

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.09.2019

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.176 of 2015 &

O.A.Nos.256 & 257 of 2015

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

Vs.

M/s.Kalanjiam Dresses,
Rep. by its Sole Proprietor/Partners,
No.98, M.T.H.Road, Varadarajapuram,
Ambattur, Chennai – 600 053.
Defendant

Civil Suit filed under Order VII Rule 1 CPC read with Order IV Rule 1 of
Original Side Rules of the Madras High Court and Sections 11, 29, 134 & 135 of
Trade Marks Act 1999 praying for the following judgment and decree :

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 Kalanjiam Dresses upon the goods or in any media and the use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way 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, 1548035 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 'Kalanjiam Dresses' 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 Kalanjiyam Cut Piece and Kalanjiyam as and for the Kalanjiyam Cut Piece and Kalanjiyam goods of the applicant or enabling others to passing off.

c) Directing the defendant to surrender to the plaintiffs all the textile goods, packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing

the trade mark 'Kalanjiyam Dresses' 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 Trademark 'Kalanjiyam Dresses' on the goods referred and for a final decree in favour of the plaintiffs for the amount of profits found to have been made by the defendants, after the defendants have rendered accounts;

e) Directing the defendant to pay to the plaintiffs the costs of the suit.

For Plaintiffs : Mr.Ashok Kumar J.Daga

For defendant : No appearance

J U D G M E N T

The suit has been filed for the following reliefs :

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 Kalanjiyam Dresses upon the goods or in any media and the use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way 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, 1548035 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 'Kalanjiyam Dresses' 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 Kalanjiyam Cut Piece and Kalanjiyam as and for the Kalanjiyam Cut Piece and Kalanjiyam goods of the applicant or enabling others to passing off.

c) Directing the defendant to surrender to the plaintiffs all the textile goods, packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the trade mark 'Kalanjiyam Dresses' 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 Trademark 'Kalanjiyam Dresses' on the goods referred and for a final decree in favour of the plaintiffs for the amount of profits found to have been made by the defendants, after the defendants have rendered accounts;

e) for costs.

2. It is the case of the plaintiff that he is doing business in textile goods from the year 1978 and acquired good will and reputation for their trading style 'Kalanjiyam Cut Piece'. The plaintiffs are registered proprietor of Trade Mark 'Kalanjiyam Cut Piece' and 'Kalanjiyam' and their trademarks are renewed from time to time. The plaintiffs have exclusive rights to use and adopt the trade mark 'Kalanjiyam' in respect of textile piece goods and textile. The defendant unlawfully and illegally adopted the trade mark 'Kalanjiam Dresses' into the business of defendant in respect of identical goods and services covered by the registered trade mark of the plaintiff through which the defendant earned undue profits by infringing the trademark of the plaintiffs. The wrongful use of the plaintiff's trade mark is likely to cause confusion on the part of the public and deception amounting to passing off. Hence, the plaintiff sent a legal notice to the defendant on 03.08.2012. Despite the legal notice, the defendants are continuing their business in the name of Kalanjiam. Hence, the suit.

3. The defendant has been set ex parte. One of the partner of the plaintiff namely Mohammed Mohideen was examined as P.W.1 and Ex.P.1 to Ex.P.7 were marked.

4. On the side of the plaintiff, P.W.1, one of the partner of the plaintiff company was examined and Ex.P1 to Ex.P.7 were marked.

<i>S.No.</i>	<i>Date</i>	<i>Description of documents</i>	<i>Exhibit</i>
1.	11.12.1995	Certified copy of the Registered Trade Mark No.690216	P-1
2.	10.04.2007	Certified copy of Registered Trade Mark No.1548035	P-2
3.	10.04.2007	Certified copy of Registered Trade Mark No.1548038	P-3
4.	02.09.2014	Original invoice copy issued by the defendant	P-4
5.	-	Purchase copy of plaintiff firm commencing from 02.05.1979 till 03.12.2005	P-5
6.	30.08.2012	Copy of the legal notice sent by the counsel for the plaintiff to the defendant	P-6
7.	--	Postal acknowledgment card signed by the defendant	P-7

5. The plaintiff through their trade mark has gained reputation and goodwill in respect of their goods and services. It is also stated that the defendants are using the similar trade mark. Ex.P.1 to Ex.P.3 have been filed to show that the trademark of the plaintiff has been registered. Ex.P.5 has been filed to show that the plaintiff is doing business in textile goods from the year 1979. Ex.P.4 has been filed to show that the defendant is also selling the goods in the same trademark.

6. From the above documents it can be seen that the defendant has

infringed the trademark of the plaintiff. The evidence of P.W.1 remains unchallenged. When the registered trademark in the name of the plaintiff, injunction necessarily has to follow. Having regard to fact that the defendant has continued infringe the trade mark despite the legal notice and taking note of the nature of the business and the turnover set out in the plaint, the punitive damages of Rs.5000/- can be Ordered to the plaintiff. With regard to other reliefs, the learned counsel appearing for the plaintiff submitted that he leave to the finding of this Court.

7. Accordingly, the suit is decreed as prayed with regard to prayers 'a' and 'b'. With regard to prayers c and d, this suit is dismissed. The defendant is directed to pay a sum of Rs.5000/- [Rupees five thousand only] to the plaintiff towards punitive damages. Consequently, the connected applications are closed.

19.09.2019

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Index : Yes/No

Internet : Yes/No

Speaking/Non-Speaking Order

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