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C.S.No.180 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S.No.180 of 2015 and A.No.7842 of 2015

M/s.Kalanjiyam Cut Piece,
Represented by its partners
1.Mohammed Mohideen,
2. M.Basheerudeen,
3. M.Thajudeen,
4.M.Jamaludeen.
No.17/1, Ranganathan Street,
T.Nagar, Chennai - 600 017.

... Plaintiffs

Vs.

M/s.Kalanjiyam Cut Piece,
Rep. by its sole proprietor / partners,
No.61, Big Chetty Street,
Chengalpattu.

... Defendant

PRAYER: Complaint filed under Order VII Rule 1 of C.P.C. read with order IV Rule 1 of the OS Rules of the Madras High Court, and Section 11, 29, 134 and 135 of Trademarks Act, 1999 for judgment and decree for:

(a) granting a permanent injunction, restraining the Defendant, by itself, its servants, agents, distributors, or anyone claiming through them



from manufacturing, selling, advertising and offering for sale using the trade mark KALANJIAM CUT PIECE upon the goods or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, phonetically or deceptively similar to the Plaintiffs registered Trade Mark KALANJIYAM CUT PIECE AND KALANJIYAM or in any manner infringing the Plaintiffs Registered Trade Mark No.690216, 1548035 and 1548038;

(b) granting a permanent injunction restraining the Defendant by themselves, their servants, agents, men or anyone claiming through them from manufacturing, marketing, distributing, offering or advertising for sale of TEXTILE GOODS using the mark KALANJIAM CUT PIECE or similar sounding names in the course of their business and pass off their TEXTILE GOODS using the trade mark KALANJIYAM CUT PIECE AND KALANJIYAM as and for the KALANJIYAM CUT PIECE AND KALANJIYAM goods of the applicant or enable others to pass off;

c) directing the Defendant to surrender to the Plaintiffs all the TEXTILE GOODS packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the trade mark KALANJIAM CUT PIECE or other deceptively similar trade marks in respect of above;

(d) for a preliminary decree in favour of the plaintiffs, directing the Defendant to render an account of profits made by them by the use of the



Trade mark KALANJIAM CUT PIECE on the good referred and for a final decree in favour of the Plaintiffs for the amount of the profits found to have been made by the Defendants, after the Defendants have rendered accounts:

(e) directing the defendant to pay to the Plaintiffs the costs to the suit.

For Plaintiffs : Mr.R.Thiagarajan

JUDGMENT

This suit has been filed for infringement and passing off. In so far as the reliefs prayed for in paragraph Nos. C and D in paragraph No.37 of the plaint are concerned, the learned counsel for the plaintiffs, on instructions is giving up those reliefs, since it is an *ex-parte* judgment. But, however, he reserves his right to claim those reliefs in case the *ex-parte* decree is set aside by this Court in the near future.

2. The plaintiffs are the proprietors of the registered trademark "Kalanjiyam Cut Piece" and "Kalanjiyam", carrying on textile business. They are in the market, using the trademark "Kalanjiyam Cut Piece" and "Kalanjiyam" ever since 1977. As seen from the plaint averments, the sales turnover has increased manifold ever since they commenced their business.



They have obtained registrations of the trademarks "Kalanjiyam Cut Piece" and "Kalanjiyam" in class Nos.24 and 25. The dates of the registrations and the trademarks of the plaintiffs as well as the class under which the registrations were obtained are detailed hereunder:

<i>S.No.</i>	<i>Date</i>	<i>Trademark</i>	<i>R.T.M.No.</i>	<i>Class</i>
1.	11/12/1995	Kalanjiyam Cut Piece	690216	24
2.	10/04/2007	Kalanjiyam	1548038	24
3.	10/04/2007	Kalanjiyam	1548035	25

3. The plaintiffs' claim that their goods and services under the trademarks "Kalanjiyam Cut Piece" and "Kalanjiyam" have been marketed, sold and advertised on a large scale in India. According to the plaintiffs, on account of its long, continuous use and extensive sales, promotion and advertising of the marks and sale of goods under it, it has acquired such unsurpassed reputation and goodwill that the trademark immediately calls to the mind of the unwary public goods and services originating from the plaintiffs exclusively.

4. The plaintiffs' claim that their trademark, "Kalanjiyam Cut Piece" has acquired tremendous distinctive name over the years in relation to its



textile goods and textile cut piece goods. According to them, "Kalanjiyam Cut Piece" has carved a niche for itself in the minds of the public at large.

