

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.09.2019

Coram

The Honourable Mr.Justice N.SATHISH KUMAR

C.S.No.839 of 2015

and

O.A.Nos.1123 to 1126 of 2015

and A.Nos.6939 to 6941 of 2015, 3433 & 3434 of 2017

M/s.Kaleesuwari Refinery Pvt. Ltd.,
Represented by its Director Mr.K.Ashok Kumar
No.53, Rajasekaran Street,
Opp. Kalyani Hospital, Radhakrishnan Salai,
Mylapore, Chennai – 600 004.

...Plaintiff

Versus

M/s.Raja Rajan Agencies
Represented by its Proprietor D.Sankaralingham
No.63, Bazaar Street, Near Indian Bank,
Ammoor – 632 501, Walaja Taluk,
Vellore District, Tamil Nadu.

...Defendant

This suit is filed under Order IV Rule 1 of the O.S.Rules r/w. Order VII Rule 1 of C.P.C Rules r/w. Sections 134 & 135 of Trade Marks Act, 1999 r/w. Sections 61 & 62 of the Copyright Act, 1957 for the following reliefs:

(i) For a permanent injunction to restrain the defendant, their men, agents, associates, and/or assignees or any person claiming rights from them from infringing the plaintiff's reputed and well known registered Trade Mark "Gold Winner" registered vide Trade Mark No.605323 dated 27.08.1993, Trade Mark No.1147963 dated 01.11.2002, and Trade Mark No.1399086 dated 16.11.2005 for Sunflower oil and Refined Sunflower Oil

in Class 29 of the IV Schedule to the Trade Marks Rules 1999 by using the offending Trade Mark "Aarun gold" or any mark or word deceptively similar to the aforesaid Trade Mark of the plaintiff's for any edible oil marketed by the defendant, their men, agents, associates and/or assignees or any person claiming rights from the defendant.

(ii) For a permanent injunction restraining the defendant, its men, agents, assignee and/or associates or any person claiming rights from them from using the offending pouch/packing material bearing the offending words "Aarun gold" or any other mark or word and color scheme and get up deceptively similar to that of the plaintiff packing material/pouch used for their refined edible sunflower oil with distinct color scheme, get up with their reputed and well known trade mark "Gold Winner" refined sunflower oil and other oil registered vide Trade Mark No.605323 dated 27.08.1993, Trade Mark No.1147963 dated 01.11.2002 and Trade Mark No.1399086 dated 16.11.2005.

(iii) Permanent injunction restraining the defendant from violating the plaintiff's copyright in the artistic work used in the plaintiff's packing material/pouches used for packing refined edible sunflower oil and bearing the reputed and well known registered Trademarks "Gold Winner" by substituting the trademark "Gold Winner" with the offending words "Aarun gold" bearing same trade dress, color scheme and get up deceptively similar to that of the plaintiff's colour scheme and trade dress in the packing material/pouch bearing trademark "Gold Winner".

(iv) For a permanent injunction to restrain the defendant, its men, agents, associates and/or assignees or any person claiming rights from therein from passing-off their inferior product as that of the plaintiff's "Gold Winner" edible refined sunflower oil by using the offending words "Aarun gold" or any other words or mark and offending packing material and pouch deceptively similar to the plaintiff's trademark "Gold Winner"

and trade dress for "Gold Winner".

(v) For preliminary decree directing the defendant to render true account of profits made by the defendant by using the aforesaid offending label of "Aarun gold".

(vi) directing the defendant, its men, agents, assignees, dealers and/or retailers, distributor, to surrender to the plaintiff all offending pouch/packing material, label, advertising materials, hoarding, letter heads, office, stationary and all other material containing/bearing offending mark/label "Aarun gold" with distinct color scheme, get up or any other mark visually or phonetically similar to the plaintiff's well-known trademark "Gold Winner" label for destruction by an order of this Court.

(vii) for erasure, removal or obliteration from all infringing goods, materials or articles in the possession or control of the defendant with the offending mark/labels and pouches deceptively similar to the plaintiff's "Gold Winner" refined sunflower oil;

(viii) to pay for the costs of the suit.

For Plaintiff : Mr.R.Anish Kumar

For Defendants : No Appearance

J U D G M E N T

The present suit has been filed by the plaintiff for the reliefs stated in the prayer portion of this Judgment.

