

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.02.2020

PRONOUNCED ON : 18.02.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Civil Suit No.304 of 2019

M/s.Thalappakatti Naidu Anandha Vilas
Biriyani Hotel,
represented by its Partner,
D.Nagasamy,
Having its branch office
at Flat No.B3,
New No.17, Old No.18A,
11th Street, Nandanam Extension,
Chennai – 600 035.

...

Plaintiff

Vs

Mohamed Ashraf Thalappakatti Biriyani
No.40/27, Radha Nagar Main Road,
Radha Nagar, Chrompet,
Chennai – 600 044.

...

Defendant

Prayer:- This Civil Suit is filed under Order VII Rule 1 of C.P.C., r/w Order IV Rule 1 of High Court Original Side Rules and Section 134 and Section 135 of the Trade Marks Act, 1999, for the following reliefs:-

"a.Granted a permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner infringing the

plaintiff trade mark and trading style "Thalappakatti Biriyani Hotel" by using the offending Trade Mark and Trading style "THALAPPAKATTI" or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiff's trade mark "Thalappakatti Biriyani Hotel.

b)Granting a permanent injunction restraining the defendant , their men, servants, agents or anyone claiming through or under them from in any manner passing off the plaintiff Trade Mark and Trading style "Thalappakatti Biriyani hotel" by using the offending Trade Mark and trading style "THALAPPAKATTI" or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiff's Trade Mark "Thalappakatti Biriyani hotel".

c)Directing the defendant to render a true and faithful account of the profits earned by them through the same of food products bearing the offending trade mark "THALAPPAKATTI" and directing the payment of such profits to the plaintiff by way of damages for infringement committed by the defendant.

d)Directing the defendant to surrender to plaintiff the entire stock of unused offending goods with Trade Mark "THALAPPAKATTI" with name boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisements, materials, reports, envelops, brochures, printing blocks, etc., bearing the offending Trade mark for destruction.

e)Directing to the defendant to pay the plaintiff the costs of the suit and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

For Plaintiff

:Mr.Vijayan Subramanian

For Defendant

:Set Exparte

JUDGMENT

The suit is filed under Trade Marks Act seeking injunction restraining the defendant from infringement of the plaintiff's trade mark and trading style "Thalappakatti Biriyani Hotel" and also injunction restraining the defendant from in any manner passing off the plaintiff's trade mark and trade style and other consequential relief.

2.As per the plaint, one P.Nagasamy Naidu, the grand father of the plaintiff commenced hotel business particularly, in preparation and serving of Biriyani at Dindigul Town. The said P.Nagasamy Naidu, sported a Thalappa (head gear) and was referred to as Thalappakatti Naidu and the hotel by reference to his pet name, is being named as "Thalappakatti Naidu Anandha Vilas Biriyani Hotel".

3.The business has acquired enormous popularity for the extraordinary quality and uique flavour and taste particularly, in preparation of Biriyani by the

name THANAPPAKATTI NAIDU BIRIYANI HOTEL. After the demise of P.Nagasamy Naidu, in the year 1978, his son N.Dhanapalan continued the popular name "Thalappakatti Biriyan" with the picture of late P.Nagasamy Naidu with turban and continued the business. The food preparations made and served in "Thalappakatti Naidu Biriyan Hotel" has acquired enormous popularity through out Tamil Nadu and other states by virtue of extensive tourist flow through the Dindigul Town which is the transit point for Kodaikanal hill and temple town Madurai. The trade mark and name has acquired special and unique status and the business has been extended to other cities in Tamil Nadu. It has acquired the secondary meaning to denote and connote the product of the plaintiff which assures the public, the unique taste and standard in the food preparation. Several news items and few movies have referred about the plaintiff's trade mark and name "Thalappakatti Biriyan Hotel".

4. Whenever any unscrupulous traders wanted to take any illegal advantage and enrich themselves on the popularity and reputation of the plaintiff by resorting to adopt the said trademark and trading style "Thalappakatti" or "Thalapakattu" for their hotels and restaurant business, the plaintiff has vigilantly oppose and protect its trade name and style "Thalappakatti Biriyan".

5. This Court, earlier in C.S.No.203 of 2007 vide order dated 07.11.2007, has found that the plaintiff being the prior user of the name "Thalappakatti

Biriyani” and been using it atleast from the year 1989, although there are overwhelming record to show that the plaintiff and its predecessors have been using the same from 1957, this Court held that the plaintiff has proved that they have declared good will and reputation on the basis of the adoption of the said name associated with the goods and services and that the adoption of the same name and trading style by the defendant is restrained. Following this, the plaintiff has filed nearly 34 suits against the persons who have infringed the name of “Thalappakatti” or the photographs of the man with 'head gear' deceptively similar to that of the plaintiff's trade mark.

