



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 17th DAY OF AUGUST 2021

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.S. No.878 of 2015

1. Mrs.Kanni Uvaraj,
W/o.Uvaraj,
Old No.35, New No.32,
Tailor Estate 2nd Street,
Kodambakkam, Chennai-600 024.

2. Poorvika Mobiles Private Limited,
No.30, Arcot Road,
Kodambakkam, Chennai-600 024
rep. by its Director, Mr.Uvaraj

... Plaintiffs

-Versus-

Poorliya Mobiles World and Electronics
No.58D, North Main Road,
Vallioor, Tirunelveli District,
Tamil Nadu-627 117
rep. by its Proprietor,
J.Muthukrishnan

... Defendant

Civil Suit praying that this Hon'ble Court be pleased to grant a
judgment and decree against the defendant on the following terms:-

a) a perpetual injunction restraining the defendant by themselves or
their directors, men, partners, proprietors, stockists, dealers, servants,
agents, franchises, successors in interest, licensees, assignees,
representatives or any of them from in any manner infringing the plaintiff's



registered Trade and service mark 'POORVIKA MOBILE WORLD' by use of the Trade and service mark 'POORLIYA MOBILES WORLD' or POORVIKA/ POORLIYA perse with or without any logo/ artwork or any mark deceptively similar to that of the plaintiff's registered Trade Mark or in any other manner whatsoever;

b) a perpetual injunction restraining the defendant by themselves or their directors, men, partners, proprietors, stockists, dealers, servants, agents, franchises, successors in interest, licensees, assignees, representatives or any of them from in any manner infringing the plaintiff's copyright in the label 'POORVIKA MOBILE WORLD' by the use by the defendant of the mark 'POORLIYA MOBILES WORLD', POORLIYA perse with or without any accompanying logo/artwork or any other deceptively similar Trade Mark label or by use of similar/ identical colour scheme, art work, lettering style or in any other manner whatsoever;

c) the defendant be ordered to surrender to plaintiff for destruction all name boards, packing materials, visiting cards, letterheads, printer bills, cartons, sachets and all the goods bearing the Trademark 'POORLIYA MOBILES WORLD' or any mark deceptively similar to that of the plaintiff's registered Trade Mark and artistic work 'POORVIKA MOBILE WORLD';

d) 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 defendants;

e) the defendant be ordered to pay punitive damages for the unlawful act complained of;

f) for the costs of the suit.

This civil suit having been heard on 03.08.2021 in the presence of Mr.Sukumaran for Mr.K.Rajasekaran, advocates for the plaintiffs herein and Mr.S.Subbiah, Senior Counsel for Mrs.Elizabeth Ravi, advocates for the defendant herein and upon reading the plaint filed herein and the other exhibits therein referred to and upon perusing the evidence adduced therein and having stood over for consideration till this day and coming on this day before this court for orders in the presence of the said advocates for the parties hereto, and this court having observed that there is total absence of evidence on the quantum of punitive damage and now that the relief of accounting has been sought for and granted, it will be open to the plaintiffs to seek accounts from the defendant and seek damages after accounting on the basis of the final decree that would be passed after the accounts are taken and it is ordered and decreed as follows:-

That Poorliya Mobiles World and Electronics, rep. by its Proprietor,

J.Muthukrishnan, the defendant herein, by themselves or their directors,



men, partners, proprietors, stockists, dealers, servants, agents, franchises, successors in interest, licensees, assignees, representatives or any of them be and is hereby restrained by an order of perpetual injunction from in any manner (a) infringing the plaintiff's registered Trade and service mark 'POORVIKA MOBILE WORLD' by use of the Trade and service mark 'POORLIYA MOBILES WORLD' or POORVIKA/ POORLIYA per se with or without any logo/ artwork or any mark deceptively similar to that of the plaintiff's registered Trade Mark or in any other manner whatsoever; and (b) infringing the plaintiff's copyright in the label 'POORVIKA MOBILE WORLD' by the use by the defendant of the mark 'POORLIYA MOBILES WORLD', POORLIYA per se with or without any accompanying logo/artwork or any other deceptively similar Trade Mark label or by use of similar/ identical colour scheme, art work, lettering style or in any other manner whatsoever;