2. When the matter was called on 01.08.2019, there is no representation for the sole defendant. Though the suit summon was served on the defendant and the name of the defendant being printed in

the cause list, none appeared on behalf of the defendant. Therefore, the sole defendant was set *ex parte* by this Court and the Registry was directed to list the matter before the learned Additional Master-IV, for recording the *ex parte* evidence. Accordingly, when the matter was listed before the learned Additional Master-IV, the plaintiff filed the Proof Affidavit and on the side of the plaintiff, only one witness was examined P.W.1, Mr.A.Saravanan, Manager-Legal of the Plaintiff Company and 22 documents were marked as Ex.P1 to Ex.P22.

3. Today (03.09.2019), this matter is taken up for final disposal.

4.1. It is the case that the plaintiff is a company manufactures and packs various edible oils such as sunflower oil, groundnut oil, palm oil, olive oil, blended oil (olive+corn combo) etc., with the trademark "Gold Winner", "Gold Choice", "Cardia Life", etc., They also manufacture lamp oil in the name and style "Dheepam". The plaintiff has been manufacturing the above products since 1990 from its factory at Vengaivasal, Kancheepuram District and now, they have factories at Palani, Tamilnadu and in Tumkur, Karnataka. The said factories have also been certified as ISO 9001:2008, HACCP and ISO 2200:2005 Certified Company. The plaintiff launched a new pack for "Gold Winner" refined sunflower oil during April, 2015 and they have spent huge sums of money

for advertising their trademark, "Gold Winner" with the new pack/pouch. The plaintiff's "Gold Winner" new pouch is very stylish and captivating.

4.2. The plaintiff is the registered proprietor of the well-known trademark "Gold Winner" for Refined Sunflower Oil (RSO) and allied goods falling under Class 29 of IV Schedule to the Trade and Merchandise Rules, 1958 as amended by Trade Marks Rules, 2002 vide various Trade Marks since 1993. The details of the plaintiff's registered trademark is mentioned hereinbelow:

S.No.	Date	Trademark No.	Description
1	27.08.1993	605323	Gold Winner for "Sunflower Oil"
2	11.01.2002	1073117	Gold Winner for "Refined Groundnut Oil"
3	11.01.2002	1073118	Gold Winner for "Refined Groundnut Oil"
4	01.11.2002	1147963	Gold Winner for "Refined Sunflower Oil"
5	23.06.2003	1208513	Gold Winner for "Vanaspati"
6	23.06.2003	1208514	Gold Winner for "Vanaspati"
7	16.11.2005	1399086	Gold Winner for "Refined Sunflower Oil"

4.3. The plaintiff has also obtained Copyright Registration of the artistic work used along with its reputed "Gold Winner" label for Refined Sunflower Oil and for other products vide various Copyright Registrations. The details of plaintiff's Copyright Registration are as follows:

S.No.	Date	Copyright Registration No.	Description
1	17.01.2003	A-63205/2003	Artistic work for "Gold Winner"
2	27.01.2005	A-68242/2005	Artistic work for "Gold Winner" Refined Sunflower Oil (1 ltr) label
3	27.01.2005	A-68243/2005	Artistic work for "Gold Winner" Refined Groundnut Oil (1 ltr) label
4	27.01.2005	A-68244/2005	Artistic work for "Gold Winner" Refined Groundnut Oil (15 kg) label
5	29.12.2006	78000/2006	Artistic work for "Gold Winner Sree Gold" Orid Dhall
6	29.12.2006	78004/2006	Artistic work for "Gold Winner Sree Gold" Moong Dhall
7	09.01.2007	78063/2007	Artistic work for "Gold Winner Sree Gold" Toor Dhall

The aforesaid registrations are valid and subsisting. Apart from that, the plaintiff has also obtained registration certificate from the Registrar of Singapore for the trademark "Gold Winner".

