

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2019

CORAM:

The Hon'ble Mr.Justice Krishnan Ramasamy

C.S.No.611 of 2015
and
O.A.Nos.770, 771 & 775 of 2015
and
Application No.4924 of 2015

N.Ranga Rao & Sons Pvt. Ltd.,
P.B.No.52, Vani Vilas Road,
Mysore – 570004.
and also at
25-B, Industrial Estate,
Ekkaduthangal
Chennai - 600097

... Plaintiff

Vs.

M/s. Vijay Agencies,
Shakara Krupa, No.5120,
Ravindranagar, Hassan – 573201.

... Defendant

Prayer :- Complaint filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of CPC and Sections 134 and 135 of the Trade Marks Act, 1999 and under Sections 55 and 62 of the Copyright Act, 1957 is praying for :

- a. granting a permanent injunction restraining the defendant by itself, its servant, agents or anyone claiming through it from in any manner infringing the plaintiff's registered trademark "CYCLE BRAND

THREE IN ONE” by using the identical and offending Trade Mark “ALL IN ONE” or any other mark or marks which are in way identical, deceptively similar to or a colourable imitation of the plaintiff's registered Trade Mark CYCLE BRAND THREE IN ONE, either by manufacturing or selling or offering for sale or in any manner advertising the same;

b. granting a permanent injunction restraining the defendant by itself, its servant, agents or anyone claiming through it from in any manner infringing the plaintiff's registered copyright in the artistic work CYCLE BRAND THREE IN ONE with the unique and distinctive colour scheme, get up and arrangement of features by using the identical and offending artistic work “ALL IN ONE” with its identical and/or deceptively similar colour scheme and get up or any other mark or marks which are in anyway identical, deceptively similar to or a colourable imitation of the plaintiff's registered copyright CYCLE BRAND THREE IN ONE either by manufacturing or selling or offering for sale or in any manner advertising the same;

c. granting a permanent injunction restraining the defendants by itself, its servants, agents or anyone claiming through it from in any manner passing off of its “Aagarbathi/Incense Sticks” bearing the offending Trade Mark and artistic work “ALL IN ONE” as and for the plaintiff's celebrated products including Aagarbathi/Incense Sticks and Dhoop Sticks bearing the plaintiff's registered Trade Mark and copyrighted artistic work CYCLE BRAND THREE IN ONE by

manufacturing or selling or offering for sale or in any manner advertising the same.

- d. directing the defendant to render a true and faithful account of the profits earned by the defendant through the sale of its products, including the products bearing the offending Trade Mark “ALL IN ONE” and direct payment of such profits to the plaintiff for the passing off committed by the defendant;
- e. directing the defendant to surrender to the plaintiff the entire stock of unused offending labels bearing the offending Trade Mark “ALL IN ONE” with the blocks and dyes for destruction;
- f. directing the defendant to pay to the plaintiff the cost of the suit.

For Plaintiff : Mr.S.Rajesh Ramanathan
For Defendant : Set exparte

JUDGMENT

The plaintiff is a private limited company incorporated under the Companies Act, 2013. The plaintiff is a leading manufacturers of agarbathies and they have been carrying on business for a long time. In the course of the said business they had honestly conceived and adopted the trade mark CYCLE THREE IN ONE with its unique, distinctive layout,

peculiar colour scheme, get up and arrangement of features consisting of the device of flowers and a praying child, with the caption, "Everyone has a reason to pray".

2. The plaintiff submits that they are the leading manufacturers and suppliers in the industry of fragrances i.e., incense sticks and other allied products. It is further submitted that they have carved a niche in incense sticks and dhoops, in both domestic and international arena, with its innovative and high quality products and services. The plaintiff is engaged in the business of manufacturing and selling incense sticks/Agarbathies and dhoops since 1948 and they remain to be one of the few Indian companies that is global market leader in Incense/Agarbathies and Dhoops.

3. Heard the learned counsel appearing for the plaintiff and perused the averments in the plaint and also the proof affidavit and has gone through several documents filed by the plaintiff in support of their claim which was marked by PW1 as Exs.P1 to P10.

4. The plaintiff and its predecessors in the title have also applied for

and obtained registration of the composite trademark “CYCLE BRAND THREE IN ONE” with certain registration numbers. The said trademark registrations have been renewed from time to time and are valid and subsisting. Certified copies of registration for certificates for the trademark “CYCLE BRAND THREE IN ONE” with the device of a CYCLE in class 03, registered in the name of the plaintiff are marked as Ex.P2. Copies of copyright registration certificates are marked as Ex.P3.

