

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.310 of 2019

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

Vs

Star Thalappakattu Restaurant,
No.65, Millers Road,
Kilpauk, Chennai - 600 010. Defendant

Plaint filed and Suit numbered under Order VII Rule 1 of CPC read with Order IV Rule 1 of O.S.Rules and Sections 134 and 135 of the Trademarks Act, 1999, praying for judgment and decree as follows:

(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 Biryani Hotel” by using the offending Trade Mark and Trading style “Thalappakattu” or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiff’s Trade Mark “Thalappakatti Biryani 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 “Thalappakattu” or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiff’s 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 “Thalappakattu” 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 “Thalappakattu” with name boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisement, materials, reports, envelopes, brochures, printing books etc., bearing the offending trademark for destruction.

(e) directing the defendant to pay the plaintiff the costs of the suit and pass such further or other orders as this Hon’ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiff : Mr.Vijayan Subramanian

For Defendant : M/s.T.Suriya

JUDGMENT

The suit has been filed for the following reliefs :

(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 “Thalappakattu” or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiff's Trade Mark “Thalappakatti Biriyani 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 “Thalappakattu” or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiff's 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 “Thalappakattu” 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 “Thalappakattu” with name boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisement, materials, reports, envelopes, brochures, printing books etc., bearing the offending trademark for destruction.

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

2. The case of the plaintiff is that the plaintiff is running a business in the name of “Thalappakatti Biriyani Hotel”. The said hotel name was adopted from the pet name of late P.Nagasamy Naidu. It is further stated that from the year 1957, the plaintiff's predecessor late P.Nagasamy Naidu's Hotel has been popularly known in the name and style of “Thalappakatti Biriyani Hotel”. The Hotel has gained extensive publicity. The name of the Hotel has been referred in various Tamil feature films and its is a landmark place for high quality food. The plaintiff obtained registration certificate in their name and it has been declared as 'Well Known Trademark' by the Deputy Registrar of Trade Marks, Government of India, Chennai vide order dated 22.09.2010. The

plaintiff has protected their trade mark and they have filed several cases against the users of their name. When that being the position, the defendant infringed the name of the plaintiff's trade mark and also adopted the name as "Star Thalappakattu Restaurant". Hence, the present suit.

3.Despite service of summons to the defendant, no written statement was filed. Hence, the defendant was set ex parte by this Court on 18.09.2019.

4.On the side of the plaintiff, P.W.1, the Manager - Admin of the plaintiff firm was examined and Exs. P1 to P28 were marked.

Sl. No	Date	Description of documents	Exhibits
1.	07.11.2007	Attested photocopy of the order in O.A.Nos.298 and 299 of 2007 in C.S.No.203 of 2007.	P1
2.	02.01.2008	Attested photocopy of the Information furnished under RTI Act.	P2
3.	03.10.2008	Attested photocopy of the letter from V.K.Pandiyan to plaintiff Advocate (with clean copy).	P3
4.	13.10.2008	Attested photocopy of the letter from 'Arcad Thalappakattu Biriyan' Owner.	P4
5.	30.10.2008	Attested photocopy of the letter & photographs showing the name changed as	P5

Sl. No	Date	Description of documents	Exhibits
		'Jum Jum Biriyani'	
6.	19.11.2008	Attested photocopy of the order in O.S.A.Nos.223 and 224 of 2008.	P6
7.	21.11.2008	Attested photocopy of the information furnished under RTI Act given by Health Officer & Public Information Officer, Corporation of Chennai.	P7
8.	25.11.2008	Attested photocopy of the information furnished under RTI Act given by Labour Inspector.	P8
9.	30.11.2008	Attested photocopy of the information furnished under RTI Act given by Labour Inspector.	P9
10.	08.12.2008	Attested photocopy of the information furnished under RTI Act containing names of the Principal Employer of defendant.	P10
11.	16.12.2008	Attested photocopy of the information furnished under RTI Act containing list of Hotel/Business/persons in the name style "Thalapakattu Biriyan Centre" in Chennai City.	P11
12.	22.09.2010	Attested photocopy of the order, directing registration of Trademark of plaintiff.	P12
13.	23.09.2010	Attested photocopy of the Registration Certificate of plaintiff.	P13
14.	23.06.2011	Attested photocopy of the common order in O.A.Nos.48 & 49 of 2011 in C.S.No.32 of 2011.	P14
15.	01.08.2011	Attested photocopy of the common order in O.S.A.Nos.199 to 201 of 2011.	P15
16.	11.05.2012	Attested photocopy of the order passed by Supreme Court in I.A.No.7 to 9 of 2012 in SLP	P16

