

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.11.2019

Coram

The Honourable Mr.Justice N.SATHISH KUMAR

C.S.No.691 of 2013

M/s.Sangeetha Caterers and Consultants LLP,
rep. by its Designated partners,
(i)P.Rajagopal, (ii) P.Suresh,
having its registered office at
No.7, Gandhi Nagar, First Main Road, 4th Floor,
Adyar, Chennai-600 020. ...Plaintiff

(Amended as per order dated
03.10.2019 in A.No.7497 of 2019)

Versus

1.Sangeetha Food Corner,
rep. by its Proprietor,
Mr.Karuppiah,
No.5, II Main Road, R.A.Puram,
Chennai-600 028 ...Defendant

This Civil Suit is filed under Order IV Rule 1 of the Original
Side Rules r/w Order VII Rule 1 of the Code of Civil Procedure, and
r/w Sections 134 & 135 of the Trademarks Act, 1997 praying to
(a) to grant a permanent injunction restraining the defendant, its
servants or agents or anyone who claiming through them from in

any manner infringing the plaintiff's registered Trademark "SANGEETHA" by using the offending, identical and /or deceptively similar Trademark "SANGEETHA FOOD CORNER" or any other mark or marks which are deceptively similar to or a colourable imitation of the plaintiff's celebrated, well known and well established registered Trademark "SANGEETHA" either by manufacturing or selling or offering for sale or in any manner advertising the same,

(b)to grant a permanent injunction restraining the defendant, its servants or agents or anyone claiming through them from in any manner passing off of its "restaurant business" by using the offending and identical and /or deceptively similar trademark "SANGEETHA FOOD CORNER" as and for the celebrated restaurant business of the plaintiff under the well known, well established and registered trademark "SANGEETHA" by selling or offering for sale, or in any manner advertising the same,

(c)to direct the defendant to render true and faithful accounts of the profits earned by it by using the offending identical and /or deceptively similar trademark "SANGEETHA FOOD CORNER" and payment of such profits to the plaintiffs for the passing off committed by the defendant,

(d)to direct the defendant to surrender to the plaintiffs all the unused offending bill books, name board, packing materials and other stationary articles bearing the offending trademark "SANGEETHA" and/or "SANGEETHA FOOD CORNER" for destruction.,

(e)to direct the defendant to pay the plaintiff, the costs of the suit.

For Plaintiff : Mr.L.Rajasekar for TMT Law Practice

For Defendant : Set ex-parte

J U D G M E N T

The suit has been filed for the following reliefs:

(a) to grant a permanent injunction restraining the defendant, its servants or agents or anyone who claiming through them from in any manner infringing the plaintiff's registered Trademark "SANGEETHA" by using the offending, identical and /or deceptively similar Trademark "SANGEETHA FOOD CORNER" or any other mark or marks which are deceptively similar to or a colourable imitation of the plaintiff's celebrated, well known and well established registered Trademark "SANGEETHA" either by manufacturing or selling or offering for sale or in any manner advertising the same,

(b) to grant a permanent injunction restraining the

defendant, its servants or agents or anyone claiming through them from in any manner passing off of its "restaurant business" by using the offending and identical and /or deceptively similar trademark "SANGEETHA FOOD CORNER" as and for the celebrated restaurant business of the plaintiff under the well known, well established and registered trademark "SANGEETHA" by selling or offering for sale, or in any manner advertising the same,

(c) to direct the defendant to render true and faithful accounts of the profits earned by it by using the offending identical and /or deceptively similar trademark "SANGEETHA FOOD CORNER" and payment of such profits to the plaintiffs for the passing off committed by the defendant,

(d) to direct the defendant to surrender to the plaintiffs all the unused offending bill books, name board, packing materials and other stationary articles bearing the offending trademark "SANGEETHA" and/or "SANGEETHA FOOD CORNER" for destruction.,

(e) to direct the defendant to pay the plaintiff, the costs of

the suit.