6.The Deputy Registrar of Trade Marks, Government of India, Chennai, vide its order dated 22.09.2010, has declared the plaintiff's trade mark as a well known trade mark. While so, the defendant has commenced business adopting identical or deceptively similar trade mark and trading style “Thalappakatti” in respect of their hotel business. They have adopted the plaintiff's trade mark “Thalappakatti” to deceive the general public. Hence, the present suit for the following prayer:-

"a. Granting a permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner infringing the plaintiff trade mark and trading style "Thalappakatti Biriyani Hotel" by using the offending Trade Mark and Trading style "THALAPPAKATTI" or any other mark or

marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiff's trade mark "Thalappakatti Biriyani Hotel."

b)Granting a permanent injunction restraining the defendant , their men, servants, agents or anyone claiming through or under them from in any manner passing off the plaintiff Trade Mark and Trading style "Thalappakatti Biriyani hotel" by using the offending Trade Mark and trading style "THALAPPAKATTI" or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiff's Trade Mark "Thalappakatti Biriyani hotel".

c)Directing the defendant to render a true and faithful account of the profits earned by them through the same of food products bearing the offending trade mark "THALAPPAKATTI" and directing the payment of such profits to the plaintiff by way of damages for infringement committed by the defendant.

d)Directing the defendant to surrender to plaintiff the entire stock of unused offending goods with Trade Mark "THALAPPAKATTI" with name boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisements, materials, reports, envelops, brochures, printing blocks, etc., bearing the offending Trade mark for destruction.

e)Directing to the defendant to pay the plaintiff the costs of the suit and pass such further or other orders as this Hon'ble

Court may deem fit and proper in the circumstances of the case and thus render justice."

7. In the present case, as per the direction of this Court, the suit summons was sent to the defendant privately by the plaintiff and the same was received by the defendant on 11.11.2019. The plaintiff has filed an Affidavit of Service (AOS) stating that summons had been served on the defendant on 11.11.2019 and in support of his submissions, he has annexed the tracking receipt of the Postal Department for confirmation of delivery. Based on this affidavit, this Court has called the defendant absent and set exparte. Exparte evidence was recorded by the Additional Master – I.

8. The Manager – Admin was examined as P.W.1. 28 exhibits were marked on behalf of the plaintiff. Ex.P.1 is the order passed by this Court in O.A.Nos.298 & 299 of 2017 in C.S.No.203 of 2007 dated 07.11.2007 wherein, a learned single Judge of this Court held the plaintiff is the prior user of the trade name "Thalappakatti Biryani" since 1989. Exs.P.2, P.3, P.7 to P.11 are the informations received from the concerned authorities regarding various aspects under their jurisdiction carrying on hotel business using the name "Thalappakatti" to show that the plaintiff's trade mark has been exploited and infringed by unscrupulous traders. The plaintiff has relied upon the orders of the Hon'ble Supreme Court as well this Court and also the orders passed by the Intellectual

Property Appellate Board in respect of plaintiff's exclusive claim over the trade mark and trade name "Thalappakatti Biriyani Hotel". These judgments and orders indicates that the plaintiff's trade mark and logo are unique and is exclusively owned by the plaintiff. Ex.P.2 is the photocopy of the registration certificate issued by the Government of India under class 43 for the word "Thalappakatti" in favour of the plaintiff. This certificate is in effect from 27.06.2010. Ex.P.27 is the name board of the defendant reads as "Mohamed Ashraf Thalappakatti Biriyani" (in Tamil). The plaintiff has obtained Legal Usage Certificate from the Government of India and the same is marked as Ex.P.25.

9.From these documents, the right of the plaintiff to exclusively use the name "Thalappakatti Biriyani" is well found. Its right has already been tested on various occasions before various forum and confirmed in favour of the plaintiff. The name board of the defendant using the word "Thalappakatti Biriyani" along with "Mohamed Ashraf" indicates the intention to deceive the common public and pass off the defendant's product as that of the plaintiff. Therefore, this Court finds that the plaintiff has proved its case and entitled for the relief sought for. Accordingly, the suit is decreed as prayed for with costs.