2. That the defendant herein be and is hereby directed to surrender to plaintiff for destruction all name boards, packing materials, visiting cards, letterheads, printer bills, cartons, sachets and all the goods bearing the Trademark 'POORLIYA MOBILES WORLD' or any mark deceptively similar to that of the plaintiff's registered Trade Mark and artistic work 'POORVIKA MOBILE WORLD';



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3. That the defendant herein be and is hereby directed to prepare and submit an account of profits made by them by the unlawful use of the Registered Trade Mark of the plaintiff and do pay in favour of the plaintiff and against the defendants;

4. That the relief of punitive damages be and is hereby rejected.

5. That the defendant herein do pay to the plaintiffs herein the costs of this suit as and when taxed by the taxing officer of this court and noted in the margin thereof.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
17TH DAY OF AUGUST 2021.

Sd/-

ASSISTANT REGISTRAR (Comm. Cases)
//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



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C.S. No.878 of 2015

ORDER :-

DATED: 17.08.2021

THE HON'BLE MR. JUSTICE
R.SUBRAMANIAN

FOR APPROVAL: 30.12.2021

APPROVED ON: 05.01.2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 03.08.2021	Judgment Delivered on 17.08.2021
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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.878 of 2015

1.Kanni Uvaraj

2.Poorvika Mobiles Private Limited,
No.30, Arcot Road,
Kodambakkam,
Chennai – 600 024.
Rep. by its Director Uvaraj

... Plaintiffs

Vs.

Poorliya Mobiles World And Electronics
No.58 D, North Main Road,
Vallioor, Tirunelveli District,
Tamil Nadu – 627 117.
Rep. by its Proprietor, J.Muthukrishnan

... Defendant

PRAYER : Complaint filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure and read with Sections 27, 28, 29, 134 and 135 of the Trademarks Act, 1999 read with Section 51, 55 and 62 of the Copyrights Act, 1957 praying to grant a judgment and decree on the following terms:-

(a) A perpetual injunction restraining the defendant by themselves or

their directors, men, partners, proprietors, stockists, dealers,



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servants, agents, franchises, successors in interest, licensees, assignees, representatives or any of them from in any manner infringing the plaintiff's registered Trade and service mark 'POORVIKA MOBILE WORLD' by use of the Trade and service mark 'POORLIYA MOBILES WORLD' or POORVIKA/ POORLIYA per se with or without any logo/ artwork or any mark deceptively similar to that of the plaintiff's registered Trade Mark or in any other manner whatsoever;

(b) A perpetual injunction restraining the defendant by themselves or their directors men, partners, proprietors, stockists, dealers, servants, agents, franchises, successors in interest, licensees, assignees, representatives or any of them from in any manner infringing the plaintiff's copyright in the label 'POORVIKA MOBILE WORLD' by the use by the defendant of the mark 'POORLIYA MOBILES WORLD', POORLIYA per se with or without any accompanying logo/artwork or any other deceptively similar Trade Mark label or by use of similar/ identical colour scheme, art work, lettering style or in any other manner whatsoever;

(c) The defendant be ordered to surrender to plaintiff for destruction all name boards, packing materials, visiting cards, letterheads, printer bills, cartons, sachets and all the goods bearing the



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Trademark 'POORLIYA MOBILES WORLD' or any mark deceptively similar to that of the plaintiff's registered Trade Mark and artistic work 'POORVIKA MOBILE WORLD';

- (d) 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 defendants;
- (e) The defendant be ordered to pay punitive damages for the unlawful act complained of and
- (f) for the costs of the suit.

