

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Dated : 12.07.2019****Coram****The Honourable Mr.Justice KRISHNAN RAMASAMY****C.S.No.738 of 2014
and O.A.Nos.916 & 917 of 2014**

M/s.Kumudam Publications Pvt. Ltd.,
Rep. by its Chairman cum Managing Director,
P.Varadarajan having office at
New No.306, Old No.151,
Purasawalkam High Road,
Chennai – 600 010.

...Plaintiff

Versus

M/s.Arasial Reporter,
Rep. by its Manager cum Author,
K.S.Sriram, having office at
36, Vanniyar Street, Porur,
Chennai – 600 116.

...Defendant

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This suit is filed under Order IV Rule 1 of the O.S.Rules
r/w. Order VII Rule 1 and Section 26 of the Code of Civil
Procedure and Sections 29, 30 & 135 of the Trademarks Act for
the following reliefs:

(a) granting a order of permanent injunction restraining
the defendant or their men, agent, staff or any persons

claiming through or under them from infringing the plaintiff registered Trademark "KUMUDAM REPORTER" as registered bearing No.1184312 dated 20.03.2003 in Class 16 issued on 14 July 2005 by the Registrar of Trademark under Section 23(2) r/w. Rule 62(1) of Trademark Act, 1999.

(b) Granting a relief of permanent injunction restraining the defendant or their men, agent, staff or any persons claiming through or under them from passing off the mark "ARASIAL REPORTER" or any Trademark/trading style similar to the plaintiff's trademark "KUMUDAM REPORTER".

(c) Grant the relief of Mandatory Injunction directing the defendant to furnish an undertaking that they would refrain from using the mark/trade mark "ARASIAL REPORTER" or any other identical or deceptively similar Trademark in respect of any goods or services passing off as plaintiff's mark "KUMUDAM REPORTER".

(d) Direct the defendants to pay a sum of Rs.30,00,000/- as damages for misleading the public and encashing upon the reputation, trust and good will enjoyed by the plaintiff by infringing with the equitable and common law right vested with the plaintiff who is the prior adopter, continual user of the mark "KUMUDAM REPORTER".

(e) To pay the cost of the suit.

For Plaintiff : Mr.G.Krishnakumar

For Defendant : Set *ex parte*
vide order dated 17.07.2018

J U D G M E N T

In the present suit, though the suit summon was served on the sole defendant, none appeared on behalf of the defendant. Therefore, vide order dated 11.03.2019, the sole defendant was set *ex parte* by this Court and the matter was directed to be listed before the learned Additional Master-I on 30.07.2019, for recording the *ex-parte* evidence. Accordingly, when the matter was listed before the learned Additional Master-I, on the side of the plaintiff, P.W.1 (Mr.V.R.Rakesh) was examined and 9 documents were marked viz., Exs.P1 to P9.

2. Today(12.07.2019), this matter is taken up for final disposal.

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3.1. The learned counsel for plaintiff submitted that the plaintiff is a publisher of a Tamil bi-weekly magazine, "KUMUDAM REPORTER" who uses the trademark "KUMUDAM REPORTER" as a registered proprietor. He further submitted

that on 20.03.2003, the said trademark was registered by the plaintiff as Registered Trademark No.1184312 in Class '16' issued on 14.07.2005 by the Registrar of Trademark under Section 23(2) r/w. Rule 62(1) of Trademark Act, 1999 and the said Registered Trademark was renewed on 04.04.2013. He would also submit that the plaintiff is the author and owner of the copyright of the label/front cover with the distinctive colour scheme, get up and layout under the Copyrights Act, 1957 of the said magazine/periodical "KUMUDAM REPORTER".

3.2. The learned counsel would contend that the defendant is infringing the plaintiff's registered Trademark "KUMUDAM REPORTER" by cleverly indulged in printing and publishing a Tamil magazine/periodical in the name and style of "ARASIYAL REPORTER" with a subtle difference, which is deceptively similar to the label and artistic work of plaintiff's magazine. He also contended that the entire look and get-up in the label of defendant's magazine is quite similar to that of the plaintiff's magazine, "KUMUDAM REPORTER". He further argued that the defendant is indulging in such activity only

with a *mala fide* intention to tarnish the goodwill and reputation earned by the plaintiff in the business of publication. He also submitted the plaintiff is suffering a huge loss in their business due to the aforesaid *mala fide* act of the defendant. He therefore prayed that the defendant may be restrained from using the offending trademark "ARASIYAL REPORTER", otherwise, the plaintiff would be put to heavy loss and hardship.

4. Heard the learned counsel for plaintiff and perused the materials available on record.

5.1. On perusing the Proof Affidavit filed by P.W.1 and the exhibits marked on the side of plaintiff, this Court found that the plaintiff is the registered proprietor of the trademark, "KUMUDAM REPORTER" which is particularly evident from Exs.P4 to P6. From the submissions made by the plaintiff's counsel and on perusal of the exhibits marked on the side of the plaintiff, it is clearly evident that the defendant had adopted the colour scheme, get-up and layout which are

deceptively similar to that of the plaintiff.

5.2. It is crystal clear that the defendant is infringing the plaintiff's registered trademark "KUMUDAM REPORTER", most particularly, the colour scheme, get-up and layout of the plaintiff's trademark. The defendant is using the offending trademark, "ARASIYAL REPORTER" which is deceptively similar to the plaintiff's trademark. As far as prayer (a), (b) & (c) are concerned, the plaintiff proved the suit claim beyond doubts and therefore, the plaintiff is entitled to the reliefs sought for therein. On the other hand, in respect of prayer (d), the plaintiff is praying to direct the defendants to pay a sum of Rs.30,00,000/- as damages for infringing the registered trademark of the plaintiff and also for spoiling the reputation, trust and goodwill gained by the plaintiff among the general public, however, the plaintiff failed to prove the said suit claim. Hence, the suit is liable to be dismissed in respect of prayer (d).

5.3. Taking note of the above facts and circumstances of the case, this Court is inclined to partly decree the present suit in respect of prayer (a), (b) & (c) and dismiss the suit in respect of prayer (d). Apart from that, considering the above such *mala fide* on the part of the defendant, this Court feels that it would be necessary to impose cost on the defendant.

5.4. Accordingly, this Civil Suit is partly decreed in respect of prayer (a), (b) & (c) and the same is dismissed in respect of prayer (d). Further, the defendant is directed to pay the cost of Rs.1,00,000/- (Rupees One Lakh only) to the plaintiff. Consequently, connected Applications are closed.

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KRISHNAN RAMASAMY, J.,

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