

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

Reserved on	16.03.2020
Pronounced on	27.05.2020

THE HONOURABLE MR.JUSTICE M.S.RAMESH

CS.No.510 of 2012

M/s. Gemini Circus
167-E, Poonawadi,
Dr. Ambedkar Road,
Dadar T.T., Mumbai-400 014
rep. by its Partner Ajay Shankar
S/o. M.V.Shankaran

... Plaintiff

Vs.

M/s. Great Gemini Circus,
MG 2/20, KDA Colony,
Jajmau,
Kanpur-208 001,
Uttar Pradesh
rep. by Mr.Fakruddhin Khan

... Defendant

Prayer:- This Civil Suit is filed under Order IV Rule 1 of O.S. Rules read with Order VII Rule 1 of CPC and read with Sections 27, 28, 29, 134 and 135 of the Trade Marks Act, 1999 praying for i) a perpetual injunction restraining the defendant by themselves or their proprietors, partners, directors, men, servants, agents, franchises, successors in interest, licensees, assignees, representatives or any of them from in any manner infringing the plaintiff's registered Trademark "Gemini Circus" by use of the trademark "Great Gemini Circus" or any mark deceptively similar to that of the plaintiff's registered trademark or by use of identical or deceptively similar trading style or in any other manner whatsoever; a perpetual injunction restraining the defendant by themselves or their proprietors, partners, directors, men, servants, agents, franchises, successors in interest, licensees, assignees, representatives or any of them from in any manner passing off or enabling passing off of the

defendant's circus shows with the mark "Great Gemini Circus" as that of the plaintiff's registered trademark or any other deceptively similar trademark as that of the plaintiff's or in any other manner whatsoever; the defendant be ordered to surrender to plaintiff for destruction all name boards, menu cards, advertisement materials, visiting cards, letterheads, printer bills, show tickets and other materials bearing the trademark "Great Gemini Circus" or any other deceptively similar to that of the plaintiff's registered trademark and artistic work "Gemini Circus"; the defendant be ordered to prepare and submit an account of profits made by them by the unlawful use of the registered trade mark of the plaintiff and thereafter to pass a final decree upon ascertaining the accounts, in favour of the plaintiff and against the defendant; and for the costs of the suit.

For Plaintiff : Mr.K.Rajasekaran
For Defendant : Set Ex-parte

J U D G M E N T

Heard the learned counsel for the plaintiff. The sole defendant was set ex-parte by an order dated 25.09.2019. The plaintiff had examined himself as P.W.1 and accordingly, the ex-parte evidence was recorded.

2. The suit has been instituted seeking perpetual injunction restraining the defendant from any manner infringing plaintiff's registered Trademark "Gemini Circus" by use of the mark of "Great Gemini Circus" or any other mark that may be deceptively similar to that of the plaintiff's trademark, as well as for passing off, together with consequential reliefs for destruction of all the materials bearing

the mark "Great Gemini Circus" and for rendering of accounts of profits deserved by unlawful use of the plaintiff's registered trademark.

3. The case of the plaintiff is that the father of the partners of the plaintiff's firm namely, M.V.Shankaran had promoted Gemini Circus in the year 1951. The partnership of Mr.M.V.Shankaran underwent reconstitution on 30.03.1987 and thereafter, the firm was managed by Mr.M.V.Shankaran on his own. From 1999, Mr.Prem Kumar took over and managed the Circus till 2005 and from 05.04.2005, the sons of Mr.M.V.Shankaran namely, Ajay Shankar and Ashok Shankar were inducted into the partnership. After the retirement of Prem Kumar on 30.05.2008, the partnership firm of Gemini Circus is continued by Ajay Shankar and Ashok Shankar.

4. The trademark and the trading style of Gemini Circus came to be registered before the Registrar of Trademarks in the name of the then Proprietor Mr.Prem Kumar. After the retirement of Mr.Prem Kumar, the names of Ajay Shankar and Ashok Shankar came to be incorporated in the Certificate of Registration in the year 2011. It is the case of the plaintiff that the trademark Gemini Circus has been in consistent and uninterrupted use from 1951.

5. The defendant herein has been imitating circus shows in various parts of Uttar Pradesh and other States under the imitative trademark "Great Gemini Circus". The plaintiff had issued a cease and desist notice dated 30.09.2011 to the defendant and compliance of the demand was refused in their reply dated 14.10.2011. Hence, the present suit.

6. The plaintiff has marked Exs.P1 to P7, which are the assessment orders evidencing Mr.M.V.Shankaran to be a partner in Gemini Circus. Exs.P8 to P10, which are government communications, also ratifies the involvement of Mr.M.V.Shankaran in Gemini Circus. Ex.P11 and Ex.P12 is the Retirement Deed and Reconstitution Deed of two of the partners and the continuance of Mr.M.V.Shankaran as partner of "Gemini Circus". Ex.P13 is the Dissolution Deed of the partnership of the Gemini Circus. The income tax returns/assessment for the assessment years 1989-1990, 1990-1991 and 1992-1993 have been marked as Ex.P16, Ex.P17 & Ex.P20, which discloses that Mr.M.V.Shankaran to be the Proprietor of Gemini Circus. Ex.P32 is the Certificate of Registration of the trademark "Gemini Circus" under No.1271745 in Clause 41 dated 09.03.2004 and the Trademark Journal Publication of plaintiff dated

17.01.2005 has been marked as Ex.P33. Ex.P39 is also the certificate copy of the registered trademark dated 26.02.2009. The income tax returns of Gemini Circus between assessment years 2008 to 2012 has been marked as Exs.P37, P38, P40 and P41. Ex.P21 to P31 are various documents evidencing Gemini Circus was actively conducting shows.

