

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
15~10~2019	04~11~2019

CORAM:

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

C.S.No.260 of 2017

N.Ranga Rao & Sons Private Limited
PB No.52, Vani Vilas Road,
Mysore-570004
and also at
T.S.109, Block No.3, Poomagal
5th Street, Ekkaduthangal,
Chennai 600032.

... Plaintiff

Vs.

Sriman Industries
No.15, P.P.V.Nandhivaram Street,
Virudhunagar – 626001.

... Defendant

Civil suit filed under Order IV Rule 1 O.S. Rules read with order VII Rule 1 of CPC alongwith Ss.27, 28 and 29, 134 and 135 of the Trademarks Act, 1999, to grant Permanent Injunction restraining the Defendant, its servant, agents or any one claiming through it from in any manner infringing the Plaintiff's registered Trade Mark CYCLE by using the identical the offending Trade Mark CYCLE BRAND or any other mark or marks which are in anyway identically, deceptively similar to or a colourable limitation of the Plaintiff's registered Trade Mark CYCLE, passing of its products under the offending trade mark CYCLE BRAND, Directing the Defendant to render a true and faithful account of the profits

earned through the sale of its products and also directing the Defendant to surrender the entire stock of the unused offending labels to the Plaintiff with costs.

For Plaintiff : Mr.P.S. Raman
Senior Counsel for
M/s. Rajesh Ramanathan

For Defendant : Mr.R. Sathish Kumar for
M/s. P.C.N.Raghupathy

JUDGMENT

1. This suit has been filed for Permanent Injunction restraining the Defendant, its servant, agents or any one claiming through it from in any manner infringing the Plaintiff's registered Trade Mark CYCLE by using the identical the offending Trade Mark CYCLE BRAND or any other mark or marks which are in anyway identically, deceptively similar to or a colourable limitation of the Plaintiff's registered Trade Mark CYCLE, passing of its products under the offending trade mark CYCLE BRAND, Directing the Defendant to render a true and faithful account of the profits earned through the sale of its products and also directing the Defendant to surrender the entire stock of the unused offending

labels to the Plaintiff with costs.

2. It is the case of the Plaintiff that they are leading manufacturers and suppliers in the industry of fragrances i.e., incense sticks and other allied products. The Plaintiff is engaged in business of manufacturing and selling incense sticks / Agarbathies and dhoops since 1948. The Plaintiff originally a proprietary concern in 1948 was established by late Mr.N. Ranga Rao, the grand father of the current directors of the company. They honestly conceived and adopted several trademarks including CYCLE, CYCLE BRAND with the device of a cycle, Cycle Brand Three in One with the device of a Cycle, Woods, LIA, HERITAGE, etc.,

3. The Plaintiff submits that their predecessor adopted the trade mark CYCLE as early as in the year 1954 and has been using the same, openly, continuously and extensively for the past several decades. Due to the hard work, high quality products, strong brand value and efficient services catered under the house mark CYCLE, the trade mark "CYCLE" has come to be identified

by the consuming public with the Plaintiff alone and the said Trademark has become one of the most recognised and sought after brand, not only in India but overseas as well. The Plaintiff also obtained registration of the said mark under various classes, and indicative list of which is as follows:

Sl. No.	Mark	Regd. no.	Class	Date of application	Status
1.		163539	3	01/04/1954	Registered
2.		274106	3	06/08/1971	Registered
3.		565808	3	20/01/1992	Registered
4.	CYCLE POPULAR PARFUM	996501	3	14/03/2001	Registered
5.	CYCLE POPULAR COSMETIC	996502	3	14/03/2001	Registered
6.		1888788	3	25/11/2009	Registered

Sl. No.	Mark	Regd. no.	Class	Date of application	Status
7.		1800789	35	25/11/2009	Registered
8.		2045400	35	27/10/2010	Registered
9.		2045406	41	27/10/2010	Registered
10.		2045408	43	27/10/2010	Registered
11.	CYCLE PURE	2237691	3	22/11/2011	Registered
12.	CYCLE PURE	2237696	35	22/11/2011	Registered
13.	CYCLE PURE	2237699	41	22/11/2011	Registered

