

CAMANI
v.
THE
ADMINIS-
TRATOR
GENERAL OF
MADRAS.

testamentary and funeral expenses should be paid out of the specific bequest. But we are not entitled to speculate as to what the testatrix would or might have done and in effect make a new will for her. We must give effect to the express directions in the will. This appeal is dismissed with costs.

Mr. *James Short*, attorney for appellant.

Mr. *A. E. Rencontre*, attorney for respondent.

APPELLATE CIVIL.

Before Mr. Justice Subrahmanya Ayyar and Mr. Justice Benson.

1906.
January 18.

SABAPATHY MUDALIAR (DEFENDANT), APPELLANT,

v.

SEETHARAMIAH AND OTHERS (PLAINTIFFS), RESPONDENTS.*

Copyright Act XX of 1847, s. 14—Act XXV of 1867—Law under section 14 of Act XX of 1847 same as law in England. No copyright in published work except where copyright registered and subsists.

The law as settled in England is that in the case of a book which has been published, there is no right to sue for piracy except where the copyright is registered and subsists under statutory provisions.

Copinger on 'Copyright,' pages 23 and 33, referred to.

Maclean v. Richardson and Goubaud v. Wallace, (7 Ruling Cases, 66 at pp. 67, 70 and 123 respectively), referred to.

The law is the same in India.

The proviso to section 14 of Act XX of 1847 has not effected any change in the law as stated above and does not protect copyright in published works when not registered under Act XX of 1847 or Act XXV of 1867.

Macmillan v. Suresh Chunder Deb, (I.L.R., 17 Cal., 951), distinguished.

SUIT for damages for infringement of copyright and an injunction.

The plaintiffs were the proprietors and authors of the calendars called 'Sarva Moolhoortha Panchangam' which they have been publishing and selling every year since 1902. Prior to 1902, first and second plaintiffs alone were the proprietors and authors. Defendant was the proprietor of a press called the 'Chandrica Press' where the calendar for 1903 was printed for the plaintiffs. In 1904,

* City Civil Court Appeal No. 4 of 1906, presented against the decree of M.R.Ry. C. Jambulingam Mudaliar, City Civil Court Judge, Madras, in Original Suit No. 100 of 1904.

plaintiffs printed their book elsewhere. The defendant printed a book for the same year with the name 'Sarva Moohoortha Ganitha Panchangam' and was selling the same on his own account. The plaintiffs' book contained, besides the panchangam or calendar portion, original matter which was the result of their personal skill and labour. The plaintiffs alleged that the defendant had copied several original portions in his calendar from the calendar of the plaintiffs and had thus infringed their copyright. The plaintiffs estimated the loss sustained by them owing to the action of the defendant at Rs. 250. The plaintiff further charged that the defendant also infringed the plaintiffs' trade mark which was registered in the Chamber of Commerce. The plaintiffs therefore prayed for an injunction and damages.

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The defendant pleaded *inter alia* that the plaintiffs had not obtained the copyright, and that the publication was not capable of being registered under the Copyright Act 25 of 1867.

The City Civil Judge passed a decree in favour of the plaintiff. Defendant preferred this appeal.

Mr. John Adam and T. Pattabhirama Ayyar for appellant.

C. Venkatasubbaramiah for respondents.

JUDGMENT.—Mr. John Adam has argued the question arising in this case fully, and has drawn our attention to all the authorities bearing on it. Except the case [*Macmillan v. Suresh Chunder Deb*(1)], all the other cases are English authorities. The result of them is that in the case of a book which has been published there is no right to sue on account of piracy, except where the copyright has been registered and subsists under statutory provisions [Copinger on 'Copyright,' pages 29 to 33 and *Macklin v. Richardson* and *Goubaud v. Wallace* (2)].

In the present case the plaintiff's almanac was not registered under Act XX of 1847, nor under Act XXV of 1867, which would be equivalent to registration under the Act of 1847.

No doubt the plaintiff applied for registration under the Act of 1867, but the Registrar refused to register on the ground that the almanac was exempted from registration by notification of the Government of India, dated December 1871, under section 21 of the Act. It is argued for the plaintiffs that this is equivalent to

(1) I.L.R., 17 Calc., 951.

(2) 7 Ruling Cases, 66 at pp. 67, 70 and 128, respectively.

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registration, but we cannot accede to this contention. It is next urged that having regard to the language of the proviso to section 14 of Act XX of 1847, the law in this country must be taken to be different from that accepted as the law of England subsequent to the decision of the House of Lords which settled it [*Jefferys v. Boosay* (1)]. In our opinion, however, the proviso in the Indian Act does not, in substance, differ from the proviso in the English Act (5 & 6 Vic., ch. 45, section 24). The effect of it is to protect copyright in unpublished works as also copyright where there is registry under the statute in the case of published works inclusive of cases in which there has been registry before the suit, though after the infringement complained of. The Calcutta case on which the Judge relies is not in conflict with our view for the work was in that case registered prior to the filing of the suit.

It follows that the plaintiff's suit was unsustainable. We therefore reverse the decree of the Judge and dismiss the suit. Having regard, however, to the fact that the plaintiff asked for registration and was, as far as we can judge, improperly refused, we direct that each party bear his own costs throughout.

APPELLATE CIVIL.

Before Mr. Justice S. Subrahmania Ayyar and Mr. Justice Benson.

1906.
January 22.

YELUMALAI CHETTI AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

SRINIVASA CHETTI AND OTHERS (DEFENDANTS), RESPONDENTS.*

Civil Procedure Code-Act XIV of 1882, ss. 244, 318--Purchaser of undivided share must sue for partition by separate suit--Section 244 no bar to such suit.

The purchaser at a Court sale of the share of an undivided member of a joint Hindu family acquires only a right to sue for partition and for delivery of what may be allotted as the share of such undivided member. The Court cannot on a mere application for execution by such purchaser enforce his right by an order for partition. No such order can be made under section 318 of the Code of Civil

(1) 4 H. L., 815.

* City Civil Court Appeal No. 22 of 1905, presented against the decree of M.R.Ry.C. Jambulingam Mudaliar, City Civil Court Judge, Madras, in Original Suit No. 173 of 1904.