For Plaintiffs : Mr.K.Sukumaran
for Mr.K.Rajasekaran

For Defendant : Mr.S.Subbiah, Senior Counsel
for Mrs.Elizabeth Ravi

J U D G M E N T

1. The suit is one for perpetual injunction restraining the defendant from infringing the plaintiffs trade and service mark 'POORVIKA MOBILE WORLD', for a perpetual injunction restraining the defendant from infringing the copyright of the plaintiffs in the label 'POORVIKA MOBILE WORLD', for other consequential reliefs like surrender for destruction of all name boards, packing materials, visiting cards, letter heads, printer bills, cartons, sachets



and other goods bearing the trademark 'POORLIYA MOBILE WORLD' or any other mark deceptively similar to that of the plaintiffs' registered trademark and artistic work 'POORVIKA MOBILE WORLD', for accounts and for costs of the suit.

The summary of the case of the plaintiffs is as follows :-

2. The plaintiffs are carrying on business in sale of mobile phones and accessories for more than 10 years and the plaintiffs trade name 'POORVIKA MOBILE WORLD' has earned substantial good will and reputation in the trade. The 1st plaintiff applied for registration of its mark and obtained registration in Registration No.1706433 in Class 35 on 03.07.2008 claiming user since 2004. The 1st plaintiff licensed the 2nd plaintiff to use the marks 'POORVIKA', 'POORVIKA MOBILE WORLD', 'Think Mobile Think Poorvika', 'UTTHAMAVAATHA MOBILE POORVIKAKE BANNI' etc., under the license agreement dated 08.04.2014, in relation to the retail and marketing services connected with the sale of mobile phones and its accessories.

3. The 1st plaintiff also filed various trademark applications with the name 'POORVIKA'. She has also been proactive in restraining infringement and trafficking of her intellectual property. The plaintiffs have been issuing

<https://hcservices.ecourts.gov.in/hcservices/>
cease and desist notices to various infringers. The mark 'POORVIKA',



according to the plaintiffs, has attracted fame and has become well known across classes of goods under Section 2(1)(zg) of the Trade Mark Act, 1999 and it is entitled to statutory protection across territories as well as across classes.

4. The 2nd plaintiff has got various show rooms all over the southern states and the 2nd plaintiff has acquired a right to prevent others from using the same or deceptively similar mark. The plaintiffs would also claim that the turn over of the 2nd plaintiff had been on the increase and from a mere Rs.3,49,827/- in 2003-04, the turn over has increased to Rs.11,02,45,42,740/- in the year 2013-14. The 2nd plaintiff has also been spending huge amounts towards advertisement expenses and the amount spent towards advertisement in 2013-14 is Rs.2,01,82,891/-. The plaintiff has also been selected as 'the number one mobile dealer' in the State of Tamil Nadu by The Times of India.

5. Relying upon Section 2(1)(zg) of the Trade Marks Act, 1999, the plaintiffs would contend that the plaintiffs are entitled to seek an injunction even in respect of places where the plaintiffs do not have a physical presence.



6. According to the plaintiffs, the defendant opened an outlet selling mobile phones in Vallioor at Tirunelveli District. The defendant used the name 'POORLIYA' and adopted the style of the plaintiffs in its labels, other advertisement and packing materials including the name board. The defendant also copied the tag-line of the plaintiffs in english and slightly modified the tag-line of the plaintiffs in tamil. Contending that the defendant by adopting a trademark with such deceptive similarity is attempting to grab the popularity of the plaintiffs and encash upon it, the plaintiffs would seek the aforesaid reliefs.

7. The suit is resisted by the defendant contending that the word 'POORLIYA' was coined by the defendant from the words 'POORNAM' which means perfection and the name of his daughter 'VINOLIYA'. It is also contended by the defendant that the defendant has been trading in mobile phones under the different name called M.M.Mobiles and Enterprises in Ervadi in Tirunelveli District from the year 2008, before the defendant entered the business at Valliyoor.