4. The Cycle Brand logo containing the device of cycle inside a unique oval shaped device is a unique and distinctive artistic work, which is also the house mark of the Plaintiff. The Plaintiff annual sale turnover for the goods using the trademark CYCLE runs into several crores of rupees. They have also spent several crores of rupees for the sales promotional activities making the

said trademark one of the most recognisable brands and envy amongst the peers. In view of such long continuous and extensive sales and promotional activities undertaken by the Plaintiff, the trademark CYCLE has come to be associated exclusively with that of the Plaintiff alone and no one else. The mark CYCLE has acquired tremendous reputation and goodwill among the trade and public, the trademark has become well-known trademark.

5. The Plaintiff recently came to know that the Defendant had started manufacturing, marketing and using the trademark "CYCLE BRAND", which is identical to plaintiff's reputed and registered trademark "CYCLE BRAND" in relation to sambrani, which falls within class 3 of the Nice Classification of goods and services. As the Plaintiff is a registered proprietor of the trademark CYCLE in respect of various products falling under class 3 of the NICE Classification, the acts of the defendant in using the identical word mark CYCLE BRAND amounts to

infringement of plaintiff's exclusive statutory rights. All products used in relation to pooja and devotional purposes fall under Class 3 of Nice Classification. The Plaintiff who is one of the pioneers of the Agarbathi / incense sticks industry in India has been involved in goods pertaining to pooja and devotional purposes. While so, the defendant's adoption and use of the identical trademark CYCLE in conjunction with the word BRAND in respect of Sambrani /Benzoin, which also falls within class 3 of the NICE Classification, which is nothing but infringement of plaintiff's registered trade mark CYCLE BRAND. The use by the Defendant of the mark CYCLE BRAND is without any authorisation from the Plaintiff. In such case the use would automatically cause an unwarranted confusion among the trade and public as to the source of defendant's goods. Hence the suit.

6. It is the case of the Defendant that they are admitting that the Plaintiff has reputation and goodwill of the trading in 'Agarbathies' and the Plaintiff is marketing 'Agarbathies' under

the various label marks CYCLE BRAND, CYCLE POPULAR PARFUM, CYCLE POPULAR COSMETIC, CYCLE PURE AGARBATHIES and CYCLE PURE. It is the contention of the Defendant that they are manufacturing and marketing 'BENZOIN' under the label mark 'CYCLE'. The label trademark under which the defendant is marketing the goods 'BENZOIN' under the label mark is CYCLE. The defendant is continuously using CYCLE label in respect of the goods BENZOIN during the last 34 years from the days of Predecessor-in-title. Thereby the adoption of the said label mark 'CYCLE' for goods 'BENZOIN' is honest and bonafide.

7. It is his further contention that the device of cycle is not an invented or coined word or device by the Plaintiff alone. The Defendant is the prior user of the mark CYCLE with a device of Cycle in respect of goods BENZOIN which will also fall in Class 03. The Plaintiff may be the Prior User for CYCLE label in respect of goods AGARBATHIES which also will fall in Class 03 but not in respect of BENZOIN. Even though both the AGARBATHIES and

BENZOIN fall under the same class, the function and consumption and utility of both the goods are entirely different from each other. The Defendant's goods BENZOIN (small cakes and powder) are packed in pouches. The Plaintiff's goods AGARBATHIES (long stick) are packed in lengthy carton boxes. The cost of the Defendant's mark CYCLE brand BENZOIN box is less than the cost of the Plaintiff's CYCLE brand AGARBATHIES. Accordingly, the price, size of the goods, packaging of the goods and utility of both the goods are different from each other. There will be no possibility of deception or confusion in the market in selling the defendant's goods BENZOIN under the label mark CYCLE. The Plaintiff is non-user of the trademark CYCLE with the device cycle drawn inside one diamond in respect of goods BENZOIN. The Plaintiff is indulged in trafficking in trademarks by getting trademark registration almost in various classes, but actually not using the mark CYCLE in respect of those goods/services which are not being manufactured or marketed by the Plaintiff except AGARBATHIES. The defendant is using the

mark CYCLE for goods BENZOIN continuously during the period of 34 years.

