



A.S.No.574 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 27.06.2025

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit No. 574 of 2024
and
C.M.P. Nos.17834 and 17837 of 2024

G. Raghu Babu
trading as Chaithanya Tractors,
Seemapuram Village & Post,
Ponneri Taluk, Thiruvallur – 601203. ... Appellant

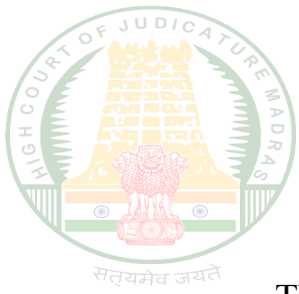
Versus

1. Murali Krishnan
trading as M/s. Murali Krishna Tractors,
Near Lakshmi Vilas Bank,
GNT Road, Karanodai,
Chennai – 600 067.
2. R. Pandurangan
trading as M/s. Vinoth Brick Works,
Z-275, 5th Avenue,
Anna Nagar, Chennai – 600 047. ... Respondents

Appeal Suit is filed under Section 96 r/w. Order XLI, Rule 1 and 2 of Civil Procedure Code praying to set aside the judgment dated 07.11.2023 passed in O.S.No.190 of 2022 by the learned Additional Sub Judge, Ponneri.

For Appellants : Mr. S. Rajesh Ramanathan
For Respondents : Mr. P. V. Muralidhar

JUDGMENT



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This Appeal Suit had been filed to set aside the judgment dated 07.11.2023 passed in O.S.No.190 of 2022 by the learned Additional Sub Judge, Ponneri.

2. **The brief facts, which are necessary for the disposal of this Appeal, are as follows:-**

2.1. The Appellant is primarily involved in the designing and manufacturing of various mechanical appliances and has created a creative portfolio, having designed a number of unique devices, which are currently being used in various relevant fields including agriculture, brick making and quarries. The articles to which the designs of the Appellant have been applied are also being used in several parts of the country. The Appellant has won several awards and accolades as an acknowledgment of the Appellant's contribution in having created various such appliances used across the country.

2.2. In the course of his business, the Appellant having altruistic intentions rooted in practicality came up with a creative design for a FORKLIFT VEHICLE by applying a novel industrial design to a conventional tractor. A conventional tractor is the most visible and useful vehicle that a farmer would wish to invest in. In a country like India where farming and

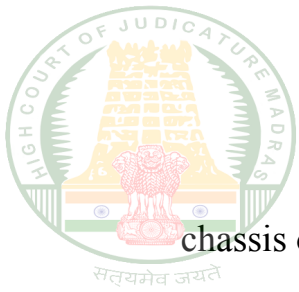


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agriculture is the leading occupation of the people, a tractor plays a vital role in the life of a farmer. It can deliver several advantages to the farmers and make the task of farming easier such as saving time and resources, providing multiple farming uses such as tilling, ploughing, planting, and harvesting, functioning as transport carriers, etc. As an efficient machine, it helps the farmer to comprehensively carry out the various works related to the farming.

2.3. The advantages of forklift in agriculture and farming are also several, because lifting and easily moving heavy parcels is a daily task on a farm. This includes lifting of hay bales, animal feed, fencing materials, equipment parts and seed. A farm forklift can be used on many different types of farming operations including grain, livestock, and produce. Without a farm forklift, farmers are tasked with lifting items like these by themselves, or using another piece of equipment that is not made to do this work.

2.4. Pursuant to the above, on the basis of his expertise in designing and manufacturing appliances with unique and aesthetic designs coupled with his understanding of the critical role played by tractors and the advantages of forklifts in the agricultural industry. In an endeavour to achieve the ends of creating a forklift vehicle from an ubiquitous tractor that is generally used by agriculturists, the Appellant created the design for a forklift vehicle from the



chassis of a conventional tractor.

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2.5. It is pertinent to note that the said design can be applied on a conventional tractor without compromising on the optimum utilization of the existing tractor specifications including ride comfort, visibility and performance and does not in any manner impede the vision of the rider and also ensures that the drive has an aesthetically pleasing vis-à-vis ride comfort of the said vehicle as compared to existing forklift modifications to a tractor that heavily encumbers the operator's vision range.

2.6. The design created by the Appellant is novel and innovative, which is not a subject of any prior inventive designs. The Appellant designed and developed the forklift vehicle based on a unique and innovative arrangement where the necessary components of a forklift have been creatively attached to a conventional tractor with various other external modifications. The design of the forklift vehicle allows the operator to use the vehicle to lift and transport heavy materials for longer distances and through rougher terrains. The forklift vehicle designed by the Appellant can be used by farmers and small industrialists for loading of any agricultural bags in the field to the trailer, inserting submersible motor in the borewell, transporting any heavy material on the field and for any outdoor commercial purposes.



WEB COPY 2.7. The Appellant has invested tremendous time and energy with respect to the research and development of the said design. Initially, the Appellant applied this design to a few conventional tractors with a view to test various parameters including ride safety, road safety, operational effectiveness, engine consistency, terrain testing to name a few. To this effect, the Appellant had approached various interested private parties to test the tractor to which the innovative design was applied without taking any consideration including the 2nd Respondent herein with whom the Appellant had entered into an arrangement for application of the Appellant's forklift vehicle design to the farm tractor of the 2nd Respondent being used in his brick kiln.

2.8. It was upon such repeated and meticulous testing that the Appellant perfected his design and created an efficient machine that helps the farmer to comprehensively carry out the various works related to the farming, which he named as "FORKLIFT VEHICLE". Further, with a view to obtain statutory protection for the distinctive shape and configuration of the said forklift vehicle design that is expected to revolutionise not only the Agricultural sector but also various other allied industries, the Appellant applied for and obtained registration thereof for his novel and innovative design vide application No. 297504 in class 12-05 dated 13/09/2017 under the

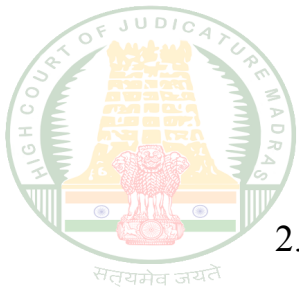


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provisions of Designs Act, 2000. The said design registration is valid till 13/09/2027 and is subsisting as on date.

2.9. Hence, it is clear that the Appellant is the proprietor of the copyright in the said design named as FORKLIFT VEHICLE and thus has acquired an exclusive right over the design to the exclusion of the rest of the world. The Appellant can claim monopoly over the said registered design as against any person using an identical or similar design. Subsequent to the filing of design application, the Appellant has sought to obtain necessary approvals from the appropriate government authorities to apply the design on industrial scale.

2.10. While things stood thus, in the month of December 2018, the Appellant knew about the design infringement committed by 1st Respondent, who is financed by the 2nd Respondent. The Appellant provided photographic evidences to prove that the 1st Respondent is recreating the Appellant's design and applying it to various tractors without any consent or authorisation from the Appellant. The forklift vehicle modification done by the Respondents is identical to the registered design of the Appellant. The Respondents have copied each and every feature of the Appellant's registered design.



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2.11. The Appellant respectfully submits that the Respondents, being aware of the Appellant's design, have been actively trying to imitate each and every aspect thereof, which was created by the Appellant. It is pertinent to note that the name board of the 1st Respondent bears the photograph of Appellant's design as lifted from the Appellant's design registration, which is a public document.

2.12. In an effort to sort out the issue and provide the Respondents with an opportunity to ameliorate their erring ways, a Cease and Desist Notice dated 28/12/2018, was issued on behalf of the Appellant to both Respondents herein informing them of the Appellant's exclusive right over his registered design and thereby called upon them to cease and desist from infringing and passing off the Appellant's registered design.

2.13. Upon receipt of the aforementioned notice, the 1st Respondent vide his reply 11/01/2019 had merely provided a vague and evasive reply alleging that the Appellant had no right/*locus standi* to question him despite being informed of the Appellant's statutory right pertaining to the forklift vehicle design. On the other hand, the 2nd Respondent vide his reply dated 22/01/2019 had tacitly admitted to having availed the services of the Appellant to modify his tractor and his later collaboration with the 1st Respondent



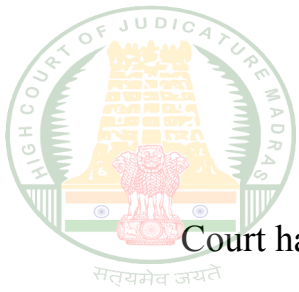
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towards infringing upon the Appellant's registered design. In spite of being aware of the Appellant's exclusive rights over the registered design through the legal notice, both the Respondents continue to nefariously infringe and pass off the registered forklift vehicle design of the Appellant.