8. It is also claimed that the defendant is authorized dealer for various leading mobile companies. The defendant would also point out that after the filing of the suit, the defendant has changed the style of the letters in its



name 'POORLIYA' which would cure even the slightest resemblance that was complained of by the plaintiffs. Therefore, according to the defendant, the name as it stands today with the change in the style of writing would efface the so called deception on the part of the defendant. It is also contended that the plaintiffs not having any business in Valliyoor cannot seek an injunction against the defendant.

9. It is the further claim of the defendant that the alleged claim of infringement is false and both the plaintiffs and the defendant had started the business at about the same time and therefore the defendant cannot be said to have infringed the plaintiff's trademark. On the above contentions, the defendant sought for dismissal of the suit.

10. On the above pleadings the following issues were framed by this Court for determination:

1. *Whether the plaintiffs are entitled for perpetual injunction against the infringement of trade marks by the defendant?*
2. *Whether the plaintiffs are entitled for perpetual injunction against the infringement of Copy Right by the defendant?*



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3. *Whether the plaintiffs are entitled for punitive damages?*
4. *Whether the plaintiffs are entitled for cost of the suit?*
5. *Whether the plaintiffs are eligible for other ancillary reliefs?*
6. *Other reliefs, if any?*

11. At trial, one Mr.Uvaraj, Director of the 2nd plaintiff was examined as PW1. On the side of the defendant, one Mr.J.Muthukrishnan, the Proprietor of the defendant was examined as DW1. Exs.P1 to P23 were marked on the side of the plaintiffs and Exs.D1 to D17 were marked on the side of the defendant.

12. Heard Mr.K.Sukumaran, learned counsel appearing for M/s. M.R.Gokul Krishnan and S.Patrick for the plaintiffs and Mr.S.Subbiah, learned Senior Counsel for Mr.P.Raja for the defendant.

Issue Nos.1 and 2:

13. The fact that the plaintiff is a registered proprietor of the trademark 'POORVIKA MOBILE WORLD' is not in dispute. The trademark



registration certificate along with the legal user certificate have been marked as Ex.P1. From Ex.P1 it could be gathered that the plaintiff has got a registration for the name mark 'POORVIKA MOBILE WORLD' in class 35 and the label registration for the style of writing and the getup. The legal user certificate would show that the plaintiff has got a device mark for the design in which the letters 'POORVIKA MOBILE WORLD' are arranged. These facts are not disputed.

14. It is also seen from Ex.P2, that the design of the plaintiffs is published in the trademarks journal dated 16.08.2009 under class 35. According to the plaintiffS, it has got branches all over the State of Tamil Nadu as well as in the neighboring States and as such, the mark of the plaintiffs had obtained a status of a well known trademark under Section 2(1)(zg) of the Trade Marks Act, 1999.

15. It is the further claim of the plaintiffs that the defendant by adopting the plaintiffs mark with a slight change in the last four letters alone replacing the letters 'VIKA' by the letters 'LIYA' had created a mark which is substantially similar to that of the plaintiffs in its get-up and the style of writing. The plaintiffs would also add that both the names 'POORVIKA'



confusion in the minds of the consumers who are men of average intelligence with imperfect re-collection.

16. It is also the contention of the plaintiffs that the plaintiffs called upon the defendant to cease and desist from using the plaintiffs' mark by a cease and desist notice dated 17.12.2014. The defendant instead of complying with the same, sent a reply claiming that the user is honest and bonafide. The defendant also changed the manner of writing of the word 'POORLIYA' both in english and tamil and claimed that the same would meet the demand of the plaintiffs and cure any similarity that was there in the marks which were being used by the defendant.

17. The plaintiffs would also claim that even subsequent to the reply to the cease and desist notice that was issued on 06.01.2014 the defendant has been adopting the old mark, which is substantially similar to that of the plaintiffs. In order to buttress its contention, the plaintiffs would rely upon Ex.P16 which is an invoice for purchase of mobile phone issued by the defendant on 16.02.2015. It is also contended that the defendant has also sought for registration of the mark 'POORLIYA' written in a particular manner with the Trademark Registry. On the opposition of the plaintiffs, the said application has not been granted and the same is said to be pending.