8. It is further contended that in the year of July 2004 one similar cease and desist notice has been issued by the Plaintiff's predecessor to the Defendant's predecessor. Suitable reply dated 5.8.2004 was given by the Defendant's predecessor. The Plaintiff's predecessor has not taken any action during the last 12 years against the continuous use of Trademark CYCLE in respect of goods BENZOIN. Hence the above suit is barred by limitation and further the suit is liable to be dismissed on the grounds of laches and acquiescence.

9. Based on both the pleadings, following issues have been framed:

- 1. Whether the Defendant is manufacturing BENZOIN with the trademark CYCLE for the last 34 years?*

2. *Whether the Plaintiff can claim exclusive monopoly rights over the name CYCLE and its device in respect of all goods in all the classes (Class 1 to 45) apart from Agarbathies?*
3. *Whether the Defendant is the 'Prior User' of the mark CYCLE in respect of goods BENZOIN?*
4. *Whether the Plaintiff's conduct since 2004 to the present suit amounts to acquiescence, delay and latches?*
5. *Whether the defendant has infringed the Plaintiff's registered trademark CYCLE?*
6. *Whether the defendant is passing off its goods using the trademark CYCLE as and for the goods of the Plaintiff under the registered trademark and copyrighted artistic work CYCLE?*
7. *Whether the Plaintiff is entitled to the various limbs of prayers sought for in the prior paragraph (paragraph 25) of the plaint?*

10. On the side of the Plaintiff Mr.V.Ramamoorthy was

examined as P.W.1 and Exs.P1 to P10 were marked. On the side of the Defendant Mr.S.M.N.Manrajan was examined as D.W.1 and Exs.D1 to D10 were marked. The Exhibits are as under:-

10(a) Exhibits produced on the side of the plaintiff:

S.No.	Date	Description of documents	Exhibit
1.	120219	Authorisation letter in favour of the Deponent	P-1
2.	---	Legal Use Certificate for the Trademark CYCLE	P-2 series
3.	---	Copy of Sales Invoices evidencing use of the mark CYCLE.	P-3 series
4.	---	Copies of various advertisements issued by the Plaintiff for the mark CYCLE	P-4 series
5.	---	Copies of various awards and recognition conferred upon the plaintiff and its predecessor	P-5 series
6.	19.10.2016	Office Copy of the notice dated 19.10.2016 along with postal receipt and acknowledgment.	P-6
7.	011116	Original reply issued on behalf of the defendant	P-7
8.	01.12.2016	Office copy of the Rejoinder issued by the Plaintiff dated 01.12.2016.	P-8
9.	---	Plaintiff labels containing the mark CYCLE	P-9 series
10.	---	Defendant's label containing the mark CYCLE BRAND	P-10

10(b) Exhibits produced on the side of the defendant:

S.No.	Date	Description of documents	Exhibit
1.	20.07.2004	Legal Notice sent on behalf of the Plaintiff to the Defendant's predecessor	D-1

S.No.	Date	Description of documents	Exhibit
2	26.02.2019	Power of Attorney (Original)	D-2
3	27.1.1997 & 7.3.1997	Assessment order from the Commercial Tax Officer M/s.Rajaman Industries	D-3 series
4	31.03.2003	Letter from Rajaman Industries to the Commercial Tax Officer surrendering the old registrations	D-4
5	05~08~2004	Reply notice sent by the defendant to the plaintiff's counsel	D-5
6	08~01~2007	VAT Registration of the defendant	D-6
7	14~05~2012	Assessment order from the Commercial Tax Officer to the defendant	D-7
8	---	Invoices for the sale of CYCLE BENZOIN	D-8 series
9	---	Chartered Accountant Certificate for the Defendant and their predecessors	D-9 series
10	---	Labels of the defendant with CYCLE brand BENZOIN	D-10

