

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 28.03.2018
CORAM
THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN
C.M.A.No.1502 of 2015
&
M.P.Nos.1 & 2 of 2015

K.Allavudeen Batcha
D.No.44, Sambandhar Street
Erode - 1.

..Appellant/1st Respondent/
1st Defendant

-Vs.-

1.K.Sheik Allavudeen
2.K.Sirajudeen
3.K.Jiyavudeen
4.K.Noorjahan
5.K.Mumtaj Begum
6.Asarafunnisha
7.K.Nilofer Banu

..Respondents/Petitioners/Plaintiffs

Prayer: Civil Miscellaneous Appeal as against the order dated 10.04.2015 made in I.A.No.227 of 2014 in O.S.No.11 of 2014 on the file of I Additional District Judge, Erode allowing petition for Ad interim injunction.

For Appellant :: Mr.K.Rajasekaran

For Respondents :: Dr.C.Ravichandran,
for R2, R3, R5 and R6
Mr.R.NagaSundaram (Caveator)
for R1 (No Appearance)
R4 - Died

J U D G M E N T

The appellant and the father of the respondents' namely S.A.Kuthoose Bai constituted a partnership firm by registering a partnership deed in the name and style of "Cootu Muyarchi Sangu Mark Beedi Firm" in the year 1984. The business of the

partnership firm is manufacturing of Beedi in the aforesaid name. While so, after the death of respondents' father viz., S.A.Kuthoose Bai, disputes arose between the parties and both the groups started to manufacture and market the beedis in two different names. The appellant marketed the beedi in the name of "Coottu Muyarchi Sangu Mark Beedi Company" while the respondent marketed the beedi in the name of "Sangu Beedi, Erode".

2.At that juncture, the respondents filed O.S.No.11 of 2014 on the file of the Principal District and Sessions Judge, Erode against the appellant herein seeking permanent injunction restraining the appellant herein from in any manner passing off the partnership firm trade mark label of "Cootu Muyarchi Sangu Mark Beedi Company" and from in any manner representing the Defendants' goods as that of the Partnership Firm, by selling, advertising, offering to sell or using the Partnership Firm Trade Mark or any mark or product which is identical with or deceptively similar or confusingly similar to the Partnership Firm Trade Mark and/or shape, color scheme, get up etc., of the products and for damages. In the said suit, an order of interim injunction has been obtained by the respondent in I.A.No.227/2014 and the said order is under challenge in the present Civil Miscellaneous Appeal.

3.On the other hand, the appellant filed a suit in O.S.No.12 of 2014 against the respondent herein seeking permanent injunction and requisition of accounts of the partnership firm. In the said suit, though an injunction application was taken out, no injunction has been granted.

4.When the matter is called today, Mr.K.Rajasekaran, learned counsel for the appellant as well as Dr.C.Ravichandran, learned counsel for the respondents 2, 3, 5 and 6 would submit that though the parties tried to settle the matter amicably, the same could not be fructified. Though the other respondents were served and their names, except that of R1 have been printed in the cause list, no one entered appearance on behalf of the other respondents. Even though the name of R1 is not printed in the cause list, considering the fact that all the legal heirs are represented, this Court decided to pass order based on the joint representation made by both sides.

5.It is to be noted that the order of injunction granted by the Trial Court in I.A.No.227 of 2014 was already suspended by this Court in this appeal. Therefore, both the parties are manufacturing beedis in their respective trade names and there is no injunction against each other as on date. In view of the aforesaid position, this Court is of the considered view that the present position shall continue and both the parties are directed to appear before the Mediation Centre attached to the District Court, Erode and try to settle the disputes at the

earliest, in any event, on or before 31-08-2018.

6.In case, if the mediation between the parties ends in failure, the matter should be referred to the Civil Court and the said Court shall take up the trial and decide the matter within four months from the date of reference from the Mediation Centre.

7.The Civil Miscellaneous Appeal is disposed of accordingly. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The I Additional District Court,
Erode

2.The Mediation Centre, District Court Erode

+1 cc to Mr.A.Swaminathan advocate sr 24258

+1 cc to Dr.C.Ravichandran Advocate sr 23873

C.M.A.No.1502 of 2015

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