

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 02nd DAY OF AUGUST 2018

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

O.A. Nos.193 to 195 of 2017

in
C.S. No.135 of 2017

M/s.Y.V.S.Seshachalam & Co.,
a partnership firm,
rep. by its Partner,
Mr.Y.V.Niranjana Krishna,
No.138, Audiappa Street,
Chennai-600 001.

... Applicant/Plaintiff

(in O.A. Nos.193 to 195 of 2017)

-Versus-

Sri Venkateswara Traders,
SH Pet, Nellore-524 002.

... Respondent/Defendant

(in O.A. Nos.193 to 195 of 2017)

O.A. No.193 of 2017:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the defendant/respondent, their men, agents, servants, or any one claiming through them from in any manner infringing the plaintiff's registered trademark label GOPURAM as annexed hereto by using the offending trademark label which is identical and/or deceptively similar to and/or a colourable imitation of the plaintiff's registered trade dress trademark label or any other mark, label or device which is identical or deceptively similar to or a colourable imitation of the plaintiff's registered trademarks pending disposal of the suit.

O.A. No.194 of 2017:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the defendant/respondent, their men, agents, servants, or any

one claiming through them from in any manner passing off their goods as that of the plaintiff's by using the identical trademark label, trade dress, colour combination, get-up and layout, which is identical and/or deceptively similar to that of the plaintiff's trademark label/trade dress GOPURAM or any other mark or device which is similar or deceptively similar to that of the plaintiff's trademark label/trade dress either by manufacturing or offering for sale of the products under the offending trade mark label/trade dress or any manner advertising the products under the offending trademark, trade dress and artistic work, pending disposal of the suit.

O.A. No.195 of 2017:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the defendant/respondent, their men, agents, servants, or any one claiming through them from in any manner interfering with the plaintiff's copyright over the artistic work in the trade mark label GOPURAM by using the offending trade mark label/trade dress or any other trade mark label/trade dress, which is identical or substantial reproduction of the plaintiff's artistic work in the trade mark label/trade dress GOPURAM, pending disposal of the suit.

These Original Applications coming on this day before this court for hearing the court made the following order:-

These applications have been filed by the Plaintiff in the suit.

2. The suit in C.S.No. 135 of 2017 had been filed by M/s.Y.V.S.Seshachalam & Co., a partnership firm, Chennai, represented by its Partner, Y.V.Niranjan Krishna, against Sri Venkata Swami Traders, Nellore, Andhra Pradesh, seeking a

judgement and decree of permanent injunction, restraining the Defendant, from infringing the Plaintiff's registered trademark label GOPURAM, from passing off their goods as that of the Plaintiff's, by using an identical trademark label/trademark dress, deceptively similar to the registered trademark label/trademark dress GOPURAM, from infringing the Plaintiff's copyright in the artistic work in the trademark label GOPURAM and for consequential reliefs, directing the Defendant to surrender their stocks with the infringing trademark label, to render accounts of the profits earned and to pay the costs of the litigation.

3. The Plaintiff is a partnership firm, registered in the year 1948. They are manufacturers of cosmetic and pooja preparations, like turmeric powder, kumkum, benzoin, incense sticks/powders and they expanded their business to manufacture further related products. The predecessor was Y.V.Seshachalam, and he started the business in the year 1945. He coined the trademark GOPURAM in 1948. The Plaintiff attained reputation and goodwill. The firm is run by the family members of Y.V. Seshachalam.

4. The trademark and trade dress GOPURAM of the Plaintiff is as follows :-



5. The conditions for the trademark GOPURAM are as follows :-

S.N	Trade Mark	Class	No	Status
1	GOPURAM	03	548622	Registered
2	GOPURAM	03	586262	Registered
3	GOPURAM	03	654067	Registered
4	GOPURAM	03	652774	Registered
5	GOPURAM	03	654044	Registered
6	GOPURAM	03	652771	Registered
7	GOPURAM	03	1270901	Registered
8	GOPURAM	03	889498	Registered
9	GOPURAM	03	889497	Registered
10	GOPURAM	03	1447031	Registered
11	GOPURAM	03	1447032	Registered
12	GOPURAM	03	1464320	Registered
13	GOPURAM	03	548623	Registered
14	GOPURAM	03	1828688	Registered
15	GOPURAM	03	652770	Registered
16	GOPURAM	03	1828687	Advertised

6. The Plaintiff has specifically stated in the plaint that they are also the owner of the copyright of the artistic work in respect of the trademark label GOPURAM. The trademark GOPURAM and the device of GOPURAM have become

distinctive features of the Plaintiff's products. They are associated with the Plaintiff for the past over six decades. The Plaintiff depicts the label with a circular device within which the GOPURAM is used as a device (golden colour) and the word GOPURAM is written in red colour. The Plaintiff claims copyright of the artistic work.

