

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

and

The Hon'ble Mr. Justice KRISHNAN RAMASAMY

O.S.A.No.471 of 2018

1.Parthasarathy Seniammal Educational
Trust rep. by its Managing Trustee,
HIG 34, Raja Mannar Street, 3rd Main,
Nulambur, Chennai - 37.

2.Chennai Institute of Technology
rep. by its Correspondent/Director/
Principal, Sarathy Nagar,
SH-113, Nandambakkam Post,
Pudupedu, Near Kundrathur,
Chennai - 69.

3.P.Sriram,
Managing Trustee,
Parthasarathy Seniammal
Educational Trust,
HIG 34, Raja Mannar Street, 3rd Main,
Nulambur, Chennai - 37.

... Appellants

Vs

V.Rangasamy Naidu Educational Trust
(a Trust registered under the Indian
Trusts Act 1882)

rep. by its Managing Trustee
Dr.SRK Prasad
No.48, 2nd Floor, B.N.Road,
T.Nagar, Chennai - 17.

... Respondent

Appeal preferred under Order XXXVI Rule 9 of O.S. Rules r/w
Clause 15 of Letters Patent against the order dated 14.03.2018
made in A.No.682 of 2018 in C.S.No.344 of 2017.

A.No.682 of 2018 in C.S.No.344 of 2017

This Application has been preferred under order XIV Rule 8 of O.S.Rules read with order VII Rule 11 and Section 151 of CPC Seeking to dismiss the suit in C.S.No.344 of 2017 as not maintainable on the preliminary issue of maintainability that an Appellation simplicitor of a name is not a trademark.

For Appellants .. Mr.T.Sundaranathan

For Respondent .. Mr.Silambanan, Sr. Counsel
for Mr.G.M.Muthukumar

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

This appeal is preferred against the order of the learned single Judge, who dismissed the application filed by the appellants for injunction holding that Order 7 Rule 11 CPC cannot be pressed into service.

2.Heard the learned counsel appearing for the appellants and the learned senior counsel appearing for the respondents.

3.Learned counsel appearing for the appellants would submit that the mere abbreviation per se cannot be termed as infringement. For passing off, there has to be sufficient material. Learned single Judge went into the merits of the case and decided the matter while relying upon the judgments. In the event of this Court not inclined to exercise its power under Order 7 Rule 11 CPC, all the issues can be left open, since the right of the appellants to contest the injunction application on merit will be prejudiced.

4.Learned senior counsel appearing for the respondents would submit that inasmuch as the learned single Judge has considered the matter after hearing the parties, no interference is required.

5.The contentions sought to be raised would not come within the purview of Order 7 Rule 11 CPC. The exercise of power under Order 7 Rule 11 CPC would arise only on four contingencies as mentioned thereunder. In this case, the suit is filed not only for infringement but also for passing off. Therefore, the merits cannot be gone into at this stage. Further more, Clauses (b) and (c) of Order 7 Rule 11 CPC are not applicable to the Original Side of this Court.

6.In such view of the matter, we are not inclined to entertain this appeal. However, all the issues, both on facts

and on law, are left open to the parties to be agitated in the pending application, in which the order of injunction has already been operating against the appellants. Accordingly, the Original Side Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mmi
To

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

+1cc to Mr.G.K.Muthukumaar, Advocate, S.R.No.7338

+1cc to Mr.T.Sundaranathan, Advocate, S.R.No.8559

O.S.A.No.471 of 2018

PA(CO)
GSP(21/02/2019)



WEB COPY