

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 20.12.2016

PRONOUNCED ON: 12.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.282 of 2009

A.R.Safiullah, Sole Proprietor of
M/s.S.A.Safiullah & Co.,
Pudukottai 622003

Plaintiff

Vs

1. A.Sowkath Ali trading as Super Trading Company
Chennai-1

2. M/s.Pravallika Industries, Nellore
Andhra Pradesh

Defendants

Prayer:- This Civil Suit is filed under Order VII Rules 1 and 2 of CPC and read with Sections 48, 104, 108 of the Patents Act, 1970, Section 22 of the Designs Act and Sections 27, 134 and 135 of the Trade Marks Act, 1999, for the reliefs as stated therein.

For Plaintiff : Ms.Brinda Mohan

For Defendants : Set Exparte

JUDGEMENT

This civil suit had been filed to pass a judgement and decree, against the Defendants:-

(a) granting permanent injunction restraining the Defendants and their men from in any manner infringing the Plaintiff's patent no.198079 for 'Food Grade Laminated Paper', Method and Apparatus for Manufacturing The Laminated Paper' and/or from using the technology/invention described in the said patent no.198079 by manufacturing, marketing, selling, offering for

sale or exporting artificial laminated banana leaves identical or similar to the Plaintiff's artificial laminated banana leaves;

(b) granting permanent injunction restraining the Defendants and their men from in any manner infringing the Plaintiff's registered design under no.182931 by manufacture and sale of artificial laminated banana leaf identical or similar to the shape and configuration of Plaintiff's artificial laminated banana leaf registered under the Designs Act.

(c) granting permanent injunction restraining the Defendants and their men from in any manner passing off food grade laminated paper resembling banana leaf/artificial banana leaves manufactured and sold by them as and for Plaintiff's food grade laminated paper resembling banana leaf/artificial banana leaves by using identical/or deceptively similar same colour scheme, getup and layout, imitation of Plaintiff's trade dress in his unique, distinctive artificial laminated banana leaf or in any other manner whatsoever.

(d) granting mandatory injunction directing the Defendant to surrender for destruction to the Plaintiff all materials used for creation of the infringing goods to be forfeited or destroyed.

(e) directing the Defendants to pay the Plaintiff a sum of Rs.10,05,000/- as damages.

(f) directing the Defendant to pay the costs of the suit.

2. The case of the Plaintiff as set out in the plaint, is as follows:-

a. The Plaintiff is the manufacturer, seller and exporter of artificial laminated banana leaf, which has been introduced for the first time in India and in the world by the Plaintiff and is the intellectual property of the Plaintiff and was certified by the Central Electro Chemical Research Institute, Karaikudi that the said product is biodegradable and eco-friendly material. The said product has got registration in Malaysia in No.MY 01-00035 of 2000 and in Singapore in NOD2001/137/F. The Plaintiff had invented an unique apparatus and finalized technical know-how with details thereof for production of the laminated artificial

banana leaf. The Plaintiff had invented a unique method of manufacture of the artificial banana leaf, by using an unique apparatus for making the said product in the desired shape. The apparatus consists of laminating mold adaptable to printing machine of known art, a heating device and a spraying device all mounted adjacent to the frame of the printing machine, such as to form a laminating gap in between and wherein laminating mold further includes a male die having the desired impression and a female steel jacketed die and onto which compound solution of plaster of pairs and gum is sprayed. The sheet paper is fed through a supply roller, preheating roller and onto laminating gap wherein the hot melted poly granules are sprayed onto the said sheet paper and thereafter, the pressing of dies to achieve the desired impression on the sheets and left untouched to cool off.

b. The The Plaintiff had also got patent right in Letter Patent No.198079 on 20.1.2006, in his application dated 29.8.2000. The said patent right was with effect from 29.8.2000. The Plaintiff had obtained design registration for its artificial laminated banana leaf in various shapes and configuration in Reg.Nos.182931, 183131, 183132 and 184037, 184035, 184036 and 184038, dated 18.7.2000, 4.8.2000, 4.8.2000, and 27.11.2000, respectively. Thus, the Plaintiff has exclusive right to manufacture and sell the artificial laminated banana leaves. The sales turn over has been increasing every day. The Plaintiff had also spent huge amount towards advertisement expenditure. The Plaintiff had also obtained orders of permanent injunction in various suits against the third parties restraining them from using the product of

the Plaintiff, in CS.Nos.268 of 2001, 448 of 2006, 103 of 2005, 525 of 2008, etc.

