

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:06.02.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.322 of 2015

&

O.A.Nos.422 and 423 of 2015

M/s.Kalanjiyam Cut Piece
Represented by its Partners
1.Mohammed Mohideen
2.M.Basheerudeen
3.M.Thajudeen
4.M.Jamaludeen
No.17/1 Ranganathan Street
T.Nagar, Chennai – 600 017

.. Plaintiff

Vs.

M/s.New Kalangiye Tex-Styles
Rep. By its Sole Propreitor/Partners
No.136, North Redhills Road
Villivakkam, Chennai – 49

.. Defendant

This Civil Suit is preferred, under Order VII Rule 1 of Code of Civil Procedure Code, 1908 read with Order IV Rule 1 of the Original Side Rules of the Madras High Court and Sections 11, 29, 134 and 135 of the Trade Marks Act, 1999 for permanent injunction, restraining the defendant, by itself, its servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the trade mark New Kalangiye Tex Styles upon the goods or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, phonetically or deceptively similar to the plaintiffs registered Trade Mark Cut Piece and Kalanjiyam or in any manner infringing the plaintiffs Registered Trade Mark No.690216, 1548035 and 1548038; permanent injunction restraining the defendant by

themselves, their servants, agents, men or anyone claiming through them from manufacturing, marketing, distributing, offering or advertising for sale of TEXTILE GOODS using the trade mark New Kalangiye Tex Styles or similar sounding names in the course of their business and pass off their Textiles goods using the trade mark Kalanjiyum Cut Piece and Kalanjiyam as and for the Kalanjiyum Cut Piece and Kalanjiyam goods of the applicant or enable others to pass off; for a direction to the defendant to surrender to the plaintiffs all the Textile goods packing material, cartons, advertisement materials and hoardings, letter heads, visiting cards, office stationery and all other materials containing/bearing the trade mark NEW KALANGIYE TEX STYLES or other deceptively similar trade marks in respect of above and for a preliminary decree in favour of the plaintiffs, directing the defendant to render an account of profits made by them by the use of the Trade mark NEW KALANJIYE TEX STYLES on the good referred and for a final decree in favour of the plaintiffs for the amount of the profits found to have been made by the defendants, after the defendants have rendered accounts and for the costs of the suit.

For Plaintiffs : Ms.Vasudha Thiagarajan

For Defendants : Mr.P.Sampath
for Mr.Ajmal Azzath

JUDGMENT

Ms.Vasudha Thiagarajan, learned counsel on record for the sole plaintiff is before this Commercial Division. Mr.K.Sampath, learned counsel representing Mr.M.Ajmal Azzath, counsel on record for the sole defendant is also before this Commercial Division.

2.With regard to jurisdiction of this Commercial Division, qua this suit, this Commercial Division has already expressed its intention to

exercise jurisdiction over this suit vide proceedings dated 22.01.2018. Paragraphs 2 and 3 of the said proceedings are relevant and I extract the same, which read as follows:

“2. Learned counsel for the plaintiff submits that this suit pertains to alleged infringement of a registered Trademark. There is also a prayer qua passing off. Learned counsel further submits that in the light of the subject matter of the suit, particularly in the light of the prayers in the plaint, Section 134(1) of Trademarks Act, 1999 (hereinafter referred to as 'TM Act' for brevity) operates. As Section 134(1) of Trademarks Act, 1999 operates, this Commercial Division will have jurisdiction under first proviso to Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (4 of 2016) (hereinafter referred to as 'Act 4 of 2016' for brevity). As this is a suit for alleged infringement of trademark, in the light of Section 134(1) of TM Act, 'specified value' aspect (as in Section 2(1)(i) read with Section 12 of Act 4 of 2016) is of no relevance.

3. I have perused the plaint and as set out supra, I have also heard the learned counsel for plaintiff. After perusing the plaint averments, I am satisfied that the submission made by the learned counsel for plaintiff deserves to be accepted. I accept the aforesaid submission and hold that this Commercial Division shall exercise jurisdiction over this suit in the light of first proviso to Section 7 of Act 4 of 2016. To be noted, this is an expression of intention to exercise jurisdiction by this Commercial Division qua the suit and the jurisdiction is otherwise inherent. “

3. Today, learned counsel for sole defendant has filed an affidavit dated 06.02.2018, wherein it has inter alia been stated on a sworn affidavit that the sole defendant has changed the name of his business and that he does not intend using the alleged offending name. This affidavit has been filed along with a photograph showing the signboard of the sole defendant.

4. This makes the whole lis simple and both the learned counsel submit that a summary judgment can be passed in this suit without further oral or documentary evidence inter alia in exercise of powers of this Commercial Division under Order XIII-A of amended Code of Civil Procedure, 1908, as amended by Act 4 of 2016.

