

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.10.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.3 of 2017

M/s. V.V.V. & Sons Edible Oils Limited.
Represented by its Director,
V.R.Muthu,
No.443, Bazaar,
Virudhunagar - 626 001. ..Plaintiff

Vs.

Pitambari Products Private Limited.,
Arvind Bros Compound,
Digha
Ganpatipada
Navi Mumbai - 400 075. .. Defendant

This Civil Suit is preferred, under Order IV Rule 1 of Madras High Court O.S. Rules read with Section 29 of the Trademark Act, Order VII Rule 1 CPC, praying to

- a) A permanent injunction restraining the Defendant, its distributors, stockists, servants, agents, retailers, legal representatives, job-workers, manufacturers or any other person claiming under it from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly manufacturing or dealing in edible oils infringing plaintiff's registered trademark VANGA by use of deceptively similar or any mark deceptively similar to Plaintiff's registered trademark VANGA or in any other manner whatsoever;
- b) A permanent injunction restraining the Defendant, its distributors, stockists, servants, agents, retailers, legal representatives job-workers, manufacturers or any other person claiming under it from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly manufacturing or dealing under the trademark VANGA or any other trademark that is identical and/or deceptively similar as that of the Plaintiff's registered trademark VANGA and/or use similar packaging as that of the plaintiff's products under the mark VANGA so as to pass off the Defendant's oils as and for the VANGA Refined sesame oil of the Plaintiff and/or in any other manner whatsoever connected with the Plaintiff;
- c) the Defendant be ordered to pay to the Plaintiff a sum of Rs.1,00,00,000/- as liquidated damages for committing acts of infringement against Plaintiff's registered trademark so as to pass off its product as and for the Plaintiff's products;
- d) the defendants be ordered and decreed to deliver up for destruction to the Plaintiff all the preparations, machines, bottles, labels, packaging either filled or empty, brochures, leaflets, pamphlets, handbills, hoardings, wall posters, calendars, carry bags, stationery items and such other sales promotional materials bearing and/or containing the impugned trademark VANGA;
- e) a preliminary decree be passed in favour of the plaintiff directing the defendants to render

accounts of profits made by it by use of the trademark VANGA which is identical and/or deceptively similar and a final decree be passed in favour of the Plaintiff for the amount of profits found to have been made by the Defendant after the latter has rendered accounts;

f) for cost of the entire proceedings, and;

g) 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.

For Plaintiff : Mr.M.Musthafakhan

For Defendant : Mr.R.Sathish Kumar

JUDGMENT

Mr.M.Musthafakhan, learned counsel on record for sole plaintiff and Mr.R.Sathish Kumar, learned counsel on record for sole defendant are before this Commercial Division.

2. The central theme or in other words, the nucleus of this entire suit is a registered trademark bearing No.2428852 and the mark is 'VANGA'. The trademark registration is class 29 and it is used for edible oil by the plaintiff.

3. Alleging that the defendant is using a deceptively similar mark with regard to the same product, instant suit has been filed with certain prayers and I shall be extracting the prayer elsewhere infra.

4. Before that, it is necessary to set out the depiction of the plaintiff's mark in its product, which has been placed before me as Plaint Document No.12 and the same is as follows:

5. The alleged offending/infringing mark of the defendants, as applied on defendant's product, has been placed before me as Plaint Document No.14 and the same is as follows:

6. The aforesaid trademark registration in favour of the plaintiff being trademark No.2428852 in class 29 shall hereinafter be referred to as 'suit TM' for the sake of convenience and clarity.

