

HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2019

CORAM :

THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

C.S.No.177 of 2015

and

O.A.Nos.254 & 255 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. Kalanjiyam Readymade,
rep. by its Sole Proprietor/Partners,
No.66/6, M.T.H.Road,
Varadarajapuram, Ambattur,
Chennai - 600 053

... Defendant

Suit filed under order VII RULE 1 of CPC read with order IV Rule 1 of High Court O.S. Rules of the Madras High Court and Section 11,29, 134, 135 Trade marks Act 1999 praying for a 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 Kalanjiyam

Readymade 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 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 Readymade 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 the plaintiffs all the Textile Goods packing materials, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the trade mark Kalanjiam Readymade 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 Kalanjiam Readymade on the good 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, after the defendants have rendered accounts ;

e) for costs of the suit.

For Plaintiff : Mr. Ashok Kumar J.Daga

For Defendant : set exparte

JUDGMENT

The present suit has been filed by the plaintiff against the infringement of trade mark by the defendant.

2.1. The learned counsel appearing for the plaintiffs submits that the plaintiffs had bonafidely adopted the trade name Kalanjiyam Cut Piece in the year 1978 and acquired the trading style Kalanjiyam Cut Piece. Further, the trade name Kalanjiyam Cut Piece earned high reputation and has attained the popularity among the trade and public. The Trade mark Kalanjiyam Cut Piece and Kalanjiyam , by virtue of its long, continuous and uninterrupted use has made the Trade mark distinctive and acquired secondary meaning and the public started association in the trade mark only with the plaintiffs. Further the

plaintiffs have developed an extremely well established and flourishing business under the trade mark Kalanjiyam Cut Piece. Further they have attained the sales turnover during the year 1977 for a sum of Rs.22,149.60 and in the year 2014, the plaintiffs achieved the turnover of Rs.110,136,265/- .

2.2. The learned counsel further submits that they built up a thriving business and enormous good will and reputation in the Kalanjiyam/Kalanjiyam Cut Piece. The members of the trade and public associated and identify the brand name Kalanjiyam Cut Piece/Kalanjiyam only with the plaintiffs. The word Kalanjiyam is famous in textile business and the plaintiffs registered the trade mark as Kalanjiyam Cut Piece and Kalanjiyam with the logo under Class 24 and 25.

2.3. The learned counsel for the plaintiffs brought to the knowledge of this Court pending application in the plaint,, they obtained registration for the word "Kalanjiyam " on 02.06.2017 and the was produced before this Court. They have mentioned in the plaint

about the application for obtaining trade mark for the words Kalanjiyam under class 24 and 25 and wide No.2219463 and 2219464 they registered Therefore, the plaintiffs is the proprietor of the trade mark Kalanjiyam and also Kalanjiyam Cut Piece.

2.4. He would argue that immediately, the plaintiffs came to know about the use of the word Kalanjiyam by the defendant under the name and style of Kalanjan Readymade. They sent a legal notice dated 03.08.2012. Though the defendant received the same failed to send any reply.

2.5. The learned counsel bonafidely submit that the defendant has now discontinued to use the word Kalanjiyam. However, during the month of February 2015 only the plaintiff came to know that the defendant is using the word Kalanjiyam under the name and style of Kalanjiyam Readymade. He further submit that the use of the trade mark Kalanjiyam is a whole word the defendant is using as part of his trade name as Kalanjiyam readymades. So this amounts to clearly passing off infringement of its trade mark. Hence, the plaintiffs have filed the present suit.

3. 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.P8.

4.1. From a perusal of the order sheets, it is seen that despite suit summons was served to the sole defendant on 13.05.2015, none appeared on behalf of the defendant and therefore, vide order dated 19.07.2019, the sole defendant was set *ex-parte* by this Court and this Court directed the Registry to post the matter before the learned Additional Master III for recording the *ex-parte* evidence and on 05.08.2019, 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. Mohammed Mohideen, who is the partner of the plaintiffs firm and 8 documents were marked, viz., Ex.P.1 to Ex.P.8 as narrated in the Proof Affidavit, dated 05.08.2019, filed by the plaintiff's counsel.

4.2. Having gone through the documents marked on the side of the plaintiff, this Court finds that the word Kalanjiyam, the plaintiff is the registered proprietor of the trade name "Kalanjiyam" since 1978

relating to textile business. In this regard, he has filed various bills starting from 1978 till 2005 under Ex.P.6 . Further he has obtained the registration of trade mark for the word Kalanjiyam Cut piece and label mark Kalanjiyam and also the trade name Kalanjiyam. In this regard, the plaintiff had also filed the registration certificate. Therefore, this Court is of the view that the plaintiff is using the word Kalanjiyam Cut Piece/Kalanjiyam with regard to textile goods and they have obtained the distinctive rights by virtue of usage. Therefore, the plaintiffs are entitled to use the word Kalanjiyam exclusively, for their textile business. In order to prove the use of the word Kalanjiyam by the defendant the plaintiffs had also filed the cash bill of the defendant Ex.P.4 and the carry bag of the defendant, Ex.P.5. On perusal of the Ex.P.4 and Ex.P.5, it appears that the defendant is using the word "Kalanjiyam" as its trade mark for the textiles business. Therefore, this Court is of the view that while the plaintiff is the registered proprietor of the trade mark "Kalanjiyam", the defendant has no right to use the word "Kalanjiyam" for its textiles business. Hence, the use of the word "Kalanjiyam" by the defendant amounts to infringement of trade mark of the plaintiff in terms of Section 29 of the Trade Marks Act.

Therefore, this Court is of the view that the defendant is infringing the trade name of the plaintiff and the plaintiff is entitled for the relief as prayed for since they proved the suit claim beyond any doubt.

4.3. 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.

5. In the result, this suit is decreed as prayed for with payment of costs of Rs.1,00,000/- (Rupees One Lakh only) by the defendant to the plaintiff. Consequently, connected original applications are closed.

20.08.2019

mrp
Index:Yes/No
Internet:Yes/No
Speaking order/non speaking order

WEB COPY

C.S.No.177 of 2015

KRISHNAN RAMASAMY, J

mrp



C.S.No.177 of 2015

WEB COPY

20.08.2019