5. Plaintiffs have averred in the plaint that the plaintiffs bonafidely adopted the trade name Kalanjiyam Cut Piece in the year 1978 and that they have acquired goodwill and reputation for their trading style Kalanjiyam Cut Piece. It is also the further submission of the plaintiff that Kalanjiyum Cut Piece and Kalanjiyam, by virtue of its long, continuous and uninterrupted use, had made the Trade mark distinctive and has acquired secondary meaning and the public started associating the Trademark only with the plaintiffs. The sales turnover of the plaintiffs for the last 20 years has been set out in Paragraph 10 of the plaint, which reads as follows:

<i>Year</i>	<i>Sales Turnover</i>
	<i>Rs.</i>
<i>1977-1978</i>	<i>Rs.22,149.60</i>
<i>1978-1979</i>	<i>Rs.233,400.50</i>
<i>1979-1980</i>	<i>Rs.201,597.40</i>

1980-1981

Rs.370,766.95

6. With regard to Trademark Registration of the plaintiff, the details are set out in Paragraphs 15 and 16, which read as follows:

15.Plaintiff are registered proprietor of Trademark Kalanjiyum Cut Piece and Kalanjiyam. The details of the Registration granted to and in favour of plaintiffs are given hereunder:

S.No	Date	Trade Mark	R.T.M.No.	Class
1	11/12/1995	Kalanjiyum Cut Piece	690216	24
2	10/04/2007	Kalanjiyum	1548038	24
3	10/04/2007	Kalanjiyum	1548035	25

Plaintiffs also filed necessary papers before Trade Mark Registry to bring on record Name of present plaintiffs as subsequent proprietor. Both the above Trade Marks are renewed from time to time and is still valid and subsisting. Therefore, on account of Registration granted by Trade Mark Registry in respect of Registered Trade Mark Kalanjiyum Cut Piece and Kalanjiyam in plaintiff's favour. Plaintiffs have exclusive rights to use and adopt trade mark Kalanjiyam in respect of Textile Piece goods and Textile.

16.Apart from above Registered Trade Mark, Plaintiffs also proceeded for Registration of Trade Mark Kalanjiyam by filing applications before Trade Mark Registry and are awaiting for Certificate of Registration. The details of Applications filed by plaintiffs before Trade Mark Registry are given hereunder:-

S.No	Date	Trade Mark	Appln.No.	Class
1	13/10/2011	Kalanjiyum (Tamil Label)	2219462	16
2	13/10/2011	Kalanjiyum	2219463	24
3	13/10/2011	Kalanjiyum	2219464	25
4	13/10/2011	Kalanjiyum (Tamil Label)	2219465	35

7. There is no dispute before me that products which the plaintiffs

and defendant are trading in are the same. Under such circumstances, the aforesaid affidavit dated 06.02.2018 filed by the sole defendant reads as follows:

"I, Md.Haja Mohaiden, son of N.M.Abdul Aziz, Muslim, aged about 38 years residing at 136, North Redhills Road, Villivakkam, Chennai- 600 049, do hereby solemnly affirm and sincerely state as follows:-

I state that, I was running a shop in the name of new Kalangiyem text-styles doing the business at No.36, North red hill road, Villivakkam, Chennai- 600 049 for doing the business of selling the cutpiece and other textile materials.

While doing this so, I have received a letter from one Mr.Ashok Kumar J.Daga & Daga Advocates, stating that, the above said civil case was filed against me, in respect of shop name.

I further state that after receiving the letter, I discussed and informed with my advocate and I don't want to continue my business in the name of new Kalangiyem and I have changed my shop name to RATHI TEXTILES. I am doing my business in very struggle manner and we are very small and poor trader. Further, I don't have enough money and time to defend the case also. It is not compulsory or more benefited to run the business in the name of New Kalanjiyem Textiles. Now I am running my business in the name of RATHI TEXTILES.

Therefore, I prayed that this Hon'ble Court pleased to permit me to file this affidavit and allow my affidavit and dismiss the suit and pass or such other orders as this Hon'ble Court may deem fit in this circumstances of this case and thus render justice."

8. Photograph of the changed signboard of the defendant (as annexed to the aforesaid affidavit) is as follows:



9. To be noted, photograph gives the address as No.136 North Redhills Road, Villivakkam, Chennai-49, which is the address as contained in the short and long cause titles of the sole defendant. Prayer paragraph in the plaint is Paragraph No.37 and the same reads as follows:

"37. The plaintiffs, therefore, prays for judgment and decree for
 (a) Granting a permanent injunction, restraining the defendant, by itself, its servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the trade mark New Kalangiye Tex Styles upon the goods or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually, phonetically or deceptively similar to the plaintiffs registered

Trade Mark Cut Piece and Kalanjiyam or in any manner infringing the plaintiffs Registered Trade Mark No.690216, 1548035 and 1548038.

