

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :12.01.2017

CORAM

THE HON'BLE MR. JUSTICE **N.SATHISH KUMAR****C.S.No.122 of 2011**

M/s.Express Infrastructure Pvt. Ltd.,
Express Estates,
No.2, Club House Road,
Mount Road (Anna Salai),
Chennai-600 002
rep. by R.R.Arron Kumar
the Chief Financial Officer.

...Plaintiff

Vs.

1.M/s.Property Bazaar
rep. by its Managing Partner
No.10/41, Kirubashankari St,
West Mambalam,
Chennai-600 033.

2.R.Akilan,
Partner,
M/s.Property Bazaar,
No.10/41, Kirubashankari St,
West Mambalam,
Chennai-600 033.

...Defendants

Prayer:- Complaint filed under Order IV Rule 1 of O.S. Rules r/w. Order VII Rule 1 of CPC and Sections 134 & 135 of the Trade Marks Act, 1999, praying for

i)a permanent injunction restraining the defendants, its servants, agents and or anyone acting under or through it from in any manner rendering their services under the mark "Express Avenue"or any other mark deceptively similar to that of the plaintiff's mark "Express Avenue" thereby infringing the plaintiff's mark Express Avenue;

ii)a direction to the defendants to pay a sum of Rs.25,00,000/- or such sum that may be found on taking account as damages. The plaintiff undertakes to pay the additional Court fees on taking of such accounts;

iii)an order for delivery of all impugned finished cartons, hoardings, banners, visual aids, catalogues, price lists, literature and advertisement bearing or containing the mark "Express Avenue"or any other mark similar to that of the plaintiff for purpose of destruction; and

iv)costs of the suit.

For Plaintiff : Ms.A.Gomathi
for M/s.King & Patridge

For Defendants : Ex-parte

ORDER

The suit has been filed by the plaintiff for a permanent injunction restraining the defendants, its servants, agents and or anyone acting under or through it from in any manner rendering their services under the mark "Express Avenue"or any other mark deceptively similar to that of the plaintiff's mark "Express Avenue" thereby infringing the plaintiff's mark Express Avenue and also for damages to the tune of Rs.25,00,000/-.

2.The brief facts of the plaintiff's case is as follows:

a)The plaintiff's company is engaged in the business of real estate affairs and one of the leading promoters in Chennai and is a successful building constructor since its inception. In the year 2007, the plaintiff's company started its construction for huge mall under the name "Express Avenue". The said mall is borne out of the high class facilities and international brands housed in the mall, attracting huge number of visitors on a daily basis. The trade mark name 'Express Avenue' has applied global standards of mall management from astute planning to right tenant mix, synergistic placement, food and options to establish a hallmark in mall development and international level property management.

b)The plaintiff originally conceived, designed and used the distinctive trademark/name "Express Avenue" along with its logo extensively, continuously and uninterruptedly for several years in the field of business developments and commercial space development successfully. It has acquired a considerable goodwill and reputation in the minds of the public in regard to the services provided by the plaintiff's company. The defendants are also in the field of real estate affairs and made advertisements in newspapers in Hindu and Daily Thanthi, other media and their website namely,

property bazzaar.com for their projects for selling of plots/layouts at Mamandur and promoting their plot layout in the market under the same name and get up of "Express Avenue". As per the name and appearance of Express Avenue, the name the defendant has chosen for their project which is visually, phonically and deceptively similar and identical to the plaintiff's trademark.

c)The defendant is dishonest and illegally adopted the plaintiff's trademark and deceived the public by taking advantage of the goodwill and reputation enjoyed by the plaintiff by way of infringing their trademark. Hence, the plaintiff has no other option except to file the present suit.

3.The defendants remained absent and set exparte. The Chief Financial Officer of the plaintiff's company has submitted about the case of the plaintiff. To establish the claim of the plaintiff, the following documents namely, Exhibits P1 to P11 were marked:

i)Ex.P1 is the photocopy of the Memorandum of Association and Articles of Association of the company. Ex.P2 is the photograph of inaugural invitation news item showing the inauguration date of the plaintiff's mall. Ex.P3 is also a similar news item. Ex.P4 is the report of the Directors of the company. Ex.P6 series additional representations for registration of the trademark

dated 27.07.2009 and 20.08.2009 respectively. Ex.P7 clearly shows that the defendants have used to promote their projects adopting the name of the plaintiff company's trademark issued. Ex.P8 is the Trademark Caution Notice published by the plaintiff's company in Hindu Newspaper. Ex.P9 is the advertisement in the newspapers which also shows that the defendants used the plaintiff's trademark. Legal notice issued by the plaintiff is under Ex.P10. Ex.P11 is the advertisement given by the defendant in the name of the plaintiff's trademark.

4.From the aforesaid documents, it is clear that the plaintiff's mall is one of the reputed, unique and distinct mall and it acquired good will and reputation in the minds of the public and also it had acquired trademark registration by way of proper application and therefore, the defendants cannot adopt the same for promoting their business which is also similar in viz., Real Estate. If the same trademark is used, it will cause serious confusion in the minds of the public and deceive the public and create irreparable loss to the plaintiff's company. Further evidence of P.W.1 remains unchallenged. In view of the same, the plaintiff is entitled for permanent injunction and the suit is decreed in respect of the same.

5. So far as the damages are concerned, no evidence is adduced on the side of the plaintiff, as they have suffered such damages. In the absence of any evidence to prove the substantial damages has stated by the plaintiff in the prayer, he cannot be given the relief as sought for by this Court.

6. In fine, the plaintiff is entitled for permanent injunction for their registered trademark and in respect of damages, the suit is dismissed. No costs.

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Index: Yes/No
Internet: Yes/No
DP

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