



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.11.2019

Coram:

THE HONOURABLE MRS.JUSTICE V. BHAVANI SUBBAROYAN

C.M.A.No.3286 of 2019

and

C.M.P.No.19162 of 2019

1.M/s. Thiruppur Sree Annapoorna,
Rep. By its partners
Mr.Venkatesh Dheenadayalan
Mrs.Vasnthi Dheenadayalan
No.9/15, Kumaran Road,
Tirupur-641 601.

2.Mr.Venkatesh Deenadayalan,
Partner, Tirupur Sree Annapoorna,
No.67, New No.15, Kumaran Road,
Tirupur-641 601.

3.Mrs.Vasanthi Dheenadayalan,
Partner, Tirupur Sree Annapoorna,
No.67, New No.15, Kumaran Road,
Tirupur-641 601.

.. Appellants

Versus

1.M/s.K.Dhamodarasamy Naidu & Brothers,
Partnership Firm,
Represented by its Managing Partner, K.Ramasamy,
No.47, East Arockiasamy Road,
R.S.Puram, Coimbatore-641 002.

2.Sree Annapoorna Sree Gowrishankar Hotels Pvt. Ltd.,
Represented by its Managing Partner, K.Ramasamy,
No.47, East Arockiasamy Road,
R.S.Puram, Coimbatore-641 002.

.. Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Order 43 Rule (1) (r) r/w Sec.104 of the Civil Procedure Code against the order dated 16.04.2019 in I.A.No.280/2018 in O.S.No.231 of 2018 passed by the Hon'ble Principal District Judge at Coimbatore granting temporary injunction restraining the appellants from using the trade mark "Sree Annapoorna".



ORDER

This Civil Miscellaneous Appeal has been filed by the appellants to set aside the order in I.A.No.280/2018 in O.S.No.231 of 2018 dated 16.04.2019 passed by the Principal District Judge, Coimbatore.

2. The case of the appellants is that Originally the 1st respondent/plaintiff firm filed a suit in O.S.No.231 of 2018 against the appellants herein seeking permanent injunction restraining the appellants from using the trade mark "Sree Annapoorna" and Interlocutory application was filed by the respondents in I.A.No.280 of 2018 seeking to grant temporary injunction, restraining the appellants, their servants, agents, distributors, dealers and anybody associated with the appellants from using the trade mark "Sree Annapoorna" before the Principal District Judge, Coimbatore. The respondents stated that they have been carrying a business of running hotels, restaurant etc., in the name of "Sree Annapoorna" from the year 1960. The 1st appellant firm is a partnership firm and was started under a Partnership Deed dated 22.02.1978, there were 7 partners in the said firm in which the 1st respondent is one of the partners. The next key partner is one Dheenadayalan, father of 2nd appellant and husband of the 3rd appellant. The 1st respondent/plaintiff and other partners agreed to carry on the business in Tirupur and in the name of "Tirupur Sree Annapoorna". The 1st respondent retired from the partnership business from 31.03.1984 and the 2nd & 3rd appellants were inducted as partners on 01.04.1997 and on 07.05.2009 respectively and the said Dheenadayalan died on 18.05.2009. The 1st respondent applied for registration of the trade mark for the word "Sree Annapoorna" under the Trade Mark Act, 1999 and registered it from 02.03.2007. The 2nd respondent company is a permitted user of the same trade mark from 30.04.1997. The 1st respondent came to know that the 1st appellant firm had applied for registration of trade mark as "Tirupur Sree Annapoorna" by an application dated 29.06.2016. On 17.02.2017 the 1st respondent issued notice and objected the usage of the trade mark owned by it alleging infringement of trade mark right for the first time. On 25.02.2017, the appellants send a reply stating that rejoinder was issued by the 1st respondent on 10.05.2017. Thereafter, the appellants did not stop using the trade mark and had committed infringement and sought for permanent injunction restraining appellants from using the trade mark "Sree Annapoorna". The Principal District Judge, Coimbatore, granted exparte adinterim injunction on 26.04.2018 in I.A.No.280/2018 and the same was made absolute on 16.04.2019.

3. It is the furthercase of the appellants that the 1st appellant firm "Tiruppur Sree Annapoorna" is in existence from 22.02.1978, as per the partnership deed. The 1st respondent registered the trade mark "Sree Annapoorna" only on 02.03.2007. hence, the name "Tirupur Sree Annapoorna" was used by the appellants for the past 29 years even before registering the trade mark "Sree Annapoorna" with the knowledge of the 1st



respondent and they have not caused any infringement against the said trade mark. The 1st respondent was permitted use the trade mark for about 10 years after registering the trade mark. The 1st appellant is using the disputed trade mark uninterruptedly for a period of about 40 years with permission from the present registered proprietor. The trial Court failed to see that under Section 33 of Trade Marks Act, when trade mark has been in acquiescence for a continuous period of 5 years in use of a registered trade mark, and registered owner of the trade mark is aware about that use of 5 years period, he shall no longer be entitled to oppose the use of later trade mark which was in use in relation to which it has been so used. According to the partnership deed, K.Dhamodarasamy Naidu has given consent to use the trade mark "Sree Annapoorna" and shall be discontinued in case partners namely Dheenadayalan and D.Jayachandran decided to windup the business or transfer the management to third party. Dheenadayalan, neither wind up the business nor transferred the business to third party. By partnership deed dated 01.04.1997, he inducted his son, the 2nd appellant and by partnership deed dated 07.05.2009, he inducted his wife, the 3rd appellant herein as partners. Dheenadayalan died on 18.05.2009 and there is no change of management to third party, both the parties are his own son and his wife. The 1st respondent had participated in the inauguration of "Tirupur Sree Annapoorna" after the death of Deenadayalan. The implied consent given by the 1st respondent was not considered by the trial court and hence seeks to set aside the order passed by the Court below.