2. The case of the plaintiff is that the plaintiff is engaged in the business of running restaurants and Hotel for several years in India and abroad. The partner and brother of Mr.P.Rajagopal, who is one of the partners of plaintiff's firm, namely Mr.P.Suresh, initially commenced the restaurant business in the name and style of "SANGEETHA VEG RESTAURANTS" in the year 1985 as a small establishment. He honestly conceived and adopted the trademark "SANGEETHA" for his restaurant business. During the course of said business in the year 1990, Mr.P.Rajagopal, who is also one of the partners of plaintiff Firm has also started his own restaurant in the name and style of "SANGEETHA VEG RESTAURANT" at Mylapore and they got registration under the trademarks "SANGEETHA", SVR SANGEETHA, SANGEETHA (with the device of VEENA), SANGEETHA'S OKEDEYS, SANGEETHA BAKERS CAFE and APOORVA SANGEETHA". In order to better administer and manage the group of Restaurants/Hotels and to manage the growing portfolios of different trademarks used by the plaintiff group, they

constituted Partnership Firm "SANGEETHA CATERERS AND CONSULTANTS" for a common entity in the year 2001. The plaintiff has acquired an impeccable reputation and goodwill amongst their consumers. The plaintiff trademarks have been in use continuously ever since its inception, adoption and /or acquisition, without any interruption from any quarters. The plaintiff has obtained registration of all their trademarks including "SANGEETHA" under various Clauses of the Trademarks Act, 1999 and in order to protect their artistic work "SANGEETHA", they had also applied for and obtained registration of the said artistic work "SANGEETHA" under the Copyright Act, 1957. The plaintiff annual sales turnover of the restaurants operating under the trademark "SANGEETHA" runs to several crore of rupees.

3. The defendant has recently commenced the restaurant business in the name of style of M/s.SANGEETHA FOOD CORNER", which is identical and/or deceptively similar to the plaintiff's registered, well known, well established trademark "SANGEETHA". The defendant's use of an identical and/or deceptively trademark

"SANGEETHA FOOD CORNER" for his restaurant indeed created a lot of confusion in the minds of the consuming public, and the act of defendant is having infringement.

4. The defendant is set ex-parte. On the side of the plaintiff, PW1 has examined. Ex.P1 to P19 were marked. Pw1 in his evidence, has submitted about the reputation and good will of the Hotels and the turnover in order to prove that they are the registered proprietors. Ex.P1 is the copy of the Corporation License for the period ending 31.03.1992, Ex.P2 is the Partnership Deed dated 22.11.2001, Ex.P3 is the copy of the Copyrights Certificate dated 04.09.2002, Ex.P4 is the copy of the Catalogue of the plaintiff Firm's Restaurants, Ex.P5 is the copy of the Limited Liability partnership agreement dated 01.04.2015, Ex.P6 is the copy of the certificate of conversion of Sangeetha Caterers and Consultants LLP dated 01.04.2015, Ex.P7 is the copy of the Reconstituted Partnership Deed dated 01.04.2017, Ex.P8 is the copy of the Legal Use Certificate of TM No.1441849 dated 23.10.2018, Ex.P9 is the copy of the Legal Use Certificate for TM

No.1441854 dated 23.10.2018, Ex.P10 is the copy of the Legal Use Certificate for TM No.1464536 dated 23.10.2018, Ex.P11 is the copy of the Legal Use Certificate for TM No.1464537 dated 23.10.2018, Ex.P12 is the www.tripadvisor.com to General Public Review, Ex.P13 is the News Article published in New India Express dated 02.06.2010, Ex.P14 is the copy of the Advertisements of the plaintiff Brand in the Print Media, Ex.P15 is the copy of Times Award to the plaintiff's Restaurants dated 26.03.2011, Ex.P16 is the photograph of the defendant's sign board, Ex.P17 is the office of the Police Complaint dated 08.08.2013, Ex.P18 is the copy of the purchase bill of the plaintiff from the Water Supplier dated 04.09.2013, Ex.P19 is the copy of the purchase bill issued by the defendant's Restaurant dated 06.08.2013. Ex.P16, the photograph of the defendant's sign board saying that the name "SANGEETHA FOOD CORNER", is pre-dominantly used in the name board of the defendant as identical and similar to that of plaintiff's. The evidence of PW1 remains unchallenged and the documents filed by the plaintiff are not rebutted from the evidence and the documents filed by the plaintiff have proved their claim.

