

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	05.11.2020
Pronounced On	11.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

O.S.A.No.181 of 2020
and
C.M.P.No.9258 of 2020
(Through Video Conferencing)

1. Priya Krishnakumar,
Proprietor, UDAYA MASALA,
216/A2, Senguttaipalayam,
Negamam Road, Pollachi - 642 120,
Coimbatore District.
 2. Krishnakumar,
Proprietor, SRI KRISHNA SPICES,
216/A2, Senguttaipalayam,
Negamam Road, Pollachi - 642 120,
Coimbatore District.
- Appellants

.Vs.

1. S.Sudhakar
 2. Shri Lakshmi Agro Foods Pvt. Ltd.,
No.9, N.N.Garden,
10th Street, Chennai - 600 021.
Rep. by its Managing Director,
Mr.S.Sudhakar.
- ... Respondents

Original Side Appeal filed under Order XXXVI Rule 9 of the O.S.Rules read with Clause 15 of the Letters Patent, to set aside the order dated 17.12.2019 passed by the learned Single Judge in A.No.9557 of 2019 in C.S.No.324 of 2017 on the file of this Court.

For Appellants : M/s.A.K.Mylsamy and Associates
For Respondents: Mr.Harshavardhan

J U D G M E N T

C.SARAVANAN, J.

The defendants are the appellants in this appeal. They are aggrieved by the impugned Judgment dated 17.12.2019 passed by the learned Single Judge of this Court in A.No.9557 of 2019 in C.S.No.324 of 2017.

2. The learned Single Judge has dismissed the application filed by the appellants herein under Order XIV Rule 8 of Madras High Court, Original Side Rules, 1956 read with Order 8 Rule 1 (a) (3) of C.P.C., to permit/allow the appellants/defendants to mark certain additional documents. The learned Single Judge has dismissed the said application with the following observations:-

11. The dispute under consideration is whether the registered Trademark of the plaintiffs namely "UDHAIYAM", logo/artistic work of sunrays is infringed by the defendants by using the name "UDHAYA MASALA" for their product. Touching upon the controverted facts, issues have been framed, trial has commenced. The plaintiffs who have instituted the suit, has completed his side of examining witnesses and marking documents. At this stage, the defendants have taken out this application to introduce the documents which are not related to the pleadings as found in their written statement.

Order VIII Rule 2 of C.P.C. Reads as below:-

2. New facts must be specially pleaded:-

The defendant must raise by his pleading all matters which show the suit not be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

12. In this application, a new facts through these additional documents are attempted to be introduced, without amendment to the written statement. Even otherwise the facts which are now sought to be introduced are events subsequent to the filing of the suit. This does not takeaway the cause

of action which was available for the plaintiffs at the time of instituting the suit. Further, as per Order VIII Rule 1 (A) (3) of C.P.C., the documents which ought to be produced in the Court by the defendants under this Rule if not so produce, shall not without leave of the Court be received in evidence on his behalf. This situation will arise only if the documents co-relates with the pleadings available.

13. As a result, this application deserves to be dismissed for introducing a new facts through the documents without pleadings and the pleadings cannot be now amended or altered in the midst of examining the witnesses for the defendants, quite contrary what has already been pleaded. Hence, the Application is dismissed with cost of Rs.10,000/- payable to the plaintiffs.

3. In this appeal, the appellants submit that three documents which they sought to mark as Additional documents will prove that the respondents/plaintiffs have stopped using the trademark and that they have adopted a totally different trademark. It is further submitted that the documents which the appellants wants to mark were not available at the time of filing of the written statement or at the time of examination of the respondent's/plaintiff's witness and therefore, the Court erred in rejecting the prayer of the appellants/defendants to mark these additional documents under Order XIV Rule 8 of Madras High Court, Original Side Rules, 1956 read with Order 8 Rule 1 (a) (3) of C.P.C.

4. The learned counsel for the appellants/defendants submits that these documents will establish that the respondents/plaintiffs has no case in the suit filed for injunction to restrain the appellants/defendants from using the trademark "UDAYA MASALA".

5. Per contra, the learned counsel for the respondents/plaintiffs submits that the issue is squarely covered by the decision of this Court in M/s.Magic Frames and Others Vs. M/s.Radiance Media Pvt. Ltd., 2019 (4) CTC 497. It is therefore submitted that no intra-court appeal is maintainable against an interlocutory order passed by the Commercial Division of this Court. The said decision was authorised by one of us (The Hon'ble Mr.Justice R.Subbiah). The Court there noted Section 13(2) of the Commercial Courts Act, 2015 and held that "the appeal is not maintainable when there is a clear bar under Section 13(2) of the Commercial Courts Act".

6. The said decision of the Division Bench of this Court is sought to be distinguished by the learned counsel for the appellants/defendants that the rejection of the application to mark additional documents vide the impugned order has finally determined the issue between the appellants/defendants and the respondents/plaintiffs and therefore, the present appeal filed by the appellants/defendants under Order XLIII of CPC read with Order XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent is maintainable.