11. Learned counsel appearing for the Plaintiff submitted that the Plaintiff's predecessor in title adopted the trade mark CYCLE in the year 1954. They had various trademarks. Subject matter of the suit relates to the Agarbathies and Pooja products. Their registered trademark is reputed one. It is the contention that the reputation on the nature of the business of the Plaintiff is not in dispute. The contention of the Defendant that they are the prior user, has not been established. All the documents relied

upon by the Defendant have been created only for the purpose of the case. The so called invoices is only a computer print out which has not been proved in the manner known to law. Those documents are inevitable for evidence. The evidence of D.W.1 also clearly indicate that those documents are created only for the purpose of the case. The alleged acquiescence is also not established. The defendant has not proved the alleged reply notice sent by them dated 5.8.2004. Above document is also not proved in the manner known to law. There is no proof of delivery. It is his contention that though Ex.D1 cease and desist notice was issued to the defendant's predecessor, since the defendant's predecessors themselves has discontinued the business, no action was taken against them by the Plaintiff. Therefore, it cannot be said that the Plaintiff has not accused the business of the Defendant. The Defendant has dishonestly adopted the mark of the Plaintiff subsequently and dealing with the products which are similar to the nature of the Plaintiff. The Plaintiff trademark is registered under Class 3. The Defendants

also registered under the same class. Therefore, when the plaintiff mark has reputation and existing from the year 1954, the Defendants conduct adopting the similar mark and dealing with the same products is nothing but dishonestly adopting the same mark. Hence it is contention that the alleged acquiescence has also not been established.

12. It is the contention that the Plaintiff was honoured by various awards, that itself indicate that their mark is well known and have a reputation. The Defendant's conduct is nothing but to ride on the reputation of the Plaintiff. It is his further contention that all the sales tax receipts and invoices filed by the Defendant are not admissible in the evidence, those are created only for the purpose of the case. Further the claim usage assignment is required. The Defendant has not pleaded any assignment nor proved the same. There is no link with the Sriman Industries. His further contention is that the Plaintiff products and Defendant products are one and the same. Therefore, the Plaintiff is

entitled to the decree and judgment.

13. The learned counsel appearing for the Defendant submitted that the Plaintiff never used Sambrani, whereas the Defendant is the prior user. The product dhoop is not sambrani. It is different product. The Sales Tax Assessment Orders and invoices are clinching evidence to the fact that the Defendant are dealing with Sambrani much prior to the Plaintiff. Therefore, the Defendant are the prior user. It is his further contention that in the year 2004, the Plaintiff issued cease and desist notice to the predecessor of the Defendant. The above notice was replied by the Defendant. The evidence of the D.W.1 clearly proved the factum of issuance of legal notice. Such being the position, after the reply notice which was given earlier in the year 2004, no action was taken by the Plaintiff. The conduct of the plaintiff keeping silent for more than 12 years amounts to acquiescence. Therefore, as per Section 32 of the Trademark Act, there cannot be any injunction against the Defendant.

14. It is his further contention that sending of the reply notice as early as in the year 2004 has not been disputed in the reply sent by the Plaintiff. The Plaintiff has also not denied the succession. In the absence of registration relating to the dhoop, the prayer for infringement fails. Therefore, since the Defendant has established the prior user of the product Sambrani, the Plaintiff is not entitled to any injunction. The suit has to fail. It is contention that merely because the Assessment Order do not refer about the nature of the goods, it cannot be said that the Defendant are not dealt with the good Sambrani. Hence it is his contention that the suit has to fail.

15. In the light of the above submissions I proceed to answer the issues. Before advertng to other issues, Issue Nos.1,3 and 4 are discussed first.