18.02.2020

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Index: Yes/No

Speaking order/non speaking order

List of witnesses examined on the side of the plaintiff :-

Mr.V.Kamesh (P.W.1)

List of witness examined on the side of the defendant :-

Nil

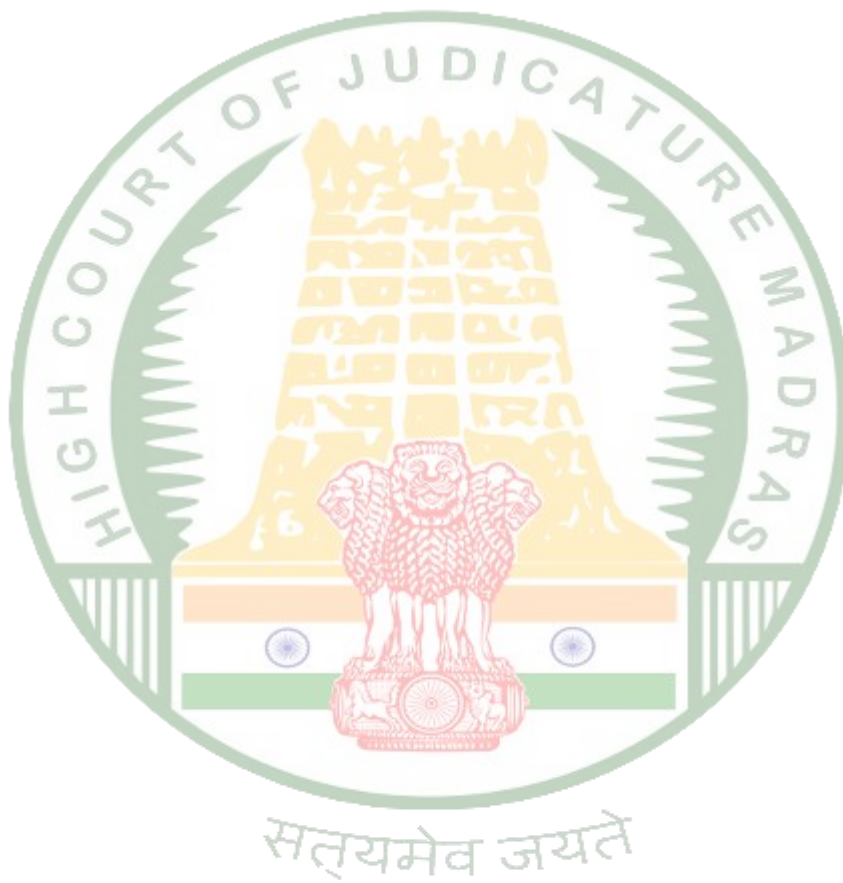
List of exhibits marked on the side of the plaintiff :-

Sl.No.	Exhibits	PW.1
1.	Ex.P.1	Xerox Copy of the order in O.A.Nos.298 & 299 of 2007 in C.S.No.203/2007, dated 07.11.2007.
2.	Ex.P.2	Xerox Copy of the Information furnished under RTI Act dated 02.01.2008.
3.	Ex.P.3	Xerox Copy of the letter from V.K.Pandiyar to Plaintiff Advocate (with clean copy) dated 03.10.2008.
4.	Ex.P.4	Xerox Copy of the Letter from "Arcad Thalappakattu Biriyan" owner dated 13.10.2008.
5.	Ex.P.5	Xerox Copy of the letter & Photographs showing the name changed as "Jum Jum Biriyan" dated 30.10.2008.
6.	Ex.P.6	Xerox Copy of the order in O.S.A.Nos.223 and 224 of 2008 dated 19.11.2008.
7.	Ex.P.7	Xerox Copy of the Information under RTI Act given by Health Officer & Public Information Officer, Corporation of Chennai dated 21.11.2008.
8.	Ex.P.8	Xerox Copy of the Information under RTI Act given by Labour Inspector dated 25.11.2008.
9.	Ex.P.9	Xerox Copy of the Information under RTI Act given by Labour Inspector dated 30.11.2008.
10.	Ex.P.10	Xerox Copy of the Information under RTI Act containing names of the Principal Employer of Defendant dated 08.12.2008.
11.	Ex.P.11	Xerox Copy of the Information furnished under RTI Act containing list of Hotel/Business/Persons in the name style "Thalapakattu Biriyan Centre" in Chennai City dated 16.12.2008.
12.	Ex.P.12	Xerox copy of the order Directing registration of Trademark of Plaintiff dated 22.09.2010.

