

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.08.2019

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

C.S.No.275 of 2019
and
O.A.Nos.418, 419 & 420 of 2019

M/s.Ayangaran coffee,
No.28, Sarangapani Koil East Street,
Kumbalonam – 612 001.

Also Branch at,
31/33, Anjugam Nagar, Jawaharlal Road,
Jafferkhanpet, Chennai – 600 083.

A partnership firm represented by one its Partner
Mr.A.Ramachandran.

...Plaintiff

Versus

1.G.Tamil Selvi,
W/o.K.Gunasekaran, Proprietor,
No.558, Market Salai, Keelvasal,
Thanjavur -1.

2.K.Gunasekaran

...Defendants

This Civil Suit is filed under Order IV Rule 1 of Original Side Rules and Order VII Rule 1 of Civil Procedure Code, Sections 27(2), 134 & 135 of the Trade Marks Act, 1999 and Sections 52, 55 & 62 of the Copyright Act, 1957 and Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, No.4 of 2016, praying for

(a) granting permanent injunction restraining the defendants, their men, servants, agents or anyone claiming through or under them from in any manner infringing the plaintiff's registered trade mark 'Kumbakonam Ayngaran Coffee' by using the offending trade mark 'Sri Kumbakonam Ayngaran Coffee Unavagam' or any other trade mark which is similar or in any way deceptively similar to or colourable imitation of the plaintiff's registered trade mark either name board or marketing coffee or any products or in any manner advertising the same.

(b) granting permanent injunction restraining the defendants, their, men, servants, agents or anyone calming through or under them from in any manner infringing the plaintiff's copyright in the registered trade mark 'Kumbakonam Ayngaran Coffee' by using the offending trade mark 'Sri Kumbakonam Ayngaran Coffee Unavagam' or any other trade mark which is similar or in any way deceptively similar to or colourable imitation of the plaintiff's registered trade mark either by

name board or marketing coffee or any products or in any manner selling the same.

(c) granting permanent injunction restraining the defendants, their men, servants, agents or anyone claiming through or under them from in any manner passing off their coffee and food snacks as that of the plaintiff's by using the registered trade mark 'Sri Kumbakonam Ayngaran Coffee Unavagam' or any other trade mark which is similar or in any way deceptively similar to or colourable imitation of the plaintiff's registered trade mark either by name board or marketing coffee or in any manner selling the same.

(d) directing the defendants to render true and faithful account of profits earned by them through the sale of the coffee bearing the offending trade mark 'Sri Kumbakonam Ayngaran Coffee Unavagam' and directing payment of such profits to the plaintiff by way of damages for passing off committed by the defendants.

(e) directing the defendants to surrender to the plaintiff the entire stock of unused offending goods under the trade mark 'Sri Kumbakonam Ayngaran Coffee Unavagam' together with cartons, labels, name boards, printing blocks, boxes etc bearing the trade mark 'Sri Kumbakonam Ayngaran Coffee Unavagam' for destruction.

(f) directing the defendant to pay the plaintiff the cost of the suit.

For Plaintiff : M/s.N. Devi

For Defendants : Set ex parte

vide order dated 15.07.2019

J U D G M E N T

The present Civil Suit has been filed by the plaintiff, seeking for the relief, as stated in the prayer portion of this judgement.

2. The plaintiff is engaged in the business of manufacture, marketing, preparation and selling of traditional Kumbakonam coffee, tea and other hot beverages under the trade name 'Kumbakonam Aynagaran Coffee' written in Tamil language. The plaintiff has business in Kumbakonam, Mannargudi, Thanjavur, Chennai etc. According to the plaintiff, they have started the business on 19.01.2014 under the trademark 'Kumbakonam Aynagaran Coffee' and by their hard work and sheer effort, the plaintiff has started business in various other places in Tamil Nadu such as Mannargudi, Thanjavur, Chennai. According to the plaintiff, he has over 35 numbers of shops throughout Tamil Nadu. The

plaintiff is the first to adopt the said trade mark 'Kumbakonam Ayngaran Coffee' and honestly, continuing to use the same without any interruption and commercial break.

2.1 The learned counsel for the plaintiff submitted that they have spent Rs.10,00,000/- on advertisement for promotion of their business under the trademark 'Kumbakonam Ayngaran Coffee'. Further, the annual sales turnover of the plaintiff is increasing year after year. Therefore, the plaintiff submitted that they have spent substantial sums of money, effort and man power in developing their business under the trademark 'Kumbakonam Ayngaran Coffee'.

2.2 It is the further case of the plaintiff that, in order to protect the trade name, the plaintiff has applied trademark registration under No.2672510 in class 30 and further the plaintiff submitted that he has also filed various other applications in order to protect the trade name 'Kumbakonam Ayngaran Coffee' under the Trade marks Act, 1999 and

Copyright Act, 1957.

2.3 The learned counsel further stated that the plaintiff came to know through various name boards and sign boards that there are some business miscreants in order to gain unlawful profits, are using the trademark 'Kumbakonam Ayngaran Coffee' as such and/or with some additions/alterations to it. In order to prevent the trademark 'Kumbakonam Ayngaran Coffee' from being infringed and pirated, the plaintiff caused to issue a public warning notice in the Newspapers such as Dinamani, Dinathanthi and the said warning notices were published on 26.01.2019. Further, the plaintiff's Hotel Association also cautioned their members and general public not to use the trademark 'Kumbakonam Ayngaran Coffee'.