WEB COPY 18. Mr.K.Sukumaran, learned counsel appearing for the plaintiffs would vehemently contend that the words 'POORVIKA' and 'POORLIYA' are phonetically similar and the style of writing of the words by the plaintiffs and the defendant is also substantially similar. Drawing my attention to Ex.P16, the learned counsel would submit that even after sending a reply notice to the cease and desist notice claiming that the style of writing has been changed, the defendant had continued to sell mobile phones with the same pattern of writing as it existed prior to the reply to the cease and desist notice.

The plaintiffs mark as registered is as follows:-





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The mark 'POORLIYA' that was used by the defendant is as follows:-



The packaging material used by the plaintiffs is as follows:-

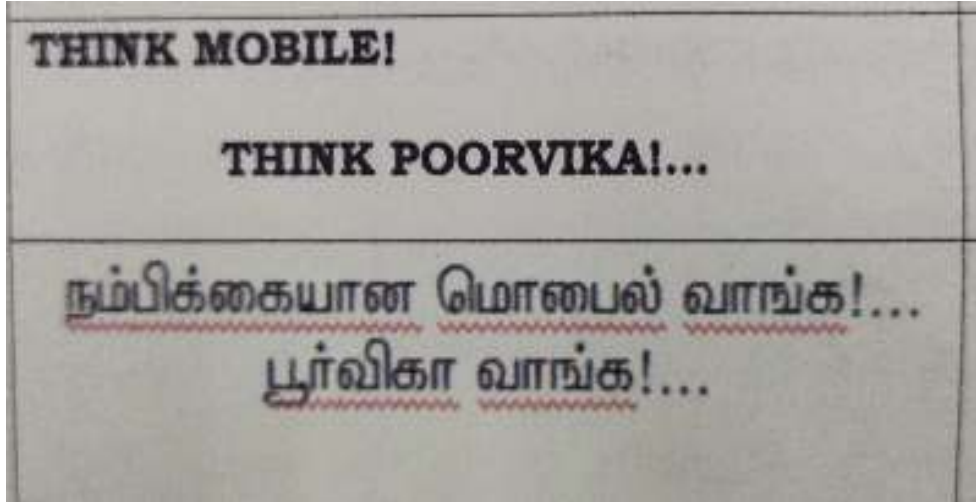


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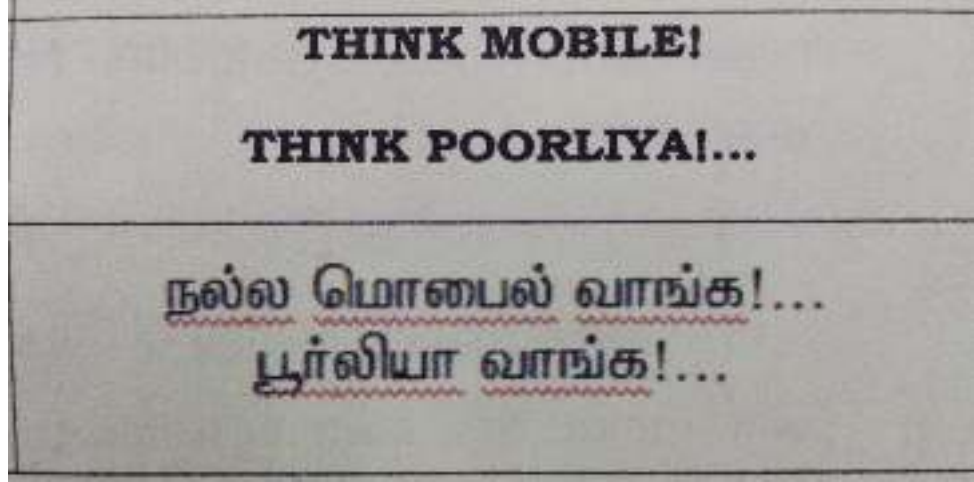
The packaging material used for the defendant was as follows:-



