

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2019

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THE HONOURABLE **MR.JUSTICE KRISHNAN RAMASAMY**

C.S.No.853 of 2014
& O.A.No.1045, 1046 & 1047 of 2014
and A.No.8488 & 8489 of 2014

M/s.Y.V.Seshachalam & Co,
A partnership firm rep.by its
Partner Mr.Y.V.Niranjan Krishna
No.138, Audiappa Street,
Chennai 600 001.

...Plaintiff

Vs.

1.M/s.Sri Lakshmi Sai Oil Traders,
R.R.Pet,
Vijayawada-520 001.

2.M/s.Vijetha Agarbathi Stores
Gowrisetti Narayana Complex
Post Office Road,
Karim Nagar 505 001.

...Defendants

This Civil Suit is preferred under Order VII Rule 1 of CPC read with Order IV Rule 1 of High Court O.S Rules and Section 134 and 135 of the Trade Marks Act, 1999 Section 55 & 62 of the Copyright Act prays for judgment and decree against the defendants granting; A) for a permanent injunction restraining the defendants, their men, agents, servants or any one claiming through them from in any manner infringing the plaintiff's

registered Trade Mark "Gopuram" by using the offending Trademark Gopuram and the device temple tower or any other trademark, trademark label or device which is identical or deceptively similar to or a colourable imitation to that of the plaintiff's registered trademarks trademark and Trademark Label. B) for a permanent injunction restraining the defendants, their men, agents, servants, or any one claiming through them from in any manner passing off its goods as that of the plaintiff's by using the offending trademark Gopuram, lay out, trade dress, colour combination, get up, lettering style, which is identical to that of the plaintiff's trademark or any other marks or device which is similar or deceptively similar to that of the plaintiff's trademark either by manufacturing or offering for sale of the products under the offending trade mark or any manner advertising the products under the offending trademark. C) for a permanent injunction restraining the defendants their men, agents, servants or any one claiming through them from in any manner infringing the plaintiff's copyright over the artistic work in the trademark label "Gopuram" by using the offending trade mark label "Gopuram" or any other trade mark label which is identical or colourable reproduction of the first plaintiff's artistic work in the trade mark label "Gopuram"; D.Directing the defendants to surrender to the plaintiff the entire stocks, cartons with the infringing artistic work "Gopuram" and the unused infringing Trademark label "Gopuram" together with blocks and dies for destruction. E) directing the defendants to render a true and faithful accounts of the profits earned by them through the sale of their products bearing the infringing labels "Gopuram" which is similar or deceptively similar to the plaintiff's trademarks and the copyrighted label

"Gopuram" and directing the payment of such profits to the plaintiff.
F) Directing the defendants to pay the costs of the suit to the plaintiff.
G) granting such further or other relief as this Court may deem fit and proper in the circumstances of the case.

For Plaintiff : Mr. Prasanna Venkat

For Defendant : No appearance

JUDGMENT

The plaintiff is a registered Partnership Firm and carrying on business since 1945. The plaintiff is a leading manufacturer and marketer of Kumkum and Turmeric Powder and other related products. The goods of the plaintiff were also being exported to various countries. The plaintiff has honestly conceived and adopted the trademark "GOPURAM" and device of GOPURAM / temple tower, and using the same for all the products since 1952. The Trademark "GOPURAM" and their device are being used in all the products of the plaintiff.

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2. The plaintiff further states that each distinctive product of the plaintiff has distinct label, get up, Color scheme and artistically created trade dress designed with the aid of qualified experts. The plaintiff has spent

huge amount in engaging experts in artistic work and designed the celebrated label with TEMPLE TOWER by significantly emphasizing the monumental tower of the temple, in vernacular language called "Gopuram" or "Sigaram" or "Shikaram" along with their trademark " GOPURAM " depicted the same in their products including using in all sachets/packing cartons. The said trademark forms the plaintiff's trade dress and the same has been patronized and recognized by the people with the product of the plaintiff exclusively. During the year 2012 and 2013, the plaintiff also attained the turnover of about more than 12 Crore of Rupees. Further to develop and publicise its trade name, the plaintiff has also spent a sum of Rs.99,45,088/- for the year ending 2012-2013. The combined effect of the trade dress and trade mark label has become highly distinctive of the plaintiff and the trade and public always associate the said trade dress and trademark label of the plaintiff with the products of the plaintiff alone.

