

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.01.2017

CORAM

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

C.S.No.791 of 2011

Annai Flour Mills (P) Ltd.,
No.5, 80 feet road,
Saligramam, Chennai 600 093
Rep. by its Managing Director
Mr.S.Suvindran

...Plaintiff

Vs.

M/s. Muruhan & Co
No.71, V.O.C.Nagar Main street,
Sozhambedu Road,
Thirumullaivoyil,
Chennai 600 062.

...Defendant

Prayer:- Complaint filed under Order IV Rule 1 of O.S.Rules and order VII Rule 1 CPC read with Sec.134 and 135 of the Trade Marks Act, 1999.

a. granting a permanent injunction restraining the defendant, its servants or agents or anyone claiming through it from in any manner infringing the plaintiff's well established and registered trade mark "ANNAI" by using the offending trade mark "ANNAI" or any other mark or marks which are identical and similar to or a colourable imitation of the plaintiff's well established and registered trade mark "ANNAI";

b. granting a permanent injunction restraining the defendant, its servants agents or anyone claiming through it from in any manner passing off of its products bearing the offending trade mark "ANNAI" as and for the celebrated products of the plaintiff bearing the well established and registered trade mark "ANNAI" either by manufacturing or selling or offering

for sale or in any manner advertising the same;

c) directing the defendant to surrender the entire stock of unused offending trade mark wrappers, containers bill books etc., bearing the offending trade mark "ANNAI", together with blocks and dyes for destruction;

d) directing the defendant to render a true and faithful accounts of the profits earned by the defendants through the sale of its products sold under the offending trade mark "ANNAI" and directing payment of such profits to the plaintiffs for the passing off committed by the defendant;

e) directing the defendant to pay to the plaintiff the cost of the suit;

For Plaintiff : Mr. H.Manojin

For Defendant : No appearance

ORDER

The suit is for permanent injunction restraining the defendant from in any manner infringing the plaintiff's well established and registered trade mark "ANNAI" and from passing of its products bearing the offending trade mark "ANNAI" and for a direction to the defendant to surrender the entire stock of unused offending trade mark wrappers, container bill books etc., bearing the offending trade mark "ANNAI" together with blocks and dyes for destruction and to render a true and faithful accounts of the profits earned by the defendants through the sale of its products sold under the offending trade mark "ANNAI" and directing payment of such profits.

2. The facts of the case are as follows:-

The plaintiff is the leading manufacturers of Maida, Rava, Atta, Dhall, Rice and flour preparations. In the course of the said business, they had honestly conceived and adopted the trademark "Annai" and applied for registration of the said trademark on 05.03.1997 and got registered in the plaintiff's name. The defendant started manufacturing "Rava" and other products and selling the same bearing the identical trademark of "ANNAI" and the same came to be known by the plaintiff in the year 2011. The defendant has no right whatsoever to adopt the identical trademark of "ANNAI" and the adoption of the offending trade mark would confuse the general public and they are misled. Hence the suit for the above reliefs.

3. The defendant remained ex-parte.

4. Heard the learned counsel for the plaintiff.

5. The plaintiff was examined as PW1. PW1 has spoken about manufacturing of Maida, Rava, Atta, Dhall and other flour preparations since 1998 and the said trade mark "ANNAI" is in respect of the above products and by virtue of the same the said trade mark had attained good reputation.

6. Ex.P1 is the certificate of incorporation of the year 1996.

Ex.P.2 is the plaintiff's trademark published in the register in the year 2012.

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Ex.P.3 is the trademark registration certificate issued in the name of the plaintiff. Ex.P.4 is the copy of trademark renewal certificate issued on 12.03.2004. Ex.P.5 are the copies of invoices from 1998 to 2011 showing the plaintiff's products sold in the name of "ANNAI". Ex.P.6 is showing the turnover of their products. Ex.P.7 is the specimen of the plaintiff's trademark. Ex.P.8 is the specimen of the defendant's trade mark "ANNAI" filed by the plaintiff.

7. From the above documents, it is seen that the plaintiff is a registered owner of the trademark "ANNAI" and the defendant having the identical trademark cannot interfere and infringe the plaintiff's trademark. If the defendant is not enjoined and allowed to continue its business in selling the products, the same will lead to confusion in the mind of the public. Therefore, this Court is of the view that from the documents filed by PW1, the plaintiff is entitled to permanent injunction as prayed for. As far as other prayers sought against the defendant are concerned, there is no evidence. Hence the suit is decreed for the relief of permanent injunction alone. So far as other reliefs are concerned the suit stands dismissed.

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Index: Yes/No

Internet:Yes/No

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