Sl.No.	Exhibits	PW.1
13.	Ex.P.13	Xerox copy of the Trademark Registration Certificate of Applicant dated 23.09.2010.
14.	Ex.P.14	Xerox copy of the Common order in O.A.Nos.48 & 49 of 2011 in C.S.No.32 of 2011 dated 23.06.2011.
15.	Ex.P.15	Xerox copy of the Common order in O.S.A.Nos.199 to 201 of 2011 dated 01.08.2011.
16.	Ex.P.16	Xerox Copy of the order passed by Supreme Court in I.A.Nos.7 to 9 of 2012 in S.L.P.Nos.23604 to 23606 of 2011 dated 11.05.2012.
17.	Ex.P.17	Xerox Copy of the order passed by Supreme Court in I.A.Nos.7 to 9 of 2012 in S.L.P.Nos.23604 to 23606 of 2011 dated 04.04.2013.
18.	Ex.P.18	Xerox copy of the order passed by IPAB in O.A.No.13 of 2011 and O.A.No.58 of 2010 dated 05.04.2013.
19.	Ex.P.19	Xerox copy of the Common judgment in C.S.No.203 of 2007 and C.S.No.32 of 2011 dated 02.09.2013
20.	Ex.P.20	Xerox copy of the Common judgement in C.S.No.203 of 2007 and C.S.No.32 of 2011 and Cont.Petition No.1412 of 2013 dated 02.09.2013.
21.	Ex.P.21	Xerox copy of the Partnership Deed/Form-A dated 20.11.2013.
22.	Ex.P.22	Xerox copy of the order passed in O.A.Nos.120 to 127 of 2014.
23.	Ex.P.23	Xerox Copy of the Registration Certificate under class 43 dated 07.08.2014 (Marked after comparing and verifying with the original)
24.	Ex.P.24	Xerox copy of the legal notice issued by Plaintiff to Defendant with receipt dated 10.08.2018.
25.	Ex.P.25	Xerox copy of the legal usage certificate of the plaintiff dated 27.03.2018.
26.	Ex.P.26	Photocopy of the Photos of Plaintiff's hotel.
27.	Ex.P.27	Photocopy of the Photos of Defendant's hotel
28.	Ex.P.28	Copy of the Board Resolution passed by the plaintiff dated 26.06.2019 (Marked after comparing and verifying with the original).

List of exhibits marked on the side of the defendant:-

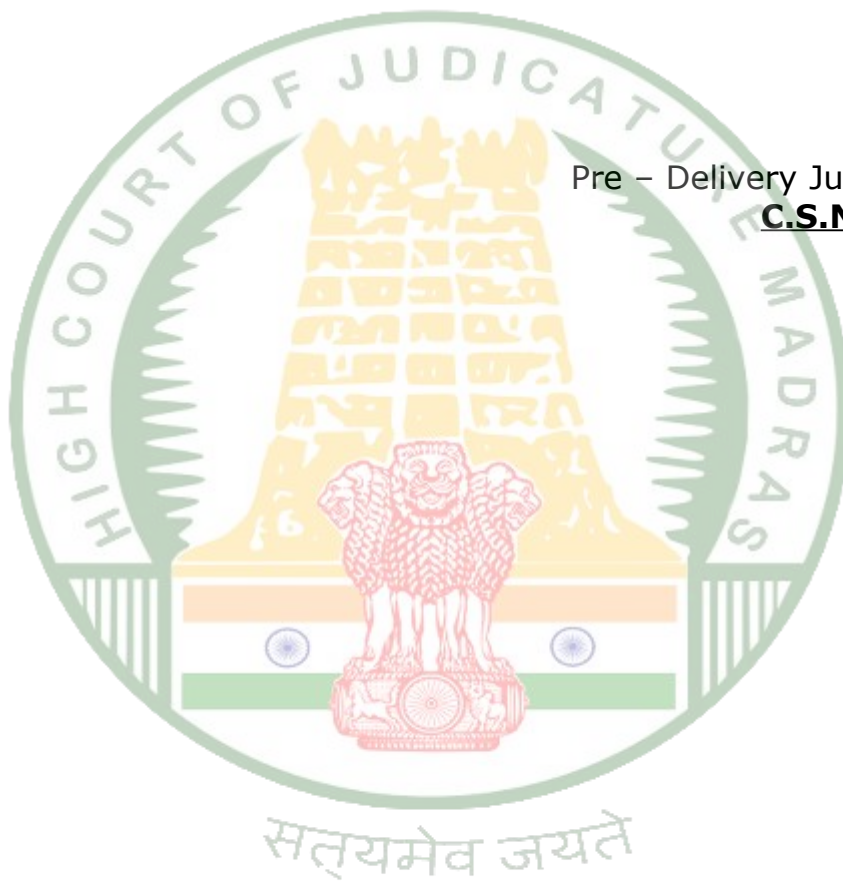
Nil



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G.JAYACHANDRAN.J.,

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Pre – Delivery Judgment made in
C.S.No.304 of 2019

18.02.2020

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