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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27 / 06 / 2016

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.NO.60 OF 2009

S.Gopi
Proprietor
M/s.Bangalore Prasanna Perfumes
34, Boologanathar Koil Street,
Tiruchi - 620 082.
Having his Branch at
No.31, Subba Reddy Street,
West Mambalam, Chennai - 600 033. .. Plaintiff

Versus

Sri Jai Sai Enterprises
N.T.R. Colony,
Eluru - 534 001.
West Godavari District,
Andhra Pradesh. .. Defendant

PRAYER: Plaint filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 CPC read with Sections 134 and 135 of the Trade Marks Act, 1999 and under Sections 55, 56 and 62 of the Copyright Act, 1957, praying for the following judgment and decree against the defendant.

a) Permanent injunction restraining the defendant, its servants or agents or anyone claiming through it from in any manner infringing the plaintiff's registered trade mark "GAYATHRI" together with the device of Goddess GAYATHRI by using the offending trade mark "JAI GAYATHRI" together with the device of "Goddess GAYATHRI" or any other mark or marks which are identical and similar to or a colourable imitation of the plaintiff's registered trade mark "GAYATHRI" together with the device of Goddess GAYATHRI;



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of sale of Agarbathies (Incense sticks), Dhoop Sticks, Sambrani Sticks, Dasangam Powder, Dasangam Sticks, Sambrani bathies etc., for several years with the trade mark "GAYATHRI" together with the device of Goddess Gayathri. As the defendant has infringed the registered Trade Mark of the plaintiff, the present Civil Suit has been filed for the following relief:-

a) Permanent injunction restraining the defendant, its servants or agents or anyone claiming through it from in any manner infringing the plaintiff's registered trade mark "GAYATHRI" together with the device of Goddess GAYATHRI by using the offending trade mark "JAI GAYATHRI" together with the device of "Goddess GAYATHRI" or any other mark or marks which are identical and similar to or a colourable imitation of the plaintiff's registered trade mark "GAYATHRI" together with the device of Goddess GAYATHRI;

b) Permanent injunction restraining the defendant, its servants or agents or anyone claiming through it from in any manner infringing the plaintiff's copyrighted artistic work "GAYATHRI" together with the device of Goddess GAYATHRI by using the offending artistic work "JAI GAYATHRI" together with the device of Goddess GAYATHRI or any other work or works which are identical and similar to a colourable



imitation of the plaintiff's well established copyrighted artistic work "GAYATHRI" together with the device of Goddess GAYATHRI;

c) Permanent injunction restraining the defendant, its servants, agents or anyone claiming through it from in any manner passing off of its sambrani sticks and other products bearing the offending artistic work and trade mark "JAI GAYATHRI" together with the device of Goddess GAYATHRI as and for the celebrated sambrani sticks and other products of the plaintiff bearing the copyrighted artistic work and well established trade mark "GAYATHRI" together with the device of Goddess GAYATHRI either by manufacturing or selling or offering for sale or in any manner advertising the same;

d) directing the defendant to surrender the entire stock of unused offending trade mark labels, bill books etc., bearing the offending trade mark "JAI GAYATHRI" together with the device of Goddess GAYATHRI, together with blocks and dyes for destruction.

e) directing the defendant to render a true and faithful accounts of the profits earned by the defendants through the sale of sambrani sticks and other products sold under the offending trade mark "JAI GAYATHRI" together with



the device of Goddess GAYATHRI and directing payment of such profits to the plaintiffs for the passing off committed by the defendants.

f) directing the defendant to pay cost of the suit to the plaintiff.

2.Though at the stage of granting interim order, the defendant had appeared before this Court, later, the defendant remained *exparte*. The plaintiff had filed his proof affidavit marking Exs.P1 to P4.

3.The only question that has to be considered in the suit is whether the defendant has infringed the trade mark of the plaintiff and whether the plaintiff is entitled to the decree as prayed for.

4.The plaintiff states that one Mrs.K.Kamakshi was carrying on business under the name and style of M/s.Bangalore Prasanna Perfumes engaged in manufacturing and selling of Incense sticks, Agarbathies, Dasangam powder, Dasangam sticks, Sambrani bathies, Sambrani sticks, etc. The said Kamakshi has honestly conceived and adopted the trade mark "GAYATHRI" together with the device of Goddess Gayathri on 21.06.1993 and eversince the said date, she had been continuously using the said trade mark. The said business was carried on by Mrs.K.Kamakshi till 29.10.2001, on which



date, the plaintiff had taken over the said business of M/s.Bangalore Prasanna Perfumes, as a going concern including the assets and liabilities along with trade mark and copyright. Since then, the plaintiff has been extensively using the said trade mark "GAYATHRI" and thereby increasing their sales and turn overs to the tune of several crores. Owing to the long, continuous and extensive usage by the plaintiff's predecessor in title and also by the plaintiff from the year 2001, the consuming public associate the trade mark "GAYATHRI" along with the device of Goddess Gayathri only with the plaintiff's products and not with anybody else.