4.4. While so, during the month of September 2015, the plaintiff came to know that the defendant is trading as "Aarun Gold" with offending label which is deceptively similar to that of the plaintiff's label. The defendant copied the artistic work of the plaintiff's pouch by substituting the words "Gold Winner" with "Aarun Gold" which is

deceptively identical to that of the plaintiff's new "Gold Winner" pouch. The script, getup, trade dress, design, art work and color scheme in the offending pouch of the defendant are almost deceptively identical and similar. The defendant appears to be engaged in packing and marketing refined sunflower oil in Ammoor rural, Walaja rural and Vellore District areas and also in the neighbouring districts in the State of Tamilnadu with an intent to ruin the goodwill and reputation gained by the plaintiff over the trademark "Gold Winner". The aforesaid *mala fide* acts of the defendant continue till date. Therefore, left with no other alternative, the plaintiff has filed the present suit.

5.1. The learned counsel for the plaintiff submitted that the plaintiff is the registered proprietor and prior user of the trademark, "Gold Winner" and that the defendant has no right to adopt and use the registered trademark of the plaintiff. He further submitted that the plaintiff has obtained a License to manufacture its product from Directorate of Health and Family Welfare Service, Food and Drugs Administration, Government of India and the said license is valid and subsisting. He also submitted that the plaintiff is complying with the provisions of the Food Safety Act and has obtained FSSAI registration.

5.2. The learned counsel for plaintiff would contend that the

defendant has copied the artistic work of the plaintiff's pouch by simply substituting the words "Gold Winner" with "Aarun Gold", however, the script, font, get up, trade dress, design, art work and colour scheme in the defendant's pouch are almost similar to that of the plaintiff's pouch. He would also contend that the defendant has wilfully adopted the registered trademark of the plaintiff for packing inferior grade refined edible oil only with a bad intention to spoil the immense goodwill and reputation earned by the plaintiff over the trademark, "Gold Winner". He therefore prayed that the defendant may be restrained from using the offending identical trademark, "Aarun Gold", otherwise, the plaintiff will suffer a great loss and damages.

6. Heard the learned counsel for the plaintiff and perused the materials available on record.

7.1. In view of the submission made by the plaintiff's counsel, this Court finds that the plaintiff is the registered proprietor of the trademark, "Gold Winner" and they have obtained registration of the said trademark, which is clearly evident from Ex.P2 (Trade Mark Registration Certificate for plaintiff's "Gold Winner" Sunflower Oil having Trademark No.605323 dated 27.08.1993), Ex.P3 (Trade Mark Registration Certificate for plaintiff's "Gold Winner" refined groundnut oil having Trade Mark

No.1073117 dated 11.01.2002), Ex.P4 (Trade Mark Registration Certificate for plaintiff's "Gold Winner" refined groundnut oil having Trademark No.1073118 dated 11.01.2002), Ex.P5 (Trade Mark Registration Certificate for plaintiff's "Gold Winner" refined Sunflower Oil having Trade Mark No.1147963 dated 01.11.2002), Ex.P7 (Trade Mark Registration Certificate for plaintiff's "Gold Winner" Vanaspati having Trade Mark No.1208513 dated 23.06.2003), Ex.P8 (Trade Mark Registration Certificate for plaintiff's "Gold Winner" Vanaspati having Trade Mark No.1208514 dated 23.06.2003), Ex.P12 (Trade Mark Registration Certificate issued by the Registrar of Trade Marks, Singapore for Trade Mark No.T05/03792F in favour of plaintiff dated 23.03.2005 & Ex.P13 (Trademark Registration Certificate for plaintiff's "Gold Winner" Refined Sunflower Oil having Trade Mark No.1399086 dated 16.11.2005).

7.2. It is also seen that the plaintiff had obtained Copyright Registration of the artistic work used along with its "Gold Winner" label for Refined Sunflower Oil and for other products, which is evident from the documents marked as Ex.P6 (Extract from the Register of Copyright bearing Registration No.A-63205/2003 of the plaintiff for "Gold Winner" dated 17.01.2003), Ex.P9 (Extract from the Register of Copyright bearing Registration No.A-68242/2005 of the plaintiff for "Gold Winner" Refined Sunflower Oil (1 ltr) label dated 27.01.2005), Ex.P10 (Extract from the

