

C.S.(Commercial Division) No.323 of 2019
and
O.A.Nos.517 and 518 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.12.2019

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.S.(Commercial Division) No.323 of 2019
and
O.A.Nos.517 and 518 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.18A,
11th Street, Nandanam Extension,
Chennai 600 035. .. Plaintiff

/versus/

Star Thalapakattu Biriyani,
Bengaluru Bye Pass Road,
Thandalam,
Sriperumpudur,
Chennai 602 105. .. Defendant

Civil 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 to pass 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 “Thalapakatti” 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”; (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 “Thalapakatti” 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 “Thalapakatti” 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 “Thalapakatti” with name boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisement, materials, reports, envelops, brochures, printing blocks, etc. bearing the offending trademark for destruction; and (e) directing to the defendant to pay the plaintiff the costs of the suit.

For Plaintiff :Mr.Vijayan Subramanian
For Defendant :Set Exparte

J U D G M E N T

The case of the plaintiff is that the grandfather of the plaintiff has commenced hotel business in the year 1957 under the name and style of "Thalappakatti Naidu Biriyan Hotel" and extensively popular trade mark among the public as "Thalappakatti Naidu Biriyan Hotel". The plaintiff has established the distinct name for its product and have goodwill, duly registered with the trademark Registrar the trade mark "Thalappakatti" under Class 43 with effect from 26.07.2010 and trade mark "Thalappakatti Biriyan Hotel" under Class 42 with effect from 23.12.2005.

2. While so, the defendant in the name and style of "Star Thalapakattu Biriyan Hotel" has started business at Bengaluru Bye Pass Road, Thandalam, Sriperumpudur, Chennai by inserting the plaintiff's trademark. Hence, the present suit is filed for the following prayers:-

(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 "Thalapakatti" 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";

(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 "Thalapakatti" 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 "Thalapakatti" 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 "Thalapakatti" with name boards, labels, wrappers, boxes, covers, bags, packets,

cartons, bills, advertisement, materials, reports, envelopes, brochures, printing blocks, etc bearing the offending trademark for destruction;and

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

3. Suit summon sent to the defendant returned as "unserved". Hence, this Court has ordered substitute service by paper publication in one issue of "Malai Malar"-Tamil Daily. Accordingly, the plaintiff has effected the paper publication in one issue of "Malai Malar" as substitute service on the defendant to appear on 04.10.2019. Since there was no representation on behalf of the defendant, this Court has called the defendant, absent and set exparte on 04.10.2019.

4. The plaintiff has examined one V.Kamalesh, Manager Admin. of the plaintiff company and marked 28 exhibits. Exs.P26 and P27 are the photographs of the signboard of the plaintiff and the defendant respectively. The photocopy of the Trademark Registration Certificate issued for "Thalappakatti" in Class 43 with effect from

26.07.2010 is marked as Ex.P23. The photocopy of the Trademark Registration Certificate for "Thalapakatti Biriyani Hotel" with logo in Class 42 with effect from 23.12.2005 is marked as Ex.P13. The plaintiff notice to the defendant is marked as Ex.P24.

5. From these documents, this Court finds that the defendant has deliberately infringed the trade mark of the plaintiff and passing off his food product as that of the plaintiff. Hence, Civil Suit is allowed as prayed for with costs. Consequently, connected Original Applications are closed.

16.12.2019

Index:yes/no
Internet:yes/no
Speaking order/non speaking order
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