

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.10.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

O.S.A.No.280 of 2017
and
C.M.P.No.17948 of 2017

A.Rajendran ... Appellant
Vs.

1.Thenandal Studios Limited
Represented by its
Director N.Ramasamy
No.15, Old No.8,
Lake Area 5th Street
Nungambakkam
Chennai - 600 034.

2.N.Ramasamy ... Respondents

Appeal filed under Order XXXVI Rule 9 of the O.S.Rules r/w
Clause 15 of the Letters Patent, against the order dated
06.10.2017 made in O.A.No.942 of 2017 in C.S.No.747 of 2017.

For Appellant : Mr.P.Raja

For Respondents : Mr.P.S.Raman
for Mr.S.Vijayan for R1

सत्यमेव जयते
Mr.Satish Parasaran
for Mr.R.Parthasarathy for R2

JUDGMENT

(Judgment of the Court was delivered by RAJIV SHAKDER, J)

1. This is an appeal preferred against the judgment and order of the learned Single Judge dated 06.10.2017. The learned Single Judge, by virtue of the impugned judgment and order, has dismissed the appellant's application for injunction.

2.The appeal arises in the background of the following brief facts :

2.1. The appellant, who is a film producer intended to introduce his son as an actor. It appears that the appellant, for this purpose, selected a story and titled it as "Merrasalaitan". It is the stand of the appellant that the said title was first registered as early as in 2014 by an entity going by the name "Green Apple Pictures".

2.2. The appellant further avers that the titles "Merrasalaitan" and "Naan Merrasalaitan" were thereafter, registered in his name upon receiving a No Objection Certificate (NOC) from erstwhile title holder(s).

2.3. It is also the case of the appellant that between October 2015 and January 2016, he entered into various agreements with associated persons, such as Artists, Musician, Editor, Designer, Design and Publicity in charge, Lyric Writer, Dialogue Writer, Production Manager etc., in order to take the project forward. It is claimed by the appellant that on 17.08.2016, a pooja ceremony was held, in that behalf, and a first look poster was released accordingly.

2.4. The appellant claims that in and about 20th June 2017, the respondent's film titled "Mersal" was announced, and the advertising material connected thereto was released by the first respondent.

2.5. The appellant, it appears also found out that in and about 30th June 2017, the second respondent had filed an application with the Trade Mark Registry to register the title "Mersal" under clause 41 of the Trade Marks Act, 1999.

2.6. In the interregnum, on 21.06.2017, the appellant filed a complaint, with the Tamil Film Producers Council. This was followed by another complaint, which was filed on 18.06.2017.

2.7. Furthermore, on 14.09.2017, the appellant, apparently, also filed his opposition to second respondent's application filed with the Trade Mark Registry.

2.8. Since, the appellant's grievance was not redressed, the instant suit for permanent injunction was instituted by him, in order to restrain the respondents from passing off the title "Merrasalaitan", by taking recourse to its purportedly, adopted version, that is, "Mersal".

3. It is in this background, as alluded to above, via., the impugned judgment and order, the interlocutory application for injunction preferred by the appellant was dismissed by the learned Single Judge.

4. Learned counsel for the appellant submits that the impugned judgment and order is erroneous, as it failed to take into account the following:

(i) That objections had been filed by the appellant in the form of complaints lodged with the Tamil Film Producers Council (in short, "Council"), which were pending adjudication.

(ii) The appellant had invested money in the project and, therefore, had acquired rights in the title "Merrasalaitan".

(iii) The appellant, thus, had a prima facie case, and also, the balance of the convenience was in his favour, which was not given due consideration.

4.1. In sum, counsel for the appellant says that injunction ought to have been granted, and therefore, the failure to grant injunction had affected his rights.

5. Mr.P.S.Raman, who appears for respondent No.1 and Mr.Sathish Parasaran, who appears for respondent No.2 vigorously opposed the appeal.

6. We have heard the learned counsel for the parties and perused the record.

7. What emerges from the record is that while the appellant claims to have made a huge amount of investment, a finding of fact, albeit, a prima facie one, has been returned by the learned Single Judge that not a shred of evidence has been placed on record in that behalf.

8. The subject title "Merrasalaitan" has, admittedly, not been placed in public domain, and therefore, necessarily could not have acquired any goodwill and/or reputation. As a matter of fact, it is conceded before us that no advertisement concerning the subject title has been released. The argument that huge investment has been made is nebulous to say the least.

9. Having regard to these aspects, in our view, as rightly concluded by the learned Single Judge, no injunction could have been granted. It is trite to say that a passing off action even qua a title would lie only if, it acquires reputation and/or goodwill. There is nothing to suggest that the subject title, i.e., "Merrasalaitan" had acquired goodwill and/or reputation. The appellant has neither been able to set up a prima facie case nor is the balance of convenience in his favour, as would be evident from the narration of the facts set out above.

9.1. The other submission that objections filed by the appellant in the form of complaints were pending consideration before the Council, in our opinion, will not help the cause of

the appellant, in view of the fact that mere registration of the subject title with the Council by itself, would not vest any legal right in the appellant. The subject title ought to have acquired goodwill and/or reputation to enable the appellant to sustain the passing off action.

9.2. There is, according to us, no error of law or fact in the impugned judgment and order. The appellate Court, if at all, can interfere on a principle of law, and not merely because it may have a different view of the matter.

10. For all these reasons, we find no merit in the appeal. The appeal is, accordingly, dismissed. Consequently, connected pending application shall stand closed.

11. Needless to say that the observations made by us hereinabove, or, by the learned Single Judge, would not impact the final adjudication of the suit.

12. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vsm/gg
To
The Sub Assistant Registrar (O.S.),
Madras High Court,
Chennai.

+ 1 cc to M/s. R. Parthasarathy, Advocate Sr.73760
+ 1 cc to M/s. P. Raja, Advocate SR.73812

O.S.A.No.280 of 2017

WEB COPY

CP (CO)
EU (25/10/2017)