

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

Coram

The Hon'ble Mr. Justice S.NAGAMUTHU
and
The Hon'ble Mr. Justice N.AUTHINATHAN
O.S.A.Nos.261 & 262 of 2013
and
M.P.Nos.1 and 2 of 2013

M/s.Gemini Circus
rep.by its Partner Ajay Shankar ... Appellant in
both the appeals
Vs

M/s.Great Gemini Circus,
rep.by Mr.Fakruddhin Khan ... Respondent
in both the appeals

OSA.261&262/2013 Prayer

Appeals preferred under Order XXXVI Rule 9 of O.S. Rules r/w
Clause 15 of the Letters Patent against the common order dated
04.12.2012 made in O.A.Nos.635 and 636 of 2012 in C.S.No.510 of
2012.

O.A.635/2012

Praying to pass an order of Interim Injunction restraining the
Respondent/Defendant by themselves or their proprietor partners
directors men servants agents franchises successors and
interest licensees assignees representatives or any of them
from in any manner passing off or enabling passing off of
the Respondent/Defendant circus shows with the mark GREAT GEMINI
CIRCUS as that of the Applicant/Plaintiffs registered trade mark
or any other deceptively similar Trade Mark as that of the
Applicant/Plaintiffs or in any other manner what so ever pending
disposal of the suit.

O.A.636/2012

Original Application praying that this Hon'ble Court be pleased
to pass an order of Interim Injunction restraining the
Respondent/Defendant by themselves or their proprietors
partners directors men servants agents franchises
successors in interest licensees assignees representatives or
any of them from in any manner infringing the
Applicant/Plaintiff registered Trademark GEMINI CIRCUS by use
of the Trademark GREAT GEMEINI CIRCUS or any mark deceptively
similar to that of the Applicant/Plaintiff registered Trade Mark
or by use of identical or deceptively similar trading style or

in any other manner whatsoever pending disposal of the above suit.

For Appellant .. Mr.K.Rajasekaran and
Mr.Patrick
For Respondent .. Ms.Brindamohan

COMMON JUDGMENT

(Judgment of the Court was delivered by S.NAGAMUTHU, J.)

The appellant in both these appeals is the plaintiff in C.S.No.510 of 2012, before the learned Single Judge of this Court. The said suit has been filed for perpetual injunction to restrain the defendant from in any manner infringing the plaintiff's registered trade mark 'GEMINI CIRCUS' by use of the Trade Mark 'GREAT GEMINI CIRCUS' or any mark deceptively similar to that of the plaintiff's registered Trade Mark or by use of identical or deceptively similar trading style or in any other manner whatsoever and also for perpetual injunction restraining the defendant from in any manner passing off or enabling passing off of the defendants' circus shows with the mark 'GREAT GEMINI CIRCUS' as that of the plaintiff's registered trade mark or any other deceptively similar Trade Mark as that of the plaintiff's or in any other manner whatsoever and also for the other reliefs.

2. Pending suit, the appellant filed two Original Applications in O.A.Nos.635 of 2012 and 636 of 2012, seeking interim orders. O.A.No.635 of 2012 was filed for an interim injunction to restrain the defendant from in any manner passing off or enabling passing of the respondent/defendant in the circus shows with the mark "GREAT GEMINI CIRCUS" as that of the applicant/plaintiff's registered trade mark or any other deceptively similar Trade Mark as that of the appellant/plaintiff's or in any other manner whatsoever and O.A.No.636 of 2012 was filed for interim injunction restraining the respondent/defendant from in any manner infringing the appellant/plaintiff's registered Trade Mark "GEMINI CIRCUS" by use of the Trade Mark "GREAT GEMINI CIRCUS" or any mark deceptively similar to that of the appellant/plaintiff's registered Trade Mark or by use of identical or deceptively similar trading style or in any other manner whatsoever. By a common order, dated 04.12.2012, the learned single Judge dismissed both the Original Applications. Challenging the same, the appellant has come up with these two appeals.

3. We have heard the learned counsel for the appellant and the learned counsel appearing for the respondent and we have also perused the records carefully.

4. A perusal of the order of the learned single Judge would go to show that according to the learned Judge, there is no similarity between the ' GEMINI CIRCUS' and "GREAT GEMINI CIRCUS", as they are two distinct entities and there is no chance for one being mistaken for another. In the said conclusion arrived at by the learned single Judge, we do not find any infirmity.

5. The learned single Judge has further held that no person can mistake 'GEMINI CIRCUS' and 'GREAT GEMINI CIRCUS' as one and the same, as contended by the learned counsel for the appellant/plaintiff. In this conclusion also we do not find any infirmity, warranting interference. We fully endorse the view taken by the learned single Judge that there is no similarity between the name 'GEMINI CIRCUS' and 'GREAT GEMINI CIRCUS'. Thus, both the appeals are liable to be dismissed, as there is no merit. The Original Side Appeals are accordingly dismissed. No costs. Connected miscellaneous petitions are dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msk

To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1cc to Mr.K. Rajasekaran, Advocate, S.R.No.1287

+2cc to Mr.Arun C. Mohan, Advocate, S.R.No.1492 & 1493

pvs (CO)
md(06/02/2017)

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O.S.A.Nos.261 and 262 of 2013