

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE **C.V.KARTHIKEYAN**

C.S.No.854 of 2003

1.Kailashmull Dugar, Proprietor,
M/s.Kesavardhinin Products,
Plot nos.1 to 4, Choudary Nagar,
Arcot Road, Chennai – 600 087.

2.Gaurav Dugar, Proprietor,
M/s.Kesavardhini Products (Madras)
151, Mint Street,
Chennai – 600 079.

.. Plaintiffs

/versus/

M/s.Vaidya Patwardhan Research Foundation
S.V.Patel Road,
Raopura,
Vadodara – 390 001.
Gujarat
(Constitution not known)

.. Defendant

This Civil Suit is filed under Order IV Rule 1 of the High Court Original Side Rules and Order VII Rule 1 of the Code of Civil Procedure, 1908, read with Section 134 and 135 of the Trade Marks Act, 1999, prayed for a Judgment and Decree:-

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 plaintiffs' registered Trade Mark 'KESAVARDHINI' by using the offending Trade Marks 'KESHVARDHINI' or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiff's registered Trade Mark 'KESAVARDHINI' either by manufacturing the Hair-oil products or selling or offering for sale or in any manner advertising the same;

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 their Hair oil products as that of the plaintiffs' by using the offending Trade Marks labels 'KESHVARDHINI' or any other trademark which similar or deceptively similar to that of the plaintiffs' established trade mark 'KESAVARDHINI' either by manufacturing the Hair-oil or selling or offering for sale or in any manner advertising the same;

C.Directing the defendant to render a true and faithful account of the profits earned by them through the sale of Hair Oil bearing the offending trade marks “KESHVARDHINI” and directing payment of such profits to the plaintiffs by way of damages for passing off committed by the defendant;

D.Directing the defendant to surrender to the plaintiffs the entire stock of unused offending goods with the Trade Mark 'KESHVARDHINI' together with cartons, labels, brochures, printing blocks, containers, boxes, etc., bearing the offending Trademark for destruction;

E.Directing the defendant to pay the plaintiffs the costs of the suit.

For Plaintiffs : Mr.Prasanna Venkat.

For Defendant : No Appearance.

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C.V.KARTHIKEYAN,J.

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JUDGMENT

The suit had been pending from the year 2003. There is also no indication that the defendant has been served.

2.Heard the learned counsel for the plaintiffs.

3.The suit is dismissed. No order as to costs.

4.However, liberty is granted to the plaintiff to institute a fresh suit with a fresh cause of action with respect to the same trademark, if it is found that either the defendant or any other person acting under the defendant or any third party is violating the mark.

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Internet : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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