

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.01.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.694 of 2018  
and O.A.Nos.933, 934 and 938 of 2018  
and A.No.7810 of 2018

1.Mr.P.C.Duraisamy  
trading as Sakthi Trading Company  
No.6, Mamarathupalayam  
Erode - 638 004.

2.M/s.Sakthi Masala (P) Ltd.  
No.6, Mamarathupalayam  
Erode: 638 004  
Rep. by its Managing Director  
Mr.P.C.Duraisamy.

.. Plaintiffs

Vs.

M/s.Ajay Agencies  
No.24/28, Ganapathy Nagar 2<sup>nd</sup> Street  
Ekkattuthangal  
Chennai - 600 032.

.. Defendant

This Civil Suit is preferred, under Order IV Rule - 1 of Original Side Rules read with Order VII Rule 1 of CPC along with Sections 27, 28 and 29, 134 and 135 of the Trade Marks Act and Sections 51, 55 and 62 of the Copy Right Act, 1957 Praying for

a) Granting a permanent injunction restraining the Defendant by itself, its servant, agents or any one claiming though it from in any manner

infringing the 1<sup>st</sup> plaintiff's registered Trade Marks SAKTHI AND SAKTHI logo, details of which are more fully given in *Schedule A* hereunder, by using the identical and offending Trade Mark DEEPA SAKTHI or any other mark or marks which are in anyway identical, deceptively similar to or a colorable imitation of the plaintiffs' registered Trade Mark SAKTHI, either by manufacturing or selling or offering for sale or in any manner advertising the same;

b. Granting a permanent injunction restraining the Defendant by itself, its men, servant, agents or any one claiming through it from in any manner infringing the 1<sup>st</sup> plaintiff's Copyright in the artistic work SAKTHI logo, along with the unique and distinctive colour scheme, more fully specified contained in *Schedule B* hereunder, by using impugned artistic work DEEPA SAKTHI containing identical colour scheme, get up, layout or any other artistic work, which has an overall similarity to and is a colourable imitation of the plaintiff's SAKTHI logo, either by manufacturing or selling or offering for sale or in any manner advertising the same;

c. Granting a permanent injunction restraining the Defendant by itself, its servant, agents or any one claiming through it from in any manner passing off its products under the offending Trade Mark DEEPA SAKTHI as and for the Plaintiffs' products manufactured and marketed under the Mark SAKTHI and SAKTHI logo and/or in any other manner whatsoever;

d. Directing the Defendant to render a true and faithful account of the profits earned by them through the sale of its products, including the products bearing the offending Trade Mark DEEPA SAKTHI and direct payment of such profits to the plaintiffs for the acts of infringement and passing off committed by the Defendant;

e. Directing the defendant to surrender to the plaintiffs the entire stock of unused offending labels bearing the offending Trade Mark and artistic work DEEPA SAKTHI along with the blocks and dyes for destruction;

f. Directing the Defendant to pay to the Plaintiffs the cost of the suit; and

g) pass such further order or orders as may be deemed fit and proper to the circumstances of the case.

For Plaintiffs : Mr.S.Diwakar

For Defendant : Mr.B.Karthick

### JUDGMENT

There are two plaintiffs and a lone defendant in this suit.

2. This suit is listed under the caption 'REPORTING SETTLEMENT AND MEMORANDUM OF COMPROMISE' today.

3. Mr.S.Diwakar, learned counsel of M/s.Factum Law [Law Firm] on behalf of plaintiffs and Mr.B.Karthik, learned counsel on record for sole defendant are before this Commercial Division.

4. Both learned counsel submit that parties to the lis have settled the suit amicably amongst themselves and have reduced the same to a

'Memorandum of Compromise dated 20.01.2019 (hereinafter referred to as 'said MOC' for the sake of brevity and clarity).