Issue Nos.1,3 and 4:

16. It is the specific case of the Plaintiff that the mark CYCLE, CYCLE BRAND with the device of Cycle, Cycle Brand Three in One with the device of a Cycle, WOODS, LIA, HERITAGE, etc., were registered. The trademark CYCLE was adopted as early as in the year 1954 and the Plaintiff have applied for Registration of the said marks on various classes. Ex.P.2 series 13 in numbers filed to prove the Registration. Though several registration is filed, the relevant Registration Certificate in respect of the subject matter of the suit is Trademark Application No.163539 registered under class 3. The trademark type is "WORD" and Word mark is "CYCLE BRAND (device)". The Goods and Descriptions are "PERFUMES, OODABATHY, DHOOP and HAIR OIL". The certificate was issued on 18.04.1955. Again in Trademark Application No.565808, the Word Mark registered under Class 3 as "DHOOP AND AGARBATHIES" by dated 20.01.1992. Similarly, Trade Mark Application No.2237691 the word mark was register under Class 3 for "INCENSE STICKS, INCENSE CONES AND DHOOPS". The

certificate date is 22.11.2011. Though there are various certificates marked under Ex.P.2 series, the CYCLE BRAND has been registered under Class 3 for Incense Sticks, Agarbathies, Dhoops etc., The registration of label mark Cycle is not disputed by the Defendant. Similarly, the Defendant is also admitted in the written statement that they are not disputing the reputation and goodwill of the Plaintiff's trading in Agarbathies and various label marks Cycle Brand, Cycle Popular Parfum, Cycle Popular Consmetic, Cycle Pure Agarbathies and Cycle Pure. The main contention of the Defendant is that the Defendant is prior user of the Cycle mark in respect of goods Benzoin which also falls under Class 3. The Defendant goods Benzoin (small cakes and powder) are packed in pouches. Accordingly the Defendants are in the same business for the last 34 years from the days of predecessor in title. Since the Registration under Class 3 by the Plaintiff in respect of Agarbathies and Dhoops is not in dispute and the reputation of the Plaintiff's trademark Cycle is also not disputed by the Defendant. The only remains to be decided in the suit,

whether or not the Defendant is prior user.

17. Ex.P.4 is copies of various advertisements issued by the Plaintiff for the mark CYCLE. Ex.P.5 to show various awards and recognition conferred upon the Plaintiff and its predecessor. From the above documents, the registration of the trademark CYCLE under Class 3 is clearly established besides the Defendant are also clearly admitted the registration and the reputation of the Cycle Brand is also not disputed by the Defendant. The main contention of the Defendant is that they are prior user. It is the case of the Defendant that they are marketing the goods Benzoin under the label mark Cycle for the last 34 years.

18. Exs.D3 and D4 are the Commercial Tax Assessment Order of the Commercial Tax Officer issued M/s.Rajaman Industries said to be the predecessor in title. Though the Assessment Order for the year 1997 issued in favour of M/s.Rajaman Industries for dealing Benzoin was filed to show

that the predecessors of the Defendant were dealing the Benzoin, the word mark has never reflected in the Assessment Order. Ex.D.3 addressed by one M/s. Rajaman Industries to the Commercial Tax Officer clearly indicate that Rajaman Industries has stopped business from 31.3.2003. Ex.D.1 legal notice dated 20.7.2004 issued by the Plaintiff, makes it clear that the Plaintiff has issued notice to M/s. Rajaman Industries calling upon them desist from using the trademark CYCLE BRAND together with the device of CYCLE for the product of Sambrani. This notice was issued on 20.07.2004. Thereafter, the Plaintiff has not taken any action. It is the contention of the Plaintiff that the said M/s. Rajaman Industries have themselves stopped business as evident from Ex.D.3. Since they desisted from continuing the business, no action has been taken against them. Whereas it is the main contention of the Defendant that the above notice was replied by reply notice dated 5.8.2004 which is marked as Ex.D.5. Thereafter, the Plaintiff has not take any action from the reply notice. Thereby, there cannot be any injunction in favour of

the plaintiff.

