

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

C.S.Nos.324 of 2015

M/s.Kalanjiyam Cut Piece,  
Represented by its Partners

1. Mohammed Mohideen
2. M.Basheerudeen
3. M.Thajudeen
4. M.Jamaludeen

.. Plaintiffs

*Versus*

M/s.Kalanjiyam Dresses,  
Rep. By its Sole Proprietor/Partners,  
No.87/4, M.C.Road,  
Old Washermenpet,  
Chennai - 600 021.

.. Defendants

**Prayer:** Civil Suit is filed under Order VII Rule 1 of the Code of Civil Procedure r/w. Order IV Rule 1 of the Original Side Rules of the Madras High Court and Sections 11,29,134, 135 of the Trade Marks Act, 1999, 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 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 154838.

- 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 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, 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 the Trade mark KALANJIYAM DRESSES 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) directing the defendant to pay to the plaintiffs the costs to the suit.

For Plaintiffs : Mr.R.Thiagarajan

For Defendant : No appearance

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**J U D G M E N T**

Civil 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 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 154838.

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 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, 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 the Trade mark KALANJIYAM DRESSES 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.

2. The plaintiff's predecessor commenced and started a Textile business under the name and style M/s.KALANJIYAM CUT PIECE, in the year 1978. Thereafter, KALANJIYAM CUT PIECE was reconstituted, as Partnership Firm,

under Deed of Partnership, dated 6/4/1979. The plaintiffs bonafidely adopted the trade mark “KALANJIYAM CUT PIECE”, in the year 1978, and acquired good will and reputation for their trading style “KALANJIYAM CUT PIECE”. The turn over of the plaintiffs was increased year by year.

3. The plaintiffs had obtained the trade mark in registered Trade Mark Nos.690216, 1548038 and 1548035, in Class 24 and 25 respectively, besides, they also applied for trade mark, in Tamil label. The defendant is unlawfully and illegally adopted a trade mark of KALANJIYAM Dresses, which is similar to that of the plaintiffs mark KALANJIYAM CUT PIECE AND KALANJIYAM. Hence, the plaintiffs issued a legal notice, but has not chosen to enter appearance. Name of the sole defendant has been shown in the cause list. Since no one has entered appearance, defendant is set ex parte, on 27/2/2018.

4. On the side of the plaintiffs, P.W.1 has been examined. Exs.P.1 to P.16 were marked.

5. Mr.M.Mohammed Mohideen, P.W.1 was one of the partners of the plaintiffs firm. In his evidence he has deposed that the business has grown multifold over the years from financial year 1977 to 2014. It is his further

evidence that they also obtained registered trade mark, under Classes 24 and 25, from 1995, on 11/12/1995 and 10/4/2007, respectively. Besides, they also applied registration for Tamil label. It is his further evidence that by adopting the name “Kalanjiyam Dresses”, defendant is infringing the mark of the plaintiffs. Exs.P.1 to P.5 are the partnership agreements, filed to prove the partnership firm. Ex.P.6 is the photo copy of certificate of Registration; Ex.P.7 is the photo copy of Deed of Retirement, dated 31/3/2001; Ex.P.8 is the photo copy of admission of partners, dated 1/4/2006; Exs.P.9 and 10 are the photo copies of certificate of Registration; Ex.P.11 is the series of photo copy of purchase copies, dated 25/4/1979 to 31/11/2005; Ex.P.12 is the original of invoice copy of sale and carry bag by defendant; Ex.P.13 is the certified copy of additional rep; Ex.P.14 is the series of photo copy of Deed of Assignment of Trade mark Kalanjiyam assignee, in favour of plaintiffs; Ex.P.15 is the Office copy of legal notice and Ex.P.16 is the original postal acknowledgment card received from defendant.

6. Plaintiffs evidence clearly establishes the registration of trademark. Once the trade mark is registered and it is valid, it is the *prima facie* evidence. The evidence of P.W.1 remains unchallenged.

7. From the above evidence and documents, plaintiffs have proved the claim. Accordingly, the **suit is decreed in respect of prayers (a) and (b)** and since the defendant also appears to be in similar business is directed to liquidate the stock, within a period of two months, from the date of receipt of a copy of this order. No costs.