5. On behalf of plaintiffs, learned counsel submits that there is some difficulty for Mr.P.C.Duraisamy, (who had signed and verified the plaint as also the said MOC) in being present before this Commercial Division for recording said MOC. It is submitted that he is unable to travel. Learned counsel has filed a memo dated 25.01.2019 to that effect, which reads as follows:

*'The plaintiffs humbly submit as follows:*

*1. That the plaintiffs herein have entered into an amicable settlement with the defendant above named, whereby the defendant upon certain terms and conditions morefully mentioned in the Joint Memo of Compromise dated 20th January 2019, agreed to submit themselves to an order of permanent injunction from using the trademark DEEPA SAKTHI or the DEEPA SAKTHI logo in respect of their products. I crave leave of this Hon'ble Court to refer to and rely upon the Joint Memo of Compromise filed by both plaintiff and defendants in C.S.No.694 of 2018 dated 20th January 2019 for full and better appreciation of the terms of settlement and the same may be read as part and parcel of this application.*

*2. That the signatory of the memo of compromise on behalf of the plaintiffs, i.e. Mr.P.C.Duraisamy, is himself the 1st plaintiff and also the Managing Director of the 2nd plaintiff to the suit. Owing to business exigencies, the said Mr.P.C.Duraisamy is unable to travel out of Erode and*

*consequently, is unable to be personally present during the presentation of the Joint Memo of Compromise in order to confirm the terms agreed thereunder.*

*3. It is therefore, prayed that this Hon'ble Court may be pleased to dispense with the presence of Mr.P.C.Duraisamy at the time presentation of the Joint Memo of Compromise dated 20th January 2019, entered into between plaintiffs and the defendant in C.S.No.694 of 2018 and thereby render justice.'*

The above said memo is self-explanatory.

6. It is not in dispute that said MOC was signed by parties to the proceedings in the presence of one another and therefore, the prayer for dispensing with the presence of Mr.P.C.Duraisamy for recording said MOC is acceded to.

7. With regard to defendant, Mr.B.Karthik, learned counsel on record submits that 'Ajay Agencies' is a proprietary concern and Mr.Raj, son of Mr.Nagarajan, residing at No.34/64, Bharathidasan East Street, Saidapet, Chennai, Tamil Nadu is carrying on business as a sole Proprietor in the name and style 'Ajay Agencies'. Mr.Raj is present before this Commercial Division.

8. Mr.Raj confirms that he has understood the terms of said MOC and has signed the same after understanding the contents of the same.

9. Both learned counsel (defendant's counsel on instructions from the defendant, who is present in Court) make a common joint request that this main suit itself may please be disposed of by passing a compromise decree in terms of said MOC.

10. This common joint request is acceded to.

11. To be noted, terms of said MOC read as follows:

1. *The above mentioned suit was filed by the Plaintiffs seeking reliefs of permanent injunction against the defendant for its act of infringement of trademark, infringement of copyright and passing off in view of use of the trademark **DEEPA SAKTHI** and its artistic features identical to the plaintiffs' prior adopted, celebrated, well known and registered trademark **SAKTHI** and **SAKTHI** logo and for other consequential reliefs:*
2. *Pending disposal of the said suit, both Plaintiffs and the Defendant thought it fit to amicably settle the dispute and in view of the same, both the parties to the suit are submitting to this Memorandum of Compromise on such terms and conditions as mentioned herein below.*
3. *The Defendant agrees and acknowledges the 1st Plaintiff holds the exclusive proprietorship and absolute monopolistic rights over the trademark "**SAKTHI**", "**SAKTHI** log" and the copyright in artistic work "**SAKTHI** logo" (graphic representation of which is given below) both in view of statutory registrations and also through long and continuous*

use thereof in the market:



4. In view of the same, the Defendant has assured the Plaintiffs that

i. The Defendant shall forthwith cease to use and shall not manufacture or market their products under the mark **DEEPA SAKTHI** or any mark deceptively similar, either phonetically, visually or structurally thereto, in any manner whatsoever to the plaintiffs' trademark **SAKTHI** and **SAKTHI logo** or the artistic work **SAKTHI logo**; and

ii. Consequently, the Defendant agrees to bind itself to a decree of permanent injunction in terms of prayers 26(a), 26(b) and 26(c) of the plaint in C.S.No.694 of 2018, respectively for permanent injunction against acts of infringement of trademark, infringement of copyright and passing off;

5. Subject to the above, the plaintiffs agree to give up other reliefs found in prayers 26(d), 26(e) and 26(f), respectively for accounts of profits, surrender of infringing goods for destruction, and costs.