2.14. As the Respondents have absolutely no right to even attempt to imitate or apply any design that is similar to the registered design of the Appellant, the Appellant filed a civil suit, being O.S. No. 198 of 2019 before the Principal District Court, Thiruvallur seeking relief of permanent injunction against Respondents' infringement of Appellant's registered design, product passing off and other consequential reliefs. Subsequently, the case was transferred to IV Additional District Court at Ponneri, wherein the interim injunction applications were argued and allowed in favour of the Appellant herein. Thereafter, the matter was once again transferred back to the Principal District Court, Thiruvallur, and after being renumbered as O.S. No. 190 of 2022, was transferred back to the Court of Additional Subordinate Judge, Ponneri.

3. The written statement filed by the first Defendant are as follows:-

3.1. The suit is not maintainable either in law or on facts. This Hon'ble



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Court has no jurisdiction to try the suit on this nature.

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3.2. The Defendant deny the averments made in para No.4, of the plaint wherein the Plaintiff has specifically mentioned that he has involved in designing and manufacturing of various mechanical appliances and not specifically mentioned what are the appliances and the plaint is very vague, if really Plaintiff has manufactured any attachment to the tractor using for various purposes he could have disclosed the same and in the absence of the same, the inference is till date has not manufactured any appliances. Equally he has also stated that the said appliances are used in several parts of the country without specifying what are all the state, he has supplied, and the Plaintiff is strict proof of the said averment.

3.3. The Defendant submits that the averment that para Nos.5 to 10 are totally unnecessary for the purpose of the present suit. As for as this Defendant is concern he is doing only workshop for service and repair of tractor, trailer and other tractor attachment for agricultural operations for more than 2 decades. The 2nd Defendant who is one of his customers is doing agricultural operations having brick kiln industry and having marriage hall, he used to send his tractors as well as its attachments or rusted, broken to this Defendant use to restore the same even the photographs which filed along with the suit will

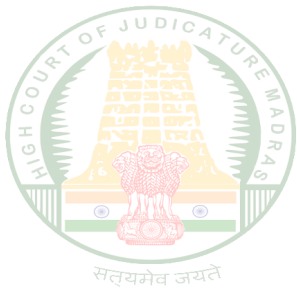


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reveal the fact. This Defendant is not aware that the Plaintiff has spent several lakhs towards the research work in manufacturing and marketing of the design, without specifying the quantum of the amount and proof for the same.

3.4. The Defendant submits that it is specifically mentioned in para No.12 of the plaint that the Plaintiff has obtained the Certificate of Registration for Forklift Vehicle, and but in the same para from line No.11 onward as stated sought to obtain necessary approval from the appropriate authorities and on applying the design on the industrial scale. The subsequent lines and till end of the para has stated that is awaiting for approval as well as intend to start application of registered design for commercial scale. If, this being the case, the present suit is a premature one and has no *locus standi* to maintain the same.

3.5. The Defendant deny the specific averments made in para Nos.13 to 17 of the plaint, that the 2nd Defendant has approached the 1st Defendant to imitate the design which exclusively belongs to the Plaintiff, and the Plaintiff is not sure about the said allegation and is not personally aware of it since the 2nd line in para No.13, has specifically mentioned "come to know that" without mentioning from whom he came to know about the said allegations. Mere assumption/presumption/apprehension the Plaintiff cannot maintain the suit.



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3.6. The Defendant submits that the Plaintiff is put to strict proof that this Defendant has imitate Forklift and manufacture of the same and without any proof the Plaintiff cannot imagine and also stating that in last two lines of para No.14, that the Defendants are guilty of deceiving/defrauding the Government, which are allegations are *per se* defamatory, and Defendant deserves his right to take separate action in that regard. The Plaintiff has issued notice for which the Defendant has sent a detail reply on 22.01.2019 and the same may be read as part and parcel of this Written Statement.

3.7. The Defendant submits that there is no cause of action for the suit, as stated supra when this Defendant has not indulged in either manufacturing or selling forklift and in the absence of any proof by way of documentary evidence the present suit is not maintainable and relief of injunction which is a discretionary one, when particularly in the absence of proper proof and the Plaintiff is not entitled to same.

3.8. The Defendant submits that as stated supra it is the Plaintiff who has to submit that how many forklift this Defendant has manufactured and then only the question of surrender all material which is mentioned in relief column 23© on imaginary ground mentioned by the Plaintiff and in prayer column



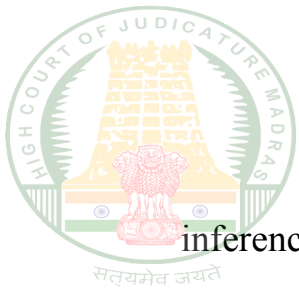
"D" rendering account and claiming Rs.1,00,000/- by way of damages in relief column "E" without specific pleading how the Plaintiff has arrived for the same, and in the absence of the same, the plaint got to be dismissed.

3.9. The Defendant submit that there is no *prima facie* case or *bona fide* in the present suit. If the suit is decreed, the Defendant shall be put to irreparable loss, hardship and injury, the balance of convenience is in favour of this Defendant alone. Hence it is therefore prayed this Hon'ble court may be pleased to dismiss the above suit with exemplary cost and render justice.

4. The written statement filed by the second Defendant are as follows:-

4.1. The suit is not maintainable either in law or on facts. This Hon Ble Court has no jurisdiction to try the suit on this nature.

4.2. The Defendant deny the averments made in para No.4, of the plaint wherein the Plaintiff has specifically mentioned that he has involved in designing and manufacturing of various mechanical appliances and not specifically mentioned what are the appliances and the plaint is very vague. If really Plaintiff has manufactured any attachment to the tractor using for various purposes he could have disclosed the same and in the absence of the same, the



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inference is till date has not manufactured any appliances. Equally he has also stated that the said appliances are used in several parts of the country without specifying what are all the states he has supplied, and the Plaintiff is strict proof of the said averment.

4.3. The Defendant submits that the averment that para Nos.5 to 10 are totally unnecessary for the purpose of the present suit. As for as this Defendant is concerned, he is carrying on business in Brick kiln in the name and style of "Vinoth Brick Works" for more than 30 years, having cultivable lands. For the said purpose, he owns tractor and its accessories, lorries and etc, for which he used to give repair work to the 1st Defendant.

4.4. The Defendant submits that the Plaintiff is a dealer in tractor and doing the said business in the name and style of "Chaithanya Tractors" and this Defendant has purchased "Sonalika International Tractor" from the Plaintiff. The said tractor was used for this Defendant utility. This Defendant has approached the Plaintiff for additional attachment work and the Plaintiff has agreed to do the same and directed this Defendant to leave the tractor and give an estimation of Rs.3,00,000/- for the said work. The Defendant has also left the vehicle along with its tools. As promised by the Plaintiff, he could not do the said work, and return the tractor while taking delivery the Defendant



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noticed that the tools and other hydraulic accessories in 11 Nos as detailed in the reply notice sent by the Defendant on 11.01.2019 roughly worth about Rs.1,10,000/- apart from that not returned the Rs 3,00,000/- when question by the Defendant the Plaintiff has filed the present suit as if this Defendant has imitated the forklift through the 1st Defendant is totally incorrect.

4.5. The Defendant submits that the 1st Defendant is doing only work shop for service and repair of tractor, trailer and other tractor attachment for agricultural operations for more than 3 decades. The 1st Defendant who is one of his mechanic who is attending his tractors as well as its attachments or rusted/broken use to restore the same even the photographs which filed along with the suit will reveal the fact. This Defendant is not aware that the Plaintiff has spent several lakhs towards the research work in manufacturing and marketing of the design, without specifying the quantum of the amount and proof for the same.

4.6. The Defendant submits that it is specifically mentioned in para No.12 of the plaint that the Plaintiff has obtained the Certificate of Registration for Forklift Vehicle, and but in the same para from line No.11 onward as stated sought to obtain necessary approval from the appropriate authorities and on applying the design on the industrial scale. The subsequent lines and till end of



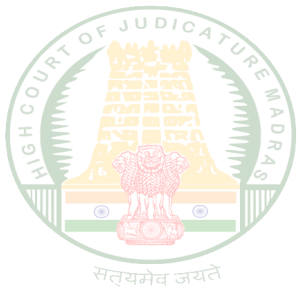
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the para has stated that is awaiting, for approval as well as intend to start application of registered design for commercial scale. If, this being the case, the present suit is a premature one and has no locus standi to maintain the same.

4.7. The Defendant deny the specific averments made in para Nos. 13 to 17 of the plaint, that this Defendant has approached the 1st Defendant to imitate the design which exclusively belongs to the Plaintiff, and the Plaintiff is not sure about the said allegation and is not personally aware of it since the 2nd line in para No. 13, has specifically mentioned "come to know that" without mentioning from whom he came to know about the said allegations. Mere assumption/presumption / apprehension the Plaintiff cannot maintain the suit.

