

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 16.07.2020

PRONOUNCED ON: 24.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.S.No.648 of 2019

And

O.A.Nos. 1009 & 1010 of 2019

Mr.M.Anees Ahmed

Plaintiff

Vs

Mr.Raja

Defendant

PRAYER:- This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC., Rules read with Sections 134 & 135 of Trade Marks Act, 1999 praying for the following reliefs:

(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 “AMBUR STAR BRIYANI” by using the offending Trade Mark and Trading style “STAR BRIYANI” or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiffs Trade Mark “AMBUR STAR BRIYANI”.

(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 “AMBUR STAR BRIYANI” by using the offending Trade Mark and Trading style “STAR BRIYANI” or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiffs Trade Mark “AMBUR STAR BRIYANI”.

(c) direct the defendant to render a true and faithful account of the profits earned by them through the sale of food products bearing the offending trade mark “STAR BRIYANI” and directing payment of such profits to the plaintiff by way of damages for infringement committed by the defendant.

(d) Directing the defendant to surrender the plaintiff the entire stock of unused offending goods with Trade Mark “STAR BRIYANI” with name boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisements, materials, reports, envelops, brochures, printing blocks, etc, bearing the offending Trademark for destruction; and

(e) directing to the defendant to pay the plaintiff the costs of the suit.

For Plaintiff : M/s. Vijayan Subramanian

For Defendant : Set Exparte

JUDGEMENT

The Plaintiff Ambur Star Briyani is represented by its Proprietor M.Anees Ahmed. In the plaint, M.Anees Ahmed has stated that his great grandfather Hasan Baig was a cook in the kitchen of the Nawabs of Arcot. He became popular and thereafter started his own hotel under the name “AMBUR STAR BRIYANI” in the year 1890. Substantial goodwill was built particularly with respect to the extraordinary quality and unique flavour and taste in the preparation of Briyani. Since Ambur was a commercial business centre and also transit point for Bangalore, Tirupati, Salem, Pondicherry and Chennai, the hotel Ambur Star Briyani acquired extensive popularity. Mr.Hasan baig died in the year 1934 and thereafter, the business was conducted by his son Khursheed. He died in the year 1981. Thereafter, his son-in-law Nazeer Ahmed continued the business. The plaintiff is a son of Nazeer Ahmed. He has a brother Muneer Ahmed. The hotel Ambur Star Briyani has been under the control of the family of the plaintiff from 1890. Branches have been opened at Ambur,

Coimbatore, Bangalore, Madurai, Trichy, Salem, Ulundurpet, Perundurai, Sankagiri, Soolagiri, Pondicherry, Hosur, Vaniyambadi, Kanhchipuram and 12 restaurants in Chennai. It also has a branch in UAE. The popularity is so vast that it had also been referred in several Tamil feature films. The plaintiff also registered the Trade Mark Ambur Star Briyani on 01.08.2018.

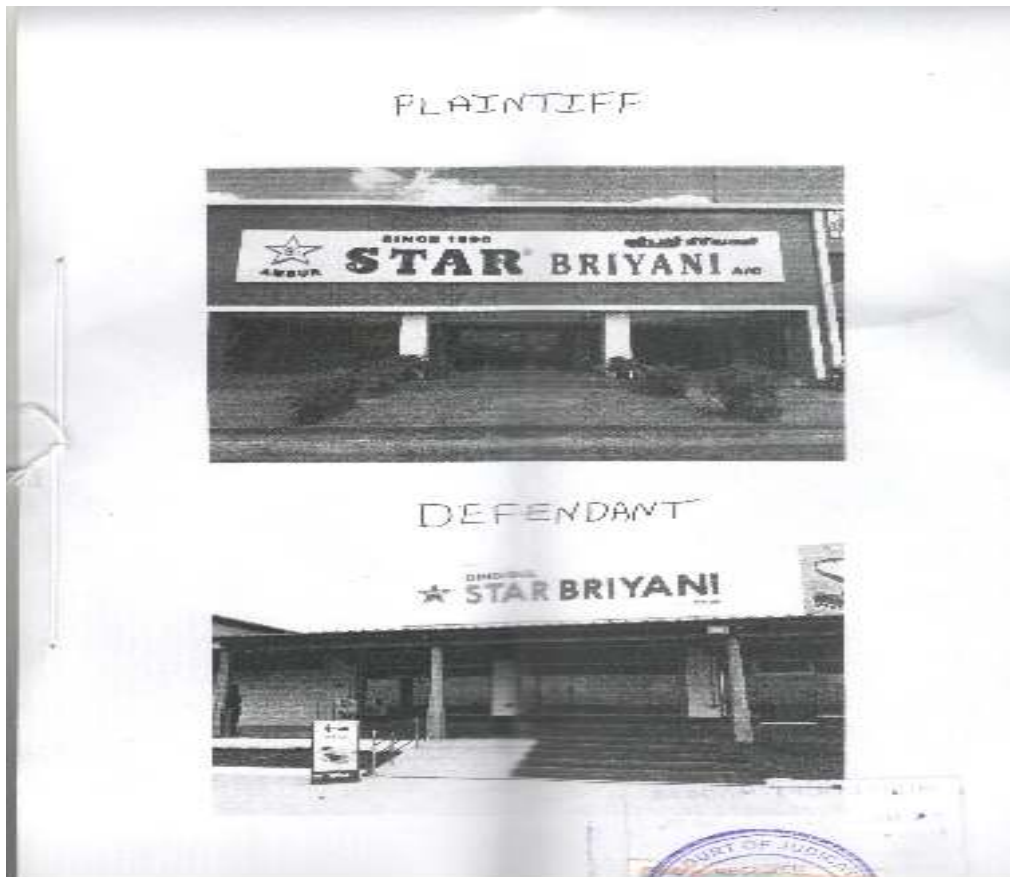
2. The grievance of the plaintiff is that the defendant had started a hotel business on 27.10.2019 under the name “DINDIGUL STAR BRIYANI”. It is claimed by the plaintiff that the defendant is attempting to deceive the general public that the hotel Dindigul Star Briyani is actually part of the business of Ambur Star Briyani. Even the red sofa/chair and white table has also been copied by the defendant.