7. We have given our anxious consideration to the facts and the circumstances of the case. The impugned Judgment passed by the learned Single Judge has not determined the issue finally between the parties as the suit in C.S.No.324 of 2017 is still pending trial as on the date of this appeal before the Commercial Division of this Court. The facts indicate that the application for registration of trademark "UDAYA MASALA" under Class 30 of Trade Marks Act, 1999 came to be filed on 16.10.2012 vide T.M.A.No.2412375 by the appellants/defendants before the Trade Mark Registry.

8. The trademark came to be registered subsequently on 05.05.2018. Those are facts which are before filing of the written statement. It was incumbent on their part to specify the details of the Trade Mark Application in their written statement by reserving their rights to produce the registration certificate as and when it is issued to them.

9. In their written statement, the appellants/defendants ought to have made appropriate averments regarding the same to demonstrate their case. Strangely, the appellants/defendants also did not disclose the details of filing of Trade Mark Application in their written statement.

10. The appellants/defendants ought to have taken steps to amend their written statement before trial commenced. As a consequences of the same, they should have simultaneously filed application for marking additional documents before the trial commenced. However, they have not taken such steps. Therefore, the impugned order of the learned Single Judge is well reasoned and requires no interference. Even otherwise, the present appeal is clearly barred in law in view of the decision of this Court in M/s.Magic Frames case referred to supra.

11. In any event, Registration Certificate granted by the Trade Mark Registry is a public document within the meaning of Section 76 of Indian Evidence Act, 1872. The Hon'ble Supreme Court in Madamanchi Ramappa and Another Vs. Muthaluru Bojjappa, AIR 1963 SC 1633, held that certified copies of public documents are admissible in evidence without they being proved by calling

witnesses. Therefore, it can be produced before the Commercial Division of this Court. The Trade Marks Act, 1999 itself provides for protection to the proprietor of a registered trademark in case where infringement is alleged.

12. In view of the above observations, we find no merits in this appeal. Therefore, we are inclined to dismiss this appeal while giving liberty to the appellants/defendants to workout their remedy before the Commercial Division of this Court in accordance with law.

13. Accordingly, this Original Side Appeal is dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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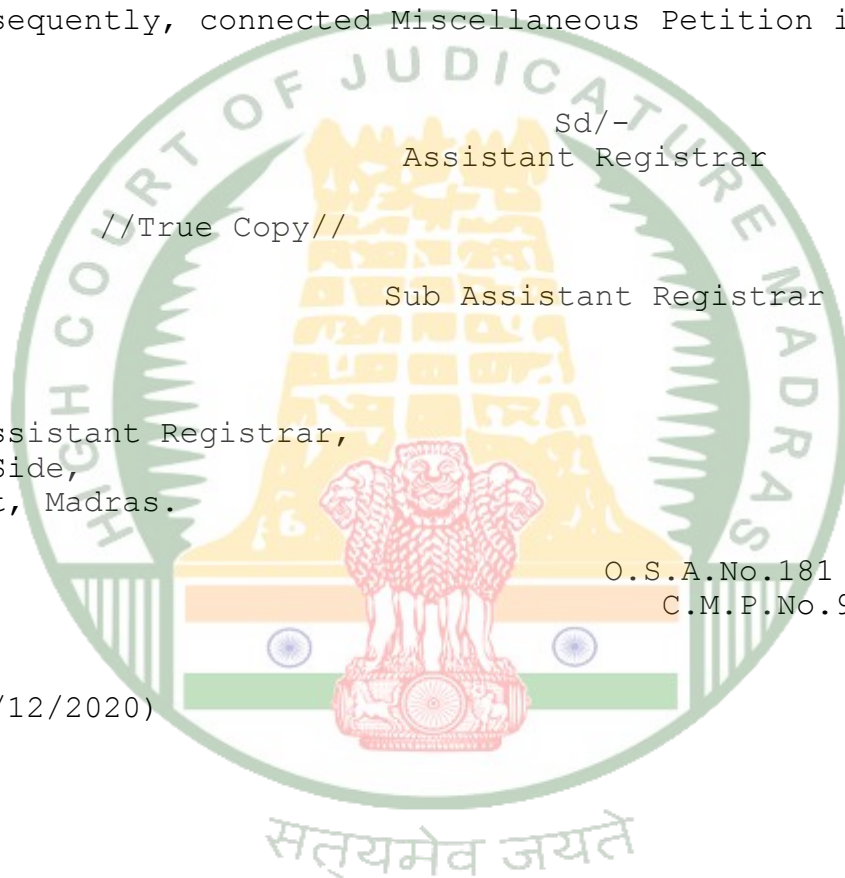
Sub Assistant Registrar

To

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

O.S.A.No.181 of 2020 and
C.M.P.No.9258 of 2020

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