4.8. The Defendant submits that the Plaintiff is put to strict proof that this Defendant has imitate Forklift and manufacture of the same and without any proof the Plaintiff cannot imagine and also stating that in last two lines of para No.14, that the Defendants are guilty of deceiving / defrauding the Government, which are allegations are *per se* defamatory, and Defendant deserves his right to take separate action in that regard. The Plaintiff has issued notice for which the Defendant has sent a detailed reply on 11.01.2019 and the same may be read as part and parcel of this Written Statement.



WEB COPY 4.9. The Defendant submits that there is no cause of action for the suit, as stated supra when this Defendant has not indulged in either manufacturing or selling forklift and in the absence of any proof by way of documentary evidence, the present suit is not maintainable and relief of injunction which is a discretionary one when particularly in the absence of proper proof and the Plaintiff is not entitle to same.

4.10. The Defendant submits that as stated supra it is the Plaintiff who has to submit that how many forklift this Defendant has manufactured and then only the question of surrender all material which is mentioned in relief column 23© on imaginary ground mentioned by the Plaintiff and in prayer column "D" rendering account and claiming Rs.1,00,000/- by way of damages in relief column "E" without specific pleading how the Plaintiff has arrived for the same, and in the absence of the same, the plaint got to be dismissed. In fact, this Defendant reserves his right to take separate action for recovery of Rs.3,00,000/- as well as the materials worth Rs.1,10,000/- and apart from damages for dragging this Defendant to this Hon'ble Court without any legal basis.

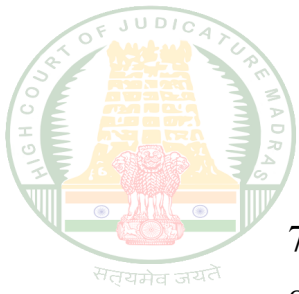
4.11. The Defendant submit that there is no prima facie case or *bona*



fide in the present suit. If the suit is decreed, the Defendant shall be put to irreparable loss, hardship and injury, the balance of convenience is in favour of this Defendant alone. Hence it is therefore prayed this Hon'ble court may be pleased to dismiss the above suit with exemplary cost and render justice.

5. The Trial Court on the basis of the above said pleadings, framed the following issues:-

1. Whether the Plaintiff is entitled to get permanent injunction against the Defendants from infringing the Plaintiff's copy right in the registered design in any manner with respect to design of Forklift vehicle as prayed for?
2. Whether the Plaintiff is entitled to get permanent injunction against the Defendants to passing off vehicle that is identical or deceptively similar to or a colourable imitation of Plaintiff's design of Forklift vehicle?
3. Whether the Plaintiff is entitled to get an order of surrender of materials which is used for imitating Plaintiff's registered design of Forklift vehicle or not?
4. Whether the Plaintiff is entitled to get preliminary decree with respect to true account of profits made by them by imitating Forklift vehicle design from the Defendants as prayed for?
5. Whether the Plaintiff is entitled to get damage of Rs.1,00,000/- from the Defendants for infringement of copy right of Plaintiff as prayed for?
6. Whether the suit is prematured or not?



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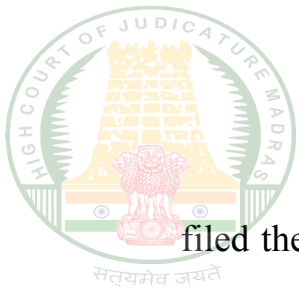
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7. Whether the suit is having cause of action or not?
8. To what other relief?

6. During trial, the Plaintiff himself examined as P.W-1 and marked six documents as Ex.A-1 to Ex.A-6. On the side of the Defendants the first Defendant was examined as D.W-1 and no document was marked on the side of the Defendant.

7. On appreciation of evidence and on hearing both sides, the learned Additional Sub Judge, Ponneri, dismissed the Suit in O.S. No. 190 of 2022. Aggrieved by the same, the Plaintiff preferred this Appeal Suit.

8. The learned Counsel for the Appellant submitted that the Appellant was the Plaintiff in O.S.No.190 of 2022. As per the contention of the learned Counsel for the Appellant, the Plaintiff had registered the design of forklift vehicle which is basically Tractor modified with an attachment of forklift to be used by the Industries as well as Farmers and other business purposes instead of Tractor used only by Farmers. The Plaintiff came to know that the second Defendant had approached the first Defendant for the same attachment for his Tractor. Therefore, for violation of designs which he had registered with the appropriate authority as per the Designs Act, 2000, he had



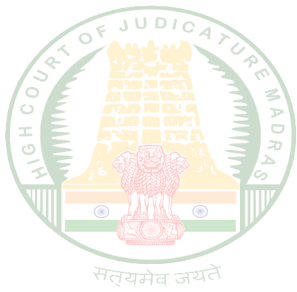
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filed the Suit before the learned Principal District Judge which is a competent Court as per the Designs Act, 2000. After filing of the Suit, the learned Principal District Judge had transferred the Suit to the learned Sub Judge, Ponneri as the subject matter involved was within the territorial jurisdiction of Court at Ponneri.

9. The learned Counsel for the Appellant further submitted that the District Court itself ought to have disposed off the case as it involved dispute regarding the Designs Act. The learned Additional Sub Judge, after full trial, by Judgment dated 07.11.2023 in O.S.No.190 of 2022 dismissed the claim of the Plaintiff. Aggrieved by the same, the Plaintiff had preferred this Appeal.

10. The learned Counsel for the Appellant invited the attention of this Court to the averments in the Plaint in O.S.No.190 of 2022, particularly, with regard to the cause of action and relief sought by the Plaintiff.

“20. The cause of action for filing the suit arose when the Plaintiff applied for and obtained design registration under No. 297504 in class 12-05 dated 13/09/2017 in respect of distinctive shaped 'FORKLIFT VEHICLE'; in December 2018, when the Plaintiff became aware of the defendants' acts of infringement by using the plaintiff's own forklift vehicle as a model to build a vehicle with identical shape and configuration as the Plaintiff's registered design; on 28/12/2018, when the plaintiff issued a cease and desist notice to the defendants and on 11/01/2019, when the 1st defendant issued a reply and on 22/01/2019, when the 2nd defendant



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issued a reply to the plaintiff, both containing vague and evasive statements. The cause of action continues to arise every day till the defendants are restrained by an order of injunction by this Hon'ble Court from using the identical shape and configuration as that of the Plaintiff's registered design.

23. The Plaintiff therefore, prays that this Hon'ble Court may be pleased to pass a decree and judgment on the following terms:-

a. A permanent injunction restraining the defendants by themselves, their partners/proprietors, heirs, legal representatives, successors in business, assigns, servants, agents, distributors, stockists, or any one claiming through them from in any manner infringing the Plaintiff's copyright in the registered design by manufacturing, assembling, selling, distributing or in any manner dealing with any vehicle over which design of a forklift vehicle is applied or apply any such design on any vehicle, which is an imitation of the Plaintiff's registered design No.297504 in class 12-05 for FORKLIFT VEHICLE or in any other manner whatsoever;

b. A permanent injunction restraining the defendants by themselves, their partners/proprietors, heirs, legal representatives, successors in business, assigns, servants, agents, distributors, stockists, or any one claiming through them from in any manner passing off any vehicle that is identical or deceptively similar to or a colourable imitation of plaintiff's design of FORKLIFT VEHICLE by use of identical shape, configuration and arrangement of features, in any manner whatsoever,

c. The defendants be ordered to surrender to the Plaintiff for destruction of all materials, including chassis, tools, spares and other body, work and accessories used to imitate plaintiff's registered design of FORKLIFT VEHICLE;

d. A preliminary decree be passed in favour of the Plaintiff directing the defendants to render true account of profits made by them by manufacture, assembly, sale, distribution of any



vehicle that imitates plaintiff's registered design FORKLIFT VEHICLE and a final decree be passed in favour of the Plaintiff for the amount of profits thus found to have been made by the defendants after the latter have rendered accounts;

e. The defendants be directed to pay a sum of Rs. 1,00,000/- as damages in favour of the Plaintiff for the acts of infringement of copyright in the registered design and passing off;

f. For costs of the suit.”

11. The learned Counsel for the Appellant invited the attention of this Court to the discussion of evidence and the finding of the learned Additional Sub Judge, Ponneri in Paragraph Nos.4 and 5 which are as follows:

“4. வாதியின் ஃபோர்க்லிப்ட் வாகனத்தை பின்பற்றி எந்தவொரு வாகனத்தையும் உற்பத்தி செய்தல், அசெம்பிள் செய்தல், விற்பனை செய்தல், விநியோகம் செய்தல் போன்றவற்றின் மூலம் பிரதிவாதிகள் ஈட்டிய லாபத்தின் உண்மையான கணக்கை வழங்குமாறு வாதிக்கு ஆதரவாக முதல்நிலை தீர்ப்பாணை பிறப்பிக்கக் கோரப்பட்டுள்ளது.

