

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.03.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.34 of 2018
and
O.A.Nos.35 and 36 of 2018
and
A.Nos.376 and 377 of 2018

S.V.Balasubramani

Proprietor

SRI VEERA'S CREATIONS

(Textile and Readymade Wholesale Shop)

Office at No: 51-51/1, M.C.Road,

Old Washermenpet,

Chennai - 600 021.

.. Plaintiff

Vs.

M/s.Sri Veera's

Door No.63, Kattukudalur Road,

Near Dhinasarikaikani Market,

Virdhachalam - 606 001.

.. Defendant

This Civil Suit is preferred, under Order VII Rule 1 C.P.C. Read with Order IV Rule 1 of Original Side Rules and Sections 134 and 135 of the Trademarks Act, 1999 praying to

a) grant permanent injunction restraining the defendant, their men, servants or dealers or agents or person claiming through them or under them, from in any manner, infringing the Plaintiff's registered trade mark "SRI VEERA'S (label) under No.2120621 in class 35, and "SRI VEERA'S" (Word mark) under No.2120621 in class 35 or any other deceptively similar variation thereof, in any form and manner whatsoever,

b) grant permanent injunction restraining the defendant by them, their men, servants or agents or dealers or any persons claiming through or under

them, from passing off their textile goods, in any manner, as and for the textile goods of the plaintiff by using the well reputed and registered trade mark "SRI VEERA'S" or any other identical or similar trademark which are deceptively similar to or imitation of the words of the Plaintiff's registered trademark,

c) direct the defendant to surrender to the Plaintiff of the entire stock of unused offending trade mark labels/blocks and dyes for destruction;

d) direct the defendant to render a true and faithful account of profits earned by them through the sale of textile goods bearing the offending "SRI VEERA'S CRATIONS" trademark and directing payment of such profits to the plaintiffs for the infringement and/or passing off committed by the defendant and

f) directing the defendant to pay the Plaintiff the cost of this suit

For Plaintiff : Mr.G.Sudhakar

For Defendant : Mr.M.V.O.Chidambaram

JUDGMENT

Mr.G.Sudhakar, counsel on record for sole plaintiff and Mr.V.O.Chidambaram, counsel on record for sole defendant are before this Commercial Division.

2. On behalf of plaintiff, Mr.B.Deepak, son of Mr.S.V.Balasubramani, sole plaintiff is before this Commercial Division. Ms.V.Devagi Gandhi, wife of A.Vinoth Kumar, Proprietrix of Sri Veera's, Virdhachalam, sole defendant is before this Commercial Division.

3. With regard Mr.B.Deepak, counsel on record for sole plaintiff Mr.G.Sudhakar, has identified Mr.B.Deepak.

4. A joint submission is made by both the aforesaid learned counsel that plaintiff and defendant have settled the matter amongst themselves and have entered into a Joint Memorandum of Compromise dated 09.03.2018. A Joint Memorandum of Compromise dated 09.03.2018 duly signed by both parties and their respective counsel is placed before me. The terms of the Joint Memorandum of Compromise dated 09.03.2018, read as follows:

"Both the Plaintiff and Defendant had agreed for joint compromise as enumerated hereunder:

a. That the defendant was called upon to furnish their constitution and the plaintiff reserves their right to make an appropriate amendments in the plaint and by the same the defendant mentions that V.Devagi Gandhi is the proprietrix of committing infringement of trademark and passing off with their textile goods with that of the plaintiff's well known and registered trademark of "SRI VEERA'S CREATIONS" in the trade name of impugned " SRI VEERA'S" at No.63, Kattukodalore Road, Near Dhinasari Kaikani Market, Virdhachalam - 606 001.

b. By way of entering into joint compromise, the defendant have agreed to cease and desist forthwith from using the mark impugned name of "SRI VEERAS" or any other mark which is identical with or deceptively similar to the Plaintiff's trademark "SRI VEERA'S" CREATIONS".

c. The defendant have agreed to surrender to the Plaintiff

for destruction of all infringing labels, dies, blocks and cartons with printed/packing materials, screens, negative, advertisement, publicity materials, stationery, price lists and the like, bearing and/or carrying the false trademark "SRI VEERA'S" or any other mark that is identical with or deceptively similar to the Plaintiff's trademark, "SRI VEERA'S CREATIONS".