6. Parties to this memorandum further agree that they shall bear respective costs.

7. The Plaintiffs and the Defendant pray that the above suit may be decreed in terms of the above compromise.

Dated at Chennai on this the 20<sup>th</sup> day of January, 2019.

Sd/-  
1<sup>st</sup> plaintiff

Sd/-  
2<sup>nd</sup> plaintiff

sd/-  
Defendant

Sd/-

Sd/-

*Counsel for Plaintiffs*

*Counsel for Defendant.'*

12. There shall be a decree in terms of said MOC.

13. Said MOC, memo filed on behalf of plaintiffs as well as photo copy of photo identity card of the defendant (self attested) shall all form part of the compromise decree.

14. Suit is decreed on above terms. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.



25.01.2019

Speaking Order/Non-Speaking Order

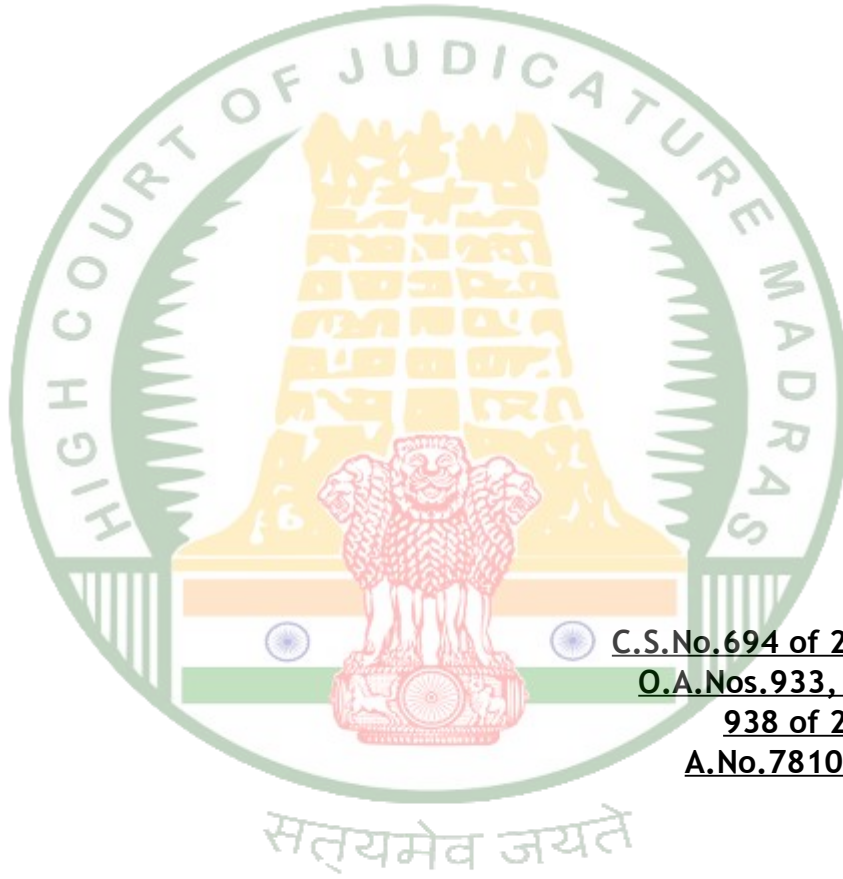
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M. SUNDAR, J.

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