5. The plaintiff converted its partnership firm into a private limited company and applied for changing the name of the registered proprietor of all the trademarks. Copies of application to bring the subsequent proprietor as owner of the trademark and artistic works are marked as Ex.P4 and the copies of sales invoices evidencing use of the mark CYCLE is marked as Ex.P5.

6. The plaintiff spent huge amount of time, money and effort to promote the trademark and copyrighted artistic work CYCLE BRAND THREE IN ONE with the unique colour scheme, get up and arrangement of features and the copies of the various advertisements of the plaintiff are

marked as Ex.P6. The plaintiff was recognized with various awards and accolades and the copies of such awards and recognition are hereby marked as Ex.P7.

7. Upon discovering that the defendant was using the infringing trademark ALL IN ONE with an identical colour combination, get up and arrangement of features, the plaintiff immediately issued a cease and desist notice on 02.05.2015. But the said notice was returned unclaimed despite having served it on the defendant at both addresses and the office copy of the cease and desist notice dated 02.05.2015 issued by the plaintiff to defendant along with postal receipt and unserved returned cover was marked as Ex.P8. The plaintiff has also filed the specimen of their carton as well as the defendant's carton which were marked as Exs.P9 & P10.

8. This Court vide order dated 01.07.2019 set the defendant exparte and thereafter PW1 was examined and marked Exs.P1 to P10. With this, the plaintiff prays that the above suit may be decreed as prayed for.

9. On the perusal of the averments in the plaint, Exs.P2 and P3 and

other documents it is clear that the plaintiff is the proprietor of the trade mark “BRAND THREE IN ONE” along with get up, colour scheme and the dress of the carton box. The plaintiff has also registered the said colour scheme and get up along with the trade name of the carton box under the Copyrights Act.

10. On the mere comparison of the specimen of plaintiff's carton box and defendant's carton box which were marked as Exs.P9 & P10, it is clear that the defendant is copying the colour scheme, get up and dress of the plaintiff in the carton box of the defendant. Accordingly, the plaintiff is entitled for the relief as prayed for.

11. Hence, the suit is decreed, as prayed for, with cost of Rs.50,000/- (Rupees Fifty Thousand only). Consequently, the connected applications are closed.

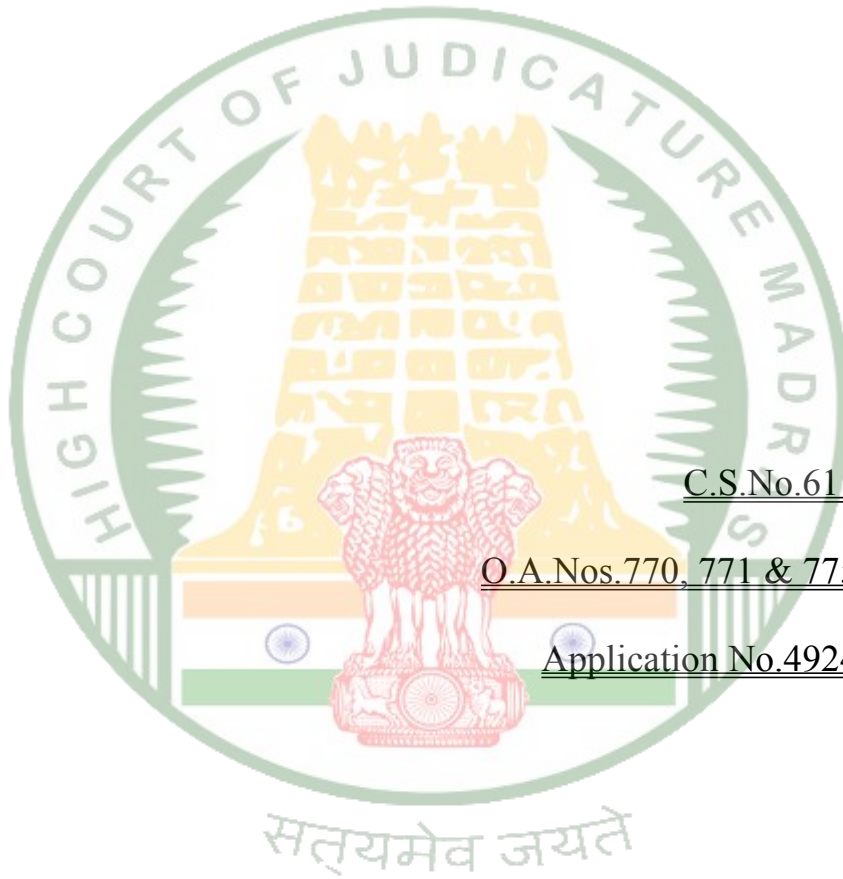
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Krishnan Ramasamy,J.,

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