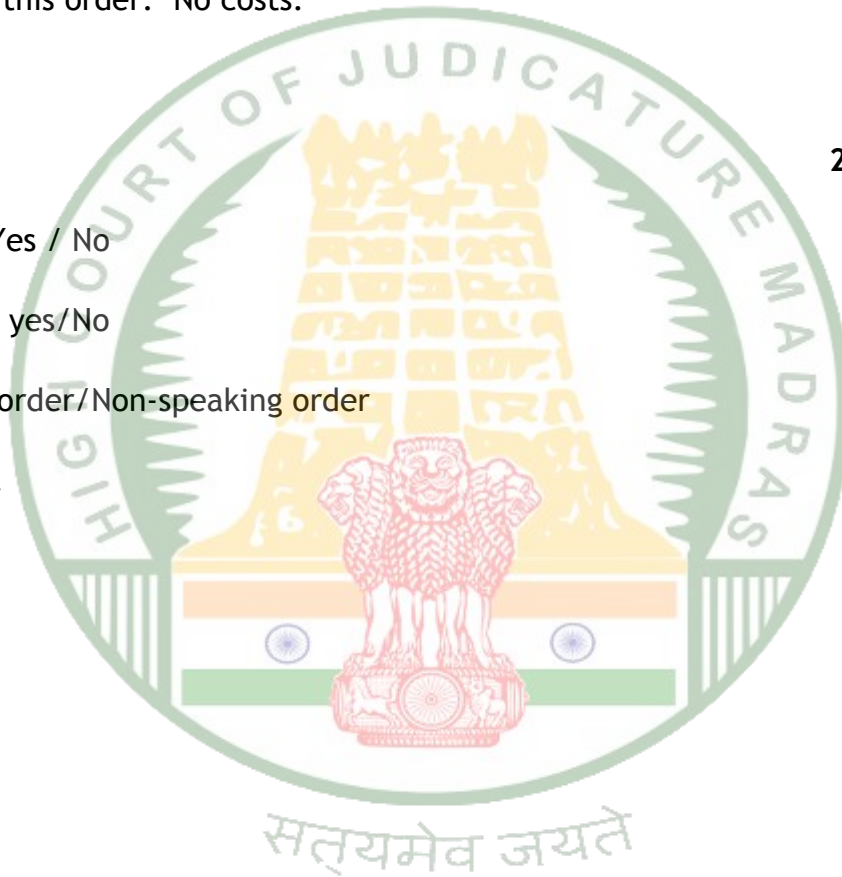
21.11.2019

Index : Yes / No

Internet: yes/No

Speaking order/Non-speaking order

vum/mvs.

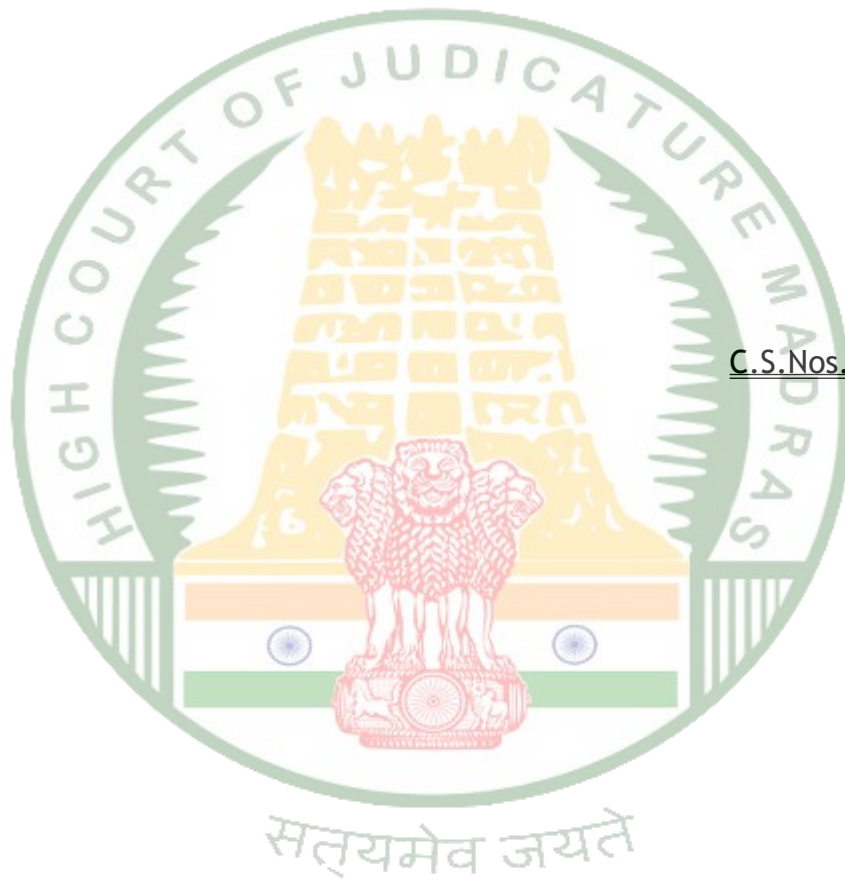


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**N.SATHISH KUMAR, J**

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