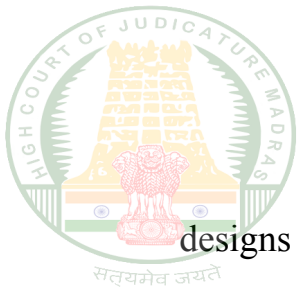
5. வாதியின் பதிப்புரிமையை மீறலுக்காக ரூ.1,00,000/- சேதாரமாக வழங்க உத்தரவிடக் கோரி தாக்கல் செய்யப்பட்டுள்ளது. இவற்றிற்கு எந்தவொரு அடிப்படை ஆவணமோ அவர்கள் தரப்பில் தாக்கல் செய்யவில்லை. ஏனென்றால் குறிப்பாக புகைப்படத்தை மட்டுமே முக்கிய ஆவணமாக வாதி தரப்பில் எடுத்து பார்க்கப்பட்டுள்ளது. ஆறு புகைப்படங்கள் உள்ளது. அதில் ஐந்து புகைப்படத்தில் அந்த கடையின் பெயர் பலகை தொடர்புபடுத்தி வந்திருக்கிறார்கள். ஒரு புகைப்படம் தொடர்பற்று இருக்கிறது. இவற்றில் இந்த நீதிமன்றத்திற்கு சந்தேகம் எழுகிறது. இது இணைப்பு வாகனம் பழுது பார்ப்பது போல் உள்ளது. அதை யார் பழுது பார்த்துக் கொண்டிருக்கிறார்கள் என்று எதுவும் அதில் இல்லை. வாதி தரப்பில் பிரதிவாதிகள் அவருடைய கண்டுபிடிப்பின் வரைபடத்தின் நகல் போல் அவர்கள் இணைப்புக்காக வாகனம் தயார் செய்து விற்பனை செய்வதாக கூறுகிறார். அவ்வாறு இணைப்பு வாகனம் செய்து விற்பனை செய்து அதை சந்தையில் இருப்பதாக அடிப்படை சாட்சி மற்றும் சான்றாவணங்கள் வாதி தரப்பில் தாக்கல் செய்யவில்லை. மேலும் சந்தையில் விற்பனை செய்வதற்கு இன்னும் வாதி தரப்பில் அனுமதி பெறவில்லை என்பது முக்கிய கருத்தாகும். அவ்வாறு இருக்கும் பட்சத்தில் எதன் அடிப்படையில் வாதிக்கு நட்பம் ஏற்பட்டது. எதன் அடிப்படையில் வாதியின் உரிமையை பிரதிவாதிகள்



பறித்தார்கள் என்று தெரியவில்லை. உண்மையில் வாதி கூறியுள்ளது போல் 200 வாகனத்திற்கு மேல் இணைப்பு வாகனம் தயார் செய்து கொண்டிருக்கும் பட்சத்தில் ஒருவர் கூட இன்னாரிடம் இருந்து தான் இந்த வாகனத்தை பழுது பார்த்து வாங்கினேன் என்று கூறாமல் இருந்திருக்க மாட்டார்கள். மேலும் அவரிடமிருந்த புகைப்படத்தை வாதி தரப்பில் தாக்கல் செய்திருக்கலாம். இவற்றைப் பார்க்கும் போது வாதி தரப்பில் முன்னுக்கு பின் முரணான சங்கதிகள் மற்றும் தவறான சங்கதிகளை இந்நீதிமன்றத்தின் முன் அளித்துள்ளார்கள் என்றே இந்நீதிமன்றம் கருதுகிறது. எனவே வாதி கோரிய பரிகாரம் வாதிக்கு வழங்கத்தக்கதல்ல என்று இந்நீதிமன்றம் கருதி எழுவினா 1 முதல் 7 வரை வாதிக்கு எதிராக விடை காணப்படுகிறது.”

12. He has also invited the attention of this Court to the documents filed by the Plaintiff as Ex.A-1 to Ex.A-6. Ex.A-1 is the Certificate of Registration of Design developed by the Plaintiff. Ex.A-2 is the letters of appreciation. Ex.A-3 is the photographs of the Defendant's work shed wherein the infringing activities are carried. Ex.A-4 is the Cease and Desist Notice along with postal acknowledgment card issued to the 1st and 2nd Defendant dated 28.12.2018. Ex.A-5 is the reply notice dated 22.01.2019 issued by the second Defendant to the Plaintiff's notice. Ex.A-6 is the reply notice dated 11.01.2019 issued by the second Defendant to the Plaintiff's notice.

13. The learned Counsel for the Appellant invited the attention of this Court to the Provisions of the Designs Act; the Provisions of Commercial Courts Act; and the Plaint pleadings. The evidence of the Plaintiff and evidence of the Defendant as P.W-1 and D.W-1. It is his contention that the tractor belonging to the second Defendant was designed and registered by the Appellant herein under Ex.A-1. He invited the attention of this Court to the



designs as registered under the Provisions of Designs Act particularly Sections

2, 9 to 11, 17, 18, 22 and 38 which reads as follows:

“2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(a) “article” means any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately;

(b) “Controller” means the Controller-General of Patents, Designs and Trade Marks referred to in section 3;

(c) “copyright” means the exclusive right to apply a design to any article in any class in which the design is registered;

(d) “design” means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in clause (v) of sub-section (1) of section 2 of the Trade and Merchandise Marks Act, 1958 (43 of 1958) or property mark as defined in section 479 of the Indian Penal Code (45 of 1860) or any artistic work as defined in clause (c) of section 2 of the Copyright Act, 1957 (14 of 1957).

(e) “High Court” shall have the same meaning as assigned to it in clause (i) of section 2 of the Patents Act, 1970 (39 of 1970);

(f) “legal representative” means a person who in law represents the estate of a deceased person;

(g) “original”, in relation to a design, means originating from the author of such design and includes the cases which though old in themselves yet are new in their application;

(h) “Patent Office” means the patent office referred to in section 74 of the Patents Act, 1970 (39 of 1970);

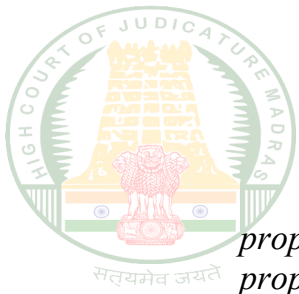
(i) “prescribed” means prescribed by rules made under this Act;

(j) “proprietor of a new or original design”,—

(i) where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed;

(ii) where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired; and

(iii) *in any other case, means the author of the design; and where the*



property in or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person.

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9. Certificate of registration.—(1) The Controller shall grant a certificate of registration to the proprietor of the design when registered. (2) The Controller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, furnish one or more copies of the certificate.

10. Register of designs.—(1) There shall be kept at the patent office a book called the register of designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matter as may be prescribed and such register may be maintained wholly or partly on computer, floppies or diskettes, subject to such safeguards as may be prescribed. (2) Where the register is maintained wholly or partly on computer floppies and diskettes under sub-section (1), any reference in this Act to any entry in the register shall be construed as the reference to entry so maintained on computer floppies or diskettes. (3) The register of designs existing at the commencement of this Act shall be incorporated with and form part of the register of designs under this Act. (4) The register of designs shall be prima facie evidence of any matter by this Act directed or authorized to be entered therein.

11. Copyright on registration.—(1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during ten years from the date of registration. (2) If, before the expiration of the said ten years, application for the extension of the period of copyright is made to the Controller in the prescribed manner, the Controller shall, on payment of the prescribed fee, extend the period of copy-right for a second period of five years from the expiration of the original period of ten years.

17. Inspection of registered designs.—(1) During the existence of copyright in a design, any person on furnishing such information as may enable the Controller to identify the design and on payment of the prescribed fee may inspect the design in the prescribed manner. (2) Any person may, on an application to the Controller and on payment of such fee as may be prescribed, obtain a certified copy of any registered design.

18. Information as to existence of copyright.—On the request of any person furnishing such information as may enable the Controller to identify the design, and on payment of the prescribed fee, the Controller shall inform such person whether the registration still exists in respect of the



design, and, if so, in respect of what classes of articles, and shall state the date of registration, and the name and address of the registered proprietor.

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Section 22- Piracy of registered design – (1) During the existence of copyright in any design it shall not be lawful for any person -

(a) for the purpose of sale to apply or cause to be applied to any article in any class of articles in which the design is registered, the design or any fraudulent or obvious imitation thereof, except with the licence or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or

(c) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article in any class of articles in which the design is registered without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.