7. The details of the Plaintiff's sales turnover and advertisement expenses have also been given in the plaint. The Plaintiff has claimed that their sales turnover was Rs.47,019,027.18/- in the financial year 1999-2000. This had increased substantially to Rs.183,776,423.47 in the financial year 2015-2016. Similarly, the advertisement expenses which was Rs.343,427.00 in the financial year 1999-2000 had increased to Rs.24,152,082.50 in the financial year 2015-2016.

8. The Plaintiff had stated that several attempts had been made to take advantage of the goodwill and reputation of the Plaintiff's products. The Plaintiff has been very vigilant in protecting their trademark with the artistic work of the device GOPURAM. The Plaintiff came to know in the first week of January 2017 that the Defendant, who was earlier a dealer of the Plaintiff, had also entered into the market, by marketing kumkum packets under the name 'Sowbhagya'. However, the Defendant has retained the Plaintiff's device of GOPURAM. The Defendant has also put a

circle similar to that of the Plaintiff around the device, GOPURAM.

9. The Plaintiff had used 3 separate colour schemes to indicate the quality of the kumkum, which includes, (1) gold for extra special quality, (2) silver for special quality and (3) poly pack for regular quality. The Defendant had used the identical colour scheme by using (1) gold for premium quality, (2) silver for special quality and (3) poly pack for regular quality.

10. The Plaintiff had used a blue colour circular ring within which the device of GOPURAM and the word GOPURAM is depicted. The Defendant has copied the circular ring device and also the blue colour used by the Plaintiff. The Plaintiff has artistically devised the temple tower and depicted the same in gold colour. The Defendant has also used the temple tower and has also depicted the same in gold colour.

11. The Plaintiff has written GOPURAM KUMKUM in 3 vernacular languages in dark blue background and white letters. The Defendant has also written the word 'Sowbhagya' in four vernacular languages in dark blue background and white letters. The only difference is that the Plaintiff has used the word 'GOPURAM' and the Defendant has used the word 'Sowbhagya'. However, the Defendant has written the word in

12. The mark of the Defendant is as follows:-



13. A comparison of the two labels of the Plaintiff and the Defendant clearly shows that the Defendant has copied the device image and also blue circle and also the nature of packing. The only difference is the word 'GOPURAM' and the word 'Sowbhagya'.

14. The Plaintiff has also complained that the Defendant had infringed the copyright of the Plaintiff, namely, usage of gold colour packaging with colour scheme of white and blue along with the device of GOPURAM in such a blue colour circle. The word GOPURAM is depicted in red colour. The Defendant has also used similar device of GOPURAM and also a similar blue colour circle. The Plaintiff has further claimed that the Defendant is attempting to pass off their products by using the deceptively similar mark, trade dress and trade label and trying to market their products as that of the Plaintiff. The nature of the products are also the same. The Plaintiff also markets

<https://hcservices.ecourts.gov.in/hcservices> kumkum and the Defendant also markets kumkum. It is under

these circumstances that the suit had been filed, seeking the relief of injunction, restraining the Defendant from infringing the trademark, infringing the copyright and from passing off the goods as that of the Plaintiff and also for consequential reliefs.

15. Along with the plaint, the Plaintiff has also filed the present applications in OA.No.193 of 2017, seeking interim injunction, restraining the Defendant from infringing the Plaintiff's registered trademark label GOPURAM, OA.No.194 of 2017, seeking interim injunction, restraining the Defendant from passing off their goods as that of the Plaintiff by using identical trademark label, trade dress, colour combination similar to that of the Plaintiff's trademark, label/ trade dress GOPURAM and OA.No.195 of 2017, seeking interim injunction, restraining the Defendant, from infringing the Plaintiff's copyright over the artistic work in the trademark label GOPURAM by using the offending trademark similar to that of the Plaintiff.

16. In the affidavits filed in support of the said applications, the Plaintiff has reiterated the facts as stated in the plaint .It was stated that the device GOPURAM had been specifically designed by the Plaintiff and it was also stated that the Plaintiff enjoyed reputation and goodwill which is under serious threat by the usage of the

Defendant of their trademark 'Sowbhagya', but with the same

device GOPURAM. The deponent of the affidavit sought interim orders as prayed for in these applications.

17. A counter had been filed on behalf of the Defendant. In the counter affidavit, the Defendant had stated that the trademark used by them is 'Sowbhagya', whereas the trademark used by the Plaintiff is GOPURAM. It has been claimed that there is no phonetic similarity between the trademarks. It has also been stated that with respect to device GOPURAM, the Plaintiff had registration of the device of GOPURAM whereas the Defendant's image of GOPURAM is totally different.

