

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.02.2017

PRONOUNCED ON 27..02..2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.498 of 2012

1. Durga Dairy Ltd
Nuziveedu Road, Nunna
Vijayawada – 521 212

2. Sri Thirumala Venkateswara Agencies
519, Thiruvottiyur High Road,
Chennai -600 021

.. Plaintiffs

vs.

M/s. Sri Shakthi Dairy Products
24-1-8, Gollapudi,
Vijayawada – 520 012

.. Defendant

Civil Suit filed under Order IV Rule 1 of Original Side Rules
1956 read with Order VII Rule 1 CPC praying for the following
judgment and decree against the defendant.

a) a permanent injunction restraining the defendant by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through them from in any manner infringing the plaintiff's registered trademark under No.470076 in class 29 and other registered trademarks by using the trademark JAI DURGA or any other mark deceptively similar to the plaintiff's registered trademarks DURGA or in any other manner whatsoever;

b) a permanent injunction restraining the defendant, by itself, its partners, men, servants, agents, distributors, stockiest, representatives or any one claiming through them from in any manner passing off and/or enabling others to pass off the defendants' products as and for the plaintiffs' products by manufacturing, selling, or offering to sell, distributing, displaying, printing, stocking, using, advertising products bearing trademark

JAI DURGA or any other mark deceptively similar to the plaintiffs' trademark DURGA with identical stylized script or writing or in any other manner whatsoever;

c) a permanent injunction restraining the defendant by itself, its partners, men, servants, agents, distributors, stockiest, representatives or anyone claiming through them from in any manner committing acts of copyright infringement by using, offering for sale, publishing JAI DURGA pouches with the device of a lady carrying a pot in rural costume in a stylized script which is a substantial reproduction of Plaintiffs' DURGA label in identical colour scheme, get up and layout or in any other manner whatsoever;

d) the defendant be ordered to surrender to plaintiffs for destruction of all products, labels, dyes, moulds, screen prints, packing materials and other materials bearing the trademark JAI DURGA or any mark deceptively similar to the plaintiffs' trademark

and artistic work DURGA.

e) a preliminary decree be passed in favour of the plaintiffs directing the defendant to render account of profits made by use of trademark and copyright in the artistic work JAI DURGA and a final decree be passed in favour of the plaintiffs for the amount of profits thus found to have been made by the defendant after the latter have rendered accounts;

f) The defendant be ordered and decreed to pay to the plaintiffs a sum of Rs.1,00,000/- as damages for acts of infringement of trademarks, passing off and infringement of copyright committed by the defendant by manufacture and sale of products bearing the trademark and artistic work JAI DURGA;

g) for costs of the suit

For Plaintiffs : Mr.R.Sathishkumar

For defendant : No Appearance

J U D G M E N T

The plaintiffs have filed the present suit seeking permanent injunction restraining the defendant from in any manner infringing the plaintiffs registered trademark under No.470076 in class 29 and other registered trademarks by using the trademark JAI DURGA or any other mark deceptively similar to the plaintiff's registered trademarks DURGA or in any other manner whatsoever and for other reliefs.

2.The brief facts of the case of the plaintiffs, are as follows:

The 1st plaintiff is manufacturing and marketing GHEE under the registered trademark DURGA from the year 1981 onwards and the 2nd plaintiff is the authorised and exclusive dealer of the 1st plaintiff's products. The plaintiffs' trademark DURGA for GHEE consists of a device comprising of a picture of a lady dressed in rural costume carrying a pot. According to the plaintiffs, they

have acquired enormous reputation and goodwill throughout the country by virtue of their long, continuous and uninterrupted use of the trademark DURGA in respect of GHEE.

(ii) When things are such, the defendant is also manufacturing and marketing GHEE under the identical trademark JAI DURGA. The defendant, with a malafide intention, is also using a deceptively similar device of a lady carrying a pot in rural costume in the package as that of the plaintiffs. The defendant has deliberately adopted a trademark and an artistic work which is identical to that of the plaintiffs in order to create confusion among the consumers. Hence, the plaintiffs have filed the present suit for permanent injunction and for other reliefs.

3. Though notice was served on the defendant, he has not chosen to appear either in person or through learned counsel. The defendant remained *ex parte*.