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5. According to the plaintiffs, they came to know in the year 2012 that the defendants are unlawfully and illegally adopting the plaintiffs' trademark "Kalanjiyam Cut Piece". The plaintiffs submit that using of similar and identical trademark clearly reveals that the defendant has been infringing the plaintiffs' trademark rights under the registered trademarks "Kalanjiyam Cut Piece" and "Kalanjiyam" and passing off their business as that of plaintiffs.

6. The plaintiffs have issued a cease and desist notice on 06.09.2012 to the defendant through their counsel, requesting the defendant to cease and desist from using the plaintiffs' trademarks "Kalanjiyam Cut Piece" and "Kalanjiyam". According to the plaintiffs, they were under the bonafide impression and belief that on receipt of the cease and desist notice dated 06.09.2012, the defendant has stopped using the trademarks "Kalanjiyam Cut Piece" and "Kalanjiyam" belonging to the plaintiffs. But, according to the plaintiffs, they came to know in the first week of February, 2015 that the defendant is continuing to use the trademark "Kalanjiyam Cut Piece" for its



textile business. Only in such circumstances, the plaintiffs have filed this Suit.

7. The defendant has already been set *ex-parte* by this Court as they chose to not defend the suit despite having received the suit summons on 06.05.2015 itself. Till date, no application has been filed by the defendant to set aside the *ex-parte* order. One of the partners of the plaintiffs, Mr.Mohammed Mohideen, was examined as a witness before the learned Additional Master - I, High Court, Madras on behalf of the plaintiffs. He has also filed a proof affidavit supporting the pleadings made in the plaint. Before the learned Additional Master - I, on the side of the plaintiffs through PW1, the following documents were marked as exhibits:

<i>Ex.No.</i>	<i>Date</i>	<i>Particulars of Documents</i>
Ex.P1	11.12.1995	xerox copy of the Certificate of Registration Trade Mark No.690216
Ex.P2	10.04.2007	xerox copy of the Certificate of Registration Registered Trade Mark No. 1548035
Ex.P3	10.04.2007	xerox copy of the Certificate of Registration TradeMark No.1548038
Ex.P4	02.09.2014	xerox copy of the Invoice copy sale by defendant
Ex.P5		xerox of the Carry Bag used by Defendant.



Ex.No.	Date	Particulars of Documents
Ex.P6	06.04.1979	xerox copy of the Deed of Partnership
Ex.P7	21.04.1979	xerox copy of the Acknowledgment of Registration of firm
Ex.P8	03.03.1986	xerox copy of the Deed of Partnership
Ex.P9	04.01.1993	xerox copy of the Deed of Partnership
Ex.P10	31.03.2001	xerox copy of the Deed of Retirement
Ex.P11	01.04.2006	xerox copy of the Admission of Partners
Ex.P12 (Series)	25.04.1979 to 03.11.2005	xerox copies of Purchase Copies
Ex.P13	13.10.2011	xerox copy of the Additional Rep. Of Application No.2219462, 2219463, 2219464 & 2219465
Ex.P14	20.10.2011	xerox copy of the Deed of Assignment of TradeMark KALAJIYAM Assignee in favour plaintiff (Collectively)
Ex.P15	06.09.2012	office copy of the Legal Notice
Ex.P16	10.09.2012	xerox copy of the Postal A/D (The originals have been produced by PW1 in the other suits before this Hon'ble Court filed by the plaintiff for infringement of trade mark and passing off as against certain other third parties. He undertakes to produce the originals before this Court as and when called upon to do so).
Ex.P17	2/1977-78	Demand Notice/Receipt from Corporation of Madras, Bill No.122 - Kalanjiyam Cut Piece, T.Nagar, Chennai-17 (Copy)
Ex.P18	1/1978-79	Demand Notice/Receipt from Corporation of Madras, Bill No.118 - Kalanjiyam Cut Piece, T.Nagar, Chennai-17-(Copy)