19. It is to be noted Ex.D.5 Reply notice is only a xerox copy. The original has not seen the light of the day. Further the defendant has not even made any foundation for filing copy of the alleged reply notice sent on 5.8.2004. Unless sufficient foundation is made for loss of original and for filing xerox copy as secondary evidence, as a matter of right, a copy of the document cannot be taken as evidence. It cannot be admitted in evidence. Be that as it may. Even assuming such a reply notice is sent, the defendant has not proved to whom it was served. On a perusal of Ex.D.7, there is no acknowledgment whatsoever found to show that the reply has been served on the counsel. Further, no postal receipts even to prove such despatch of the letter are filed. Even to prove hand delivery, acknowledgment is absent. Therefore, sending reply by the Defendant cannot be countenanced unless delivery of such document has been established. Further, admittedly Ex.D.1 was sent to the

predecessor of the defendant. Such being the position, if at all reply was sent, it should have been in their name. Whereas copy filed before the Court, the address of the counsel was scored of. Besides, admittedly legal notice Ex.D1 was originally sent to M/s.Rajaman Industries. The reply ought to have been given by M/s.Rajaman Industries. Whereas in the address M/s.Rajaman Industries was scored of and M/s. Sriman Industries was included. This aspect also created serious doubt about the reply sent by the defendant on 5.8.2004.

20. Ex.D.10 invoices filed to prove the prior user. On perusal of the invoices from the year 2003, no mark of CYCLE is found. Whereas the mark of STAG is found in all the invoices. If really the Defendant is using the CYCLE BRAND from the year 2003, there is no reason as to why the brand was not found in the invoices. Further it is to be noted that the Invoices has not been issued from time to time. The evidence of D.W.1 is clearly

indicate that the invoice print outs were taken from the computer. His admission clearly indicate that the invoices were created at the later point of time by taking printouts. When the print outs are taken from the computer it acquire the character of secondary evidence. Such being the position, from which computer the print out was taken and who was in-charge of the computer and whether the computer was in operative, whether First Defendant was in-charge of the computer, absolutely there is no evidence whatsoever. Therefore, any print out taken from the computer unless satisfying the conditions stipulated under section 65B of the Indian Evidence Act, 1872, the document cannot be given much importance.

21. The evidence of D.W.1 clearly indicate that all the invoices computer print out were taken. If really cycle mark was in vogue and used by the defendant, there is no reason as to why the mark has not found in the invoices. Instead, STAG mark is found. These facts also create series doubt about these

documents to believe the version of the defendant that they are prior user. If really the Defendant's Sambrani is under the mark Cycle, letterhead and invoices in the normal course of events should have contained the mark CYCLE, which is normal human conduct to have such mark in the letterhead or invoices. Therefore, selling the alleged Sambrani products in some other marks namely (STAG) is against the normal human conduct to use the mark of STAG in the invoices particularly if the defendant were using the Cycle Brand which has some reputation.

22. Therefore, the contention of the defendant is highly improbable and cannot be countenanced. Ex.D9 a photocopy of chartered accountant certificate has filed to show that they are prior user. It is relevant to note that here also the Original has not been filed. The foundations for filing a copy has also not been made by the Defendant at anywhere. At any event, the certificate issued by the third party, the so called auditor. Unless the author of the certificate examined before the court of law,

Ex.D9 also cannot be given much importance.

23. Ex.D.10 is the CYCLE mark and label of the Defendant clearly indicate the Cycle mark for sale of Sambrani. As already discussed, the Plaintiff has got registered trademark in the year 1954. They also have a registration under Class 3 for Agarbathies and also Pooja products. It is the contention of the Defendant that they are prior user of brand Sambrani and dealing with Sambrani for more than 34 years is not established. The documents filed on the side of the Defendants are not sufficient to countenance their contention. Accordingly, this Court hold that the defendant is failed to prove the plea of prior user and also acquiescence. The alleged reply notice dated 5.8.2004 is also not been proved. Accordingly, The issue Nos.1,3,4 are answered in favour of the Plaintiff.

