

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Dated : 25.06.2019****Coram****The Honourable Mr.Justice KRISHNAN RAMASAMY****C.S.No.503 of 2009**

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

...Plaintiff

Versus

Thalappakattu Briyani & Fast Food,
No.185, Nelson Manikam Road,
Chennai - 24.

...Defendant

Prayer:

This suit is filed under Order VII Rule 1 of C.P.C r/w. Order IV Rule 1 of High Court O.S.Rules and Section 134 and Section 135 of the Trademarks Act, 1999 for the following reliefs:

(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 Trademark and Trading style "Thalappakatti Biriyani Hotel" by using the offending Trademark and the trading style "Thalappakattu Biriyani & Fast Food" or by using any other Trademark which is similar or deceptively similar to that of the plaintiff's trademark "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 trademark "Thalappakattu Biriyani & 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 Trademark "Thalappakattu Biriyani & Fast Food" with name boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisements, 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.

For Plaintiff : Mr.Vijayan Subramanian
For Defendant : Set *ex parte*
vide order dated 03.09.2018

J U D G M E N T

In the present suit, the plaintiff is a registered Partnership Firm commenced by one Mr.P.Nagasamy Naidu @ Thalappakatti Naidu, the grandfather of the plaintiff, was involving in the hotel business, particularly in preparation and serving of Biriyani at Dindigul Town since 1957. The said Nagasamy Naidu sported a THALAPPA (head gear) in his head and was referred to as THALAPPAKATTI NAIDU and the hotel by reference to his pet name, is being named as "THALAPPAKATTI NAIDU ANANDHA VILAS BIRIYANI HOTEL". The business of the plaintiff firm has acquired enormous popularity for the extraordinary quality and unique flavour and taste, particularly, in preparation of Biriyani by the name THALAPPAKATTI NAIDU BIRIYANI.

2. The said Nagasamy Naidu died in the year 1978. After his demise, Mr.N.Dhanabalan, son of P.Nagasamy Naidu adopted the popular name "THALAPPAKATTI BIRIYANI HOTEL" with the picture of his deceased father, P.Nagasamy Naidu with turban, referred as "THALAPPAKATTU" in Tamil and continued the hotel business. Thereafter, the said Dhanabalan also died and in April 2002, D.Nagasamy Naidu, the grandson of late Thalappakatti P.Nagasamy Naidu and son of N.Dhanabalan, started continuing the said hotel business. While so, in the year 2008, the plaintiff firm came to know that the defendant is running a hotel business at No.185, Nelson Manickam Road, Chennai - 600 024 under the trademark and trading style, "THALAPPAKATTU BIRIYANI & FAST FOOD" which is identical or deceptively similar to the trademark and trading style of the plaintiff.

3.1. The learned counsel for plaintiff contended that the defendant has adopted the identical or deceptively similar trademark and trading style, "THALAPPAKATTU" only with a *mala fide* intention to deceive the general public and to make them believe that the food preparations served by the defendant is that of the plaintiff and also make them believe that the defendant is associated with the plaintiff in business. He would also contend that the defendant has no right to adopt and use the said offending trademark and/or trading style "THALAPPAKATTU". He also contended that due to the immense popularity and reputation of the

trademark and trading style, "THALAPPAKATTI BIRIYANI HOTEL", a negligible and irrelevant changes in the last word of the name, both in Tamil and English, would make no difference so that the general public will be deceived easily and it would also amount to an passing off/offending action by the defendant.

3.2. He would argue that the defendant, by adopting the offending trademark and trading style "THALAPPAKATTU", is playing fraud on the general public by making them to buy the food preparations of the defendant thinking that the same is of the plaintiff and therefore, the plaintiff sent a Legal Notice dated 26.09.2008, to the defendant stating not to use the offending trade name "THALAPPAKATTU" in respect of their hotel business, but even after the receipt of the said Legal Notice, the defendant continues to use the same offending trade name "THALAPPAKATTTU" in respect of their hotel business. He also argued that since the defendant is carrying on their business in Chennai, the cause of action of the suit arose in Chennai, which is well within the jurisdiction of this Court.