2.4 The plaintiff's counsel further submitted that during the month of January 2019, the plaintiff came across the shop of the defendants with the name board 'Sri Kumbakonam Ayngaran Coffee'

Unavagam' in Thanjavur, which is similar and identical to that of plaintiff's trademark 'Kumbakonam Ayngaran Coffee'. Therefore, the trademark adopted by the defendants is visually, phonetically and structurally similar and identical to that of the plaintiff except some minor additions, i.e. by adding the word 'Sri', as prefix to the words 'Kumbakonam Ayngaran Coffee', the colour scheme, getup etc of the label/board device of the trademark is similar and/or deceptively similar to that of the plaintiff's trademark. Therefore, the mala fide intention of the defendants in making unlawful profit is crystal clear by the simple glance of the two trade marks of the plaintiff and defendants.

3. Heard the learned counsel for plaintiff and perused the material available on record. As far as the defendants is concerned, it is seen from the records that, despite the name of the defendants are printed along with the address of the defendant in the cause list, none appeared when the matter was called on 15.07.2019. Therefore, the sole defendant was set *ex parte* by this Court vide order dated

15.07.2019, and the matter was directed to be listed before the learned Additional Master, for recording ex parte evidence. On the side of the plaintiff, A.Ramachandran, one of the partners of plaintiff's Company examined himself as P.W.1, and 5 documents were marked viz., Exs.P1 to P5.

4. This Court also gone through the pleadings and documents filed along with the plaint and also the proof affidavit filed by PW1. Ex.P1 is the photocopy of Certificate of Registration of plaintiff's Trade Mark dated 05.02.2014 and Ex.P2 is the Legal User Certificate dated 10.09.2018. On perusal of Exs.P1 and P2, this Court finds that the plaintiff has registered the trade mark 'Kumbakonam Ayngaran Coffee'. Therefore, it is crystal clear that the plaintiff is the registered proprietor of the trademark 'Kumbakonam Ayngaran Coffee'. On perusal of Ex.P3/warning notice in the Tamil newspaper, it is seen that the plaintiff has effected the warning notice in the Tamil Newspaper 'DinaMalar' on 26.01.2018.

5. Further, the plaintiff has also filed the photographs of name board of the defendant's as Ex.P4 and photograph of the label mark of the plaintiff's as Ex.P5. On comparison of Exs.P4 and P5, it is clear seen that the defendants are copying the registered trademark of plaintiff 'Kumbakonam Ayngaran Coffee', and the same amounts to infringement of trademark, in terms of Section 29 of the Trademarks Act.

6. Thus, it is clear that the plaintiff is the registered owner of the trademark "Kumbakonam Ayngaran Coffee", and they have the exclusive right to use the trade mark in respect of their product. **In view of the exclusive right to use the word, "Kumbakonam Ayngaran Coffee" by the plaintiff, the adoption of the mark, "Sri Kumbakonam Ayngaran Coffee Unavagam", by the defendants is clearly amounts to infringement of trademark of the plaintiff.** Hence, the plaintiff is entitled to the relief as prayed in the suit.

7. In the result, this suit is decreed with cost of Rs.1,00,000/-
(Rupees One Lakh only). Consequently, connected Original
Applications are closed.

26.08.2019

rst

Index : Yes/No

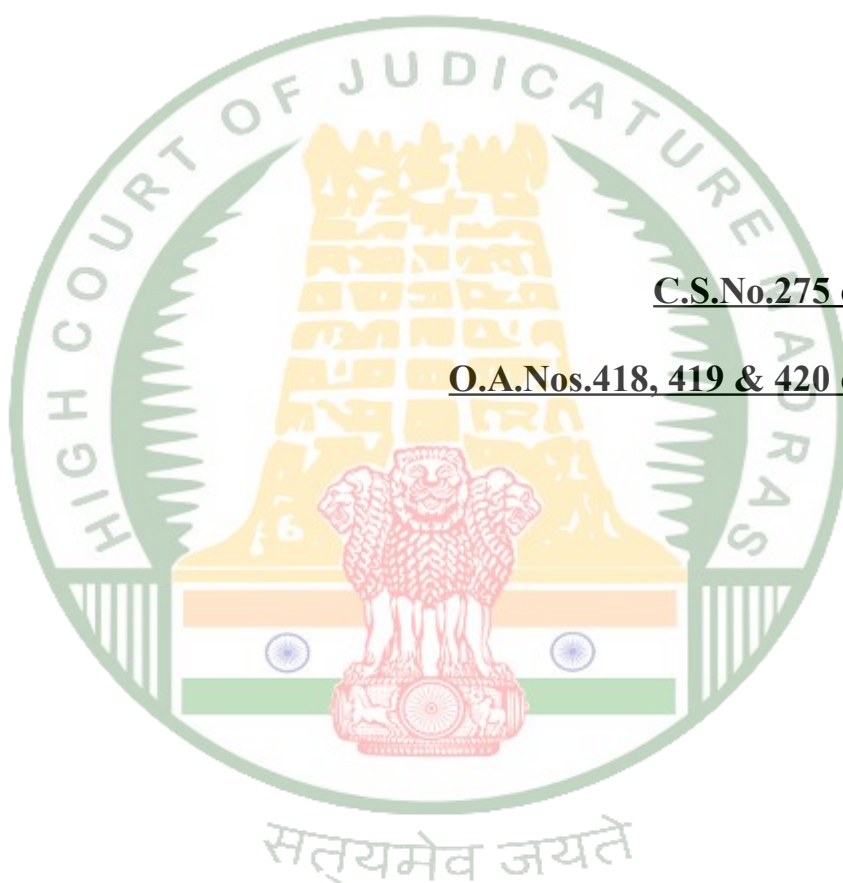


WEB COPY

C.S.No.275 of 2019
and O.A.Nos.418, 419 & 420 of 2019

KRISHNAN RAMASAMY, J.,

rst



C.S.No.275 of 2019
and
O.A.Nos.418, 419 & 420 of 2019

26.08.2019

WEB COPY

11/11