4. On the side of the plaintiffs, one P.V.Srikrishna was examined as P.W.1, and Exs.P1 to P9 were marked.

5. Heard the learned counsel for the plaintiffs and perused the records.

6. The learned counsel for the plaintiffs submitted that the 1st plaintiff is the manufacturer of the product Durga Ghee and the 2nd plaintiff is the authorised and exclusive dealer of the 1st plaintiff's product under the trademark DURGA all over Tamil Nadu, including Chennai. It is submitted by the learned counsel for the plaintiffs that the plaintiffs' trade mark DURGA for Ghee consists of a device comprising of a picture of a lady dressed in rural costume carrying a pot with the word DURGA, prominently. The plaintiff also obtained copyright for such artistic work. By virtue of their long, continuous and uninterrupted use of the trade mark DURGA in respect of GHEE, the plaintiffs have acquired enormous reputation and goodwill throughout the

country.

7. The learned counsel for the plaintiff further submitted that the defendant knowing very well about the plaintiffs' trade mark, started using a very deceptively similar trademark JAI DURGA with a similar label for identical product viz., GHEE. The use of deceptively similar trademark likely to cause confusion, which is against the basic principle of trademark law. Therefore, the learned counsel for the plaintiffs prayed that a decree may be granted as prayed for by the plaintiffs.

8. The evidence of P.W.1 remains unchallenged. Ex.P1 is the Board Resolution authorising P.V. Srikrishna, General Manager of the company, to represent the company. Ex.P2 is the certified copy of the trade mark register, which shows the plaintiff company got certificate under Certificate No.470076 for manufacturing Dairy products. It also indicates that the registration was renewed for seven (7) years from 31.03.1994. Ex.P2 further indicates that the plaintiffs are doing business from

1981 onwards. Ex.P3 is the another certified copy of the registration, which shows that registration certificate was renewed for a period of 10 years and it is valid up to 25.05.2019. The plaintiffs trade mark under the name and style of DURGA DAIRY Limited, is found in Ex.P4. Similarly, under Ex.P4 a Lady Device also got registered in favour of the plaintiffs. Ex.P5 is also one of the trademark certificate, which shows that the plaintiffs mark has been recognized and registered under the Act. Ex.P6 certificate shows the annual turnover of the plaintiffs DURGA DAIRY product. The same clearly shows that in the year 2014-2015, the turnover of the plaintiffs is around Rs.5,34,54,0330/-. Ex.P7 is filed to prove the advertisement expenses of the plaintiffs. As per the same, the plaintiffs spent a sum of Rs. 1,75,94,220/- towards advertisement for the year 2014-2015.

9. Though Exs.P6 and P.7 cannot be taken as proved, the fact remains that the plaintiffs got specific trademark registered

for their products. Ex.P8 is filed to prove the plaintiffs' packaging. Ex.P9 is filed to show the packaging of the defendant, which shows that the defendant's packaging is also similar to that of the plaintiffs packaging. Before the name "DURGA", the word "JAI" has been prefixed. Except this, the word DURGA and other packaging materials are also similar to that of the plaintiffs.

10. That apart, the packaging of the defendant clearly indicates that they have also reproduced the lady device, which was used by the plaintiffs by making some minor modification. In fact, the defendant packaging is nothing but a copy of the plaintiffs' packaging. The plaintiffs have got statutory protection for carrying on the business from the year 1981. The registration certificates filed on the side of the plaintiffs clearly established the fact that the plaintiffs also got a statutory protection for the name DURGA as well as the picture of the lady in the packaging materials. If the defendant has adopted the identical picture for the very same business, i.e. GHEE, it is not only

deceptive but also create confusion among the consumers, as the name of the GHEE product of the defendant is also identical and deceptively similar with that of the plaintiffs. Except the word "JAI", the word "DURGA" is phonetically similar with that of the plaintiffs. Ex.P9 clearly shows that the defendant has infringed the trademark of the plaintiff. If the same is not restrained by this Court, the same would create confusion in the mind of the consumers, as both the products are one and the same. Therefore, this Court holds that the plaintiffs have established their right for permanent injunction as prayed for. As a sequel thereto, prayer "d" is also ordered. The defendant is directed to surrender all the products containing plaintiffs' trademark forthwith.

11. As far as the rendition of accounts as prayed, the plaintiffs have not placed any materials to show that the defendant has in fact, sold the properties and thereby, they are making profits. In the absence of any evidence to show that the

defendant had gained profits by using the trade of the plaintiffs, the preliminary decree cannot be passed for rendition of accounts. Further, the learned counsel for the plaintiffs also fairly conceded that the plaintiffs have confined their relief only in respect of the injunction. Hence, the relief sought for by the plaintiffs with regard to the passing of preliminary decree in respect of rendition of account is rejected.

In the result, the suit is decreed on the aforesaid terms. No costs. Connected Original Applications and application are closed.

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Index : Yes/No

Internet : Yes/No

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N.SATHISH KUMAR, J

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