

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.08.2019

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

C.S.No.276 of 2019
and
O.A.Nos.421, 422 & 423 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

Agilandeswari
W/o.S.Bala Murali, Proprietor,
M/s.Sri Kumbakonam Ayngaran Coffee Unavagam,
No.366, North Street,
Thanjavur -1.

...Defendant

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 defendant, 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 defendant, their men, servants, agents or anyone claiming 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 defendant, 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 defendant 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 defendant 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 Defendant : Set ex parte

vide order dated 15.07.2019

J U D G M E N T

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 its business on 19.01.2014 under the trademark 'Kumbakonam Aynagaran Coffee' and by its hard work and sheer effort the plaintiff has started its business in various other places in Tamil Nadu such as Mannargudi, Thanjavur, Chennai etc. 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 Aynagaran Coffee' and honestly continuing to use the same without any interruption and commercial break.

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

2.1 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.

2.2 While the case stands so, the plaintiff came to know through various name boards and sign boards that there are some business

miscreants in order to gain unlawful profit are using the trademark 'Kumbakonam Ayngaran Coffee' as such and/ or with some additions to it. In order to safeguard 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. However, the plaintiff's Hotel Association also cautioned their members and general public not to use the trademark 'Kumbakonam Ayngaran Coffee'.

2.3 The plaintiff's counsel further submitted that during the month of January 2019, the plaintiff came across the shop of the defendant with the board 'Sri Kumbakonam Ayngaran Coffee Unavagam' in Thanjavur which is similar and identical to that of 'Kumbakonam Ayngaran Coffee'. Therefore, the trademark adopted by the defendant is visually, phonetically and structurally similar and identical to that of the plaintiff except some minor additions 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. The malafied intention of the defendant in making unlawful profit is crystal clear by the simple glance of the two trade marks of the plaintiff and defendant.

3. Heard the learned counsel for plaintiff and perused the material available on record. As far as defendant is concerned, it is seen from the records, despite the name of the learned counsel appearing for the defendants printed along with the name and address of the defendants 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 partner of plaintiff's Company examined himself as P.W.1, and 5 documents were marked viz., Exs.P1 to P5.

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4. This Court also gone through the pleadings and documents filed along with the plaint and also the proof affidavit filed by the PW1. Ex.P1 is the photocopy of Certificate of Registration of 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, this Court make it clear that the plaintiff is the registered proprietor of the trademark 'Kumbakonam Ayngaran Coffee'. On persual of Ex.P3/warning notice in the Tamil newspaper , it is seen that the plaintiff has effected the warning notice on Tamil newspaper on 26.01.2018.

5. The plaintiff has also filed the photographs of name board of the defendants as Ex.P4 and photograph of the label mark of the plaintiff as Ex.P5. On comparison of Exs.P4 and P5, it is clear seen that the defendant is copying the registered trademark of 'Kumbakonam Ayngaran Coffee'.

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 defendant 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

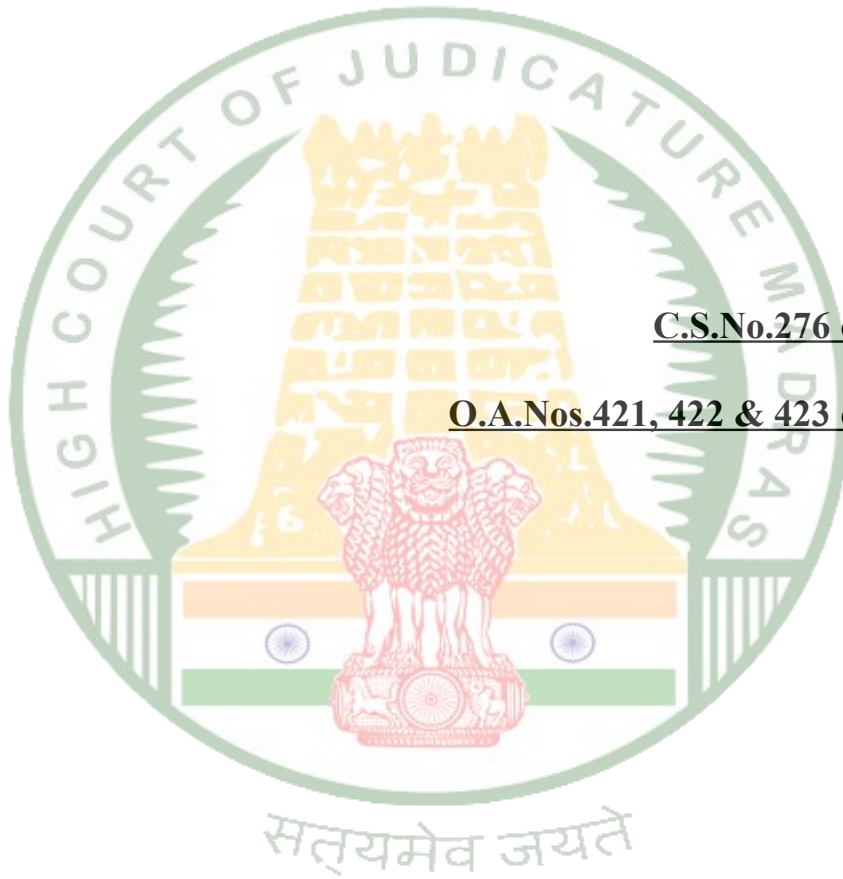
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KRISHNAN RAMASAMY, J.,
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