The tag-lines of the plaintiffs in english and tamil are as follows:-



The tag-lines of the defendant in english and tamil are as follows:-



19. Pointing out to the above, the learned counsel for the plaintiffs would contend that if this is not deceptive similarity nothing else could be termed as deceptive similarity. Drawing my attention to Ex.P16, the sales invoice dated 06.01.2015, Mr.K.Sukumaran, would contend that though the defendant had claimed that it had changed the style of writing of the word 'POORLIYA' as follows:-



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it had continued to sell mobile phones under invoices which have the same style of writing as found in the cease and desist notice even on 16.01.2015. This act of the defendant, according to the learned counsel is nothing but a dishonest attempt to continue to infringe the mark of the plaintiffs.

20. The learned counsel for the plaintiffs would also further claim that the plaintiffs have since started the business in Valliyoor also and therefore the defence that the plaintiffs cannot seek injunction without having a business establishment at Valliyoor does not also exist any longer.

21. Mr.K.Sukumaran, learned counsel for the plaintiff would also draw my attention to the judgments of the Hon'ble Supreme Court in

→ ***Parle Products (P) Ltd. Vs. J.P. and Co., Mysore***

<https://hcservices.ecourts.gov.in/hcservices/>

reported in ***(1972) 1 SCC 618***



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→ ***Lakshmikant V.Patel Vs. Chetanbhai Shan and another***
reported in ***(2002) 3 SCC 65***

→ ***N.R.Dongre and others Vs. Whirlpool Corporation and another***
reported in ***(1996) 5 SCC 714***

→ ***K.R.Chinna Krishna Chettiar Vs. Shri Ambal & Co.,
Madras and another*** reported in ***(1969) 2 SCC 131.***

Apart from the above the learned counsel would also rely upon the judgment of this Court in

→ ***Gangotree Sweets and Snacks Pvt. Ltd., Vs. Shree Gangotree
Sweets, Snacks & Savouries, Trichy*** reported in ***2005 (31) PTC 502.***

and the judgment of mine in

→ ***M/s.Sri Kanishk Collection Vs. M/s. SKC Readymades*** reported in
2017 (8) MLJ 163.

22. Contending contra Mr.S.Subbiah, learned Senior Counsel appearing for the defendant would submit that, no doubt, there was a certain similarity between the two marks prior to the issuance of the cease and desist notice, but, after the issuance of cease and desist notice, the defendant has changed the style of writing and has also applied for a trademark with a new style of writing. This according to the learned Senior Counsel, would



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23. Mr.S.Subbiah, learned Senior Counsel would also point out that the defendant has produced Ex.D1 and Ex.D2 which would show the substantial change in the style of writing of the letters 'POORLIYA'. He would also further point out that the name boards of the show rooms of the defendant have also been changed. Therefore, the so called deceptive similarity even if it had existed, is no longer there. The learned Senior Counsel would also point out that Ex.D7 and Ex.D8 would show that the plaintiffs have adopted totally different style of exhibiting its name 'POORVIKA' in its show rooms. However, the learned Senior Counsel would concede that he has not made out a case of abandonment.

24. Mr.S.Subbiah, learned Senior Counsel would also rely upon the judgment of the Hon'ble Supreme Court in *Toyota Jidosha Kabushiki Kaisha Vs. Prius Auto Industries Ltd., & others* reported in **2018 (3) LW 452**, in order to justify his contention that the plaintiffs without being present in Valliyoor cannot seek an injunction restraining the defendant from carrying on business at Valliyoor.