- (b) Granting a permanent injunction restraining the defendant by themselves, their servants, agents, men or anyone claiming through them from manufacturing, marketing, distributing, offering or advertising for sale of TEXTILE GOODS using the trade mark New Kalangiye Tex Styles or similar sounding names in the course of their business and pass off their Textiles goods using the trade mark Kalanjiyum Cut Piece and Kalanjiyam as and for the Kalanjiyum Cut Piece and Kalanjiyam goods of the applicant or enable others to pass off.
- (c) Directing the defendant to surrender to the plaintiffs all the Textile goods packing material, cartons, advertisement materials and hoardings, letter heads, visiting cards, office stationery and all other materials containing/bearing the trade mark NEW KALANGIYE TEX STYLES or other deceptively similar trade marks in respect of above.
- (d) For a preliminary decree in favour of the plaintiffs, directing the defendant to render an account of profits made by them by the use of the Trade mark NEW KALANJIYE TEX STYLES on the good referred and for a final decree in favour of the plaintiffs for the amount of the profits found to have been made by the defendants, after the defendants have rendered accounts.
- (e) Directing the defendant to pay to the plaintiffs the costs to the cost, and
- (f) Pass such further or other order, as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

10. In the light of the aforesaid narrative, learned counsel for sole defendant submits that the sole defendant will submit itself to decree with regard to Sub-paragraphs (a) and (b) of Plaintiff paragraph 37 extracted supra. Obviously the plaintiff has no objection for this course of action. In the light of the fair stand taken by the sole defendant and the fair submission made by the sole defendant, learned counsel for plaintiff also very fairly submits that the plaintiff prayers as contained in sub-paragraphs (c), (d), (e) and (f) in Paragraph 37 will stand given up. Learned counsel for sole defendant submits that they will continue to carry on business as set out in the aforesaid affidavit and the name as captured in the aforesaid photograph. To be noted, photograph is the signboard of the sole defendant.

11. Therefore, there shall be a decree in this suit decreeing plaintiff prayers contained in 37(a) and 37(b) of the plaintiff. Plaintiff paragraphs 37(c), 37(d), 37(e) and 37(f) are given up by plaintiff. The aforesaid affidavit of the sole defendant dated 06.02.2018 and the photograph, though extracted and scanned supra, shall also form part of this decree.

12. Suit is decreed on the above terms. In the light of plaintiff prayers 37(c) to 37(f) being given up, there shall be no order as to costs. All pending applications stand closed.

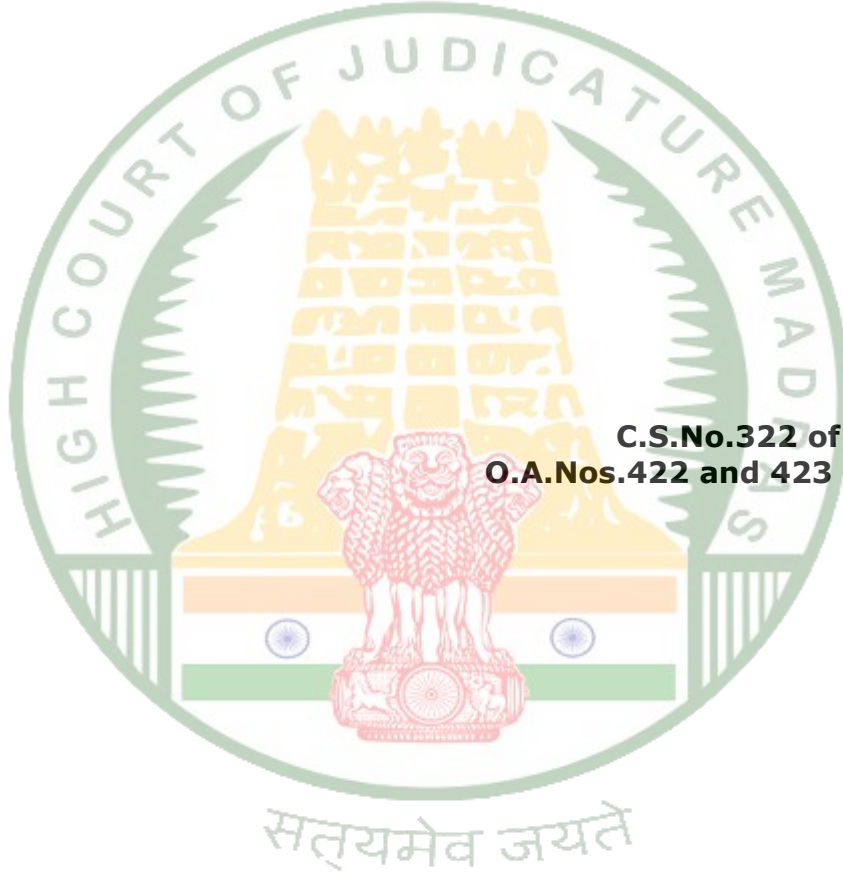
06.02.2018

Speaking/Non-Speaking order

Index : Yes/No

M.SUNDAR, J.

gpa



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