

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 04.10.2017**

**CORAM**

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**

**C.S.No.1017 of 1995**

1.P.M.Palani Mudhaliar and Co.,  
36, Coral Merchant Street,  
Mannady, Chennai – 600 001.

2.P.Selvamani

3.Palani Cotton Fabrics,  
No.144 (New No.70),  
Coral Merchant Street,  
Mannady, Chennai – 600 001.  
Rep. by its Partner Mr.P.Selvamani  
(Plaintiffs No.2 & 3 impleaded as per order  
dated 30.01.2014 in A.No.634 of 2014)

.. Plaintiffs

Vs.

1.Venkateswara Lungi Company,  
98/2, New Street,  
Mannady, Chennai – 600 001.

2.P.R.Textile,  
98/2, New Street,  
Mannady, Chennai – 600 001.

3.Sanjay Kumar Chordia

4.Ajay Kumar Chordia

.. Defendants

**Prayer :** Complaint filed under Order VII Rule 1 of Civil Procedure Code and Order IV Rule 1 of O.S.Rules and Sections 27, 29, 105 and 106 of the Trade and Merchandise Marks Act, 1958 Read with Sections 51, 55 and 63 of the Copyright Act, 1957, praying to grant a Judgment and Decree on the following terms:

a) Grant a perpetual order and injunction restraining the defendants by themselves, their partners/proprietors, servants, agents, distributors, stockists, representatives or any of them from in any manner infringing second plaintiff's Registered Trade Marks 144 label and device mark by use of the Trade Marks 744 label and device or any mark similar to second plaintiff's said Registered Trade Marks.

b) Granting a perpetual order and injunction restraining the defendants by themselves, their partners/proprietors, servants, agents, distributors, stockists, representatives or any of them from in any manner passing off and enable others to pass off the defendants lungis as and for the plaintiffs' lungis by use of the Trade Marks 744 label, round seal and device mark or any Trade Mark or any Trade Mark deceptively or any of them from in any manner passing off and enable others to pass off the defendants lungis as and for the plaintiffs' lungis by use of the trade Marks 744 label, round seal and device mark or any Trade deceptively similar to the plaintiffs Trade Marks 144 label, PMP Seal and device mark or in any other manner whatsoever.

c) Grant a perpetual order and injunction restraining the defendants by themselves, their partners/proprietors, servants, agents, distributors stockiest, representatives or any of them from in any manner infringing 2<sup>nd</sup> Plaintiffs Registered Copyright 144 label by use of 744 label or any other label which is a substantial reproduction of 2<sup>nd</sup> Plaintiffs artistic work 144 label;

d) A preliminary decree be passed in favour of the Plaintiffs directing the defendants to render account of profits made by use of Trade Marks 744 label round seal and device mark and final decree be passed in favour of the Plaintiffs for the amount of

profits thus found to have been made by the defendants after the latter have rendered accounts.

e) The defendants be ordered to surrender to the Plaintiffs' for destruction, of all lungis, labels, blocks, dies, screen prints packing materials and other material bearing the Trade Marks 744 label, round seal and device mark or any mark defectively similar to the Plaintiffs' Trade Marks 144 label PMP seal and device mark.

f) The defendants be ordered and decreed to pay to the plaintiffs a sum of Rs.1,10,000/- as damages for his wrongful and illegal activities and for the use of Trade Marks 744 label, round seal and device mark.

g) For costs of the suit; and

h) For such further and other orders as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

For Plaintiff : Ms.Brinda Mohan

For Defendant : Mr.A.Prabakara Reddy

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**JUDGMENT**

The defendants were set ex-parte on 06.01.2014. According to the plaintiffs, the first plaintiff is a registered Proprietor of the Trade Mark PMP round seal which is in use for the last one decade in Class 24 in respect of "Textile piece goods" and is using the said label with No.144 and a colour

combination of red and gold from the year 1974. The said Trade mark has also been registered with the Registrar of Trade Marks on 02.09.1988 in Class 24 under No.497210.

2.The first plaintiff has assigned the said Trade Mark in favour of the second plaintiff by a Deed of Assignment dated 10.10.2007. The second plaintiff who was the partner of the third plaintiff firm under the partner ship deed dated 04.06.2003 had licensed the third plaintiff to use the registered Trade Mark which was assigned to him by the Deed of Assignment dated 10.10.2007. Originally the suit was filed by the first plaintiff. The above second and third plaintiffs were impleaded subsequently on 30.01.2014.

3.Claiming the defendants are attempting to use the labels which are deceptively similar to the plaintiffs' trade mark containing the same colour combination of letters and numerals in the same fonts with a very minute difference which are not discernable by the general public, the plaintiffs have come forward with the above suit. The defendants have not contested the suit. The second plaintiff was examined as P.W.1 and has also filed a Proof Affidavit. Along with the Proof Affidavit, he had produced the trade mark registration certificate issued to the first plaintiff, the copy right registration certificate dated 07.12.1992 issued to the first plaintiff, the copy of the artistic work of the plaintiffs labels, the Deed of Assignment dated 10.10.2007 executed by the first plaintiff in favour of the second plaintiff, the copy of the label used by the defendants, the partnership deed of the third plaintiff dated

04.06.2003 and the registration certificate of the third plaintiff. The documents were marked as Ex.P.1 to Ex.P7.

4.From the above documents, it is seen that the plaintiffs have got a registered Trade Mark in respect of the label bearing No.144 with a particular colour combination of Gold and Red. The defendants' label which has been produced as Ex.D5 has the same colour combination and same lay out, but only the number is shown as 744 instead of 144. The fonts of the letters and the numerals in the labels used are same as that of the plaintiffs'. There is a likelihood of the general public who intend to buy the products of the plaintiffs, would receive the products of the defendants as if they are that of the plaintiffs. Since there is a likelihood of deception, the first plaintiff as the owner of the registered Trade Mark, the second plaintiff being the partner of the third plaintiff firm under the partner ship deed dated 04.06.2003 had licensed the third plaintiff to use the registered Trade Mark they are entitled for the relief as prayed for in the suit. The suit is decreed as prayed for as against the defendants 1 to 4.

5.Accordingly, this Civil Suit is decreed as prayed for. However, there shall be no order as to costs.

**04.10.2017**

Speaking order  
Index: No  
Internet: Yes  
ah/dna

**R.SUBRAMANIAN., J.**

ah

To

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98/2, New Street,  
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