/o. Sri. A. Chinnaswamy aged about 43 years residing at No.-57, Govindareddy Layout, Near Ganesha Temple, Aekere, Mico Layout, Bannerghatta Road, Bangalore South-562157, do hereby solemnly affirm and state on oath as follows:-

1. I state that I am the 1st Respondent in the above case and I am aware of the facts of the case, as such I am swearing to this affidavit on behalf of Respondents 1,2 and 3.
2. I hereby declare that I am only producing Kannada Movie titled "2" Two and not Dandupalya-2 as claimed by the Appellants.
3. I further state that I am not using the names of the under trials of dandupalya who the appellants herein in my above movie titled "2" Two.
4. I further state that the statements above made are true and correct.

I the deponent of this affidavit do hereby affirm and state that this is my name and signature.

Identified by me Advocate Ravishankar. S.S.

G.R. Law Firm
Bangalore

Date: 30/01/2017

sd/-
Deponent,
Venkaat
Sworn to before me"

9. In view of the rival contentions urged by the learned Counsel for the parties, the only point that arises for consideration is:

Whether the impugned order passed by the trial Court rejecting the application for temporary injunction filed by the plaintiff is just and proper in the facts and circumstances of the present case?

10. It is the specific case of the plaintiffs that the defendants making the film title as 'Dandu Palya 2' have included the names of the appellants which will deprive the rights of the plaintiffs guaranteed under Article 21 of the Constitution of India. It is the defendants case that the film is not 'Dandu Palya 2' but it is only '2' TWO which is made on the creativity, imagination, literary, musical or artistic work and concept belong to defendant No.2. The Karnataka Film Chamber of Commerce at Bangalore has issued certificate of registration of title as '2' TWO addressed to Venkat Movies clearly indicating that it is only '2' TWO and not 'Dandu Palya 2' as alleged by the appellants.

11. Considering the entire material on record, the trial Court has recorded a finding that the defendants have produced CD containing video; that the title song in the said video also stands for the testimony and prima facie proof that the film is not titled as 'Dandu Palya 2' and the said film is still under the stage of production. Therefore, to produce a Kannada Film the disclaimer video is produced prima facie to convince the Court that the allegations of the plaintiffs are not correct. In the counter, they have denied that they are relying upon the police records and producing the film and they are misleading the public by stating that they are producing a real story based on the life story and incidents in the life of the plaintiffs. Therefore, prima facie nothing is produced to show that the defendants are making the film which is the life story of the plaintiffs. Even the defendants have come up with the version that they doubt that the plaintiffs, who are in jail, are actually aware of the fact regarding filing of the suit or not. The trial Court has recorded a finding that the plaintiffs have signed the Vakalaths which is counter signed by the Jail Superintendent, Central Prisons, Belgaum wherein they are presently housed. The trial Court has further recorded a finding that there is nothing on record prima facie to show that the defendants are creating a story based on the real life story of the plaintiffs with an intention to tarnish and defame the plaintiffs. Therefore, at this stage, it cannot be said that prima face case in favour of the plaintiffs.

12. On the contrary, the film under production, the defendants are carrying out their profession and such citizens cannot be abridged or curtailed by an order of injunction. The plaintiffs have prima facie not produced anything to show that their civil rights are infringed by the acts of the defendants

in directing and producing a movie. Mere on press statement or something is released by the poster, at this stage, we cannot infer that they are going to release a film basing the real incidents and life story of the plaintiffs. Taking into consideration the amounts spent for production of the said film, the trial Court was of the considered opinion that the plaintiffs have not produced any material to show that it is the real life story of the life of 'Dandu Palya' pertaining to the plaintiffs in the present case and further recorded a finding that since the defendants are still making the film '2' TWO and not 'Dandu Palya 2' in view of the defence taken by the defendants in their written statement, the trial Court has rejected the application for grant of temporary injunction as prayed by the plaintiffs.

13. In view of the affidavit filed by the defendant No.1, Sri Venkaat @ C. Venkatesh, who is present before this Court stating in categorical terms that he is producing Kannada Movie titled '2' TWO and not 'Dandupalya-2' as claimed by the appellants and that he will not use the names of the under trials of Dandupalya, who are appellants before this Court in the Movie titled as '2' TWO, the apprehension of the appellants that they are releasing the Movie 'Dandu Palya 2' cannot be accepted.

14. However, it is made clear that the defendants shall not use the names of the plaintiffs in the film '2' TWO and defame the plaintiffs. They shall also not show the photographs of the plaintiffs, who are in Central Jail, Belagavi in the film titled '2' TWO.

15. At the same time, the appellants/plaintiffs are directed not to drag the defendants to any further proceedings when there is clear statement made by the defendants in para-16 that they are not releasing the film 'Dandu Palya 2' but only '2' TWO.

16. With the above observation, this miscellaneous first appeal is disposed of.

Sd/-

Judge Nsu/-