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Ex.No.	Date	Particulars of Documents
Ex.P19	21.04.1979	Acknowledgment of Registration of Firm Kalanjiyam Cut Piece (Copy)
Ex.P20	09.11.2003	The Hindu, Chennai Edition (Copy)
Ex.P21	09.11.2003	Daily thanthi, Vellore Edition (Copy)
Ex.P22	09.11.2003	Daily Thanthi, Chennai Edition (Copy)
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Ex.P34	09.11.2003	Daily Thanthi, Salem Edition (Copy)
Ex.P35	10.11.2003	Malai Malar, Pondicherry Edition (Copy)
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Ex.P39	10.11.2003	Malai Malar, Tiruchi Edition (Copy)
Ex.P40	10.11.2003	Malai Malar, Erode Edition (Copy)
Ex.P41	10.11.2003	Malai Malar, Nagercoil Edition (Copy)
Ex.P42	10.11.2003	Malai Malar, Chennai Edition (copy)
Ex.P43	22.07.2012	Daily Thanthi, Chennai Edition (Copy)
Ex.P44	03.09.2014	Estimate - Kalanjiyam Cut Piece, Chengalpattu (Copy)



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Ex.P45	13.03.2015	Dept.of Posts - Track Event - Kalanjiyam Cut Piece-(Copy)
Ex.P46	13.04.2015	Dept.of Posts - Track Event-Kalanjiyam Cut Piece (Copy)
Ex.P47	14.04.2015	Estimate - KalanjiyamChudidar's Chengalpattu (Copy)
Ex.P48	29.06.2015	Estimate -Kalanjiyam Cut Piece Shop, Chengalpattu (Copy)
Ex.P49	2015-2016	Income Tax Returns - Kalanjiyam Cut Piece-AY 2015-2016 (Copy)
Ex.P50	2016-2017	Income Tax Returns - Kalanjiyam Cut Piece - AY 2016-2017 (Copy)
Ex.P51	2017-2018	Income Tax Returns - Kalanjiyam Cut Piece-AY 2017-2018 (Copy)
Ex.P52	21.03.2018	Trade Mark Certificate No.2219464 in the name of Mohammed Mohideen, the Applicant herein (Copy)
Ex.P53	03.04.2018	Trade Mark Certificate No.2219462 in the name of Mohammed Mohideen, the Applicant herein (Copy)
Ex.P54	03.04.2018	Trade Mark Certificate No.2219463 in the name of Mohammed Mohideen, the Applicant herein (Copy)
Ex.P55	21.11.2018	Tax Invoice of PVR Cinemas - Kalanjiyam Cut Piece - Rs.2,31,940- cost of advertisement (Copy)
Ex.P56	26.11.2018	Tax Invoice of SPI Cinema Private Limited-Kalanjiyam Cut Piece - Rs.4,11,802 cost of advertisement (Copy)
Ex.P57	2018-2019	Income Tax Returns - Kalanjiyam Cut Piece -



Ex.No.	Date	Particulars of Documents
		AY 2018-2019 (Copy)
Ex.P58	August, 2019	Kalanjiyam Cut Piece - Salary Statement - April 2019 to August 2019 (Copy)
Ex.P59	2019	Pen drive - containing advertisement material
Ex.P60		Plastic Carry- Bag (white and blue)- New Kalanjiyam Chudidar's (Copy)
Ex.P61		Mini Cloth Carry- Bag (Yellow and red) Kalanjiyam Cut Piece (Copy)
Ex.P62		Mini Carry- Bag (White and blue) Kalanjiyam Cut Piece (Copy)
Ex.P63		Photographs - New Kalanjiyam Cut Piece Name Board (Copy)
Ex.P64		Photographs - New Kalanjiyam Chudidars Name Board (Copy)
Ex.P65		Photograph - New Kalanjiyam Cut Piece shop (Copy)

8. As seen from the aforementioned exhibits marked on the side of the plaintiffs, it is clear that the plaintiffs are having registration for their trademarks "Kalanjiyam Cut Piece" and "Kalanjiyam". It is also seen that the registrations have been obtained under class Nos.24 and 25. It is also seen that the registrations have been renewed periodically. The plaintiff averments also reveal that the plaintiffs have been using the trademarks "Kalanjiyam Cut Piece" and "Kalanjiyam" ever since 1977 as seen from the