18. The Defendant had also stated that there is no attempt to pass off their products as that of the Plaintiff. The Defendant specifically denied that the word GOPURAM and the device of GOPURAM have become synonymous with that of the Plaintiff. It was stated that nobody can claim monopoly over any device of temple tower. It had been used widely. It had also been stated that 3 qualities of products and 3 different pouches of the Plaintiff are not unique and do not deserve any protection under law. It has also been stated that the Plaintiff's product for 40 gms costs Rs.12/- whereas the Defendant's product costs Rs.16/-. Stating that their products are valued higher, the Defendant had stated that there is no attempt to either infringe the copyright,

Plaintiff.

19. The Defendant had stated that they are using the trademark 'Sowbhagya' for their kumkum products from January 2016. The Defendant had stated that the father of the deponent of the affidavit was a stockist of the Plaintiff. However, that cannot prevent the Defendant from carrying on the same business in manufacturing and marketing kumkum.

20. In the counter, the Defendant had offered to change their label as follows:-



21. The Defendant had stated that the mark is totally different phonetically and also visually and consequently, there is no violation of copyright in the trade label. The Defendant has therefore stated that the applications must be dismissed.

22. The Plaintiff has filed a reply to the counter filed by the Defendant. In the reply, the Plaintiff has

<https://hcservices.eas.gov.in/hcservices> stated that the shop of the Defendant at S.H.Pet,

Nellore was till recently a stockist as well as retailer of the Plaintiff. It has been stated that the Defendant had deliberately copied the device of GOPURAM because they had knowledge of its usage by the Plaintiff. It had been stated that the usage of device of GOPURAM by the Defendant is wholly unjustified. The Plaintiff had again reiterated that they had established substantial good will and reputation and that the Defendant is attempting to ride on such reputation and good will. The Plaintiff claimed that the reliefs must be granted in these applications.

23. This Court heard Mr.A.Prabhakar Reddy, the learned counsel for the Plaintiff and Mr.R.Sathish Kumar, the learned counsel for the Defendant. Even though orders are passed in these applications, the parties shall hereinafter shall be referred to as the Plaintiff and the Defendant for the sake of convenience.

24. The Plaintiff, M/s.Y.V.S.Seshachalam & Co., is a partnership firm. In the plaint, a brief background history of the Plaintiff firm has been given. It has been stated that Y.V.Seshachalam had commenced the business in manufacturing and supplying of pooja products at Korukupet, Chennai in 1945 under the name, M/s.Y.V.S.Seshachalam & Co. He was a pioneer in selling products at high quality at a time when inferior quality products were easily available.

He coined the trademark in the year 1948. It was claimed that

it was well received by the members of the public. It was further claimed that the trademark GOPURAM and the product of M/s.Y.V.S.Seshachalam & Co. were received with much appreciation by the general public and substantial good will and reputation were built up over a period of years. This trademark GOPURAM was also registered under the authorities.

25. The Plaintiff firm had been registered under the Partnership Act in 1948. The family Members of Y.V.Seshachalam have been running the firm till date. The trademark GOPURAM had been used continuously from 1948. It is also seen that the Plaintiff had established branches across the South India, particularly in Chennai, Bangalore and Vijayawada. They had also registered as many as 16 separate registrations under the trademark GOPURAM with respect to Class 3. The details are as follows:-

S.N o	Trade Mark	Class	No	Status
1	GOPURAM	03	548622	Registered
2	GOPURAM	03	586262	Registered
3	GOPURAM	03	654067	Registered
4	GOPURAM	03	652774	Registered
5	GOPURAM	03	654044	Registered
6	GOPURAM	03	652771	Registered
7	GOPURAM	03	1270901	Registered
8	GOPURAM	03	889498	Registered
9	GOPURAM	03	889497	Registered
10	GOPURAM	03	1447031	Registered
11	GOPURAM	03	1447032	Registered

S.No	Trade Mark	Class	No	Status
12	GOPURAM	03	1464320	Registered
13	GOPURAM	03	548623	Registered
14	GOPURAM	03	1828688	Registered
15	GOPURAM	03	652770	Registered
16	GOPURAM	03	1828687	Advertised

26. The registration included the device of a temple tower which is called GOPURAM within circle and the word GOPURAM written in the middle. The products under Class 3 included the kumkum. The registration certificates have been enclosed along with the plaint. They have also been renewed and renewal certificate dated 19.2.2016 under A.No.548623 has also been filed as a document along with the plaint. A deed of assignment of the trademark of the Plaintiff has also been filed. A certificate of the Chartered Accountant giving the total sales turnover and the advertisement expenses for the partnership firm and the sister concern under the trademark GOPURAM had also been filed as a document with the plaint. It has also been extracted in the plaint.

27. It is seen that the total sales turn over in the financial year 1999-2000 was Rs.47,019,027.18/- This had substantially increased to Rs.18,37,76,423.47/- in the financial year 2015-2016. The Plaintiff had also substantially increased its expenses towards advertisement.

