

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.01.2017

CORAM

THE HON'BLE MR. JUSTICE **N.SATHISH KUMAR**

C.S.No.598 of 2011

D.Rakkiappasamy,
Partner,
Sri Shanmuga Modern Rice Mill,
S.F.No.156, Kovai Main Road,
Kangeyam,
Tirupur District.

...Plaintiff

Vs.

D.Ramesh,
KDR Modern Rice Mill,
93 C, Adayapulam road,
Arni-632 301,
Thiruvannamalai District.

...Defendant

Prayer:- Complaint filed under Order IV Rule 1 of O.S. Rules and Order VII Rule 1 of CPC r/w. Sections 27(2), 28, 29, 134 & 135 of the Trade Marks Act, 1999, praying for

i)a permanent injunction restraining the defendants, by themselves, their partners, distributors, stockists, dealers, servants, agents, retailers, representatives or any other person claiming through them from manufacturing, selling, offering for sale, stocking, advertising directly or indirectly by infringing the plaintiff's registered trade mark "Maharaja Brand" along with the device of Maharaja in relation to rice or by using the Trade Marks "Nala Maharaja" along with the device Maharaja or by using any other mark or marks which are in anyway visually phonetically or deceptively similar to the plaintiff's registered Trade Mark "Maharaja Brand" along with the device of Maharaja or in any manner

infringing the plaintiff's registered Trademark;

ii)a permanent injunction restraining the defendants, by themselves, their partners, distributors, stockists, dealers, servants, agents, retailers, representatives or any other person claiming through them from in any manner passing off their rice bearing the plaintiff's registered Trademark and the artistic work Maharaja or by using the Trademarks "Nala Maharaja" along with the device Maharaja as and for the rice of the plaintiff by selling or offering for sale or in any manner advertising the same;

iii)a direction to the defendants to surrender to the plaintiff the unused bags, packing materials, labels, advertisement materials, catalogues, sales invoice books, blocks, dies, cartons, polythene bags and all other materials bearing the plaintiff's registered Trademark for destruction;

iv)a direction to the defendants to render true and faithful account of the profits earned by them through the sale of the rice by using the plaintiff's registered Trademark "Maharaja Brand" and directing the defendant for payment of such profits made by the defendant to the plaintiff and

v)a direction to the defendant to pay the costs of the suit.

For Plaintiff : Mr.P.Saravana Sowmiyan

For Defendant : Ex-parte

ORDER

The suit has been filed by the plaintiff for a permanent injunction restraining the defendant from infringement of their registered trademark and also for passing off their products and also

other reliefs.

2.The nutshell of the case which leads to the filing of the present suit is as follows:

i)The plaintiff and his brother are the registered proprietors of the rice brand namely, "Maharaja brand". The plaintiff is doing business of rice processing and trading the brand since 1970. The rice sold by them are well patronised by the public and well known in the market in respect of high standard of quality maintained in respect thereof. During the second week of July 2011, the plaintiff came to know through their stockist and dealers at Chennai, that the plaintiff's trademark is being falsified/infringed in the market of Tamil Nadu, particularly, in Chennai and other places. Then, on investigation, it was found that the defendant who is the manufacturers and marketers of the rice using the name 'Nala Maharaja' which is identical and deceptively similar to the brand name owned by the plaintiff. Hence, the suit for infringement and passing off has been filed.

ii)The plaintiff's brother is also the joint proprietor of the Trademark No.578456, has examined himself as P.W.1 and he has spoken about their registered product in the name of Maharaja and the renewal of the registration of the trademark upto the year 2012. He has also spoken that originally, the said trademark was

owned by one Mohammed Yousuff and the plaintiff by way of a Deed of Assignment dated 24.11.2008, has assigned the same under Ex.P1. Plaintiff had gained reputation and also goodwill in their business and if the defendant is allowed to use the market 'Nala Maharaja' rice brand, infringing the trademark of the plaintiff, the same would lead to the deception and confusion in the minds of the public and also they will be put to irreparable loss and also cause damage to their reputation and goodwill to their registered trademark which is phonetically and visibly similar to that of their rice brand 'Maharaja' and therefore, the plaintiff's has come forward with the present suit.

3.Evidence of P.W.1 remained unchallenged. To substantiate the claim of the plaintiff, the following documents viz.,Exs.P1 to P6 were marked on the side of the plaintiff:

a)Ex.P1 is the certified photocopy of the entry in Register of Trade marks relating to the registration of the Trademark 'Maharaja' issued by the Trademark Registry, which clearly establish the fact that the trademark 'Maharaja' was registered in the name of D.Eswaramurthy and D.Rakkiapasamy, for the purpose of selling the said rice brand. Ex.P2 to P4 shows that the plaintiff's trademark has been infringed and in fact, the word 'Nala has been prefixed before their name Maharaja. Ex.P5 is the original gunny

bag of the plaintiff used to sell their rice brand whereas, Ex.P6 is the original gunny bag used by the defendant.

4.The above facts clearly indicates that the plaintiff has registered the trademark ownership, which has been infringed and sold in the market under the name of 'NalaMaharaja' where the same leads to a lot of confusion and deception in the minds of the public if the infringement is allowed to continue.

5.The evidence of P.W.1 clearly proves that not only infringement by the defendant but also lots of confusion and deception in the minds of the public which are likely to be caused due to such infringement. The above evidence remains unchallenged and traversed by the defendant as he remained exparte and the same can be deemed to be admitted on the part of the defendant. Accordingly, this Court holds that the plaintiff is entitled for a permanent injunction as prayed for.

6.Insofar as the other reliefs are concerned, the same are unnecessary for the suit. Accordingly, this Court is inclined to decree the suit only in respect of the permanent injunction.

7. Accordingly, the suit is decreed as prayed for with regard to the relief of clause (a) and (b). No costs.

12.01.2017

Index: Yes/No
Internet: Yes/No
DP

N.SATHISH KUMAR.J,

DP

C.S.No.581 of 2011

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