

Copyright and Related Rights Law

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WEEK - 12

LECTURE – 57

Infringement Part III

Welcome back to this course on copyright and related rights law. In the previous two sessions, we have discussed the infringement of copyright. After understanding section 51 of the Indian Copyright Act, which provides for a consideration of what amounts to infringement, we have moved on to the question of whether infringement is limited to literal infringement. And towards that understanding, we were looking at the Indian Supreme Court judgment in the case of R.G. Anand versus Deluxe Films.

This is the second part of the discussion on R.G. Anand versus Deluxe Films. You would recall that there were certain propositions that were summarized by the Supreme Court in considering case law and authorities with respect to the question of infringement that we had discussed in the previous session.

In this session, we are going to see how the court is looking at these two works. Understanding the components in these works and then making a comparison to see whether there are similarities and dissimilarities. And how these dissimilarities or similarities can play a role in an analysis of infringement or legitimate use. Let us first look at the components that the Supreme Court is identifying with respect to the claim, both regarding the play and regarding the script of the film.

We will look at the summary of the facts in order to understand similarities and dissimilarities. Let us first look at the play. The central theme that underlies the play is provincialism. Provincialism leads to the prejudice of persons belonging to one state against persons belonging to other states. In the play, RG Anand had depicted two families, both neighbors and enjoying cordial relations. One family hailed from Punjab, and the other family hailed from Tamil Nadu. Certain characters are important. In the Punjabi family, Chander is the daughter, and in the Madrasi family, Amni is the son. The father of Amni is a person whose name is Subramanyam. This has a particular relation with the script which we will discuss in a bit.

As it happened, Amni and Chander fell in love; they were attracted to each other. The parents were not in favor of this relationship, and the parents of both Chander and Amni were looking to arrange a separate match for them in terms of a wedding. For which they took the help of a marriage broker whose name in the play is Dhanvantari. Amni and Chander also tried to use Dhanvantri's services to persuade their own parents. Chander's marriage is fixed by her father with a person named Bansi, who has been described in the play as a simpleton.

The only reason it appears that Chander's father agreed to this marriage is not particularly because of his fondness for Bansi, but rather because of the desperate need for such a match in the prevailing circumstances. Now, Amni was asked by Chander to speak to her parents about their relationship before this wedding could take place. But Amni was stated in the play to be a cowardly fellow; because of his hesitancy to take up this conversation, he instead chooses the option of suicide. Both Chander and Amni enter into a suicide pact, which they write down in a letter and provide to their parents. The marriage broker convinces them not to commit suicide.

The parents of both these children, when they get to know of the intent to commit suicide through their letters, are filled with grief. At that time, Amni and Chander appear to have married, and it was the marriage broker who had gotten them married, so all ends well. There are certain underlying themes that are important in this particular factual situation in the play. The Supreme Court identifies these features as one feature. The central idea of the play is based on provincialism and parochialism.

Connected to this idea are the other features, which are that the evils of parochialism are expressed through the notion that these two families are cordial neighbors, and even though there was cordiality among them, when the question of marriage arose, they were quick to oppose it. Another feature is the cowardly nature of the boy Amni, who would rather choose suicide than speak to his parents. Another feature is the suicidal pact, which was written into a letter and which was eventually read by the parents. Another feature is the parents realizing the horrors of parochialism after having read those letters and becoming repentant about their actions. Still another feature is that after such a realization of the horrors of parochialism, when they finally appear to be married to one another, everyone is happy.

Now, according to the Supreme Court, now that we have an understanding of the summary of the facts as they appear with respect to this play, and the features that the court identifies are underlying the objective expression. The court is saying that the play deals with only one aspect of provincialism. And that aspect concerns the question of marriage. Whether two people belong to families that hail from different provinces, the kind of issues that arise with respect to marriage. But in terms of other issues that could

be connected to provincialism, even with marriage for that matter, the evil of dowry is something that is not discussed and is not present in this play.

Neither is there any other issue apart from the one aspect of the evils arising on account of provincialism and its practice with respect to marriage. There is nothing else. Keeping that in mind, let us now look at the film's summary. In this film, there is a boy named Anand. Anand is from Punjab. His family is from Punjab. He has come to Delhi to take a course in radio engineering. At the station, he meets a girl, Janaki, who is a Madrasi girl. They had some miscommunication at that time at the station. Anand is looking for accommodation in Delhi.

But wherever he goes, because he is from a different province, he is met with closed doors. He stays at an inn opposite the railway station, where he meets an innkeeper named Kumaraswamy. The Supreme Court notes that one theme that remains throughout the course of this particular film. Is the issue that revolves around accommodation and the problem that the evils of provincialism pose for people looking to find accommodation in a particular place? And according to the court, this particular feature is completely absent from the play. You would recall that in our discussion on the features of the play, there was no consideration of the evils of provincialism featured through a person looking for accommodation.