(2) If any person acts in contravention of this section, he shall be liable for every contravention— (a) to pay to the registered proprietor of the design a sum not exceeding twenty-five thousand rupees recoverable as a contract debt, or (b) if the proprietor elects to bring a suit for the recovery of damages for any such contravention, and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly: Provided that the total sum recoverable in respect of any one design under clause (a) shall not exceed fifty thousand rupees: Provided further that no suit or any other proceeding for relief under this sub-section shall be instituted in any court below the court of District Judge. (3) In any suit or any other proceeding for relief under sub-section (2), every ground on which the registration of a design may be cancelled under section 19 shall be available as a ground of defence. (4) Notwithstanding anything contained in the second proviso to sub-section (2), where any ground on which the registration of a design may be cancelled under section 19 has been availed of as a ground of defence under sub-section (3) in any suit or other proceeding for relief under sub-section (2), the suit or such other proceedings shall be transferred by the Court, in which the suit or such other proceeding is pending, to the High Court for decision. (5) When the court makes a decree in a suit under sub-section (2), it shall send a copy of the decree to the Controller, who shall cause an entry thereof to be made in the register of designs.

Section 38 – Certificate of Controller to be evidence.



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A certificate purporting to be under the hand of the Controller as to any entry, matter or thing which he is authorized by this Act, or any rules made thereunder to make or do, shall be prima facie evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.”

14. He also invited the attention of this Court to the Provisions of Sections 6 and 7 of the Commercial Courts Act which reads as follows:

“Section 6 – Jurisdiction of Commercial Court

The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a Specified Value arising out of the entire territory of the State over which it has been vested territorial jurisdiction.

Explanation.—For the purposes of this section, a commercial dispute shall be considered to arise out of the entire territory of the State over which a Commercial Court has been vested jurisdiction, if the suit or application relating to such commercial dispute has been instituted as per the provisions of sections 16 to 20 of the Code of Civil Procedure, 1908 (5 of 1908).

7. Jurisdiction of Commercial Divisions of High Courts.—All suits and applications relating to commercial disputes of a Specified Value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court:

Provided that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a court not inferior to a District Court, and filed or pending on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court:

Provided further that all suits and applications transferred to the High Court by virtue of sub-section (4) of section 22 of the Designs Act, 2000 (16 of 2000) or section 104 of the Patents Act, 1970 (39 of 1970) shall be heard and disposed of by the Commercial Division of the High Court in all the areas over



which the High Court exercises ordinary original civil jurisdiction.”

WEB COPY 15. It is the contention of the learned Counsel for the Appellant that the Registration Certificate itself has to be treated as evidence in the light of the Provisions of the Designs Act as per Section 2-sub clause. While so, the learned Judge finding a particular clause “this certificate is not for use in legal proceedings or for obtaining registration” had dismissed the Suit on the ground that the admission of the Plaintiff in cross-examination, thereby rejecting the case of the Plaintiff which is perverse. Therefore, it has to be set aside.

16. The learned Counsel for the Appellant invited the attention of this Court to the discussion of evidence by the learned Judge in Page No.19/24 of the Judgment and the pleadings in the Plaint particularly Paragraph Nos.11 and 12 which reads as under:

“இந்த வழக்கில் வாதி கண்டுபிடித்த அவருடைய வாகனத்திற்கு அரசாங்கம் ஒப்புதல் வழங்கியுள்ளது. அந்த ஆவணத்தை பார்க்கும் போது (Certificate is not for used in legal proceedings) என்று குறிப்பிடப்பட்டுள்ளதை பார்க்க முடிகிறது. மேலும் வாதி எவ்வளவு முதலீடு செய்து இந்த ஆராய்ச்சியை மேற்கொண்டுள்ளார் என்பதற்கு தகுந்த ஆவணம் மற்றும் கால விரையம் எதுவும் குறிப்பிட்டு கூறவில்லை. இந்த வழக்கில் அரசாங்கத்திடம் இருந்து இன்னும் அனுமதி பெறவில்லை என்று வாதியே ஒப்புக் கொண்டுள்ளார்.”

11. The plaintiff submits that during the research and development of the said design, he applied his design to a few conventional tractors with a view to test various parameters including ride safety, road safety, operational effectiveness, engine consistency, terrain testing to name a few. To this effect, the plaintiff had approached various interested private parties to test the tractor to which the innovative design was applied without taking any consideration. It is noteworthy that the 2nd Defendant is



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one such person, with whom the plaintiff had entered into an arrangement for application of FORKLIFT VEHICLE design to his farm tractor for use in his brick kiln. The main intent of the plaintiff was to perfect the design at the earliest and to dedicate the same for the use of the farmers and small industrialists whose need for a cost effective utilitarian vehicle was emergent. The plaintiff has spent several lakhs of rupees towards research, development and field test of his design and has invested more substantial sums of money towards promoting, manufacturing and marketing the said design among the trade and public, more specifically farmers and small industrialists.

12. The plaintiff, upon such testing, perfected his design, which he named as "FORKLIFT VEHICLE". Further, with a view to obtain statutory protection for the distinctive shape and configuration of the said "FORKLIFT VEHICLE" design, the plaintiff applied for and obtained registration thereof vide application no. 297504 in class 12-05 dated 13/09/2017 under the provisions of Designs Act, 2000. The said design registration is valid till 13/09/2027 and is subsisting as on date. Hence, the plaintiff is thus the proprietor of the copyright in the said design named as "FORKLIFT VEHICLE" and thus has acquired an exclusive right over the design to the exclusion of the rest of the world. The Plaintiffs can claim monopoly over the said registered design as against any person using an identical or similar design. Subsequent to the filing of design application, the plaintiff has now sought to obtain necessary approvals from the appropriate government authorities to apply the design on industrial scale. As on date, the plaintiff awaits the necessary approvals from the appropriate authorities. The plaintiff submits that once approvals are obtained, the plaintiff intends to start application of his registered "FORKLIFT VEHICLE" design on commercial scale.

Regarding the observation of the learned Judge in Page No.19/24 of the judgment, the learned Counsel for the Appellant relied on the ruling reported in

MANU/TN/1047/2018 [Preethi Kitchen Appliances Pvt. Ltd. vs. Baghyaa Home Appliances Electronics & Furniture and others] wherein at Paragraph

No.5 (XVII),5 (XXIX) and 5 (XXX) it is observed as under:

“5(xxvii) I also had a very close look at the photographs of other Tripod triangular shaped mixer grinder bases that were placed before me. To be noted those have been scanned and reproduced. Further to be noted, these were placed before me not by the plaintiff, but by the second defendant.



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To my eyes, it appears that while other tripod triangular shaped mixer grinder bases are clearly distinguishable from Plaintiff's product, the tripod shaped mixer/grinder base of the second defendant is not clearly distinguishable from that of the plaintiff's products and comes across as an infringement. If at all there is any difference, it is in the bottom view. This, according to me, is immaterial because the central theme of a design is appeal to the eye. Appeal to the eye can be only by seeing a product as one would normally look at it. Bottom view will be visible only when we are examining the product very closely. In the normal position when the product is placed, the bottom view is invisible. Therefore, the central theme of design being appeal to the eye i.e., judged 'solely by the eye' clearly clinches the issue in favour of the plaintiff.

5(xxix) As alluded to supra, while design registration can be obtained in six different aspects, in the instant case, design registration has been obtained only in shape and configuration. Shape and configuration in the suit design in three dimensional form in the finished product is the test. In this view of the matter also, I have no hesitation in coming to the conclusion that the suit design, at least four out of six views is absolutely similar. The four views which are absolutely similar are front view, rear view, side view and opposite view as contained in the design registration certificate i.e., the suit design. Differences if any is visible to the eye only in top view and the bottom view. There again, there is not much of difference in the top view. Then, if one looks at the perspective view as contained in the Design Registration Certificate of the suit design, there is no doubt in my mind that the second defendant's product is a clear case of infringement/piracy. In other words, overall perspective are same. In this regard, I put it to the learned counsel on both sides as to whether there are any case laws pertaining to design infringement action, wherein some of the views as shown in the Design Registration Certificate are similar and some are not. Both learned counsel for plaintiff and learned senior counsel for second defendant fairly submitted that this principle is not blessed with authorities / precedents. It was also fairly submitted in unison that it is the overall perspective or product as a whole, which should be looked into and I have done exactly that.

5(xxx) I therefore lay down the principle that in design infringement actions, if some views in design registration certificate and alleged offending product are same/similar and when some other views are not same/similar, the overall perspective will be the clincher.”

17. He invited the attention of this Court to the observations of the



learned Judge in the reported decision in ***Preethi Kitchen Appliances Pvt. Ltd.***
WEB COPY Vs. Baghyaa Home Appliances Electronics and Furnitures particularly to

Paragraph Nos.5 (XVII),5 (XXIX) and 5 (XXX) which is squarely applicable to the facts of the case before the trial Court. Therefore, in the light of the above, the learned trial Judge dismissing the Suit of the Plaintiff is perverse and is to be set aside.

18. In support of his contention, the learned Counsel for the Appellant relied on the reported ruling ***MANU/TN/8583/2022*** in the case of ***Dart Industries Inc. and Others vs. Techno Plastics Industries*** wherein this Court had observed as follows:

“49. The Plaintiffs admittedly undertake direct sale, and this is in contrast to the traditional sales channels used by the Defendant. The following questions and answers thereto of PW1, in cross-examination, on 07.08.2019, are relevant:

Q: Can you please explain what do you mean by direct selling company?