7. A perusal of all the aforesaid exhibits clearly establishes that Mr.M.V.Shankaran had promoted the firm Gemini Circus and was actively involved in the business between 1951 to 1999. Thereafter, Mr.Prem Kumar had took over the reins of Gemini Circus and managed it till 2005. The sons of Mr.M.V.Shankaran, namely, Mr.Ajay Shankar and Mr.Ashok Shankar, were inducted into the partnership with effect from 05.04.2005 onwards. The trademark "Gemini Circus", which has been established of being in consistent and uninterrupted usage since 1951, has also been validly registered on 09.03.2004 and 26.02.2009. As such, the partners of the plaintiff's firm are deemed to be the Proprietors of the Trademark "Gemini Circus" and have the exclusive right to the use of the trademark in relation to its services.

8. When the plaintiff had issued the Cease and Desist notice on

30.09.2011, which has been marked as Ex.P42, the defendant had replied on 14.10.2011, denying that they had infringed the plaintiff's trademark and had also stated that the term "Great Gemini Circus" is different from "Gemini Circus" and that "Great Gemini Circus" is the trademark of the defendant registered before the Registrar of Firms at Kanpur, Uttar Pradesh and that there is no further particular in the reply notice with regard to the alleged registration of "Great Gemini Circus".

9. Ex.P45 is the 55th year Souvenir of Gemini Circus. The plaintiff have also produced a copy of the defendant's posters of Great Gemini Circus, which has been marked as Ex.P46. A perusal of Ex.P46 shows that the words "Gemini Circus" has been highlighted in bold letters, which is similar to the trademark of the plaintiff and the word "Great" in Ex.P46 is significantly small, so as to deceptively make it identical to the plaintiff's trademark of "Gemini Circus".

10. Mr.Shaji Lal, who is the authorised signatory of the plaintiff's firm Gemini Circus, had examined himself as P.W.1 and in his evidence, he had reiterated that Mr.M.V.Shankaran had promoted the firm Gemini Circus from 1951 which was later taken over by Prem Kumar from 1999 and Mr.Ajay Shankar and Mr.Ashok Shankar were

inducted as partners of Gemini Circus from 05.04.2005. After Mr.Prem Kumar had retired, the partnership of Gemini Circus was continued by Ajay Shankar and Ashok Shankar till date. He had also deposed that the trademark Gemini Circus was registered through Ex.P32 and Ex.P39 and the defendants have infringed the plaintiff's registered trademark through their mark of "Great Gemini Circus" which is deceptively similar to the plaintiff's registered trademark.

11. On a perusal of the documents produced by the plaintiff as well as the statement of P.W.1, this Court is of the affirmed view that the defendant had infringed the plaintiff's registered trademark and passing off and have been continuing to commit such acts of infringement. Having thus established, the plaintiff would be entitled for the relief claim sought for by them in the present suit. Accordingly, the Civil Suit stands decreed as prayed for, together with costs.

Index:Yes/No
Web:Yes/No
Order:Speaking/Non Speaking

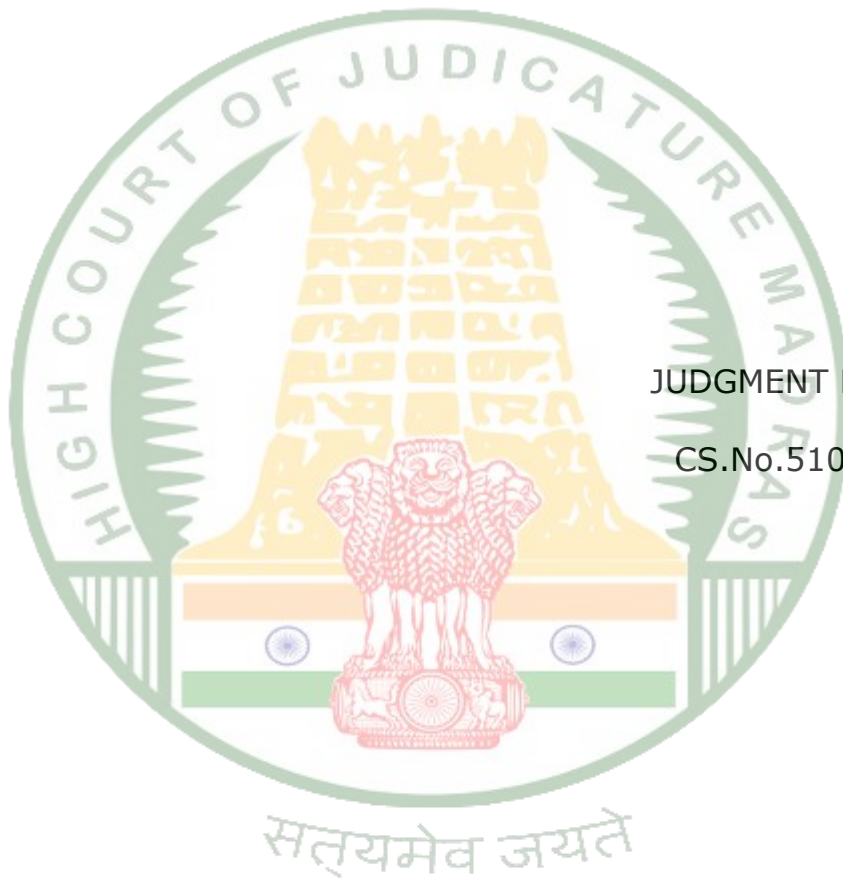
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