

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.03.2021

CORAM :

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.S.No. 524 of 2005

M/s. Incense Creators,
No.136, (Old No.111), First Floor,
Coral Merchant Street,
Mannady, Chennai - 600 001.

... Plaintiff

Vs.

M/s. Sairam Agarbathi Co.
No.163, 9th Main, Dr. Raj Road,
2nd Cross, Srinivasanagar,
Bangalore - 560 050.

... Defendant

Prayer:

Civil Suit is filed under Or.VII Rule 1 of CPC and under Order IV Rule 1 of O.S.Rules and Sections 134 and 135 of the Trade Marks Act, 1999, (a) granting permanent injunction restraining the defendants by themselves, their servants or agents or anyone claiming through them from in any manner infringing the plaintiff's well established trade mark "A B C D" by using the offending trade mark "A B C D" or any other mark or marks which are in any way deceptively similar to or a colourable imitation of the plaintiff's well established trade mark "A B C D" either by

manufacturing or selling or offering for sale or in any manner advertising the same.

(b) Granting permanent injunction restraining the defendants by themselves, their servants or agents or anyone claiming through them from in any manner passing off of their "agarbathies" bearing the offending trade mark "A B C D" as and for the plaintiff's celebrated "Agarbathies" bearing the well established trade mark either by manufacturing, selling or offering for sale or in any manner advertising the same

(c) directing the defendants to surrender to the plaintiff the entire stock of unused offending labels bearing the offending trade mark "A B C D" along with the blocks and dyes for destruction;

(d) directing the defendants to render a true and faithful account of the profits earned by the defendant through the sale of the agarbathies bearing the offending trade mark "A B C D" and directing payment of such profits to the plaintiff for the passing off committed by the defendant;

(e) for cost of the suit.

For Plaintiff : Mr.R.Govindarajan

JUDGMENT

The suit had been filed under Sections 134 and 135 of the Trade Marks Act, 1999, seeking protection of the trade mark of the plaintiff "A B C D" and for consequential reliefs.

2. Since it is an assertion of intellectual property right, the Commerical Division of this Court will have jurisdiction to determine the issues raised under Section 2(1)(c) (xvii) of the Commercial Courts Act, 2015.

3. There had been no progress in the suit from the year 2005. It was previously listed on 25.02.2021. The plaintiff was directed to file an affidavit indicating whether the cause of action still survives in the suit. It had also been noted that even if the affidavit is not filed, further orders would be passed.

4. In view of the same, nothing survives for further consideration in the present suit. Accordingly, the Civil Suit is dismissed for non prosecution. No order as to costs.

09.03.2021

msm

C.V.KARTHIKEYAN, J.

msm

Index : Yes

Internet : Yes

Speaking order : Yes/No



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