4. Per contra, it is the case of the respondents that K.Dhamodarasami Naidu entered into a deed of partnership dated 22.02.1978 with a few people including the father of the 2nd appellant for starting a business namely "Tirupur Sree Annapoorna". It is clear from the recitals of the partnership agreement that the business shall be carried on in the name and style of "Tirupur Sree Annapoorna" and that K.Dhamodarasami and Brothers are the owners of the name "Sree Annapoorna" permitting the said firm to use the name "Sree Annapoorna" with certain terms and conditions. M/s.K.Dhamodarasami & Brothers along with the other partners retired from the said partnership firm on 31.03.1984. The remaining partners Mr.S.Dheenadayalan (father of the 2nd appellant) and D.Jeyachandran continued with a new partnership agreement dated 01.04.1984. The terms and conditions of the partnership clause 1 and 13 has been stated as follows:

1."The partnership shall be carried on under the name and style of Tiruppur Sree Annapoorna. M/s.K.Dhamodarasami & Brothers being the owners of the word "Sree Annapoorna", has given their consent to use the name for the partnership business subject to the condition that the use of the trade name "Sree Annapoorna" shall be discontinued in case the above partners decide to windup the business or transfer the management to any third party".



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13. The partnership deed on 01.04.1994 states that "the good will of the partnership shall be the sole property of M/s. Dhamodarasami Naidu & Brothers and none of the other partners shall have any right or claim over the same".

5. One of the partner Sri.D.Jayachandran retired from the partnership on 01.04.1997 and Mr.S.Dheenadayalan died on 18.05.2009. The trademark holder K.Dhamodarasami & Brothers caused the issuance of a legal notice dated 17.02.2017, calling upon the appellants herein to cease and desist from using the registered trademark that legally belongs to them. The appellants herein replied to the same by a reply dated 25.02.2017. The K.Dhamodarasami & Brothers issued a rejoinder to the said notice on 10.05.2017 and they were constrained to file an I.A.No.280 of 2018 in O.S.No.231 of 2018 on the file of the Principal District Judge, Coimbatore and granted ad-interim injunction on 26.04.2018 against the appellants from using the name and style of "Tirupur Sree Annapoorna".

6. According to the respondents, they have taken enormous efforts to promote the marks and brands over the years and they have strained every nerve to protect and promote their various trademarks. The enormity of the reputation and good will accrued to them can be gauged not only from the popularity of the mark but also from the turnover achieved by the respondent in the financial year 1997-98 to 2016-17, annual sales turnover (lakhs) 2175.68 to 13.270.44. The respondents enjoy immense reputation and goodwill accrued substantially enormous in favour of the respondents. The 2nd respondent has been regularly advertising their products under the brand name "Sree Annapoorna" very extensively through different media or publicity such as Television, hoardings, newspapers, magazines, bill boards, trade publication etc due to which the said trademark, "Sree Annapoorna" is well recognized and acclaimed by the public. The 2nd respondent spent 1.96 lakhs to 33.48 lakhs for advertisement expenses, publicity and sales promotion of brand under the said trademark, in the financial year 1997 - 1998 to 2016 - 2017. In view of all the above, the respondents seeks to dismiss the claim of the appellants.

7. Heard the learned counsel for the appellants and the respondents and perused the materials available on records.

8. The learned counsel for the appellants in support of his submissions has relied on the following Judgements:

(i) Judgement of Hon'ble Supreme Court in Shree Vardhman Rice and Gen Mills Vs. Amar Singh Chawalwala reported in MANU/SC/1680/2009. wherein in paragraph No.3 among other things it is mentioned as under:-



be finally decided very expeditiously by the Trial Court instead of merely granting or refusing to grant injunction."

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"5. In our opinion, in matters relating to trademarks, copyright and patents the proviso to Order XVII Rule 1(2) C.P.C. Should be strictly complied with by all the Courts, and the hearing of the suit in such matters should proceed on day to day basis and the final judgment should be given normally within four months from the date of the filing of the suit."

(ii) Judgement of this Court (Madurai Bench) in Sri Rajeswari Fire Works and Ors. Vs. Kaliswari Fire Works and Ors. reported in MANU/TN/1680/2009. wherein in case note among other things it is mentioned as under:-

".....However, suits relating to trademarks were pending for years and years and litigation was mainly fought between parties about temporary injunction - This was unsatisfactory state of affairs, instead of deciding case at interlocutory stage, suit itself should be disposed of at early date."

9. Considering the fact that there was a consent given by the said K.Dhamodharasamy Naidu and Brothers and the father of the appellant to run the said firm in the name of "Tirupur Sree Annapoorna" wherein respondents also proceeded with the inaugural function and in view of the above said judgements, this Court is inclined to remand the I.A.No.280 of 2018 in O.S.No.231 of 2018 back to the Principal District Judge, Coimbatore to try the suit and dispose of the same within a period of six months from the date of receipt of copy of the order. Since no prejudice would be caused to both the parties, this Court is inclined to direct the parties to maintain Status-quo till then.

10. Accordingly, this Civil Miscellaneous Appeal is disposed of. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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1. The Principal District Judge,
Coimbatore.



+1cc to Mr.S.Suresh, Advocate SR.No.96740

+1cc to Mr.J.Divya, Advocate SR.No.97657

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and C.M.P.No.19162 of 2019

SPD (CO)
GMY (12/03/2020)