5.The plaintiff registered the said trade mark "GAYATHRI" together with the device of Goddess Gayathri under No.1317962 in class 3. The plaintiff has also registered his trade mark label "GAYATHRI" together with the device of Goddess Gayathri under Copyright Act and obtained copyright registration certificate under No.A-73467/2005.

6.The plaintiff has marked the trade mark registration certificate as Ex.P1, which is dated 29.10.2004. The copyright registration certificate dated 16.05.2005 is marked as Ex.P2 and the label of the plaintiff is marked as Ex.P3.



the plaintiff was shocked to note that the defendant had started manufacturing and selling Sambrani sticks bearing the offending identical trade mark JAI GAYATHRI along with the device of Goddess Gayathri. The said label of the defendant is marked as Ex.P4.

9. In this regard, attention is drawn to Section 29 of the Trademarks Act, 1999, which states that a registered



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"It is well settled principle of law that any action for infringement and pass off where the similarity between the plaintiff and the defendant's trademark is so close either visually, phonetically or otherwise and the court reaches the conclusion that there is imitation, no further evidence is required to establish that the plaintiff's rights are violated....."

12. Reliance was placed on a judgment of the Honourable Supreme Court in **MIDAS HYGIENE INDUSTRIES P. LTD., AND ANOTHER VS. SUDHIR BHATIA AND OTHERS [2004 (3) SCC 90]** wherein it has been held as follows:

"5. The law on the subject is well settled. In cases of infringement either of Trade Mark or of Copyright normally an injunction must follow. Mere delay in bringing action is not sufficient to defeat grant of injunction in such cases. The grant of injunction also becomes necessary if it prima facie appears that the adoption of the Mark was itself dishonest."



13.As stated earlier, including the colour scheme, the device of Goddess Gayathri has been reproduced by the defendant and the only defense is in addition of the word "JAI". As the marks of both the parties are visually similar, for the same product, the plaintiff is entitled to the relief of permanent injunction restraining the defendant from using the plaintiff's registered trade mark.

14.In so far as the copy right infringement is concerned, the person infringing must have used the mark without obtaining licence from the owner of the copyright. In this case, though it may be stated that the picture of Goddess Gayathri are worshiped by the people of Hindu Religion and that it is a common phenomenon for which the plaintiff cannot claim an exclusive right, the plaintiff has registered the device Goddess Gayathri as early as in 2001 and the artistic work of Gayathri was registered on 16.05.2005. Hence, the defendant's use of the artistic work of the plaintiff, without obtaining permission from the plaintiff, clearly indicates that there is an infringement of copyright of the plaintiff. The substantial and fundamental similarities between the two labels of the plaintiff and the defendant constitutes infringement which enables the plaintiff for a decree for permanent injunction



restraining the defendant from using the copyrighted artistic work of the plaintiff.

15. The plaintiff also placed his reliance on the First Bench judgment of this Court in ***THE DAILY CALENDAR SUPPLYING BUREAU VS. THE UNITED CONCERN [AIR 1967 MAD 381]***, wherein, it is observed as follows:

"22. This aspect of the similarity in the details of the two pictures would show that the defendants must have taken a photograph of the plaintiff's picture and from that photograph fixed the relative position of the various substantial features like the position of the hands, the position of the vel and the dimension and relative position of various parts of the body and used them thereafter for completing his painting."

16. With respect to passing off action is concerned, the defendant has used the trade mark and artistic work, which are deceptively similar to that of the plaintiff's trade mark, in order to unjustly enriched itself from the reputation and goodwill of the plaintiff for the product. The defendant is also said to have deceived the



17. Though the plaintiff has prayed for surrender of the entire stocks of unused offending trade mark labels, bill books etc., no evidence has been let in to establish that after the grant of interim injunction, the defendant was carrying on with the business in violation of the order passed by this Court. Hence, the plaintiff is not entitled for the relief of surrender of the entire unused stocks and also for condition of true accounts being the consequential relief.

18. In the light of the above facts and legal position, the suit is **decreed as prayed for by the plaintiff in so far as prayer (a) (b) and (c) is concerned viz.,** restraining the defendant from infringing the trade mark,



LIST OF WITNESSES EXAMINED ON THE SIDE OF THE PLAINTIFF

LIST OF EXHIBITS MARKED ON THE SIDE OF THE PLAINTIFF

<i>Sl.N o.</i>	<i>Exhib its</i>	<i>Description of documents</i>	<i>Date</i>
1	P-1	Plaintiff's trade mark registration certificate	29.10.2004
2	P-2	Plaintiff's copyright registration certificate	16.05.2005
3	P-3	Plaintiff's Gayathri Label	-
4	P-4	Defendant's Gayathri Label	-

27.06.2016

Dated this day of 2017

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.