

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.08.2019

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

C.S.No.178 of 2015
and
O.A.No.252 & 253 of 2015

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

...Plaintiff

Versus

M/s.Vanna Kalanjiyam
Rep. by its Sole Proprietor/Partners,
No.33/4, Medavakkam Main Road,
Koot Road, Madipakkam, Chennai – 91.

...Defendant

This Civil Suit is filed under Order VII Rule 1 of Civil Procedure Code r/w Order IV Rule 1 of the OS Rules of the Madras High Court, and Section 11, 29, 134, 135 Trade Mark Act, 1999, prayed 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 Vanna Kalanjiyam 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 visually, phonetically or deceptively similar to the plaintiffs registered Trade Mark Kalanjiyam Cut Piece and Kalanjiyam or in any manner infringing the plaintiffs registered Trade Mark No.690216, 15448035 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 mark Vanna Kalanjiyam or similar sounding names in the course of their business and pass off their Textile Goods using the trade mark Kalanjiyam Cut Piece and Kalanjiyam as and for the kalanjiyam 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, cartoons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other

materials containing/bearing the trade mark Vanna Kalanjiyam 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 Vanna Kalanjiyam on the goods 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 have rendered accounts.

(e) directing the defendant to pay to the plaintiffs the costs to the suit.

For Plaintiff : Mr.Ashok Kumar.J.Daga
For Defendant : Set ex parte
vide order dated 22.07.2019

JUDGMENT

The present Civil Suit has been filed by the plaintiff, seeking for the relief, as stated in the prayer portion of this judgement.

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2. The learned counsel for the plaintiff submitted that the plaintiff adopted trade name 'Kalanjiyam Cut Piece', way back in the year 1978 and turnover from the year 1977 is furnished in para 6 of the proof affidavit filed by the plaintiff before Master Court. The learned counsel further submitted that the plaintiff using trade mark 'Kalanjiyam' for trading, selling textile goods and readymade garments and he has also furnished the details of the registration which are mentioned hereunder:

S.No.	Date	Trade Mark	R.T.M. No.	Class
1.	11.12.1995	Kalanjiyam Cut Piece	690216	24
2.	10.04.2007	Kalanjiyam	1548038	24
3.	10.04.2007	Kalanjiyam	1548035	25
4.	13.10.2011	Kalanjiyam (Tamil Label)	2219462	16
5.	13.10.2011	Kalanjiyam	2219463	24
6.	13.10.2011	Kalanjiyam	2219464	25

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2.1 The learned counsel for the plaintiff further submitted that the plaintiff is using trade mark 'Kalanjiyam' ever since 1978 openly, widely, extensively, continuously and uninterruptedly in respect of textile goods and readymade garments.

2.2 The plaintiff's counsel submitted that the defendant misused plaintiff's trade mark and adopted the trading style as 'Vanna Kalanjiyam' which is similar and identical to plaintiff's trade mark 'Kalanjiyam'. This act of defendant is illegal and unlawful. The learned counsel further submitted that he has sent a legal notice dated 04.09.2012 and the same was also received by the defendant.

2.3 The learned counsel further stated that before filing the suit, the plaintiff in order to prove that the defendant is using their trading style 'Kalanjiyam', purchased the goods from defendant as like a customer on 02.09.2014, for which, the defendant issued cash bill and carry bag, which is marked as Ex.P5, wherein, it is clearly seen that the

defendant is using trading style of the plaintiff, by merely adding prefix to the word Kalanjiyam as '**Vanna** Kalanjiyam'. Apart from the said document, the plaintiff also marked other documents so as to substantiate his case, which are as follows:

Exhibit P1 To P3	Registration certificate 690216, 1548035 and 1548038
Exhibit P4	Invoice copy dated 02.09.2014
Exhibit P5	Carry Bag of defendant
Exhibit P6	User kalanjiyam by the plaintiff is proved by filing purchase copies commencing from 25.04.1979 till 3.11.2005
Exhibit P7	Legal notice dated 04.09.2012
Exhibit P8	Postal Acknowledge received by defendant

3. Heard the learned counsel for plaintiff and perused the material available on record. As far as defendant is concerned, it is seen from the records that the suit summon was served on the sole defendant on 25.10.2016. However, the defendant had not entered appearance

either in person or through counsel. Therefore, the sole defendant was set *ex parte* by this Court vide order dated 22.07.2019, and the matter was directed to be listed before the learned Additional Master – II, for recording *ex parte* evidence. On the side of the plaintiff, Mohammed Mohideen, one of the partners of plaintiff's Company examined himself as P.W.1, and 8 documents were marked viz., Exs.P1 to P8.

