

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 19TH DAY OF NOVEMBER 2019

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

A. No.6593 of 2019

in

C.S. No.208 of 2011

Mr.P.Radhakrishnan
represented by his Power of Attorney,
Mrs.Lakshmi Mukilan,
M2/D, Anugraha Colony,
3rd Avenue, Ashok Nagar,
Chennai-600 083.

..Plaintiff

-Versus-

T.V.S.Motor Company Ltd.,
Jayalakshmi Estates
No.29, Haddows Road,
Chennai-600 006.

..Defendant

A.No.6593 of 2019:-

T.V.S.Motor Company Limited,
Jayalakshmi Estates
No.29, Haddows Road,
Chennai-600 006.

..Applicant/Defendant

-Versus-

P.Radhakrishnan
Rep. by Power of Attorney,
Mrs.Lakshmi Mukilan,
M2/D, Anugraha Colony,
3rd Avenue, Ashok Nagar,
Chennai-600 083.

..Respondent/Plaintiff

Application praying that this Hon'ble Court be pleased
to treat the issue of limitation as a preliminary issue.

for hearing, the Court made the following order:

This application has been filed by the applicant/defendant to treat the issue of limitation as a preliminary issue.

2. It is averred in the affidavit that the applicant was aware of launching of the motor cycle 'TVS Flame' and its specifications on 30.08.2007. Therefore, Article 88 of the Limitation Act comes into play that the suit ought to have been filed within three years from the date of cause of action. Suit filed on 18.03.2011 is barred by limitation and not maintainable. Hence, it is the contention that the issue of limitation framed by this Court is the question of law. Therefore, the issue of limitation prayed before this Court is to be tried as a preliminary issue.

3. It is the contention of the learned counsel for the applicant that the pleadings itself indicate that the defendant has launched the motor cycle "TVS Flame on 30.08.2007 and the specifications of the products were also made available to the public on the said date. Therefore, as on the above said date, the plaintiff was aware of alleged infringement. Such being the position, the suit ought to have been filed within 3 years under Article 88 of the Limitation Act, even otherwise, under Article 113 of the Limitation Act.

4. Whereas, the learned counsel for the respondent/plaintiff would submit that the issue with regard to the limitation has already been framed and such issue can be decided along with the other issues. In any event, it is the contention of the learned counsel for the respondent that either Articles 88 or 137 of the Limitation Act cannot be applied to the facts of the case. The right of the plaintiff is dealt with under the Patent Act and the Patent is valid for 20 years and infringement is a continuous cause of action. Therefore, the issue cannot be decided as a preliminary issue. Hence, prayed for dismissal of the application.

5. The suit has been filed for the permanent injunction, restraining the defendant in any manner from infringing the plaintiff's Patent No.182682 and from using the patented technology specified and diagrammatically elicited in the said patent not for the purpose of manufacturing, advertising, marketing and selling within India, or for export of the vehicles such as the TVS Frame-125cc and such other model by whatever nomenclature described, utilizing the four stroke internal combustion engine with two spark plugs and multi-valves, which is an infringement of the plaintiff's Patent no.182682.

6. Section 53 of the Patent Act deals with the period

in which the patent will be in existence, the patent granted under the Patents Act shall be valid for 20 years from the date of filing of the application. Section 48 of the Patent Act, gives an exclusive right to the patentees to prevent third parties from using the patents without his consent.

7. On conjoint reading of Sections 48 and 53 makes it clear that as long as the patent is valid for 20 years, the patentees have get exclusive right to protect their patents by preventing third parties from infringing the patents. The act of infringement is a continuous cause of action. Therefore, when the right has been conferred by the statute for patentee to protect his right for a period during which the patent exists and hence, it cannot be said that the suit ought to have been filed within three years. As long as the infringement continues within the period in which the patent is valid, the person is entitled to enforce his right conferred in the Act. Therefore, the contention of the learned counsel for the applicant that Article 88 of the Limitation Act will apply, cannot be countenanced for the simple reason that Article 88 of the Limitation Act deals with the compensation for infringing of copyrights or any other exclusive privilege and therefore, only for claiming compensation for infringing the copyright or any other exclusive privilege, the period of limitation shall be reckoned from the date of infringement. If the

