

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:28.02.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.512 of 2009

M/s.Thalappakatti Naidu Ananada Vilas Biriyani Hotel
Rep. by its Partner Mr.D.Nagasamy
No.15, East Car Street
Dindigul

.. Plaintiff

Vs.

R.Shankar
Thalappakattu Briyani & Fast Food
29/B, Madly Road (Gilt Street)
T.Nagar
Chennai -17

.. Defendant

Civil Suit preferred, under Order VII Rule 1 of the Code of Civil Procedure, 1908, read with Order IV Rule 1 of High Court Original Side Rules and Sections 134 and 135 of the Trademarks Act, 1999 seeking permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner passing off the plaintiff Trade mark and Trading style "Thalappakatti Biriyani Hotel" by using the offending Trade Mark and the trading style "Thalappakattu Briyani & Fast Food" or by using any other Trademark which is similar or deceptively similar to that of the Plaintiff's trade mark "Thalappakatti Biriyani Hotel"; for a direction to the defendant to render a true and faithful account of the profits earned by them through the sale of food products bearing the offending trademark "Thalappakattu Briyani & Fast Food" and directing payment of such profits to the plaintiff by way of damages for passing off committed by the Defendant; for a direction to the defendant to surrender to Plaintiff the entire stock of unused offending goods with Trade Mark "Thalappakattu Briyani & Fast Food" with name

boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisement, materials, reports, envelopes, brochures, printing blocks, etc., bearing the offending Trademark for destruction and for the costs of the suit.

For Plaintiff : Mr.S.Vijayan

For Defendant : Mr.P.T.Perumal

JUDGMENT

Mr.S.Vijayan, learned counsel on record is before this Commercial Division on behalf of the sole plaintiff. Mr.P.T.Perumal, learned counsel for the lone defendant is before this Commercial Division.

2.Plaintiff has filed the main suit stating that their business was originally started in 1957 by one Mr.P.Nagasamy Naidu @ Thalappakatti Naidu. It is the further case of the plaintiff that from 1957, plaintiff's predecessor P.Nagasamy Naidu was carrying on business in the name and style of 'Thalappakatti Naidu Ananda Vilas Biriyani Stall' and after the demise of P.Nagasamy Naidu, his son N.Dhanabalan, continued the business in the name 'Thalappakatti Naidu Ananda Vilas Biriyani Hotel' since 1978. To be noted, the change is, the word 'Stall' has been replaced by 'Hotel'. It is the further case of the plaintiff that the plaintiff's business was converted into a partnership firm in April 2002 by inducting some other members of the family as partners.

3. It unfurls from the plaint averments and it emerges from the submissions made by learned counsel for plaintiff, that the business of the

plaintiff is preparation and serving of Briyani. In other words, plaintiff is in Hotel business. Be that as it may, plaintiff claims that it has acquired enormous popularity for the extraordinary quality, unique flavour, taste and particularly preparation of Briyani, which over a period of time has come to be known as 'Thalappakatti Naidu Biriyani Hotel'. Plaintiff has also averred that they have extended their business to Coimbatore, Dindigul, Bathalagundu and other places due to popular demand.

4. It is plaintiff's case that they have taken steps to protect their Trademark and trading style by applying for registration of the trademark and trading style 'Thalappakatti Naidu Biriyani Hotel'.

5. I am informed that on the date of filing of the plaint i.e., 27.04.2009, the application made by plaintiff for registration of their Trademark was pending.

6. In the light of the above, plaintiff has come up with the instant suit with the complaint that in the last week of July 2008, plaintiff came to know of adoption and use of identical and deceptively similar mark and trading style by the defendant. It is the specific case of the plaintiff that defendant is carrying on business in the same line of activity in the name and style of "Thalappakattu Biriyani & Fast Food".

7. As alluded to supra, on the date of filing of the plaint i.e., 27.04.2009, as the application for registration of Trademark made by

plaintiff was pending, the instant suit was laid inter-alia for injunctive reliefs against passing off.