4. This Court also gone through the pleadings and documents filed along with the plaint and also the proof affidavit filed by the PW1. On perusal of the Exs.P1 to P3, this Court finds that the plaintiff registered its trade mark 'Kalanjiyam' under different style along with logo. Further, the learned counsel also submitted that they have also registered 'Kalanjiyam' word mark and obtained registration certificate from the Registrar of Trade Mark. The plaintiff has not filed the above said certificate at the time of filing the suit. They produced the original copy of the same before this Court for perusal since they have got registration only on 07.03.2017 i.e after filing the present suit.

However, the learned counsel submitted that the application for registration was made on 13.10.2011. Therefore, he would submit that they are the registered proprietor of the word 'Kalanjiyam' since they are using the word from the way back 1978. The main contention of the plaintiff is that the defendant using the plaintiff's whole trade name 'Kalanjiyam' as its part of the trade name 'Vanna Kalanjiyam'. Therefore, it clearly amounts to infringement in terms of **Sub** Section 29 of the Trade Marks Act 1999.

5. On perusal of all the exhibits and perusal of original registration certificate produced by the plaintiff before this Court, it is clear that the plaintiff is the registered proprietor of the word 'Kalanjiyam' and the defendant is infringing the trade mark of the plaintiff's and by mere addition of the word 'Vanna' to the plaintiff's trademark 'Kalanjiyam' would make no difference. Thus, the plaintiff is entitled for relief as prayed for.

6. Thus, it is clear that the plaintiff is the registered owner of the trademark “Kalanjiyam”, and they have the exclusive right to use the trade mark in respect of their business. **In view of the exclusive right to use the word, “Kalanjiyam” by the plaintiff, the adoption of the mark, "'Vanna Kalanjiaym' ", by the defendant is clearly amounts to infringement of trademark of the plaintiff.** Hence, the plaintiff is entitled to the relief as prayed in the suit.

7. In the result, this suit is decreed with a cost of Rs.1,00,000/- (Rupees one lakh only). Consequently, connected Original Applications are closed.

26.08.2019

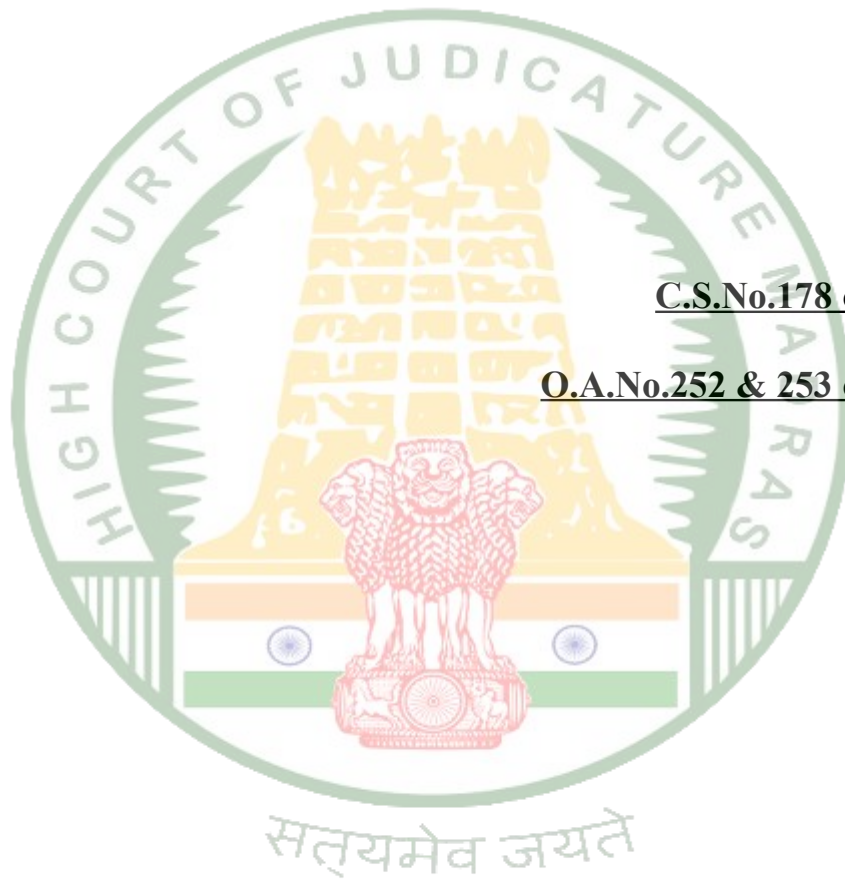
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KRISHNAN RAMASAMY, J.,
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