c. While so, the Plaintiff came to know that the Defendants are manufacturing and selling artificial laminated banana leaves, under the mark SAGAR, which are identical in shape and configuration of the artificial laminated banana leaves manufactured and sold by the Plaintiff, for which the Plaintiff had patent and design registrations. Thus, the Defendants have committed an offence of infringement of the registered design of the Plaintiff. The Defendants are also using the same process and product described in the patent application of the Plaintiff and hence, it would amount to passing off their products as that of the Plaintiff and fraud played on the trade and public. The Defendants are infringing the patent rights under the above said registrations. In such circumstances, this civil suit has been filed for the reliefs as stated above.

3. Though the service had been completed on the Defendants on 19.5.2009 and 2.9.2014, no written statement had been filed by the Defendants, in spite of sufficient opportunity given to them on the several representations of the learned counsel for the Defendants and hence, the matter was ordered to be listed under the caption of "Undefended Board". For non filing of the Written Statement, the 1st Defendant was set exparte on 21.11.2014 and the 2nd Defendant on 13.9.2015 and Exparte Evidence was ordered to be completed as per the order of this court dated 29.07.2016.

4. One S.Govindasamy, a constituted Attorney of the Plaintiff has filed the proof affidavit for his chief examination and receipt of 8 documents as documentary evidence to prove the suit claim. In the Exparte Evidence, the said

Attorney examined himself as PW.1 and marked Exs.P1 to P8 as documentary evidence in order to prove the suit claim.

5. In this civil suit, apart from the reliefs (a) to (d), the Plaintiff had claimed a sum of Rs.10,50,000/- as damages under the relief (e). However, in order to sustain such claims for damages, there should be valid evidence, but, on a perusal of the oral and documentary adduced by the Plaintiff, this court finds no valid evidence both oral and documentary to show that the Plaintiff had sustained damages or loss of profit or loss of reputation. Therefore, the claim towards damages cannot be granted.

6. With regard to the other reliefs, viz. (a) to (d), there are valid evidence, both oral and documentary, adduced by the Plaintiff. Therefore, taking into consideration the materials on record, particularly, registrations of the Plaintiff, this Court is of the view that the reliefs (a) to (d), except the relief (e) as prayed for by the Plaintiff, can be granted, along with costs.

7. In the result, this civil suit is decreed with respect to the reliefs (a), (b), (c) ,and (d), as prayed for, with costs. In respect of the relief (e), this civil is dismissed.

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Index:Yes/No
Web:Yes/No
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1. List of Witnesses Examined on the side of the Plaintiff:-

1. P.W.1 - S.Govindasamy

2. List of Exhibits Marked on the side of the Plaintiff:-

S.No	Exhibit	Description	Date
1	Ex.P. 1	Original power of attorney executed in favour of the deponent by the plaintiff	12082016
2	Ex.P. 2	Copy of the patent certificate no.198076 along with complete specification	
3	Ex.P. 3	Certified copy of the design registration certificate no.182931	
4	Ex.P. 4	Original pamphlet of the Plaintiff	
5	Ex.P. 5	Copies of the invoices of the Plaintiff	
6	Ex.P. 6	Original purchase bills of the defendant dated 12.3.2009 and 20.3.2009	12032009
7	Ex.P. 7	Specimen of Azam & SAS Banana Leaves of the plaintiff	
8	Ex.P. 8	Specimen of SAGAR Banana Leaves of the defendant	

3. List of Witnesses Examined on the side of the defendants:-

Nil

4. List of Exhibits Marked on the side of the defendants:-

Nil

12.01.2017

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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.282 of 2009

12.01.2017

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