

HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2019

CORAM :

THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

C.S.No.305 of 2019

and

O.A.Nos.485 & 486 of 2019

M/s. Thalappakatti Naidu Anandha Vilas Biriyani Hotel,
represented by its partner, D. Nagasamy,
having its branch office at Flat No. B3,
New No.17, Old NO.18 A,
11th street, Nandanam extension,
Chennai 600 035. ... Plaintiff

..Vs..

Thalapakattubiriyani
No.48, Arcot Road,
Kodambakkam,
Chennai 600 024 ... Defendant

Suit filed under order VII RULE 1 of CPC read with order IV Rule 1 of High Court O.S. Rules and Section 134 and Section 135 of the Trade Marks Act 1999, praying for a judgment and decree (a) granting a permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner infringing the plaintiff Trade Mark and trading style "Thalappakatti Biriyani Hotel" by using the offending Trade Mark and Trading style " Thalapakattu " or any other mark or marks which are similar or in any way deceptively similar to or a

colourable imitation of the plaintiffs Trade Mark " Thalappakattibiriyani Hotel";

(b) granting a permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner passing off the plaintiff Trade Mark and Trading style "Thalappakatti Biriyani Hotel " by using the offending Trade Mark and Trading style " Thalapakattu " or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiffs Trade Mark "Thalappakatti Biriyani Hotel";

c) Directing the defendant to render a true and faithful account of the profits earned by them through the sale of food products bearing the offending trade mark "Thalapakattu"and directing payment of such profits to the plaintiff by way of damages for infringement committed by the defendant;

d) Directing the defendant to surrender to plaintiff the entire stock of unused offending goods with Trade Mark "Thalapakattu "with name boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisements, materials, reports, envelops, brochures, printing blocks, etc., bearing the offending trademark for destruction; and

e) for costs of the suit.

For Plaintiff : Mr. Vijayan Subramanian

For Defendant : set exparte

JUDGMENT

The present suit has been filed by the plaintiff against the infringement of trade mark by the defendant.

2.1. The learned counsel appearing for the plaintiff submits that the plaintiff is a registered Partnership Firm commenced by one Mr.P.Nagasamy Naidu @ Thalappakatti Naidu, the grandfather of the plaintiff, was involving in the hotel business, particularly in preparation and serving of Biriyani at Dindigul Town since 1957. The said Nagasamy Naidu sported a THALAPPA (head gear) in his head and was referred to as THALAPPAKATTI NAIDU and the hotel by reference to his pet name, is being named as "THALAPPAKATTI NAIDU ANANDHA VILAS BIRIYANI HOTEL". The business of the plaintiff firm has acquired enormous popularity for the extraordinary quality and unique flavour and taste, particularly, in preparation of Biriyani by the name THALAPPAKATTI NAIDU BIRIYANI HOTEL.

2.2. The said Nagasamy Naidu died in the year 1978. After his demise, Mr.N.Dhanabalan, son of P.Nagasamy Naidu adopted the popular name "THALAPPAKATTI BIRIYANI HOTEL" with the picture of his deceased father, P.Nagasamy Naidu with turban, referred as "THALAPPAKATTU" in Tamil and continued the hotel business. Thereafter, the said Dhanabalan also died and in April 2002, D.Nagasamy Naidu, the grandson of late Thalappakatti P.Nagasamy Naidu and son of N.Dhanabalan, started continuing the said hotel business.

2.3. The trademark and trading style THALAPPAKATTI BIRIYANI HOTEL is being associated exclusively with the original business commenced by Thalapakatti P.Nagasamy Naidu at Dindigul and subsequently extended to other cities in Tamil Nadu by the plaintiff. The trading style and trademark Thalappakatti is being exclusively associated with the plaintiff and their predecessor. There is extensive patronage by the general public for the products prepared and served in their restaurants and hotels. The trademark and trading style Thalappakatti Biriyan Hotel has acquired the secondary meaning to

denote and connote the product of the plaintiff which assures to the public a unique taste and standard in the food preparations.

2.4. The learned counsel appearing for the plaintiff also submits that the plaintiff previously similar suits have also been filed by the plaintiff and obtained an order in their favour confirming that the plaintiff is the proprietor of the THALAPPAKATTI BIRIYANI. The trade name THALAPPAKATTI is registered with the Registry of Trade Mark in Class 43 under No.1998652 with effect from 26.07.2010 and the said certificate was issued by the Registry of Trade mark on 07.08.2014, which is marked as Ex.A.23 and the legal usage certificate dated 27.03.2018 issued by the Trade Mark Registry is marked as Ex.A25. Therefore, he submits that no one except the plaintiff can have exclusive right of use of such trade mark. Under such circumstances, the plaintiff came to know that the defendant is using the similar name with respect to the hotel business under the name and style of "THALAPAKATTU BIRIYANI " at No.48, Arcot Road, Kodambakkam.