Issue Nos.2,5,6 and 7:

24. As far as the issue No.2 is concerned, the same is not

relevant to lis between the parties. The subject matter of the suit is only with regard to Registration under Class 3 of the CYCLE brand. Such being the position, the Court is of the view that the issue No.2 is not relevant to the present suit. Accordingly the same is answered.

25. The Defendant has failed to prove prior user and acquiescence and the plaintiff has proved the Registration and also the reputation, which is not in dispute and the Defendant though acquired Registration under the same class for the Benzoin and dealing with Sambrani, which is also product of pooja, the Plaintiff has in fact got the Registration for pooja products not only for Agarbathies and also for pooja products. Such being the position, the Sambrani also comes within the pooja products. When the Plaintiff has registered mark from the year 1954, the Defendant failed to establish prior user and acquiescence, the Plaintiff is certainly entitled to injunction for infringement. There is no dispute that the defendant also dealing

with the pooja product namely Sambrani, which clearly create confusion or deception in the business.

26. Admittedly, the Plaintiff has registered mark under Class 3 and have reputation not only to Agarbathies but also pooja products. The Defendant dealing similar pooja product Sambrani under the CYCLE mark certainly create deception and confusion. Section 29 of the Trademarks Act comes to the aid of the plaintiff in protection the mark. Such use by the Defendant is certainly lead to deception and confusion on the part of the public. Admittedly, the plaintiff uses the mark CYCLE which is registered and have reputation and the same pooja product viz., Sambrani sold by the Defendant leads to deception and confusion certainly amounts to infringement.

27. The learned counsel for the Defendant relied upon the judgment reported in **Nandhini Deluxe v. Karnatraka Cooperative Milk Producers Federation Limited [(2018) 9**

SCC 183] wherein the apex Court has held that though there are phonetic similarity in the word "Nandhini" the trade mark logo adopted by the two parties is altogether different and held that the visual appearance of the two marks is different and they even relate to different products. It was difficult to imagine that an average man of ordinary intelligence would associate the goods of the appellant as that of the respondent. Further he relied upon the judgment in **Vishnudas Trading v. Vazir Sultan Tobacco Co. Ltd., [1997 (4) SCC 201]** wherein it is held that the proprietor of a trade mark cannot enjoy monopoly over the entire class of goods and, particularly, when he is not using the said trade mark in respect of certain goods falling under the same class. Whereas in this case though both the parties got registration for the same class, the alleged prior user by the Defendant has not been established. Further the Plaintiff is also dealing with the pooja products. Admittedly Sambrani dealt with by the Defendant is also product of pooja. Such being the position, the judgment relied upon by the learned counsel appearing for the Defendant cannot be

applicable to the facts of the present case.

28. Trade mark CYCLE is registered by the Plaintiff and the same is established by them. That being the position the Plaintiff is certainly entitled to Permanent Injunction. Accordingly the issue Nos.5,6 and 7 are answered in favour of the plaintiff.

29. In the result, the suit is decreed in favour of the plaintiff, granting Permanent Injunction restraining the Defendant, its servant, agents or any one claiming through it from in any manner infringing the Plaintiff's registered Trade Mark CYCLE by using the identical the offending Trade Mark CYCLE BRAND or any other mark or marks which are in anyway identically, deceptively similar to or a colourable limitation of the Plaintiff's registered Trade Mark CYCLE, passing of its products under the offending trade mark CYCLE BRAND, Directing the Defendant to render a true and faithful account of the profits earned through the sale of its products and also directing the

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04.11.2019

Index :Yes/No
Internet :Yes
Speaking/Non-speaking order
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N. SATHISH KUMAR, J.

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judgment in
C.S.No.260 of 2017

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