

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.08.2019

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

C.S.No.823 of 2014
and O.A.Nos.1017 & 1018 of 2014
and A.No.8211 of 2014

M/s.Mothi Textiles,
194, Gandhi Road,
Surampatti,
Erode-9
and also at
Jains Kences Retreat,
No.15, Reddy Street,
Block No.1, 4th Floor,
Virugambakkam,
Chennai - 600 092

rep. by its partner K.S.Shanmugasundaram

...Plaintiff

Versus

N.Ravichandran Handloom,
2/8, Kovalan Street,
Surampatti Valasu,
Erode – 638 009.

...Defendant

This Civil Suit is filed under Order VII Rule 1 of Civil Procedure Code r/w Order IV Rule O.S. r/w Sections 27, 28, 29, 134, 135 of the Trade Mark Act 1999 , prayed (a) a permanent injunction restraining the defendant by himself, his men, servants, agents, distributors, stockiest, representatives or any one claiming through them from in any manner infringing the plaintiff's registered trademark under No.454606 in class 24 by using the trademark MOHIT or any other mark deceptively similar to the plaintiffs' registered trademark MOTHU or in any other manner whatsoever;

(b) a permanent injunction restraining the defendant by himself, his men, servants, agents, distributors, stockiest, representatives or any one claiming through them from in any manner passing off and/or enabling others to pass off the defendants' products as and for the plaintiffs' products by manufacturing, selling, or offering to sell, distributing, displaying, printing, stocking, using, advertising products bearing trademark MOHIT or any other mark deceptively similar to the plaintiffs' trademark MOTHU or in any other manner whatsoever;

(c) the defendants be ordered to surrender to plaintiffs for destruction of all products, labels, dyes, blocks, moulds, screen prints, packing materials and other materials bearing the trademark MOHIT or any mark deceptively similar to plaintiffs' trademark and artistic work MOTHU.

(d) a preliminary decree be passed in favour of the plaintiffs directing the defendants to render account of profits made by use of trademark MOHIT and a final decree be passed in favour of the plaintiffs for the amount of profits thus found to have been made by the defendants after the latter have rendered accounts;

(e) for costs of the suit.

For Plaintiff : Mr.R.Sathish Kumar

For Defendant : Set ex parte

vide order dated 01.08.2019

JUDGMENT

The present Civil Suit has been filed by the plaintiffs, seeking for the relief, as stated in the prayer portion of this judgment.

2. The learned counsel for the plaintiff submitted that the plaintiff is a proprietor of the trademark 'Moithi', having used the same since 01.04.1971 and registered on 26.05.1986 under No. 454606 in Class 24 with respect to "handloom towels and napkin". The registration certificate is marked as Ex.P2.

2.1 The learned counsel further submitted that the plaintiff's label consists of a device of Pearl in an Oyster alongside the words 'Moithi' Tex and Towels one below another; the label also depicts a medallion and the word Gold Medal Winners; that the said label also consists of the word 'Moithi' Tex in Hindi followed by the address of the plaintiff. The label representing 'Moithi' is also an artistic work, for which, the copyright vests with them under No A-14103/75 dated 08.10.1975. The copy of the registration certificate is marked as Ex.P3. The plaintiff has acquired distinctiveness over the trademark 'Moithi' which is proved by sales of several crores of rupees

2.2 The learned counsel for the plaintiff contended that the plaintiff became aware of the defendant's using the mark 'Mohit' in May, 2014, which is deceptively similar to the plaintiff's trademark 'Moithi' for identical goods, viz., towels, and the said mark is a jumble of the last three letters of the plaintiff's trademark 'Moithi'. The defendant has also

used a deceptively similar label with device of medallion on the right side and the words Surampatti, Erode in a similar fashion, for their trademark 'Mohit' which clearly shows their dishonest intention to sell their products.

2.3 The plaintiff's counsel further submitted that the cease and desists notice, marked as Ex.P5, was immediately issued on 20.05.2014 against the defendant. The defendant's reply to the said notice on 09.06.2014 denying the contents of the said legal notice has been marked as Ex.P6. In the reply, it was admitted that the defendant started using the mark only for 6 months then.

2.4 According to the defendant, they have been using the trademark 'Mohit' since 2014. The defendant also filed counter in O.A.Nos.1017 and 1018 of 2014, wherein, they have stated that they have been using the trademark 'Mohit' since 2014. However, they contended that there is no similarity between the trademarks and the

labels as claimed by the plaintiff, and even if there is a similarity the same is not substantial. Though the counsel entered appearance on behalf of the defendant, subsequently, he reported that there is no instruction from the sole defendant, and hence, the sole defendant was set exparte and the matter was posted before the Additional Master for recording ex parte evidence. On the side of the plaintiff, one A.Nagarajan, Power of Attorney of the plaintiff's firm examined himself as P.W.1, and 8 documents were marked viz., Exs.P1 to P8.