3. The plaintiff has also registered the Certificate of Registration "GOPURAM" in different style, get up, Trade dress and layout which has been marked as Exs.P3 to P12. Therefore, plaintiff Partnership firm is the sole proprietor of the trademark "GOPURAM" as exhibited in Exs.P3 to

P12. When that being the case, to the shock and surprise of the plaintiff, the marketing division of the plaintiff came to know in the 3rd week of November 2014 that the defendants is also carrying on similar business in manufacturing and marketing of Kumkum and adopting every distinctive features of the plaintiff and making the trademark label and trade dress of the defendants identical in all aspects in respect of effect and appearance. The plaintiff has also filed pouches of the plaintiff, which has been marked as Ex.P13 and pouches of the 1st defendant, which has been marked as Ex.P14.

4. It is the main contention of the plaintiff that mere comparison of the two pouches would clearly establishes that the 1st defendant is copying their word trademark of the plaintiff "GOPURAM" along with colour scheme, get up, layout, device designed. Therefore, the plaintiff contends that the defendant infringing the registered trademark and the plaintiff has also filed an Exs.P3 to P12. Therefore he prayed for the suit to be decreed as prayed for.

5. After filing the plaint, suit summons were served and the defendants were not appeared. Therefore, they were set *exparte* by this Court on 10.09.2018 and on behalf of P.W.1 one Mr.A.Kalathi, was examined and Exs.P1 to P15 were marked.

6. Heard learned counsel for the plaintiff and this Court has also gone through the averments in the plaint, proof affidavit of P.W.1 and also examined the documents filed by the plaintiff.

7. A very perusal of the plaint states that Ex.P3 to P12 shows that the plaintiff has registered its trademark "GOPURAM" in class no. 3 in different get up, color scheme, layout, device and design. Further on mere comparison of Ex.P13 and P14, it is crystal clear that the defendant has infringed the trademark of the plaintiff, not only trademark of the plaintiff but also colour scheme, layout, get up, device and design. Therefore, the plaintiff made out his case and clearly establishes the case beyond any reasonable doubt.

8. Therefore, the suit is decreed as prayed for. Cost of Rs.1,00,000/- shall be payable to the plaintiff by the defendants. Consequently, all the applications are closed.

19.07.2019

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List of Witnesses and Exhibits:

Plaintiff's Side Witnesses:

P.W.1 - Mr.Kalathi

Plaintiff side Documents:

Ex.P1-The original Authorization letter dated 15.07.2019.

Ex.P2-The Photocopy of certificate of registration of the Partnership Firm dated 06.05.1993.

Ex.P3-The photocopy of certificate of registration of Trademark "GOPURAM" in class 03, No.1447031 dated 15.07.2008.

Ex.P4-The photocopy of certificate of registration of Trademark "GOPURAM" in class 03, No.0654067 dated 15.03.2001.

Ex.P5-The photocopy of certificate of registration of Trademark "GOPURAM" in class 03, No.0654044 dated 14.10.2002.

Ex.P6-The photocopy of certificate of registration of Trademark "GOPURAM" in class 03, No.586262 dated 14.08.2000.

Ex.P7-The photocopy of certificate of registration of Trademark "GOPURAM" in class 03, No.0652771 dated 31.05.2005.

Ex.P8-The photocopy of certificate of registration of Trademark "GOPURAM" in class 03, No.0548622 dated 15.03.2000.

Ex.P9-The photocopy of certificate of registration of Trademark "GOPURAM" in class 03, No.0450093 dated 28.03.1991.

Ex.P10-The photocopy of certificate of registration of Trademark "GOPURAM" in class 03, No.1447032 dated 23.08.2002.

Ex.P11-The photocopy of certificate of registration of Trademark "GOPURAM" in class 03, No.0652774 dated 31.01.2002.

Ex.P12-The photocopy of certificate of registration of Trademark "GOPURAM" in class 03, No.1464320 dated 25.08.2008.

Ex.P13-The photograph of plaintiff Sachet

Ex.P14-The photograph of defendant Sachet

Ex.P15-The original chartered Accountant certificate for sales turnover and advertisement expenses dated 18.12.2014.

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KRISHNAN RAMASAMY.,J.

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