

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.01.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.845 of 2007

M/s.A.Habeebur Rahman Sons
S.Beedi Factory
245, Thalayatham Bazaar
Santhapet, Gudiyatham
and also having their Branch at
No.36,Perambur Barracks Road
Chennai - 600 007

... Plaintiff

Vs.

K.Rajender
trading as Rajendar & Sons
Sri Raghavendra Swamy Beedies
No.16-10-751, Shivanagar
Warangal, AP

.. Defendant

This Civil Suit is preferred, under Order VII Rule 1 CPC and Sections 134 and 135 of the Trade and Merchandise Marks Act, 1958 and Sections 55, 56, 60 and 62 of the Copyright Act, 1957 for grant of permanent injunction restraining the defendant by himself, his servants or agents or anyone claiming through him, from in any manner infringing the plaintiffs' registered trade marks "S.BEEDI/S.MARK JADI BEEDIES" together with the letter "S" written in an artistic manner by using the offending mark "SRI RAGHAVENDRA SWAMY BEEDIES/R.S.BEEDIES together with the letter "S" written in an identical artistic manner together with identical colour scheme and get up or any other mark or marks which are in any way identical to the plaintiff's registered trade marks "S.BEEDI/S.MARK JADI BEEDIES" together with the letter "S" written in an artistic manner; permanent injunction restraining the defendant by himself, his servants or agents or anyone claiming through him, from in any manner infringing the plaintiffs' registered copyright over the artistic work "S.BEEDI/S.MARK JADI BEEDIES" together with the letter "S" written in an artistic manner by using the offending offending artistic work "SRI RAGHAVENDRA SWAMY BEEDIES/R.S.BEEDIES together with the letter "S" written in an identical artistic work or any other work or works which are in any way identical to the plaintiff's copyrighted artistic work S.BEEDI/S.MARK JADI BEEDIES together with the letter "S" written in an artistic manner; granting permanent injunction restraining the defendant by himself, his servants or agents or anyone claiming through him, from

in any manner passing off of his “beedies” bearing the offending trade mark and artistic work “SRI RAGHAVENDRA SWAMY BEEDIES/R.S.BEEDIES together with the letter “S” written in an identical artistic manner together as and for the celebrated “Beedies” of the plaintiffs sold under the registered trade mark and copyrighted artistic work S.BEEDI/S.MARK JADI BEEDIES together with the letter “S” written in an artistic manner either by selling or offering for sale or in any manner advertising the same; to direct the defendant to render a true and faithful account of the profits earned by them through the sale of their “Beedies” bearing the offending artistic work and the trade mark SRI RAGHAVENDRA SWAMY BEEDIES / R.S.BEEDIES together with the letter “S” written in identical artistic manner and directing the payment of such profits to the plaintiff’s for the passing off committed by the defendants; to direct the defendant to surrender to the plaintiff the entire stock of unused jewel boxes, bill books, labels etc., bearing the offending artistic work and the trade mark labels together with the blocks and dyes for destruction and to direct the defendant to pay to the plaintiff’s the cost of the suit.

For Plaintiff : Mr.K.M.Aasim Shehzad

For Defendants : Mr.V.Sivakumar

JUDGMENT

There is a sole plaintiff and a lone defendant in the instant suit.

2.Mr.K.M.Aasim Shehzad of M/s.BFS Legal (Law Firm) on behalf of plaintiff and Mr.V.Sivakumar are before this Commercial Division.

3. Mr.V.Sivakumar, learned counsel who was appearing for the sole defendant, has filed a memo dated 29.01.2019, which reads as follows:

‘The plaintiff has filed the above suit for infringement of Trade Mark and also prayed for other relief.

I was instructed that the sole defendant passed away and I did not have any instructions from the defendant’s heirs or the counter part as on date.

In the above circumstances, it is prayed that this Hon'ble Court may be pleased to taken on record of this Memo and pass such further or other orders as deem fit and necessary in the circumstances of the case and thus render justice.'

4. In the light of the aforesaid memo, the suit abates.

5. Suit is dismissed as abated. There shall be no order as to costs.

29.01.2019

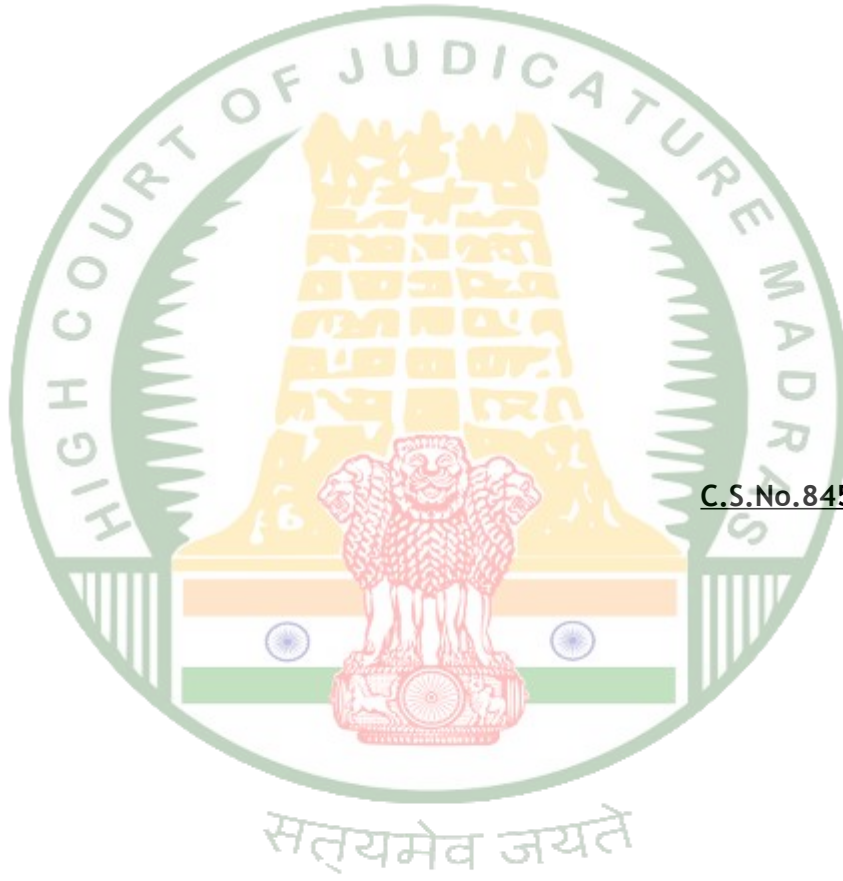
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M.SUNDAR, J.

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