Let us look further at the facts. At the inn where Anand was staying opposite the station, he met a staff member, an attendant by the name of Kumaraswamy. Kumaraswamy, being a South Indian, suggested to Anand that he should dress up as a South Indian and then go to houses to ask for accommodation. It is through this effort that Anand meets Subramanyam, who is the father of Janaki. Anand is also connected to a school where Principal Murlidhar had introduced Anand to Janaki.

It is there that he knows Janaki is a professor at that particular institute. Janaki and Anand get attracted to each other. Anand comes to know that Subramaniam, who is Janaki's father, does not have a good opinion of Punjabis. He then pretends that he is South Indian. It is at that time that he gets to know that his father, Daulat Ram, has been transferred to Delhi from Punjab.

His father, Daulat Ram, incidentally works in a commercial enterprise in which Subramaniam, Janaki's father, is a subordinate. When Daulat Ram comes to Delhi, he also brings Anand's sister, Nikki, with him. While in Delhi, Nikki meets a Bengali painter named Ashok Banerjee. Ashok Banerjee and Nikki are attracted to each other. Kumaraswamy is introduced by Anand to Subrahmanyam, Janaki's father, as his own father.

This was when Subrahmanyam asked Anand to bring his family. What we must note here, a point of difference again, is that the identity or the provincial identity of these

individuals was not known to each other. Subrahmanyam Janaki's father did not know the real identity of Anand. And in that sense, there is a dissimilarity because, in the play, the regional identity of all individuals was clearly known from the very beginning. There was also the issue that Daulat Ram had problems regarding any marriage due to the issue of caste.

This was also not an issue that we see in the play. So the Supreme Court is saying that, with respect to the play, the identities were completely known, and in terms of this particular feature, there is a clear difference between the two. Coming back to the facts, the identity was eventually revealed, and upon such revelation, Janaki decided to commit suicide. She leaves a suicide note. Daulat Ram tries to get his daughter, Nikki, married to a Punjabi boy.

But that Punjabi family is asking for a dowry. At that time, Ashok had offered his mother's jewelry to be used for such a purpose by Daulat Ram. Eventually, all of these situations subside when the parties get married, that is, Janaki and Anand, and eventually, Daulatram agrees to Nikki and Ashok's marriage as well. In terms of this particular story of the film, the Supreme Court identifies three main themes. It states that there are two aspects of provincialism.

The role of provincialism in regard to marriage, renting out accommodation, the evils of a caste-ridden society, and the evils of dowry. In terms of the last two features, they are completely absent from the play. In fact, even with respect to provincialism, the specific feature connected to accommodation is also absent from the film. The second feature of provincialism connected to accommodation was also absent from the play. Therefore, there are many dissimilarities between the play and the story.

Therefore, there are many dissimilarities between the play and the screenplay. What the Supreme Court is saying is that these three aspects, which the court has noted, are used together in a manner that they are intricately tied and form a core of the film. To take one part away would essentially be to target this particular unity of the themes present in the film. What we can then say is that there is a different treatment that has been taken with respect to the expression in the film. The story is treated differently than it is in the play.

Let us now see what the Supreme Court is saying with respect to such a distinct treatment that is meted out in the film rather than in the play. The court is saying: Mere similarities by themselves are not sufficient to raise an inference of colorable imitation. On the other hand, there are quite a few dissimilarities. The dissimilarities far outweigh the similarities. Moreover, even if we examine the similarities mentioned by the plaintiff, they are trifling and trivial and touch on insignificant points and do not appear to be of substantial nature. Just because the name of one of the fathers was Subramaniam is not enough to categorize the expression as a copyright violation. In fact, as we have also

studied, names by themselves cannot amount to a copyrighted work. Finally, the court says that the film produced by the defendants cannot be considered a substantial or material copy of the play written by the plaintiff. Treatment of the film and the manner of its presentation on the screen are quite different from the one written by the plaintiff at that stage.

Satisfied that after seeing the play and the film, no prudent person can get the impression that the film appears to be a copy of the original play, Nor is there anything to show that the film is a substantial and material copy of the play. At most, it is the central idea of provincialism that is present as a similarity between the play and the film, and just this particular central idea being the same cannot lead to a violation of copyright. With this, hopefully, we have clearly understood that infringement or copyright violation is not limited to literal forms of expression that are copied, but can also extend to non-literal elements, as we have seen in the case of R.G. Anand versus Deluxe Films. We will continue our discussion on infringements in the next session as well. Thank you for joining me; see you all in the next session. Thank you.