3. Heard the learned counsel for the plaintiff and this Court also perused the documents filed along with the plaint and also the proof affidavit filed by the PW1.

4. On perusal of Ex.P6, dated 09.06.2014, viz., the defendant's reply to the plaintiff's legal notice, this Court finds that the defendant admitted that they are using the trademark 'Mohit' for only six month. However, the plaintiff's counsel contended that the trademark 'Mohit' is

abandoned under No.2820203 in class 24 with the user date claimed as 14.10.2014. On perusal of all the exhibits filed by the plaintiff, it is seen that the defendant is using the trademark 'Mohit' in 2014 for six months while the plaintiff has been using the trademark 'Mothi' since 1971, i.e. for the past 40 years openly, widely, extensively, continuously and uninterrupted. Therefore, it is clear that, the plaintiff's trademark, 'Mothi' is being infringed by the defendant and causing confusion in the minds of the public and the trade and by merely, jumbling the last three letters of the plaintiff's trademark 'Mothi', it would make no difference or distinguish the plaintiff's trademark from that of the defendant's.

5. Further, on perusal of Ex.P2/ Trademark Registration Certificate, it is clearly seen that the plaintiff is the registered proprietor of the trademark 'Mothi' 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, "Mothi" by the plaintiff, the adoption of the mark, "Mohit", by the defendant is clearly amounts to infringement of**

trademark of the plaintiff under Section 29 of the Trade Marks Act, 1999. Hence, the plaintiff is entitled to the relief as prayed in the suit.

6. In the result, this suit is decreed with costs. Consequently, connected Applications are closed.

rst

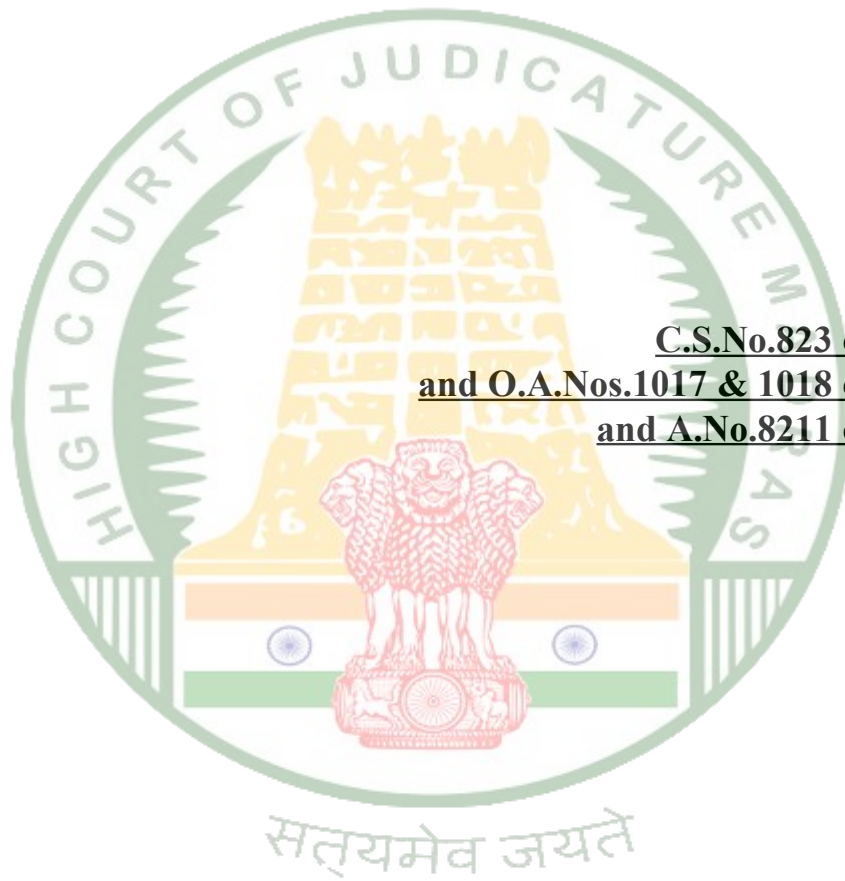
Index : Yes/No

27.08.2019



WEB COPY

KRISHNAN RAMASAMY, J.,
rst



C.S.No.823 of 2014
and O.A.Nos.1017 & 1018 of 2014
and A.No.8211 of 2014

27.08.2019

WEB COPY