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sales turnover of the plaintiffs disclosed in the plaint. The registrations for the trademarks "Kalanjiyam Cut Piece" and "Kalanjiyam" were also obtained. The documents marked as exhibits on the side of the plaintiffs would also establish that the plaintiffs are using the trademarks "Kalanjiyam Cut Piece" and "Kalanjiyam" for several years and they are in exclusive usage. It is also evident from the exhibits that the plaintiffs are having a long, continuous and uninterrupted use of the trademarks "Kalanjiyam Cut Piece" and "Kalanjiyam". The trademarks "Kalanjiyam Cut Piece" and "Kalanjiyam" are distinctive trademarks as seen from the exhibits marked on the side of the plaintiffs and the said trademarks have also acquired secondary meaning by its long and uninterrupted usage. However, as seen from the plaint averments as well as from the documents marked as exhibits, the defendant has continued to use the infringed trademarks "Kalanjiyam Cut Piece" and "Kalanjiyam" despite the plaintiffs issuing cease and desist notice on 06.09.2012 which has been marked as Ex.P15 on the side of the plaintiffs. The acknowledgment card from the defendant for having received the cease and desist notice dated 06.09.2012 has also been marked as Ex.P16. The name of the defendant is identical to that of the plaintiffs' trademarks. The defendant has also continued to use the trademark



"Kalanjiyam Cut Piece" despite cease and desist notice.

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9. The learned counsel for the plaintiffs would also submit that even today the defendant is using the infringed trademark "Kalanjiyam Cut Piece" for its textile business. The plaintiff has also given an explanation in the plaint as to why the suit has been filed belatedly despite the plaintiffs have issued the cease and desist notice on 06.09.2012 itself. The suit was filed in the month of February, 2015. The plaintiffs have given an explanation that they were under the impression that the defendant has stopped using the trademark "Kalanjiyam Cut Piece" on receipt of the cease and desist notice. But, they came to know only in February, 2015 that the defendant is still using the trademark "Kalanjiyam Cut Piece". The reason given by the plaintiffs for the delay in filing the suit is satisfactory and will have to be accepted by this Court since there is no rebuttal on the part of the defendant as they remained *ex-parte* in the suit.

10. The plaintiffs are carrying on business in Chennai at Ranganathan Street, T.Nagar, Chennai - 17. They are also selling their products only at



Chennai. A part of cause of action has also arisen at Chennai. Hence, this Court is having jurisdiction to adjudicate the suit. It is clear from the oral and documentary evidence available on record that the adoption of the trademark "Kalanjiyam Cut Piece" by the defendant will confuse the mind of the general public at large as they would think that the branch of the plaintiffs has been opened at Chengalpet, which is not true. Therefore, it is clear that the plaintiffs have proved that the defendant has committed infringement and passing off in respect of the plaintiffs' registered trademarks "Kalanjiyam Cut Piece" and "Kalanjiyam".

11. As observed at the outset of the judgment of this Court, since the plaintiffs have given up the reliefs sought for in prayer Nos.C and D of the plaint prayer since it is an *ex-parte* judgment, this Court has to dismiss the suit as not pressed with regard to the prayer Nos.C and D in the prayer column of the plaint. However, since the plaintiffs have proved the suit claim in so far as the relief of permanent injunction sought for in prayer Nos.A and B are concerned, the said reliefs will have to be granted by this Court. Based on the pleadings, oral and documentary evidence, the suit has to be partly decreed by granting the reliefs sought for by the plaintiffs in



prayer Nos.A and B of the prayer column in the plaint.

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12. Accordingly, the suit is partly decreed by granting the following reliefs:

(a) granting a permanent injunction, restraining the Defendant, by itself, its servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the trade mark KALANJIAM CUT PIECE upon the goods or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, phonetically or deceptively similar to the Plaintiffs registered Trade Mark KALANJIYAM CUT PIECE and KALANJIYAM or in any manner infringing the Plaintiffs Registered Trade Mark No.690216, 1548035 and 1548038;

(b) granting a permanent injunction restraining the Defendant by themselves, their servants, agents, men or anyone claiming through them from manufacturing, marketing, distributing, offering or advertising for sale of TEXTILE GOODS using the mark KALANJIAM CUT PIECE or similar



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sounding names in the course of their business and pass off their TEXTILE GOODS using the trade mark KALANJIYAM CUT PIECE and KALANJIYAM as and for the KALANJIYAM CUT PIECE and KALANJIYAM goods of the applicant or enable others to pass off.

(c) The defendant is directed to pay the costs of this suit to the plaintiffs.

13. In so far as the reliefs sought for in prayer Nos.C and D of the prayer column in the plaint are concerned, the same is dismissed as not pressed. Consequently, the connected application is closed.

08.11.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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**List of Witness examined on the side of the Plaintiffs:-**

Mr.Mohammed Mohideen (PW1)

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