

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.02.2017

Pronounced on : 21.02.2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.641 of 2013

Fariyal
Trading as M/s.Miracle
Ladies Hari Dresses and Beauty Parlour
2nd Floor, Kimittee Square,
Building Road, No.12, Banjara Hills,
Hyderabad – 500 034. .. Plaintiff

vs.

Mr.Shaikh Nasim Hakim Salmani
Trading as Miracle,
Ashiyana Park A-2,
Opp. Lane No.5, North Main Road,
Koregaon Park, Pune – 411 001. .. 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) Granting a permanent injunction restraining defendant by itself, its servants, relations, agents or anyone claiming through them from offering services of beauty parlour /beauty saloon using the trade mark MIRACIE or by

using any other Trade Mark which is in any way visually, phonetically or deceptively similar to the plaintiff registered trade mark MIRACLE or in any manner infringing the plaintiff registered trade mark No.1736011.

b) Granting a permanent injunction restraining the defendant by themselves, their servant, agent, men (or) anyone claiming through them from offering services of beauty parlour/beauty saloon using Name MIRACLE or similar sounding name in the course of their business and pass off their services using the Trade Name MIRACLE as and passing of services of defendant as services of plaintiff under the Trade March MIRACLE.

c) directing the defendant to surrender to the plaintiff all the Services of Beauty Saloon/Parlour packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the trade mark MIRACLE or other deceptively similar trade marks in respect of above.

d) for a preliminary decree in favour of the plaintiff directing the defendant to render an account of profits made by them by the use of th Trade Mark MIRACLE on the services referred and for a final decree in favour of the plaintiff for the amount of the profits found to have been made by the defendant, after the defendant have rendered accounts.

e) costs of the suit.

For plaintiff : Mr.Ashok Kumar.J.Daga

For Defendant : No appearance

J U D G M E N T

The suit is filed for granting permanent injunction restraining the defendant and his men from offering services of beauty parlour/beauty saloon using the trade mark MIRACLE or by using any other Trade Mark which is in any way visually, phonetically or deceptively similar to the plaintiff registered trade mark MIRACLE and consequential injunction and also directing the defendant to surrender the trade mark and to render accounts.

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

The plaintiff's mother Mrs.Puran Fareed started a beauty parlour under the name and style MIRACLE. Ever since 1967, the plaintiff adopted trade name MIRACLE for its beauty parlour offering all kinds of services related to beauty parlour. The plaintiff are offering services including hair dressing, bleaching in the trade mark MIRACLE ever since 1967 openly, continuously, widely, extensively and uninterruptedly. Trade mark MIRACLE has become distinctive trade mark of the plaintiff. The trade mark is also registered on 24.09.2008. The plaintiff also gave an application for registration of the trade mark MIRACLE and

got trade mark registered. The plaintiff have acquired enormous goodwill in respect of the goodwill in respect of the services under the trading style "MIRACLE". The plaintiff has gross turn over of Rs.5,92,318/- in the year 2012-2013. While so, the defendant has adopted identical trade mark MIRACLE and the defendant had been engaged in fraudulent conduct of infringement and passing off the knowledge of the plaintiff from February 2013. As a consequence, there is confusion in the market and goodwill of the plaintiff is being snatched away illegally by the plaintiff. Hence the suit.

3. Though notice was served on the defendant, they have not chosen either to appear in person or through counsel. Therefore, they were set *ex parte* by this Court *on 23.11.2016*.

4. On the side of the plaintiff, authorised representative of the plaintiff was examined as P.W.1 and Ex.P.1 to Ex.P.7 were marked.

Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Date	Description
1.	P-1	--	Authorization letter given to P.W.1
2.	P-2	02.10.1971	Copy of the letter appointing plaintiff by the wife of Governor of Maharashtra

S.No.	Exhibits	Date	Description
3.	P-3	11.11.1974	Copy of the letter sent by Reserve Bank of India to the plaintiff
4.	P-4	--	Copy of the registration certificate of the plaintiff beauty parlour from 01.01.1992 to 31.12.1992
5.	P-5	22.06.1995	Copy of Deccan Chronicle new paper article on plaintiff
6.	P-6	24.09.2008	Copy of the certificate of registration of Trade Mark in Certificate No.1736011 in Class 42
7.	P-7	22.02.2013	Copy of the legal notice sent by the plaintiff to the defendant

Witnesses examined on the side of the plaintiffss:

P.W.1. - Sayed Ali Murazai

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

6. The son-in-law of the plaintiff has been examined as P.W.1. P.W.1 in his evidence has stated that the trade mark MIRACLE for offering beauty parlour services was established in the year 1967. The trade mark has been adopted by the mother of the plaintiff and the plaintiff is continuing the same business. The trade mark is also registered. Similarly, the annual turn over of the plaintiff business is more than Rs.5,92,318/- in the year 2011-12 and assessment year 2012-2013. When that being so, the defendant has adopted

the trade mark of the plaintiff and infringed in the same business from February 2013. The evidence of P.W.1 has not been challenged.

7. Ex.P.2 has been issued by the wife of the Governor of Maharashtra in the year 1972. Ex.P.3, copy of a letter sent by the Reserve Bank of India shows that they sought clarification from the plaintiff as to whether they have obtained permission under section 29 of the Foreign Exchange Regulation Act, 1973 to carry on the ladies hair dressing and beauty parlour. Ex.P.5 is the report in the daily newspaper about MIRACLE. Ex.P.6 is the copy of the Trade Mark Certificate shows MIRACLE is registered under the Trade Mark Act. Ex.P.7 is the copy of the legal notice sent by the plaintiff to the defendant. The above documents clearly show that the plaintiff has a registered trade mark to run the business. The defendant who is indulged in a similar business has used the trade mark of the plaintiff for his business. When that being so, the defendant cannot indulge in the same business by using the same trade mark as that of the plaintiff which in fact create confusion and affect the goodwill of the plaintiff, which is doing the business from the year 1957. From the oral and documentary evidence, the plaintiff has proved the case for the permanent injunction as prayed for.

8. The plaintiff has not adduced any evidence to prove that the defendant has made any advertisement or put up hoardings etc and made profits

of it. In so far as the alleged infringement is concerned, it is from the month of February 2013. This suit has been filed immediately in the month of June. Therefore, as far as the the relief 'c' and 'd' are concerned, this suit is liable to be dismissed.

9. In the result, the suit is decreed with costs in respect of prayers 'a' and 'b' and in respect of prayers 'c' and 'd', this suit is dismissed.

21..02..2017

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Index : Yes
Internet: Yes

N.SATHISH KUMAR, J

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Judgment in

C.S.No.641 of 2013

21..02.2017