7. With regard to the prayer in the plaint, it consists of 7 limbs. Prayer paragraph is paragraph 13 and the same reads as follows:

'13. The plaintiff therefore prays that this Hon'ble Court may be pleased to grant Judgment and decree against the defendant.

a) A permanent injunction restraining the Defendant, its distributors, stockists, servants, agents, retailers, legal representatives, job-workers, manufacturers or any other person claiming under it from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly manufacturing or dealing in edible oils infringing plaintiff's registered trademark VANGA by use of deceptively similar or any mark deceptively similar to Plaintiff's registered trademark VANGA or in any other manner whatsoever;

b) A permanent injunction restraining the Defendant, its distributors, stockists, servants, agents, retailers, legal representatives job-workers, manufacturers or any other person claiming under it from in any manner manufacturing, selling, offering for sale, stocking, advertising directly or indirectly manufacturing or dealing under the trademark VANGA or any other trademark that is

identical and/or deceptively similar as that of the Plaintiff's registered trademark VANGA and/or use similar packaging as that of the plaintiff's products under the mark VANGA so as to pass off the Defendant's oils as and for the VANGA Refined sesame oil of the Plaintiff and/or in any other manner whatsoever connected with the Plaintiff;

c) the Defendant be ordered to pay to the Plaintiff a sum of Rs.1,00,00,000/- as liquidated damages for committing acts of infringement against Plaintiff's registered trademark so as to pass off its product as and for the Plaintiff's products;

d) the defendants be ordered and decreed to deliver up for destruction to the Plaintiff all the preparations, machines, bottles, labels, packaging either filled or empty, brochures, leaflets, pamphlets, handbills, hoardings, wall posters, calendars, carry bags, stationery items and such other sales promotional materials bearing and/or containing the impugned trademark VANGA;

e) a preliminary decree be passed in favour of the plaintiff directing the defendants to render accounts of profits made by it by use of the trademark VANGA which is identical and/or deceptively similar and a final decree be passed in favour of the Plaintiff for the amount of profits found to have been made by the Defendant after the latter has rendered accounts;

f) for cost of the entire proceedings, and;

g) 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.'

8. Learned counsel for defendant submits, on instructions, that the defendant is not using the alleged offending mark (extracted and reproduced supra) any more. To be noted, learned counsel also submits that he has got written instructions from the defendant in this regard.

9. It is further submitted as a sequitur that defendant will submit to a decree with regard to limbs (a) and (b) supra.

10. In the light of the aforesaid fair stand taken by the sole defendant, learned counsel for plaintiff Mr.M.Musthafakhan, on instructions, submits that plaintiff would give up sub-paragraphs (c) to (e) of prayer paragraph. Learned counsel submits, on instructions, that plaintiff does not insist on costs which is sub-paragraph (f) of prayer paragraph and the residuary prayer paragraph which is sub paragraph (g) of prayer paragraph is also given up.

11. To be noted, learned counsel for plaintiff has filed an affidavit dated 23.10.2018 sworn to by one of the Directors of the plaintiff company and the same is taken on record.

12. Both the learned counsel, therefore make a joint request that this suit may please be decreed in terms of sub-paragraphs (a) and (b) supra and dismissed with regard to (c) to (f) as well as costs and residuary prayers the same having been given up.

13. Before I do that, it is necessary to record that both the learned counsel drew my attention to Order XIII-A of amended 'The Code of Civil Procedure, 1908' ('C.P.C.' for brevity) as amended by 'The Commercial Courts Act, 2015' ('Said Act' for brevity). Both learned counsel drew my attention to Rule 3 in particular and submitted that in the light of the stated position of the plaintiff and the defendant which have been culled out and set out supra, defendant has no real chance of succeeding in this suit with regard to prayer sub paragraph (a) and (b) and the plaintiff has given up other limbs of the prayer.

14. Both learned counsel submit that in the light of the aforesaid stated position, this Court can pass a summary judgment without recording oral evidence as there is no other compelling reason why such a course should not be adopted.

15. In the light of the narrative supra, this suit is decreed in terms of sub-paragraphs (a) and (b) of

prayer paragraph of palint. All other plaint prayers contained in sub-paragraphs (e) to (f) followed by the residuary prayer are given up by the plaintiff. As prayer sub-paragraph (f) and residuary prayer have been given up, the question of costs does not arise or in other words, there shall be no order as to costs.

26.10.2018

Speaking order

Index : Yes

vsm/mp

M.SUNDAR, J.
vsm/mp

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