25. I have considered the submissions of the counsel on either side.

The fact that the defendant had adopted a similar style of writing and get-up



which prompted the plaintiffs to issue a cease and desist notice is not denied. The very fact that the defendant chose to change its style of writing of the word 'POORLIYA' would show that the defendant itself saw a similarity in the style of writing. The labels, name boards and packing materials used by both the parties have been extracted above. It is a fact that they had the same colour scheme apart from the style of writing.

26. I find considerable similarity, which is capable of deception in the marks used by the plaintiffs and the defendant. Though, the defendant had claimed that it had changed the style of writing of the word 'POORLIYA' in tamil and english after issuance of the cease and desist notice and Exs.D1 to D6 have been produced to demonstrate that the defendant had in fact changed the style of writing the words 'POORLIYA', both in english and tamil, it has to be seen as to whether the said change would be sufficient to efface the claim of deception by the plaintiffs. While considering the right of a registered proprietor of the trademark to prevent others from infringing the marks, Courts have consistently held that the entire mark as a whole should be looked into. Apart from the visual and the phonetic similarities between the two marks should also be weighed.

27. No doubt, after the change in the style of writing, it cannot be said



that there is deceptive similarity in the visual representation of the word 'POORLIYA', but the phonetic similarity would still exist and the same would be a cause for deception.

28. In *K.R.Chinna Krishna Chettiar Vs. Shri Ambal & Co., Madras and another* (supra), the Hon'ble Supreme Court dealt with a case of phonetic similarity between the words 'AMBAL' and 'ANDAL'. The Hon'ble Supreme Court while considering the question of deceptive similarity, has observed that the ocular comparison is not always the decisive test. The resemblance between the two marks must be considered with reference to the ear as well as the eye. If there is a close affinity between the sound, the same would amount to infringement of trademark. After referring to the oft-quoted judgment in *Coca-Cola Co. of Canada Vs. Pepsi-Cola Co. of Canada Ltd.*, reported in **1942 (59) RPC 127**, the Hon'ble Supreme Court quoted with approval the view of this Court and observed as follows:-

“5. Now the words “Sri Ambal” form part of Trade Mark No.126808 and are the whole of Trade Mark No.146291. There can be no doubt that the word “Ambal” is an essential feature of the trade marks. The common “Sri” is the subsidiary part, of the two words “Ambal” is the more distinctive



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and fixes itself in the recollection of an average buyer with imperfect recollection.

6. The vital question in issue is whether, if the appellant's mark is used in a normal and fair manner in connection with the snuff and if similarly fair and normal user is assumed of the existing registered marks, will there be such a likelihood of deception that the mark ought not to be allowed to be registered (see In the matter of Broadhead's Application reported in (1950) 57 PRC 209, 214 for registration of a trade mark). It is for the Court to decide the question on a comparison of the competing marks as a whole and their distinctive and essential features. We have no doubt in our mind that if the proposed mark is used in a normal and fair manner the mark would come to be known by its distinguishing feature "Andal". There is a striking similarity and affinity of sound between the words "Andal" and "Ambal". Giving due weight to the judgment of the Registrar and bearing in mind the conclusions of the learned Single Judge and the Divisional Bench, we are satisfied that there is a real danger of confusion between the two marks."

29. The Hon'ble Supreme Court has held that if there is a phonetic

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similarity between the two names, the same would afford a cause of action



for an infringement action. While the Hon'ble Supreme Court was concerned with the names of 'SRI AMBAL' and 'SRI ANDAL', we are now looking at 'POORVIKA' and 'POORLIYA'.

30. As I have already pointed out, while considering the infringement action, particularly on deceptive similarity, the Court must look at the entire mark and cannot break a mark into various segments and decide on similarity or dis-similarity. If the mark is looked in its entirety, despite alteration in the style of writing/ visual representation, the phonetic similarity still exists and the same would definitely cause confusion among the customers.