A: A direct selling company in India typically operates through an association with the Indian Direct Selling Association and engages in selling of products through a network of independent sales force in case of Tupperware Women who sell Tupperware products by conducting home parties and demonstrations of the product ranges.

Q: What would be the percentage of sales carried out through direct selling method in India?

A: In the current situation, almost 100% of sales is done through the authorised sellers of the company. However, the Tupperware products are also sold in retail outlets and also through e-tail (e-commerce) through a lot of non-authorized sellers which the company has no control and is also a subject matter of a recent judgment.

PW1 admitted that the Plaintiffs undertake 100% direct sales but that indirect sale is done without the authorization of the Plaintiffs. The fact



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that the Plaintiffs- Suit Products were not ordinarily available in retail outlets then (although currently available) would mean that it is unlikely that the products would be available for side-by-side comparison by being available for sale at the same shop. It does not, however, preclude the likelihood of deception because customers will still carry the imperfect recollection in their minds with less scope for cross verification. Although the evidence of actual deception is bereft of details, such deception is certainly likely to injure the reputation and goodwill of the Plaintiffs. The interest of a non-participating stakeholder in intellectual property matters, i.e. the customer, should also not be lost sight of. Such interest is likely to be prejudiced if there is close copying without adequate disclosure of trade origin. Therefore, Issue Nos.2, 3 and 7 are decided in favour of the Plaintiffs.”

19. The case of the Appellant is that Plaintiff in this case was waiting for Government permission after registering the design. The facts of the case reported in ***Dart Industries Inc. and Others vs. Techno Plastics Industries*** squarely applies to the case of the Plaintiff. The Plaintiff is to be protected in his design which he registered with the Intellectual Property Tribunal/Authorities under the Designs Act.

20. The learned Counsel for the Appellant also relied on the reported ruling in ***1998 SCC OnLine Cal 423*** in the case of ***Rotomac Pens Limited vs. Milap Chand and Co.*** This case relies on Designs Act 1911. The learned Counsel for the Appellant relied on the following paragraphs:

“37. Under the scheme of the Designs Act, 1911, as it stands the pendency of an application under Section 51A for cancellation can have no bearing on the consideration of an action under Section 53. It makes no difference that the application under Section 51A is pending before the same High Court. That might be a fortuitous circumstances. The suit for infringement need not necessarily be in the Court in which the application under Section 51A is filed. The court entertaining such a suit cannot prejudice or encroach upon the



jurisdiction of the Court before which the application under Section 51A is pending.

48. In this case the appellant applied for registration of its designs on 31.1.96, Although the certificate of registration was issued in November, 1997, by virtue of section 43(6) the design was registered with effect from 31.1.96. The novelty claimed was in respect of the 'shape and configuration'. The statement must be read with reference to the illustrations of the product which shows the corrugations and elongated portion above the nib and in terms of S. 2(5) we have to judge the similarity solely by eye-appeal.

49. On a visual comparison of the respondent's and the appellant's product it appears to us that the design adopted by the respondent is virtually identical with the appellant's design. The differences which the respondents sought to point out in its affidavit-in-opposition before the Trial Court do not appear to be relevant to the question of similarity in design. It is true that the respondent produces its pens in five colours and of these five colours only three colours are similar to the colours used by he appellant on its pens, but all have the same glossy finish. It is not necessary for the purpose of considering an allegation of infringement of a design to decide whether the purchasers are likely to be deceived. As said in *Castrol India Limited (Supra)*:

"It [is not] necessary to break the articles down into integers for descriptive purposes but in the ultimate result it is the article as a totality that must be compared and contrasted with the features of a shape and configuration shown in the totality observable from the representation of the design as registered.....

The test of deceptive similarity would be appropriate where the petitioner pleads passing off. But in cases of infringement of design the question is not whether the similarity has or [is] likely to cause confusion or deception of a purchaser but whether the similarity is an imitation of the registered design sufficient to destroy the exclusive right of user of the proprietor despite the fact that no confusion is or may be caused as to the source of the goods. Otherwise every registered design could be imitated with impunity merely by changing the colour of the two products thus obviating any confusion. In my" view the respondents have so imitated the petitioner's design as to deprive the petitioner of the protection under the Statute."

21. It is the contention of the learned Counsel for the Appellant that no cancellation action was pending against the Plaintiff. He also relied on para 47 at page 10 of the reported decision. Only eye of the observer is the tool to identify the infringement of design. There is admission by D.W-1 photograph had been ignored by the learned trial Judge. The relevant portion is extracted as under:



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“வா.த.சா.ஆ.3-ஐ பார்க்கும் போது அவர் கண்டுபிடிப்பு வரைபடத்தில் இருப்பதை ஒத்துக் கொள்ளப்பட்டது. அதே வாகனம் போல் பிரதிவாதிகள் தயார் செய்து கொண்டிருக்கிறார்கள் என்றும் அவ்வாறு தயார் செய்து விற்பனை செய்திருக்கிறார்களா என்பதற்கு எந்தவொரு புகைப்படமோ ஆதாரமோ அதை பயன்படுத்துவதற்கு சாட்சியமோ வாதி தரப்பில் முன் நிறுத்தி அவருடைய வாதத்தை நிரூபிக்கவில்லை. மேலும் வாதி என்ன சொல்கிறார் என்றால் நான் ஒரு கண்டுபிடிப்பை கண்டுபிடித்தேன் என்றும், அதற்கான வடிவமைப்பிற்கு அரசாங்கத்திடம் ஒப்புதல் பெற்றேன் என்று கூறியுள்ளார். பின்னர் அதை சமர்ப்பிப்பதற்கு நான் இன்னும் அரசாங்கத்திடம் அனுமதி பெறவில்லை என்று கூறும் பட்சத்தில் எதன் அடிப்படையில் பிரதிவாதி அதை போல் வாகனத்தை பார்த்து செய்கிறார்கள் என்று கூறுகிறார் என்று தெரியவில்லை.”

22. The word நிரூபிக்கவில்லை does not arise. He had misunderstood the provisions of the Designs Act,. This conclusion arrived by the learned trial Judge is against the Intellectual Property and Designs Act. There is enough proof before the Court to grant injunction. The learned Counsel for the Appellant claim that the judgment is not proper. It is erroneous. The finding of the learned Judge is not in tune with the Designs Act. The learned Judge had ignored the provisions of the Designs Act and dismissed the suit. The judgment of the trial Court in O.S.No.190 of 2022 dated 07.11.2023 is to be set aside.

23. Thiru P.V. Murualidhar, learned Counsel for the Respondents submitted his reply arguments to the arguments put forth by the learned Counsel for the Appellant. As per the submission of the learned Counsel for the Respondent, the Certificate of Registration under the Designs Act and the



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Photograph will be sufficient. These are not so if the plaint averments are to be considered. He invited the attention of this Court to paragraphs 11 and 18 of the plaint averments which are extracted as under:

“11.The Plaintiff submits that during the research and development of the said design, he applied his design to a few conventional tractors with a view to test various parameters including ride safety, road safety, operational effectiveness, engine consistency, terrain testing to name a few. To this effect, the Plaintiff had approached various interested private parties to test the tractor to which the innovative design was applied without taking any consideration. It is noteworthy that the 2nd Defendant is one such person, with whom the Plaintiff had entered into an arrangement for application of FORKLIFT VEHICLE design to his farm tractor for use in his brick kiln. The main intent of the Plaintiff was to perfect the design at the earliest and to dedicate the same for the use of the farmers and small industrialists whose need for a cost effective utilitarian vehicle was emergent. The Plaintiff has spent several lakhs of rupees towards research, development and field test of his design and has invested more substantial sums of money towards promoting, manufacturing and marketing the said design among the trade and public, more specifically farmers and small industrialists.

18. The piracy and fraudulent imitation carried out by the Defendants is likely to cause irreparable loss and injury to the Plaintiff's business, which cannot be compensated in pecuniary terms. The Defendants have committed acts of infringement of design and passing off. Unless this Hon'ble Court grants a permanent injunction restraining the Defendants from using an identical design for manufacturing and selling forklift vehicle from a conventional tractor, the Plaintiff would be put to irreparable loss and serious hardship. The use of identical design by the Defendants is capable of causing caused confusion and deception amongst the trade and public. Hence, the Plaintiff is entitled to get a decree of permanent injunction restraining the Defendants from continuing with the infringement of design and passing off. The Plaintiff is also entitled to claim from the Defendants as damages, the illegal profits made by them by use of the offending design which is identical to the



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Plaintiff's registered design FORKLIFT VEHICLE. On accounts being taken, the Plaintiff would be entitled to damages to the tune of several lakhs of rupees. Further, the Plaintiff is also entitled to seek delivery up of all materials, including chassis, tools, spares and other body work and accessories used to apply the forklift vehicle design on a conventional tractor that infringes the Plaintiff's registered design.”