contention of the learned counsel that any other exclusive privilege used in Article 88 is applied to the patent is accepted, it will, in fact, defeat the legislative intent of the Patent Act, whereas, the Patent Act confers exclusive right on the patentee to prevent third parties and patent is valid for a period of 20 years. Therefore, this Court is of the view that Article 88 of the Limitation Act cannot be applied for infringement of patent, similarly Article 113 will also not be applicable as discussed the right to protect the patent specifically conferred by the statute and infringement is continuing as long as the patent is valid and certainly the patentee is entitled to protect his right and to file a suit for infringement as against third parties and action for infringement cannot be confined to the single cause of action even when the infringement is continued and to prevent such infringement, the patentee can certainly bring the suit as long as infringement is continuing, provided that the patent is valid and existing at the relevant point of time. Hence the contention of the learned counsel that the issue of limitation has to be tried as a preliminary issue does not arise at all as an issue since it has already been framed along with other issues.

8. Considering the nature of submissions, this Court

is of the view that all the issues to be tried and whether or not there is any infringement and mere knowledge of

such infringement, would form a cause of action for filing the suit, is a mixed question of law and these aspects can only be seen after trial.

Accordingly, this petition is dismissed.

Sd./-N.S.K.J

19/11/2019

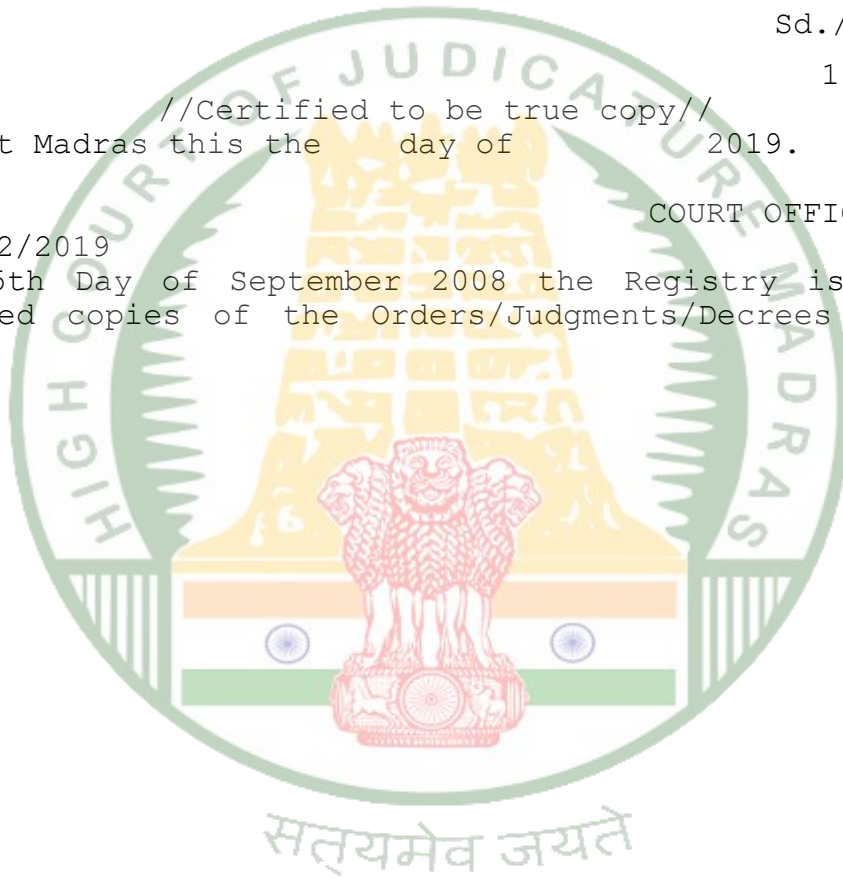
//Certified to be true copy//

Dated at Madras this the day of 2019.

COURT OFFICER (O.S.)

jj 12/12/2019

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



WEB COPY