2.5. The learned counsel for plaintiff contended that the defendant has adopted the identical or deceptively similar trademark and trading style, "THALAPPAKATTI" only with a *mala fide* intention to deceive the general public and to make them believe that the food preparations served by the defendant is that of the plaintiff and also make them believe that the defendant is associated with the plaintiff in business. He would also contend that the defendant has no right to adopt and use the said offending trademark and/or trading style "THALAPPAKATTI". He also contended that due to the immense popularity and reputation of the trademark and trading style, "THALAPPAKATTI BIRIYANI ", a negligible and irrelevant changes in the last word of the name, both in Tamil and English, would make no difference so that the general public will be deceived easily and it would also amount to an passing off/offending action by the defendant.

2.6. He would argue that the defendant, by adopting the offending trademark and trading style "THALAPPAKATTI," is playing fraud on the general public by making them to buy the food preparations of the defendant thinking that the same is of the plaintiff

and therefore, the plaintiff sent a Legal Notice dated 10.08.2018, which is marked as Ex.P.24, to the defendant stating not to use the offending trade name "THALAPPAKATTI" in respect of their hotel business. However, the defendant has not send any reply even after the receipt of the said Legal Notice, and continues to use the same offending trade name "THALAPPAKATTI" in respect of their hotel business. He also argued that since the defendant is carrying on their business in Chennai, the cause of action of the suit arose in Chennai, which is well within the jurisdiction of this Court.

2.7. The main contention of the plaintiff's counsel is that the defendant has no right to use the offending identical trademark and trade name "THALAPPAKATTI" since the word "THALAPPAKATTI" comes to mean and refer the products and services of the plaintiff firm and their predecessors. His further contention is that in the guise of the plaintiff's trademark and trading style "THALAPPAKATTI", the defendant is serving the sub-standard foodstuffs to the general public, so that it will spoil the goodwill and reputation earned by the plaintiff firm. Therefore, the learned counsel prayed that the defendant may be restrained from using the trademark of the plaintiff.

3. Heard the learned counsel for plaintiff and perused the averments made in the plaint, Proof Affidavit filed by the plaintiff and also the documents Ex.P1 to Ex.P28.

4.1. From a perusal of the order sheets, it is seen that despite suit summons was served to the sole defendant on 03.06.2019, none appeared on behalf of the defendant and therefore, vide order dated 24.06.2019, the sole defendant was set *ex-parte* by this Court and this Court directed the Registry to post the matter before the learned Additional Master for recording the *ex-parte* evidence and on 01.07.2019, when the matter was posted before the learned Additional Master, only one witness was examined on the side of the plaintiff viz., P.W.1, Mr.V.Kamesh, who is the Authorized Signatory of the plaintiff Hotel and 28 documents were marked, viz., Ex.P.1 to Ex.P.28 as narrated in the Proof Affidavit, dated 01.07.2019, filed by the plaintiff's counsel.

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4.2. Having gone through the documents marked on the side of the plaintiff, this Court finds that the plaintiff is the registered proprietor of the trade name "THALAPPAKATTI" under No.1998652 in Class 43, which is evident from Ex.P23 and the said certificate was issued on 07.08.2014. However, the plaintiff is claiming the usage of the said name since 26.07.2010. Therefore, the plaintiff is entitled to use the word "THALAPPAKATTI" exclusively, for their Hotel business. On comparison of Ex.P.26 and Ex.P.27, it is found that the defendant is using the trademark of the plaintiff THALAPPAKATTI . Therefore, this Court is of the view that the defendant is infringing the trade name of the plaintiff and the plaintiff is entitled for the relief as prayed for since they proved the suit claim beyond any doubt.

4.3. Considering the facts and circumstances of the case, this Court is inclined to decree the suit as sought for by the plaintiff and on the other hand, considering the offending acts of defendant, this Court feels that it would be necessary to put costs on the defendant.

5. In the result, this suit is decreed as prayed for with payment of costs of Rs.1,00,000/- (Rupees One Lakh only) by the defendant to the plaintiff. Consequently, connected original applications are closed.

25.07.2019

mrp
Index:Yes/No
Internet:Yes/No
Speaking order/non speaking order



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