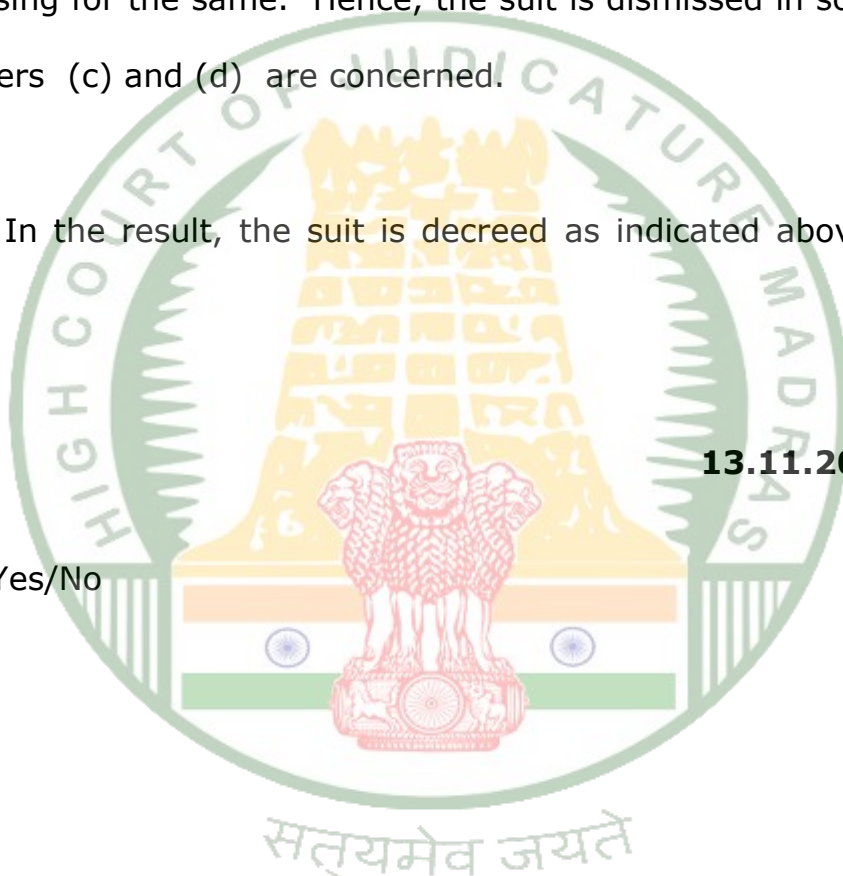
5. Accordingly, the suit is decreed in respect of prayers 'a' and 'b' are concerned. As far as the prayers (c) and (d) are concerned, the learned counsel for the plaintiff submitted that he is not pressing for the same. Hence, the suit is dismissed in so far as the prayers (c) and (d) are concerned.

6. In the result, the suit is decreed as indicated above with costs.

13.11.2019

Index : Yes/No

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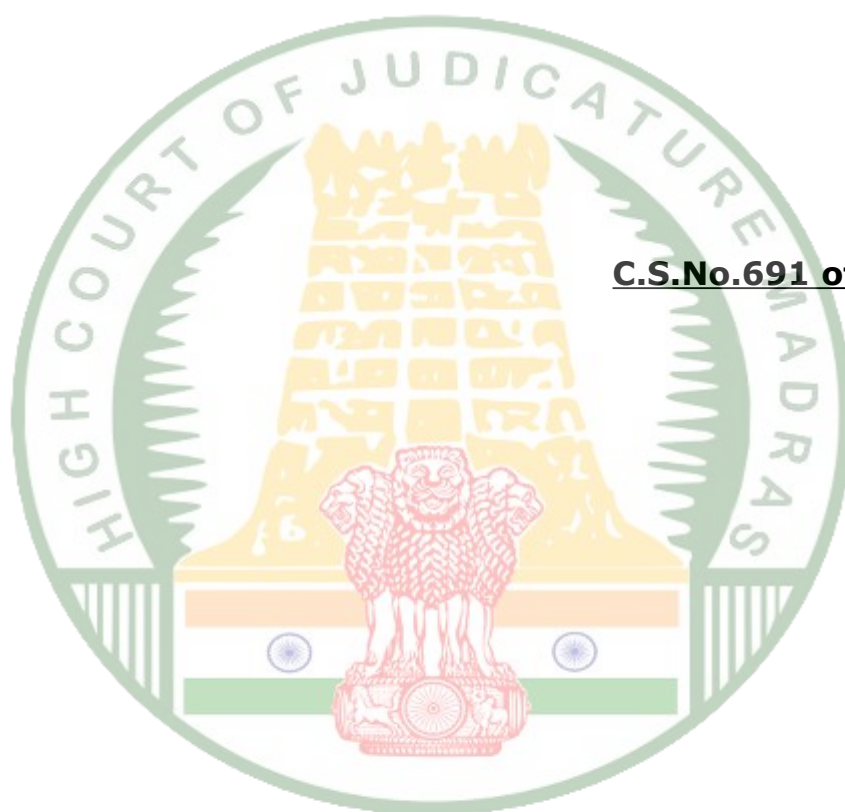


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C.S.No.691 of 2013

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