24. All the citations relied by the learned Counsel for the Appellant are facts in which the dispute are between manufacturers. That will not help the case of the Plaintiff before the learned Additional Sub Judge, Ponneri, in O.S.No.190 of 2022 simply because the first Defendant as D.W-1 admitted in the witness box the photograph furnished by the Plaintiff will not help the case of the Plaintiff. The learned Additional Sub Judge, Ponneri, had in the judgment in O.S.No.190 of 2022 rightly dismissed the suit on proper appreciation of evidence. The Defendant-1 is the welder by profession. The Defendant-2 is an agriculturist owning a tractor. There was a contract between the Defendant-2 and the Plaintiff. No document was filed in support of the claim of the Plaintiff. The learned Counsel for the Respondent invited the attention of this Court to paragraph 12 of the plaint. To the averments in paragraph 12 of the plaintiff, there is no proof at all. He also invited the attention of this Court to paragraphs 18 of the plaint. He also invited the attention of this Court to page 2 to 6 of the typed set of documents filed by the Appellant regarding photographs. What is the documents connecting Page-2 to Page-6 of the Appellants typed set. Page 1(a)+(b), page 9 + 10 are the

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photographs of the tractors, condemned vehicles. He invited the attention of this Court to page 11 the entirety does not belong to Plaintiff. The Plaintiff entered into contract with the second Defendant. No documents were marked on the side of the Plaintiff.

25. The learned Counsel for the Respondents invited the attention of this Court to paragraph 18 of the plaint as extracted in paragraph 23 above. How these are to be considered by the trial Court is available in page 106. How the Plaintiff can seek damage of Rs.1,00,000/-?

26. The learned Counsel for the Respondents invited the attention of this Court to Section 7 of the Designs Act, 2000 which reads as under:

“7. Publication of particulars of registered designs.—The Controller shall, as soon as may be after the registration of a design, cause publication of the prescribed particulars of the design to be published in such manner as may be prescribed and thereafter the design shall be open to public inspection.”

27. Whether Plaintiff produced any certificate as per Section 7? Also he invited the attention of this Court to Section 22 (2) of the Designs Act (extracted in paragraph 13 above). Whether Plaintiff succeeded, is the question to be answered. The citations relied by the learned Counsel for the Appellant are not supporting the case of the Plaintiff in O.S.No.190 of 2022 before the learned Additional Sub Judge, Ponneri. The Plaintiff has to stand or



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fall on the strength of his/her evidence and pleadings. The Plaintiff cannot seek a judgement by picking holes in the evidence of the Defendants. He cannot seek a decree on the admission of the D.W-1 in the cross examination. The Defendants had objected to the pleadings of the Plaintiff in the written statement filed by the Defendants. The evidence of the Plaintiff, if analysed, is contradictory to the pleadings of the Plaintiff. The evidence of the Plaintiff is a bundle of contradictions. On the ground of admission of Defendants, the Plaintiff cannot seek a decree.

28. By way of rejoinder to the submissions of the learned Counsel for the Respondents, the learned Counsel for the Appellant submitted that the Defendant-2 is a mechanic. The Plaintiff and Defendant-2 are both mechanics. There is no difference. Ex.A-3 Plaintiff's forklift find a place in the name board. The learned Counsel for the Appellant invited the attention of this Court to page 11 of the typed set of the Appellant on the right side of the photo. The Defendants are not questioning the veracity of the Plaintiff in design registration. It is for the Defendants to explain the photograph in the registration matches with the photograph in page 11 of the typed set. That much is sufficient for the Appellant/Plaintiff to seek the relief as claimed in the suit. The learned Counsel for the Appellant also relied on Section 7 of the Design Act, design is open to public inspection. Also he invited the attention of



this Court to Rule 22 of the Designs Rules, 2001 which reads as under:

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“22. Publication of the particulars of registered design under section 7. -On acceptance of the design filed in respect of an application, the Controller shall direct the registration and publication of the particulars of the application and the representation of the article to which the design has been applied, in the Official Gazette. When publishing in the Gazette, the Controller may select one or more views of the representation of the design, which, in his opinion, would depict the design best.”

29. He invited the attention of this Court to Section 145 of the Patents

Act which reads as under:

“145. Publication of official journal.—The Controller shall publish periodically an official journal which shall contain such information as may be required to be published by or under the provisions of this Act or any rule made thereunder.”

30. The learned Counsel for the Appellant submitted that admission of the Defendant in the witness box is not a stray admission. It is a clear admission. The learned Counsel for the Appellant invited the attention of this Court to page 139 of the Appellant's typed set which reads as under:

“புகைப்படத்தில் உள்ள பெயர் பலகையில் அட்டாச்மென்ட் இயந்திரம் இருப்பதாக உள்ளது என்றால் சரிதான். வா.த.சா.ஆ.1ல் இருக்கும் அட்டாச்மென்ட் மற்றும் புகைப்படத்தில் இருப்பதும் ஒன்றுபோல் உள்ளது என்றால் சரிதான். இந்த புகைப்பட வரிசைகள் எடுக்கப்பட்டது டிசம்பர் 2018 என்றால் சரிதான். வா.த.சா.ஆ.1ல் பதிவு செய்யப்பட்ட நாள் 13.09.2017 என்று குறிப்பிடப்பட்டுள்ளது என்றால் சரிதான். வாதி வைத்திருக்கும் அட்டாச்மென்ட் இயந்திரங்களை வைத்து நீங்கள் அதேபோல் நகல் எடுத்து செய்து வந்தீர்கள் என்றால் அதுபோல் நான் எதுவும் செய்யவில்லை. பழுது பார்க்கும் பணி மட்டும் தான் செய்து வந்தேன். ஸ்டியரிங்கை எந்த அளவிற்கு மாற்றி அமைக்க முடியுமோ அந்த அளவிற்கு மாற்றி அமைத்துக்கொடுத்தேன். அளவு எல்லாம் எனக்கு தெரியாது. ஸ்டியரிங்கை மாற்றுவதற்கு இயந்திரத்தை பிரிக்க வேண்டியது இல்லை. டிராக்டரில் கியர் பாக்ஸ் மாற்ற வேண்டும் இயந்திரத்தை பிரித்து தான் மாற்ற வேண்டும்.



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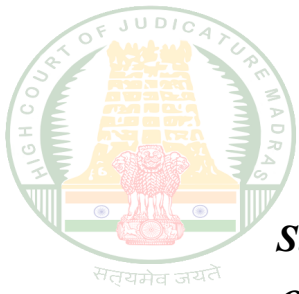
31. The deposition attracting the design of forklift. Therefore, it is the submission of the learned Counsel for the Appellant that the Appeal is to be allowed and the judgement of dismissal of the suit dated 07.11.2023 passed in O.S.No.190 of 2022 by the learned Additional Sub Judge, Ponneri is to be set aside and the suit to be decreed.

32. The learned Counsel for the Respondents objected to the line of argument of the learned Counsel for Appellant stating that if the Court on re-appreciation of evidence, read the entire evidence of Plaintiff and Defendants, this Court as Appellate Court will come to the same conclusion as arrived by the learned trial Judge, learned Additional Sub Judge, Ponneri. Therefore, this appeal lacks merit and it has to be dismissed.

Points for determination:

(i) *Whether the appreciation of evidence by the learned Additional Sub Judge, Ponneri in assessing the evidence of the Plaintiff as well as Defendants before the learned Additional Sub Judge, Ponneri in O.S.No.190 of 2022 is not as per the provisions of Indian Evidence Act and as per the provisions of the Designs Act, 2000?*

(ii) *Whether the finding arrived by the learned Additional*



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***Sub Judge, Ponneri by judgment dated 07.11.2023 in
O.S.No.190 of 2022 in dismissing the suit of the Plaintiff is
perverse warranting interference of this Court?***

33. Heard the learned Counsel for the Appellant Thiru.S.Rajesh Ramanathan and the learned Counsel for the Respondents Thiru.P.V.Muralidhar.

34. Perused the records including the judgment of the learned Additional Sub Judge, Ponneri in the suit in O.S.No. 190 of 2022.