Register of Copyright bearing Registration No.A-68243/2005 of the plaintiff for "Gold Winner" Refined Groundnut Oil (1 ltr) label dated 27.01.2005), Ex.P11 (Extract from the Register of Copyright bearing Registration No.A-68244/2005 of the plaintiff for "Gold Winner" Refined Groundnut Oil (15 kg) label dated 27.01.2005), Ex.P14 (Extract from the Register of Copyright bearing Registration No.A-78000/2006 of the plaintiff for "GOLD WINNER SREE GOLD" ORID DHALL dated 29.12.2006), Ex.P15 (Extract from the Register of Copyright bearing Registration No.A-78004/2006 of the plaintiff for "GOLD WINNER SREE GOLD" MOONG DHALL dated 29.12.2006) & Ex.P16 (Extract from the Register of Copyright bearing Registration No.A-78063/2007 of the plaintiff for "GOLD WINNER SREE GOLD" TOOR DHALL dated 09.01.2007).

7.3. On comparing the Ex.P18 with Ex.P19 and Ex.P20 with Ex.P21, this Court found that the defendant's pouch is nearly similar and identical in appearance to that of the plaintiff's pouch. Also, a perusal of Ex.P22 shows that the defendant has willfully adopted the artistic work of the plaintiff's pouch and marketing their inferior grade sunflower oil in the market with the offending label "Aarun Gold". It is crystal clear that the above such unfair trade practice of the defendant would absolutely amounts to infringement of the plaintiff's registered trademark, "Gold Winner", passing off and violation of plaintiff's Copyright.

8. There is no doubt, the plaintiff proved its suit claim. Therefore, this Court is inclined to decree the suit in favour of the plaintiff. Accordingly, this Civil Suit is decreed as prayed for. Consequently, connected Applications are closed.

03.09.2019

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Index : Yes/No

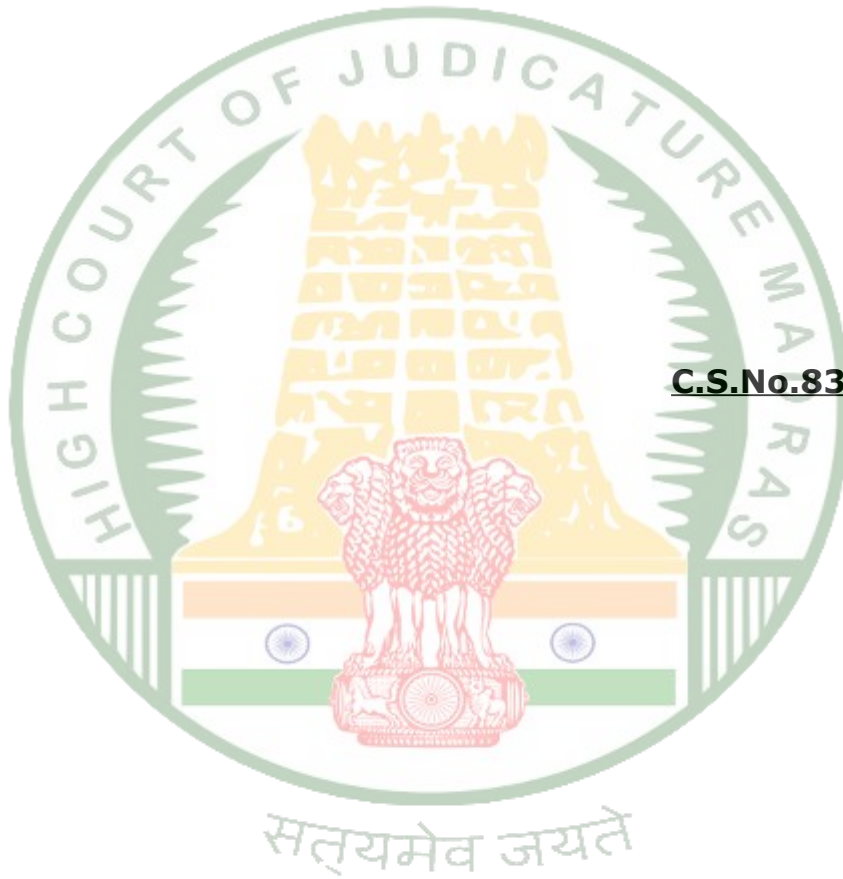


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C.S.No.839 of 2015

N.SATHISH KUMAR, J.,

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C.S.No.839 of 2015

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