It was Rs.3,43,427/- in the financial year 1999-2000. This had increased to Rs.24,152,082.50/- in the financial year

2015-2016. The above figures show an increase in both the sales turnover and in advertisement expenses incurred by the Plaintiff. This reflects the good will and reputation gained by the Plaintiff in the market. Conversely, it also reflects confidence which the general public have in the products of the Plaintiff.

28. The trademark of the Plaintiff is the device GOPURAM and it is as follows:-



29. A perusal of the same shows that in 1945 when the word GOURAM was coined, it was a synonymous word blending with the image. The image also is called GOURAM in Tamil. It is a temple tower. Consequently, the Plaintiff has coined a very simple trademark and trade dress and trade device. They used the word GOPURAM and they depicted the image of the GOPURAM. Both the image and the word go together. One signifies the other. They cannot be separated. It is clear that the Plaintiff's products would certainly be identified with the device of GOPURAM.

different name, but still, the one factor which catches the eyes is the image of the GOPURAM or temple tower in the products of the Plaintiff. In the plaint also, the Plaintiff had stated that they also market products under the name Sikharam, but they continue to use the device of GOPURAM or temple tower. The substantial increase in the sales turnover shows that the general public have identified not only the name GOPURAM with the Plaintiff, but also the device GOPURAM with the Plaintiff. As a matter of fact, any kumkum packet with the image of the device of GOPURAM would only be associated with the Plaintiff.

31. It is also to be mentioned that the Defendant was a stockist and retailer of the Plaintiff. Both as a stockist and as a retailer, the Defendant would have had personal knowledge about the movement of the goods of the Plaintiff, its reputation, the confidence which the public have in the goods of the Plaintiff as well as the turnover, which kept on increasing. The Defendant would certainly be aware that the reason why people purchased the product of the Plaintiff was because of the uniqueness of the trademark and trade dress, GOPURAM.

32. The kumkum is related to religious practices and it is also identifiable with the image of a temple. The Defendant, who was a stockist, started to manufacture and

market his own kumkum products, but used the same device of a

temple tower. This usage of the image GOPURAM was not a bona fide choice. Though the name of his product is different, even an ordinary person, if he sees the image of the temple or GOPURAM in the package, would identify the products only with that of the Plaintiff.

33. It must also be kept in mind that the Plaintiff has been in the market from 1948 for the past nearly 70 years. The long period of association by the public with the image of GOPURAM of the Plaintiff is the only reason why the Defendant has also adopted the same device. I hold that The Defendant has clearly tried to ride on the reputation of the Plaintiff. When the Defendant has used a unique word 'Sowbhagya', they could have had a device equivalent to that which signifies that name. On the other hand, there is no connection whatsoever between the word 'Sowbhagya' and the device of GOPURAM in the product of the Defendant. They are both distinct items. Consequently, the Defendant has consciously copied the image of GOPURAM from that of the Plaintiff. I hold that the Defendant is directly attempting to pass off their products as if they are the products of the Plaintiff. This cannot be permitted. It has to be prevented. The Defendant cannot claim innocence and ignorance. He was after all a stockist and retailer of the Plaintiff. Consequently, the Defendant cannot seek any

34. The Plaintiff's label and the Defendant's label are reproduced as follows:-



35. A perusal of the same shows that the Plaintiff has the image of GOPURAM or temple tower in gold colour. The Defendant has also the image of the temple tower/GOPURAM in gold colour. They both have blue colour circle surrounding it. The words, GOPURAM and Sowbhagya, are in red font. The vernacular languages are in dark blue background with white letters in both the packets. Except for the word, 'Sowbhagya', the packet of the Defendant is exactly similar to that of the Plaintiff. It is clear that the Defendant had wantonly infringed the registered trademark of the Plaintiff.

that the registration of the Plaintiff would be restricted only to the word GOPURAM and not to the device of GOPURAM. I disagree.

37. The registration certificate of the Plaintiff is reproduced as under:-



38. In the registration, the Plaintiff had retained the device GOPURAM and had also obtained registration and recognition of the same. The word and the device go hand in hand. The device is the image of the word. This Court has to protect the Plaintiff from any infringement. The Plaintiff has made out a prima facie case.

39. In the counter affidavit, the Defendant had stated that they would alter their label as follows:-

40.



40. But, it is seen that the Defendant is again retaining the same device of GOPURAM, namely, temple tower. The learned counsel for the Plaintiff had not agreed or consented to this change by the Defendant. It is also clear that the Plaintiff would suffer irreparable loss and hardship if protection is not granted.

41. In the result, there will be an order of interim injunction as prayed for in OA.Nos.193 to 195 of 2017 and accordingly, these applications are allowed as prayed for. No costs.

Sd/-C.V.K.J

02.08.2018

//Certified to be a true copy//

Dated this the day of 2018

jj 13/08/18

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.