35. The contention of the Plaintiff is that the Plaintiff is a mechanic by profession. He had invented the forklift which was registered under the Designs Act, 2000 with authorities under the Designs Act, 2000. During evidence, the Plaintiff had marked the Registration Certificate under Ex.A-1. The Registration of the design invented/innovated by the Plaintiff. Any one can register anything claimed by the person who seeks registration of the design under the Designs Act, 2000. But if the design is to be carried out into production manufacture, it requires various other legal actions. The averment in the plaint confines to registration of the design as claimed by the Plaintiff that he invented the forklift. Prior to the claim made by the Plaintiff, forklift is



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available as vehicles exclusively manufactured by certain manufacturers and forklift as in the present use is found used in seaport, airport, and in railway goods yard where it is used for shifting heavy goods from one place to another place, including shifting from railway wagon to lorry or from lorry to railway wagon. In Seaport from ship to containers. Therefore, the claim made by the Plaintiff that he invented forklift had to be rejected. Forklift is available even prior to the Plaintiff registering with the authorities under the Designs Act, 2000. After registration of the claimed invention by the Plaintiff, the Plaintiff had sought further approvals of his design with various authorities which are still pending. That is why, in Ex.A-1 it is clearly mentioned, **“it shall not be used in a legal forum for any actions”**. Therefore, the registration claimed by the Plaintiff cannot be invoked to seek legal action through a Court of law as per the Ex.A-1. There ends the matter.

36. The Plaintiff had in his evidence, not proved the claim made by the Plaintiff that he had spent lakhs and crores of rupees in conducting experiments whereby he came upon this design. No proof is made available before the trial Court regarding the expenditures met by him in conducting experiments to arrive at this design, that he claimed to have found by himself that he had invented by himself. It is the claim of the Plaintiff that he is a mechanic. He is a welder by profession. He claims that the design innovated by

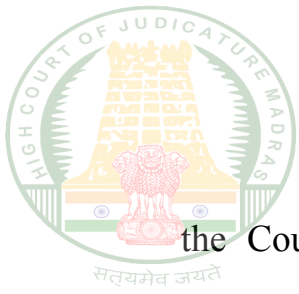


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him is the forklift which can be attached to any vehicle and can be used in agricultural field in lowering submersible motors in irrigation wells, in taking out agricultural produce from the agriculture field to lorries or other vehicles for transporting the agricultural produce from agriculture field to storage yards and it can be removed and fixed as per the requirement of the ordinary farmer in a small vehicle like jeep, car, tractor, etc., It needs only a slight modification of the vehicle that is in use. That is to be used by the user/farmer. The design claimed by the Plaintiff was used by the Defendant-2 who is an agriculturist and he was helped in the design by the first Defendant who is a welder by profession. The evidence of D.W-1 is that he is a mechanic attending to tractors in and around Ponneri which is in use by farmers. They bring damaged tractors to him for repairs and he is attending to repairs till date of the filing of the suit. Merely because he claims to have found out a design, he cannot seek relief of injunction and damages. Based on mere registration, he had not followed up the registration with other relevant laws regarding manufacture till date. Ex.A-1 restrains the Plaintiff from seeking legal action based on registration. There ends the matter.

37. It is the claim of the Plaintiff that the suit was instituted before the learned Principal District Judge, Tiruvallur, which is the competent Court under the Designs Act, 2000. But by inadvertence, the suit was transferred to



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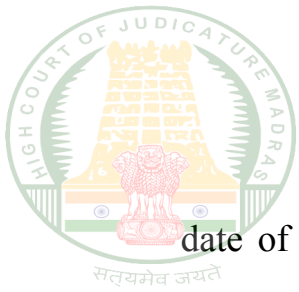
the Court of the learned Additional Sub Judge considering the territorial jurisdiction involved in this matter. The Defendants 1 and 2 are residents of Ponneri and the cause of action are at Ponneri. Therefore, he claims that the suit ought not to have been taken up for trial by the learned Additional Sub Judge, Ponneri. It is for the Plaintiff to have pointed it out to the learned Additional Sub Judge, Ponneri, at the earliest point of time before ever proceeding with the trial. Only when he suffers the judgment of dismissal, he agitates claiming that the learned Additional Sub Judge, Ponneri, does not have the authority/discretion to dispose of a case under the Designs Act. The said submission of the learned Counsel for the Plaintiff as Appellant before this cannot be accepted.

38. As rightly contented by the learned Counsel for the Respondents/Defendants the Plaintiff cannot seek a decree from Civil Court by picking holes in the evidence of the Defendants. The Plaintiff has to stand or fall on the strength of his or her pleadings and evidence. It is the settled proposition of law as laid down by the Supreme Court in very many judgments the Plaintiff has to stand or fall on the strength of his own pleadings and evidence. In this regard, it is relevant to cite the decision of the Hon'ble Supreme Court in the case of *State of Karnataka v. Union of India* reported in *(1977) 4 SCC 608 : 1977 SCC OnLine SC 301* wherein it is held as follows:



“In a civil suit the plaintiff has to succeed on the strength of his own title, not on the weakness of his adversary because the defendant may be a rank trespasser and yet he can lawfully hold on to his possession against the whole world except the true owner. If the plaintiff is not the true owner, his suit must fail. A proceeding under Article 131 stands in sharp contrast with an ordinary civil suit.”

Therefore, the contention of the Plaintiff that the first Defendant as D.W-1 admitted it in the cross examination. Therefore, the learned Judge ought to have decreed the suit cannot be accepted. There is a warning in Ex.A-1 that the registration will not help the Plaintiff to institute a suit. Therefore, the suit as framed itself is barred by the very same registration certificate. Therefore, what had been claimed in the plaint ought to have been rejected at the first instance, before ever proceeding with the trial. In the light of the restrictions imposed under Ex.A-1, the entire claim of the Plaintiff is found not enforceable. In the light of the above, the submissions made by the learned Counsel for the Appellant/Plaintiff before the trial Court is found unacceptable. The Plaintiff was unable to prove his claim that he spent lakhs and crores in conducting experiments to innovate this design. It is common knowledge that forklift is available as on date of filing of the suit in various places, particularly, in stockyards, in railway yards, in seaports and in airports. Therefore, the Plaintiff claiming to have innovated forklift is found unacceptable by common parlance. When he had innovated a new forklift which is ready to be fixed to any vehicle, he should have obtained appropriate legal approval from further authorities in continuation of Ex.A-1. As on the



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date of filing of the suit he had not obtained any such approval, permission from further authorities for manufacture of the same. That is why, in Ex.A-1 there is a restriction that it shall not be used in a legal forum. There ends the matter. Therefore, the evidence of D.W-1 in cross examination admitting the claim of the Plaintiff will not help the Plaintiff's case. The document Ex.A-1 relied by the Plaintiff itself is against his claim. Therefore, seeking injunction against the Defendants and seeking damages are found contrary and contradictory to the restrictions imposed on the Plaintiff in Ex.A-1. As rightly contended by the learned Counsel for the Respondents, the ruling cited by the learned Counsel for the Plaintiff in (i) *MANU/TN/1047/2018* in the case of *Preethi Kitchen Appliances Pvt. Ltd. vs. Baghyaa Home Appliances Electronics & Furniture and others*; (ii) *MANU/TN/8583/2022* in the case of *Dart Industries Inc. and Others vs. Techno Plastics Industries* and (iii) *1998 SCC OnLine Cal 423* in the case of *Rotomac Pens Limited vs. Milap Chand and Co.* will not help the Plaintiff in this case. The facts in the present case are different from the facts stated in the above rulings.

39. In the light of the above discussion, **the point for determinations 1 and 2 are decided against the Appellant/Plaintiff and in favour of the Respondents/Defendants.** The appreciation of evidence by the learned Additional Sub Judge, Ponneri in assessing the evidence of the Plaintiff as well



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as Defendants before the learned Additional Sub Judge, Ponneri in O.S.No.190 of 2022 is as per the provisions of Indian Evidence Act and as per the provisions of the Designs Act, 2000. The finding arrived by the learned Additional Sub Judge, Ponneri by judgment dated 07.11.2023 in O.S.No.190 of 2022 in dismissing the suit of the Plaintiff is found proper. That does not warrant interference by this Court.

In the result, **this Appeal Suit is dismissed as having no merit with cost throughout.** The judgment dated 07.11.2023 passed in O.S.No.190 of 2022 by the learned Additional Sub Judge, Ponneri is confirmed. Consequently, connected miscellaneous petitions are closed.

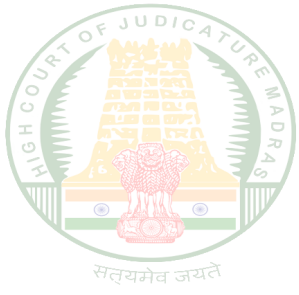
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Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order

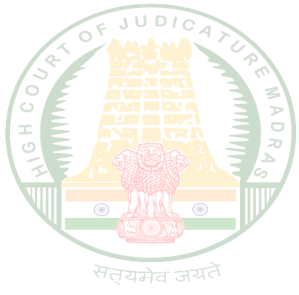


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To

1. The Additional Sub Court,
Ponneri.
2. The Section Officer,
V.R. Section,
High Court Madras.



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SATHI KUMAR SUKUMARA KURUP, J.,

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Judgment made in
A.S.No.574 of 2024

27.06.2025