<i>Sl. No</i>	<i>Date</i>	<i>Description of documents</i>	<i>Exhibits</i>
		No.23604 to 23606 of 2011.	
17.	04.04.2013	Attested photocopy of the order passed by Supreme Court in I.A.No.7 to 9 of 2012 in SLP.No.23604 to 23606 of 2011.	P17
18.	05.04.2013	Attested photocopy of the order passed by IPAB in O.A.No.13 of 2011 & O.A.No.58 of 2010.	P18
19.	02.09.2013	Attested photocopy of the common judgment in C.S.No.203 of 2007, C.S.No.32 of 2011.	P19
20.	02.09.2013	Attested photocopy of the common judgment in C.S.No.203/2007, C.S.No.32/2011 and Cont.Pet.No.1412 of 2013.	P20
21.	20.11.2013	Attested photocopy of the Partnership Deed/Form A.	P21
22.	10.06.2014	Attested photocopy of the order in O.A.Nos.120 to 127 of 2014 in C.S.No.92 to 99 of 2014 and O.A.No.85 of 2014 in C.S.No.53 of 2014.	P22
23.	07.08.2014	Attested photocopy of the Registration Certificate under clause 43.	P23
24.	17.01.2018	Attested photocopy of the Legal Notice issued by plaintiff to defendant with receipt.	P24
25.	27.03.2018	Attested photocopy of the Legal usage certificate of the plaintiff.	P25
26.	-	Photos of plaintiff's hotel	P26
27.	-	Photos of defendant's hotel	P27
28.	12.06.2019	Attested photocopy of the Board Resolution passed by the plaintiff.	P28

5. Heard the learned counsel appearing for the plaintiff; the learned counsel appearing for the defendant and perused the materials available on record.

6. Ex.P.23 indicates the registration certificate issued in favour of the plaintiff under clause 43. Exs.P26 and P27 are the photo copies of the plaintiff and defendant Hotels and when both are compared, it makes clear that the name of “Thalappakatti Biriyani Hotel” and “Star Thalappakattu Restaurant” are similar trademark and trading style. The registration trade mark of the plaintiff is not disputed, since there is no prima facie of valid registration, then there is a presumption that the certificate is valid. The plaintiff has also produced several documents to show that they have initiated action against the other persons, who had used their name.

7. The learned counsel appearing for the defendant submitted that the defendant has changed their name of the hotel and that they will not use the name of the plaintiff in future and her statement is recorded.

8. Having regard to the submission made by the learned counsel appearing for the defendant and the documents produced by the plaintiff, this

Court is of the view that the plaintiff has proved their claim and hence, they are entitled for decree in prayers 'A' and 'B'.

9. Accordingly, the suit is decreed for permanent injunction in respect of prayer 'A' and 'B'. Considering the nature of the suit, with respect to other reliefs, the suit is dismissed. No cost.

12.11.2019

Index:Yes/No
ms

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

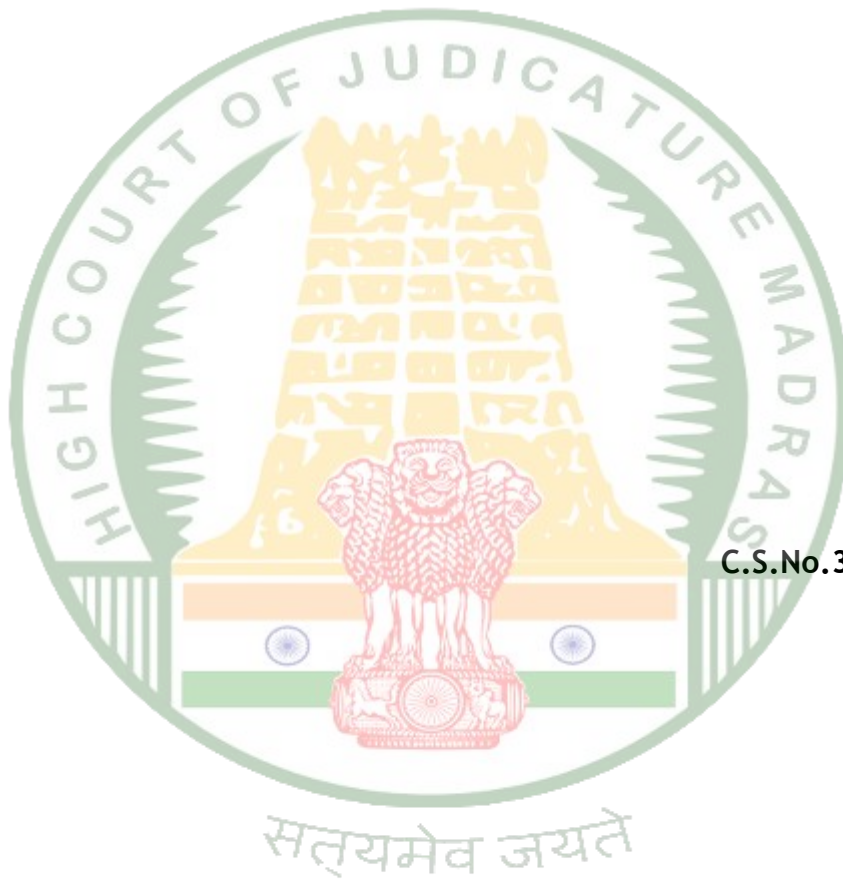


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