

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

CORAM

THE HON'BLE Dr. JUSTICE ANITA SUMANTH

CS. No.875 of 2010

1.M/s.S.Ponnusamy Gounder & Co.

A Partnership Firm

Rep. by its partner

Mr.N.Thiyagarajan

2.M/s.Sri Srinivasa & Co.

Senniappa Rice Mill

A Partnership Firm

Rep by its Partner

Mr.N.Thiyagarajan

...Plaintiffs

Vs.

Sri Balamurugan Modern Rice Mill

(Formerly also trading as

M/s.S.Sivagnanam & Brothers)

No.1209/7A, Elluppakulam Road,

Kalambur - 606 903

Tiruvannamalai District.

..Defendant

**PRAYER:** Plaint filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure read with Order Section 29, 134 and 135 of Trade Mark Act, 1999 and read with Sections.55 & 62 of Copy Right Act, 1957 for a judgement and mortgage decree on the following terms:

- a. A perpetual injunction restraining the defendant by himself/themselves, their men, servants, agents, distributors, stockists, representatives, partners, directors or any of them from in any manner

infringing the plaintiffs' registered Trade Mark "SS" by use of the Trade Mark "SS" or nay other mark deceptive to plaintiff's registered Trade Mark in any other manner whatsoever;

b. A perpetual injunction restraining the defendant by himself/themselves, their men, servants, agents, distributors, stockists, representatives, partners, directors or any of them from in any manner imitating the Artistic Work associated with the plaintiff "SS" Trade Mark so as to infringe the Copyright vested with the "SS" label of the plaintiffs or in any other manner whatsoever.

c. Perpetual injunction restraining the defendant, their proprietor/partner, men, distributors, stockists, servants, agents, retailers, manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in Trade Mark "SS" or which is identical or deceptively similar to the plaintiff's registered trade marks so as to pass off/enable passing off of the goods of the defendant as and for that of the plaintiff;

d. The defendant be ordered to surrender to the plaintiff for destruction of all labels, dies, blocks, moulds, screen prints, advertisement and promotional materials, packing materials and any other materials bearing the Trade Mark "SS" or any other mark deceptively similar to the plaintiff's Trade Mark;

e. A preliminary decree be passed favoring the plaintiff, directing the defendant to render true account of profits made by the use of Trade Mark "SS" and final decree be passed in favour of the plaintiffs for amount of profits said to have been made by the defendant after

rendering the account;

f. for cost of the suit.

For Plaintiff : Mr.R.Gokul Krishnan

### J U D G M E N T

The suit has been filed seeking the following reliefs:

*“a. A perpetual injunction restraining the defendant by himself/themselves, their men, servants, agents, distributors, stockists, representatives, partners, directors or any of them from in any manner infringing the plaintiffs' registered Trade Mark “SS” by use of the Trade Mark “SS” or nay other mark deceptive to plaintiff's registered Trade Mark in any other manner whatsoever;*

*b. A perpetual injunction restraining the defendant by himself/themselves, their men, servants, agents, distributors, stockists, representatives, partners, directors or any of them from in any manner imitating the Artistic Work associated with the plaintiff “SS” Trade Mark so as to infringe the Copyright vested with the “SS” label of the plaintiffs or in any other manner whatsoever.*

*c. Perpetual injunction restraining the defendant, their proprietor/partner, men, distributors, stockists, servants, agents, retailers, manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing in Trade Mark “SS” or which is identical or deceptively similar to the plaintiff's registered trade marks so as to pass off/enable passing off of the goods of the defendant as and for that of the plaintiff;*

*d. The defendant be ordered to surrender to the plaintiff for destruction of all labels, dies, blocks, moulds, screen prints, advertisement and promotional materials, packing materials and any other materials bearing the Trade Mark “SS” or any other mark deceptively similar to the plaintiff’s Trade Mark;*

*e. A preliminary decree be passed favoring the plaintiff, directing the defendant to render true account of profits made by the use of Trade Mark “SS” and final decree be passed in favour of the plaintiffs for amount of profits said to have been made by the defendant after rendering the account;*

along with costs and such other reliefs as may be necessary.

2. Suit summons was issued and duly served upon the defendant. On account of non appearance the defendant was set exparte as early as on 15.03.2013. The suit was thereafter referred for recording exparte evidence.

3. The Partner of the plaintiffs' firm was put in the box as PW1. 22 documents were marked as Ex.P1 to Ex.P22. The description of the documents along with dates thereto are set out below:

| <i>Sl. No.</i> | <i>Date</i> | <i>Description of Document</i>                  | <i>Exhibits</i> |
|----------------|-------------|-------------------------------------------------|-----------------|
| 01             | 10.12.1990  | Caution Notice issued by the Plaintiffs against | P1              |