3. The plaintiff had raised an apprehension that the hard earned reputation would be spoiled by the substandard food served by the defendant. It is in view of these facts that the plaintiff had filed the suit seeking the relief of permanent injunction to protect the Trade Mark and trading style “AMBUR STAR BRIYANI” and also seeking accounts of profits and to surrender the stock of unused offending goods and also for costs of the suit.

4. The defendant had been served and had chosen not to participate in the judicial proceedings. The defendant was set ex parte on 28.11.2019. During the pendency of the suit, the plaintiff had also filed O.A.Nos. 1009 and 1010 of 2019 and injunction protecting the Trade Mark and Trade Name of the plaintiff was also granted. Since the defendant had been set ex-parte, the plaintiff was invited to adduce oral and documentary evidence.

5. M.Hafeez Ahmed, son of M.Anees Ahmed, filed his proof affidavit. He reiterated the averments made in the plaint. Along with the proof affidavit, Ex.P1, an Article in the name of 'Ambur and the Art of Briyani' in the Hindu dated 20.08.2015 was also filed in which the author Ms. Akila Kannadasan had examined the proprietorship of the plaintiff's hotel at Ambur and also about the quality of the food served there. The history regarding the starting of the hotel was also mentioned in the article. Ex.P2 is the Trade Mark Registration Certificate under Section 23(2) read with Rule 56(1) of the Trade Marks Act 1999 with respect to the Trade mark "Ambur Star Briyani" for Class 43 in Trade Mark Registration No. 2623341. Ex.P-3 is the name Board of the plaintiff and the defendant and

a perusal of the same shows that they are both extremely similar. The said name boards are extracted below:-



6. The plaintiff had also filed as documents further photographs of the plaintiff's and the defendant's name boards for their respective hotels. As stated, the defendant has prominently put up the words "Star Briyani"

and had in very small letters put the word 'Dindigul'. There is therefore every chance of the public being deceived by the name board of the defendant as that of the plaintiff.

7. It is clear that the defendant has infringed on the registered Trade mark of the plaintiff.

8. In view of all these facts, **this Civil Suit is decreed with costs as assessed under Section 35 of the amended CPC with respect to the relief of 'a' & 'b', namely,**

(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 “AMBUR STAR BRIYANI” by using the offending Trade Mark and Trading style “STAR BRIYANI” 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 “AMBUR STAR BRIYANI”.

(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 “AMBUR STAR BRIYANI” by using the offending Trade Mark and Trading style “STAR BRIYANI” or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiffs Trade Mark “AMBUR STAR BRIYANI”.

9. The suit is dismissed with respect to the relief of 'c' & 'd', namely,

(c) direct the defendant to render a true and faithful account of the profits earned by them through the sale of food products bearing the offending trade mark “STAR BRIYANI” and directing payment of such profits to the plaintiff by way of damages for infringement committed by the defendant.

(d) Directing the defendant to surrender the plaintiff the entire stock of unused offending goods with Trade Mark “STAR BRIYANI” with name boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisements, materials, reports, envelops, brochures, printing blocks, etc, bearing the offending Trademark for destruction;

10. Consequently, connected Applications are also closed.

24.07.2020

Index:Yes/No

Web:Yes/No

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Speaking/Non Speaking Order

1. List of Witnesses Examined on the side of the Plaintiff:-
 1. P.W.1 – M.Hafeez Ahmed
2. List of Exhibits Marked on the side of the Plaintiff:-
 1. Ex.P1: Article about Star Briyani
 2. Ex.P2: Trademark Registration Certificate of the plaintiff dated 01.08.2018.
 3. Ex.P3: Comparison Chart
 4. Ex.P4: Table and Chair/Sofa in plaintiff and defendant hotels
 5. Ex.P5: photos of plaintiff's hotel

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6. Ex.P6: photos of defendant's hotel
7. Ex.P7: Menu Card of the Defendant's hotel
8. Ex.P8: Power of attorney dated 24.02.2020

3. List of Witnesses Examined on the side of the defendant:-

Nil

4. List of Exhibits Marked on the side of the defendant:-

Nil

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Pre-Delivery Judgement in

C.S.No.648 of 2019

And

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