3.3. The main contention of the plaintiff's counsel is that the defendant has no right to use the offending identical trademark and trade name "THALAPPAKATTU" since the word "THALAPPAKATTU" comes to mean and refer the products and services of the plaintiff firm and their

predecessors. His further contention is that in the guise of the plaintiff's trademark and trading style "THALAPPAKATTU" or "THALAPPAKATTI", the defendant is serving the sub-standard foodstuffs to the general public, so that it will spoil the goodwill and reputation earned by the plaintiff firm. Therefore, the learned counsel prayed that the defendant may be restrained from using the trademark of the plaintiff.

4. Heard the learned counsel for plaintiff and perused the averments made in the plaint, Proof Affidavit filed by the plaintiff and also the documents Ex.P1 to Ex.P51, marked on the side of the plaintiff.

5.1. From a perusal of the order sheets, it is seen that despite suit summons was served to the sole defendant on 31.07.2009, none appeared on behalf of the defendant and therefore, vide order dated 03.09.2018, the sole defendant was set *ex-parte* by this Court. Thereafter, when the matter was called on 11.06.2019, this Court directed the Registry to post the matter before the learned Additional Master for recording the *ex-parte* evidence and on 19.06.2019, when the matter was posted before the learned Additional Master, only one witness was examined on the side of the plaintiff viz., P.W.1, Mr.V.Kamesh, who is the Authorized Signatory of the plaintiff Hotel and 51 documents were marked, viz., Ex.P.1 to Ex.P.51 as narrated in the Proof Affidavit, dated 19.06.2019, filed by the plaintiff's counsel.

5.2. Having gone through the documents marked on the side of the plaintiff, this Court finds that the plaintiff's trademark "THALAPPAKATTI BIRIYANI HOTEL" was registered under No.1408388 in Class 42, which is evident from Ex.P34, Application for Registration of Trademark THALAPPAKATTI BIRIYANI HOTEL with device under No.1408388 in Class 42 dated 23.12.2005. Further, it is seen that the plaintiff gave advertisement about their trade name "THALAPPAKATTI" in the Tamil Dailies/Weekies viz., Dina Thanthi, Dina Malar, Malai Murasu, Dindigul Time etc., which is also evident from Ex.P3 to Ex.P23. On perusing the Ex.P1, Copy of the Income Tax Returns from 1989-1990 to 2005-2006, it is seen that the plaintiff is using the tradename "THALAPPAKATTI" in respect of their Hotel business.

5.3. The plaintiff has been using the tradename "THALAPPAKATTI" since 1984, at first, the plaintiff was running the Hotel in Dindigul Town alone but now they expanded their Hotel business throughout India. Hence, the plaintiff is entitled to use the word "THALAPPAKATTI" exclusively, for their Hotel business since they proved the suit claim beyond any doubt. The word "THALAPPAKATTI" obtained its distinctiveness only by virtue of the plaintiff's usage of the same in respect of their hotel business and therefore, the plaintiff attained the exclusiveness to use the word "THALAPPAKATTI" in their hotel business.

5.4. It is crystal clear that the defendant's usage of the offending tradename "THALAPPAKATTU BRIYANI & FAST FOOD" clearly amounts to infringement and passing off as stated by the plaintiff. The defendant had wilfully adopted the identical trade mark and trading style, "THALAPPAKATTU/THALAPPAKATTI" only with a *mala fide* intention to tarnish the image, goodwill and reputation earned by the plaintiff among the customers/general public. The defendant named their hotel as "THALAPPAKATTU BRIYANI & FAST FOOD", which is phonetically and deceptively similar to the plaintiff's trademark.

5.5. Considering the facts and circumstances of the case, this Court is inclined to decree the suit as sought for by the plaintiff and on the other hand, considering the offending acts of defendant, this Court feels that it would be necessary to put costs on the defendant.

6. In the result, this suit is decreed as prayed for with payment of costs of Rs.2,00,000/- (Rupees Two Lakhs only) by the defendant to the plaintiff.

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Index : Yes/No

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