| <b>Sl. No.</b> | <b>Date</b>                   | <b>Description of Document</b>                                                                            | <b>Exhibits</b> |
|----------------|-------------------------------|-----------------------------------------------------------------------------------------------------------|-----------------|
|                |                               | infringement of Trade Mark “SS”                                                                           |                 |
| 02             | 30.01.2006                    | Rregistration Certificate of the Plaintiffs' Trade Mark “SS”                                              | P2              |
| 03             | 25.04.2006                    | Legal User Certificate of Plaintiffs' Trade mark “SS” issued by the Trade Mark Registry, Guindy, Chennai. | P3              |
| 04             | 05.01.2004                    | Addition representation for registration of Plaintiffs' Trade Mark                                        | P4              |
| 05             | 15.04.2005                    | Advertisement in Trade Mark Journal                                                                       | P5              |
| 06             | 17.04.2006                    | Caution Notice published in Dhina Thanthi, Kovai Edition                                                  | P6              |
| 07             | 24.04.2006                    | Caution Notice published in Dhina Malar, Kovai Edition                                                    | P7              |
| 08             |                               | Series of photographs showing the advertisement of Plaintiffs' Trade Mark in shops                        | P8              |
| 09             | 23.05.2006<br>&<br>20.06.2006 | Receipts issued by one of the dealers of Suriyan FM for advertising Plaintiffs' Trade Mark in Suriyan FM  | P9              |
| 10             | 10.07.2006                    | Caution Notice issued by the Defendant in Dhina Malar, in Kovai Edition                                   | P10             |
| 11             | July 2006                     | Plaint in CS. No.822 of 2006 filed by the Plaintiff                                                       | P11             |
| 12             | July, 2006                    | Affidavit and Judge's Summons in OA No.872 of 2006                                                        | P12             |
| 13             | 15.12.2006                    | Order of interim injunction in OA. No.872 of 2006                                                         | P13             |
| 14             | 24.03.2007                    | Compromise Memo between the Plaintiff and the defendant                                                   | P14             |
| 15             | 30.08.2007                    | Order passed in CS. No.822 of 2006 and OA. No.872 of 2006                                                 | P15             |
| 16             | 01.10.2007                    | Trade Mark Journal Advertisement “SS” of the Defendant No.1463376                                         | P16             |
| 17             | 21.03.2008                    | Letter of withdrawal of trade Mark Application “SS” No.1463376 in Class 30                                | P17             |
| 18             | 14.07.2008                    | Order of Deputy Registrar of Trade Marks treating “SS” Trade Mark Application No.1463376 as withdrawn     | P18             |
| 19             | 01.01.2010                    | Trade Mark Journal Advertisement of the Defendant Mark                                                    | P19             |

| <i>Sl. No.</i> | <i>Date</i> | <i>Description of Document</i>                     | <i>Exhibits</i> |
|----------------|-------------|----------------------------------------------------|-----------------|
|                |             | “SS” 1652696 in Class 30                           |                 |
| 20             |             | Plaintiff's Packing strip                          | P20             |
| 21             |             | Photograph of Gunny Bag of Plaintiffs' Trade Mark  | P21             |
| 22             |             | Photograph of Gunny Bags of Defendant's Trade Mark | P22             |

4. The plaintiffs are the owners of the Registered Trade Mark bearing No.1259392 in Class 30 and constitute a partnership firm manufacturing Rice since 1996 marketed under the Trade Mark 'SS'. The firm has been remitting Income Tax and Sales Tax for many decades.

5. It was found that the defendant has issued a notice to the general public as early as on 10.12.1990 marked as Ex.P1, cautioning the public that the Trade Mark “SS” was registered by the plaintiffs and should not be used by any other member of the general public.

6. Registration of the Trade Mark had been sought and after public advertisement in Trade Mark Journal dated 15.04.2005, a registration had been accorded, bearing Trade Mark No.1259392 in Class 30 dealing with all varieties of Rice for sales in South India.

7. While this is so, the plaintiffs have found that there was an infringement of the mark by the defendant, specifically to mislead the traders and the general public and to trade upon the good will and reputation enjoyed by the plaintiffs. The market product, trade channels and ultimate users being one and the same, confusion was caused in the mind of consumers which would have an adverse impact on the sales of the plaintiffs. The plaintiffs thus approached the Court by way of a Civil Suit in C.S. No.822 of 2006 praying for reliefs similar to the reliefs sought for in the present suit.

8. The defendant had approached the plaintiffs for a compromise pending suit and a compromise memo had been executed by the parties and their respective counsel dated 24.03.2007, duly recorded by the Court holding that the suit was settled out of Court on 30.08.2007. The defendant also proceeded to withdraw the application filed for issuance of trade mark that had been filed by them before the Registrar of Trade Marks. However, subsequently, the compromise memo was violated by the defendant who continued to use the trade Mark even thereafter.

9. The present suit has been filed in the light of the continued act of infringement by the defendants.

10. In the light of the fact that the defendants continue to remain exparte till date and based on the evidences filed and the averments in the suit, this suit is decreed as prayed for.

11. A perpetual injunction is granted restraining the defendant in any manner from infringing the plaintiffs' registered Trade Mark "SS" or imitating the same so as to constitute an infringement and for manufacturing, selling, offering for sale, stocking, advertising directly or indirectly dealing with the Trade Mark "SS" or one deceptively similar thereto.

Dr. ANITA SUMANTH, J.

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12. A preliminary decree is passed directing the defendants to render true accounts of profits made by the Trade Mark "SS" within a period one month from the date of receipt of a copy of this decree.

13. The defendant is also directed to destroy all labels, dies, blocks, moulds, screen prints, advertisement and promotional materials, packing materials and any other material bearing the Trade Mark "SS" or any other mark deceptively similar

thereto or hand over the same to the plaintiffs, within a period of one month from the date of receipt of copy of this order. No costs.

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non Speaking Order

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