8. Prayer paragraph in the plaint is Paragraph No.22. I deem it appropriate to extract the prayer paragraph:

"a) Granting a permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner passing off the plaintiff Trade mark and Trading style "Thalappakatti Biriyani Hotel" by using the offending Trade Mark and the trading style "Thalappakattu Briyani & Fast Food" or by using any other Trademark which is similar or deceptively similar to that of the Plaintiff's trade mark "Thalappakatti Biriyani Hotel".

b) Directing the defendant to render a true and faithful account of the profits earned by them through the sale of food products bearing the offending trade mark "Thalappakattu Briyani & Fast Food" and directing payment of such profits to the plaintiff by way of damages for passing off committed by the Defendant.

c) Directing the defendant to surrender to Plaintiff the entire stock of unused offending goods with Trade Mark "Thalappakattu Briyani & Fast Food" with name boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisement, materials, reports, envelops, brochures, printing blocks, etc., bearing the offending Trademark for destruction.

d) Direction to the defendant to pay the plaintiff the costs of the suit and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

9. Mr.P.T.Perumal, learned counsel on record for the defendant has filed an affidavit dated 27.02.2018 sworn to by the defendant Mr.P.Sankar. Affidavit reads as follows:

I, P.Sankar, aged about 48 years, son of Palanivelu, residing at No.14/29, Muthumari Chetty Street, Mannadi, Chennai- 600 001, do hereby solemnly affirm and sincerely state as follows:-

1.I am the Proprietor of the defendant business concern. I represent the defendant herein.

2.It is respectfully submitted that I wound up and closed the defendant business long back. I surrendered the physical possession of the premises to its respective owner and I vacated.

3.In this situation, I sustain no interest in the pending C.S.No.512 of 2009 on the file of this Hon'ble Court.

Hence, it is humbly prayed that this Hon'ble Court may be pleased to pass appropriate order in disposing the C.S.No.512 of 2009 on the file of this Hon'ble Court and thus render justice."

10. Plaintiff counsel, on instruction, submits that the contents of the aforesaid affidavit of Mr.P.Sankar are factually correct as of today.

11. In the light of the aforesaid affidavit, plaintiff counsel submits that he is giving up prayers contained in sub-paragraphs (b), (c) and (d) in the plaint. That leaves us with prayer contained in Sub-Paragraph (a) alone, which is effectively an injunctive relief i.e., injunction restraining the defendant qua passing off. To be noted, prayer paragraph has been extracted supra. This takes us to a situation where the defendant has no real prospect of successfully defending the suit claim. Also to be noted,

there is no other compelling reason why the claim should not be disposed of before recording of oral evidence.

12. Both the learned counsel very fairly admit (besides the very fair stand they have taken in the main suit) that this is a fit case for summary judgment (without oral evidence) under Order XIII-A Rule 3 of Code of Civil Procedure, 1908 ('CPC' for brevity), as amended by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Act 4 of 2016). To be noted, Order XIII-A is an entirely new Order captioned 'Summary Judgment' which has been introduced into the CPC in and by Act 4 of 2016, to be precise, by way of Section 16 of Act 4 of 2016 read with Schedule to Act 4 of 2016.

13. I have no difficulty in holding that this is a fit case for summary judgment in the light of the narrative supra. There shall be a decree in terms of sub-paragraph (a) of plaint prayer. In other words, there shall be a decree of permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner passing off the plaintiff's Trade mark and Trading style "Thalappakatti Biriyani Hotel" by using the offending Trade Mark and the trading style "Thalappakattu Briyani & Fast Food" or by using any other Trademark which is similar or deceptively similar to that of the Plaintiff's trade mark "Thalappakatti Biriyani Hotel. To be noted, the other limbs of the plaint prayer have been given up by learned counsel for plaintiff.

14. This is a summary judgment under Order XIII-A Rule 3 of CPC.

Suit is decreed on above terms. To be noted, the suit is decreed without costs because the plaintiff has given up that limb of the plaint prayer also.

28.02.2018

Speaking/Non-Speaking order

Index : Yes/No

gpa



WEB COPY

M.SUNDAR, J.

gpa



C.S.No.512 of 2009

WEB COPY

28.02.2018