d. The defendant have agreed to cease the promotions of infringed trademark of "SRI VEERA'S" through internet channel such as "web search", "Youtube Search", "What's app" and on any other medium of broadcasting and by way of publishing through any means like store's hoardings, name board in front before their shop premises and any such other form of promotions that would leads to passing off the well-known Plaintiff's registered trademark "SRI VEERA'S CREATIONS".

e. The defendant agreed and tender an unconditional apology to the Plaintiff for having encroached upon the Plaintiff's valuable intellectual property rights and causing the plaintiff unnecessary harassment, hardship and financial loss.

f. The defendant agree and gives an undertaking to the Plaintiff that the defendant would not use or cause to be used any trademark that is identical with or deceptively similar to the Plaintiff's Trademark.

5. By way of entering to joint compromise, with respect to the subject matter of present suit, the Plaintiff acknowledges that no claims, damages and any sort of relief would be made against the defendant.

6. The above joint compromise set out in Para 4 a to 4f. are without prejudice to the Plaintiff's rights to demand and recover such further damages from and relief against the defendant in the event of defendant's failure to comply with the same from below mentioned date of entering into this joint memo of compromise

and on occurrence in the event of violation after such compliance by the defendant.”

5. A joint request is made to this Commercial Division that a compromise decree in terms of the aforesaid Joint Memorandum of Compromise dated 09.03.2018 may please be passed. To be noted, this Joint Memorandum of Compromise has been entered into/arrived at after long-drawn rival submissions between the parties spanning over some hearings.

6. There shall be a decree in terms of the aforesaid Joint Memorandum of Compromise dated 09.03.2018 and the Joint Memorandum of Compromise shall form part of the decree.

7. Suit is decreed on above terms. No costs. Consequently, connected pending applications shall stand closed.

09.03.2018

Speaking/Non-Speaking order

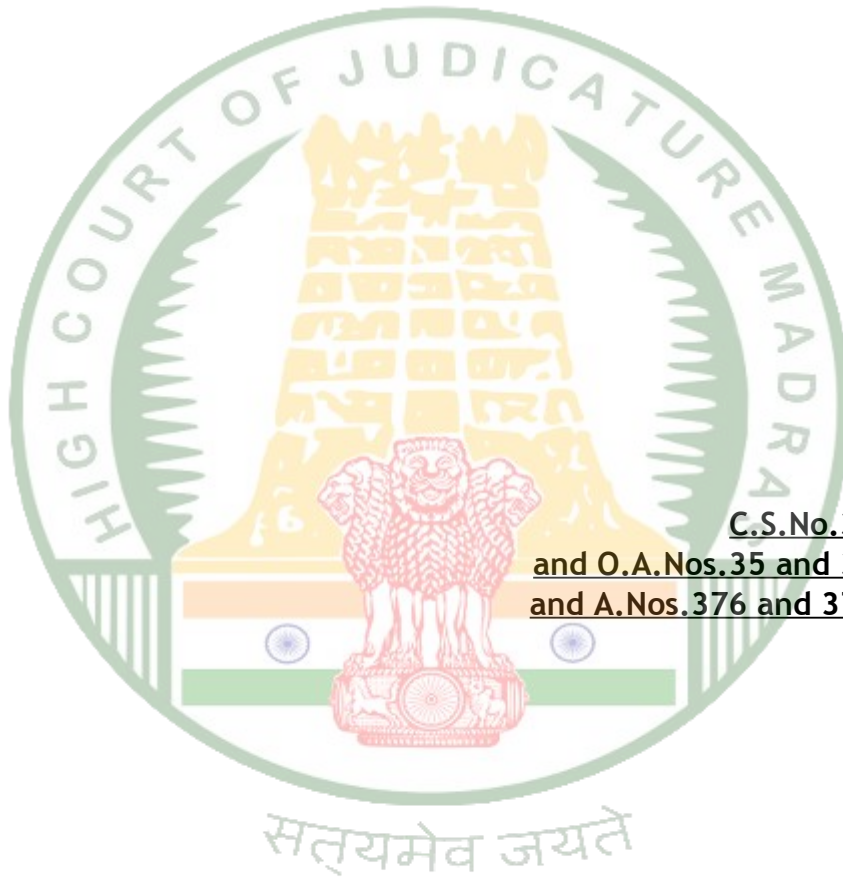
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M.SUNDAR, J.

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