

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.S.No.475 of 2017
and A.No.9424 of 2018
O.A.No.623 of 2017

M/s.V.V.V. & Sons Edible Oils Limited,
Rep. by its Director,
M.Rajiv Vignesh,
No.443, Bazaar,
Virudhunagar 626 001.

Registered address
No.6, 6/2, Ellayamudali Street II Lane,
(Kailasam Street),
Tondiarpet,
Chennai 600 081.

... Plaintiff

M/s.Shivaraja Impex Company,
No.182/1A, Kattayapuram,
Virudhunagar - 626 001.

... Defendants

Vs

Plaint filed under order IV Rule 1 of the Madras High Court O.S. Rules read with Order VII Rule 1 of C.P.C. and Section 26 and 134 and 135 of the Trade Mark Act 1999 praying to pass judgment and decree to:

- a) grant permanent injunction restraining the defendant from manufacturing, preparing and exporting sesame oil, imitating the plaintiff's product name and brand name "Idhayam";
- b) a preliminary decree be passed in favour of the plaintiff

directing the defendant to render accounts of profits made by it by use of the trademark IDHAYAM which is identical and / or deceptively similar and a final decree be passed in favour of the plaintiff for the amount of profits found to have been made by the defendant after the latter has rendered accounts;

- c) the defendant be ordered to pay to the plaintiff a sum of Rs.10,00,000/- as liquidated damages for committing acts of infringement against plaintiff's registered trademark so as to pass off its products as and for the plaintiff's products;
- d) the defendant be ordered and decreed to deliver up for destruction to the plaintiff all the preparations, machines, bottles, labels, packaging either filled or empty, brochures, leaflets, pamphlets, hand bills, hoardings, wall posters, calendars, carry bags, stationery items and such other sales promotional materials bearing and / or containing the impugned trademark "Idhayam"
- e) grant costs of the suit.

For Plaintiff : Mr.P.V.Sudakar

For Defendants : No appearance.

Set ex-parte on 08.10.2018

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JUDGMENT

The present suit has been filed for infringement of trade mark of the plaintiff by the defendant.

2. The plaintiff is engaged in the business of selling sesame oil under the brand name and trade mark of "Idhayam" and the same was registered during the year 2008 in the Registrar of Trademarks, Mumbai in Trademark Registration No.465063 by Certificate No.22.07.2008. The plaintiff also obtained legal user's certificate.

3. It is the contention of the plaintiff that the plaintiff has commenced his business during the year 1943 as VVV & Sons as a Firm. In 2008, the firm was converted into Limited Company. Under these circumstances, on 15.01.2017, the plaintiff came to know that the defendant was packing and selling sesame oil in the name of "Idhayam" and exporting to USA and Canada. Subsequently, he filed the present suit and obtained interim order and he is enjoying the benefit of interim order till date.

4. After the suit was taken on file, this Court issued suit summons. Though suit summon was received by the sole defendant on 20.07.2017, none appeared on their behalf. Hence, the defendant was set ex-parte by this Court on 08.10.2018 and the matter was listed before the learned Additional Master for recording ex-parte evidence.

5. The learned counsel for the plaintiff would state that the defendant company is exporting sesame oil imitating the plaintiff's trade mark "Idhayam", and it leads to reduction of sales to plaintiff's company and because

of their low quality, the plaintiff is losing its reputation in the public.

6. Mr.M.Rajiv Vignesh, Director of the plaintiff-Company filed proof affidavit and marked Exs.P1 to P.9. Ex.P8 is the original label of the plaintiff's product and the imitation product of the defendant. The two labels are looking exactly same, which shows that the defendant has copied the plaintiff's trade mark "Idhayam".

7. From the above oral and documentary evidence and pleadings, it is seen that the plaintiff-Company has proved their claim against the defendant. Hence, the plaintiff is entitled to the reliefs prayed for in the suit. Accordingly, the suit is decreed as prayed for, with costs of Rs.50,000/- (Rupees fifty thousand only), which the defendant shall pay to the plaintiff within a period of three months from today. Consequently, connected applications are closed.

सत्यमेव जयते

01.07.2019

Index : Yes/No

Internet : Yes/No

Speaking Order/Non Speaking Order
pvs

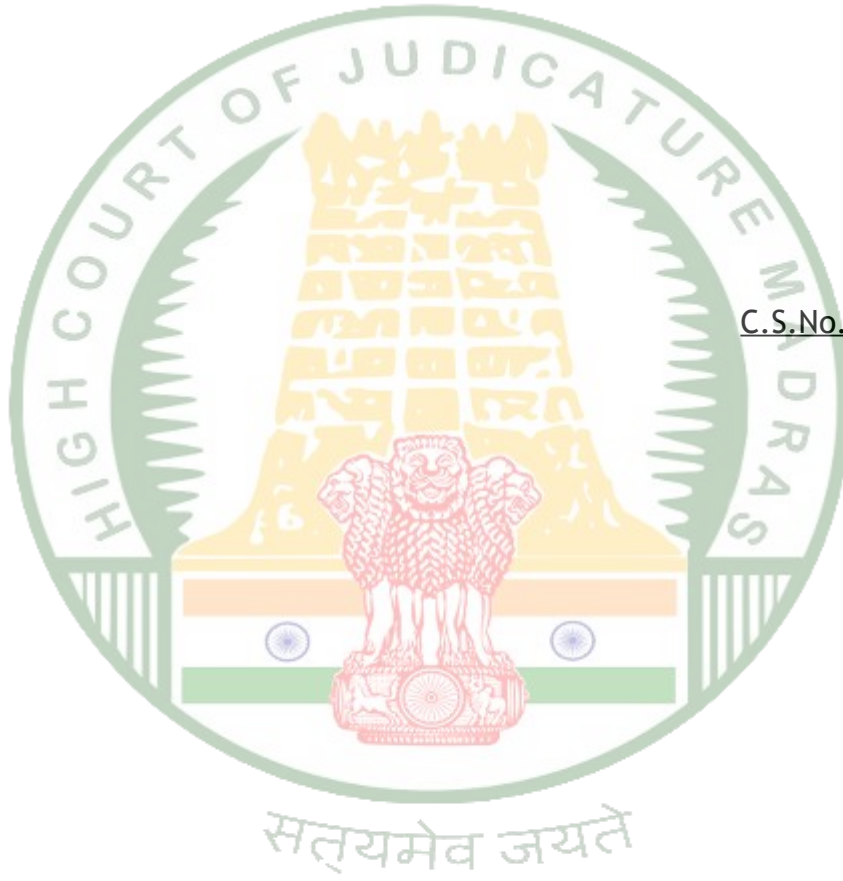
To

The Sub Assistant Registrar,
Original Side, High Court, Madras.

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KRISHNAN RAMASAMY, J.,

pvs



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