31. Adverting to the second contention of Mr.Subbiah, learned Senior Counsel on the territorial applicability, I am afraid that acceptance of such contention in the light of globalization would lead to disastrous consequences. Even in *N.R.Dongre and others Vs. Whirlpool Corporation and another (supra)*, the Hon'ble Supreme Court pointed out that a registered proprietor whose mark is famous, can injunct a person from using the said mark even in places where the registered proprietor does not have a business. This Court in *Gangotree Sweets and Snacks Pvt. Ltd.,*



the law relating to territorial operation of the registered trademark. I have followed the judgment in ***Gangotree Sweets and Snacks Pvt. Ltd., Vs. Shree Gangotree Sweets, Snacks & Savouries, Trichy (supra)*** in ***M/s.Sri Kanishk Collection Vs. M/s. SKC Readymades (supra)***. After referring to the judgment in ***Gangotree Sweets and Snacks Pvt. Ltd., Vs. Shree Gangotree Sweets, Snacks & Savouries, Trichy (supra)*** and the judgment in ***Lakshmikant V.Patel Vs. Chetanbhai Shan and another (supra)***, I had recognized the rights of a registered proprietor to injunct others from infringing their trademark even outside the territory.

32. However, it is now admitted by the parties that the plaintiffs have also started a branch at Valliyoor and therefore, the contention of the learned Senior Counsel that the plaintiffs who have no business in Vallioor cannot enforce the right across territories. The judgment in ***Toyota Jidosha Kabushiki Kaisha Vs. Prius Auto Industries Ltd., & others (supra)*** would not be of any help to the plaintiffs since it is a passing off action involving overseas territoriality.

33. The new Act viz., the Trade Marks Act, 1999 recognizes the right of a proprietor of a name mark or a device to seek injunction. A trademark relating to service is also recognized under the new Act. Going one step



further, the new Act also recognizes a new concept called 'well known trademark', which in effect gives statutory recognition to the existing law of Trademarks adopted in *N.R.Dongre and others Vs. Whirlpool Corporation and another (supra)*, wherein, the Hon'ble Supreme Court recognized a right of a foreign manufacturer and registered trademark holder to injunct a person from infringing his trademark in India.

34. The evidence on the side of the plaintiffs would establish that it has got several branches and it has a huge turn over in sales of mobile phones and accessories. The evidence on record would show that the name 'POORVIKA' has almost become synonymous with mobile phones in all these years. The turn over of the plaintiffs has increased to over Rs.1000 Crores within a span of 10 years from a mere Rs.3,49,000/- in 2003-04. This would show the amount of influence the plaintiffs has gained over the mobile phone market in Tamil Nadu and out side Tamil Nadu.

35. In these circumstances, the defendant by adopting a phonetically similar name cannot infringe upon the trademark of the plaintiffs and attempt to lure the customers of the plaintiffs. I find that there is a certain attempt by the defendant to deceive the customers of the plaintiffs which would amount to an infringement of the plaintiffs trademark as well as the



copyright. Hence, the issue Nos.1 and 2 are answered in favour of the plaintiffs.

Issue No.5:-

36. The plaintiff has apart from seeking the injunctive reliefs, also sought for the relief of surrender of the packing materials, visiting cards, letterheads, printer bills, cartons, sachets, etc., with the mark 'POORLIYA' or any other deceptively similar mark. Now, that it has been found that the plaintiffs are entitled to a decree for injunction on infringement of its mark, as a consequence, the plaintiffs would also be entitled to a direction for surrender of name boards, packing materials, visiting cards, letterheads, printer bills, cartons, sachets and all other goods bearing the trademark 'POORLIYA MOBILES WORLD' or any other mark deceptively similar to the established registered trademark or artistic work 'POORLIYA MOBILES WORLD'.

37. There is also a prayer for accounting. In the light of the findings on issue Nos.1 and 2 that the defendant had infringed upon the trademark of the plaintiffs, the defendant is definitely liable to accounts for the profits made by them by using a deceptively similar mark. In view of the above,

Issue No.5 is answered in favour of the plaintiffs and it is found that the



plaintiffs would be entitled to the reliefs of mandatory injunction as well as accounting.

Issue No.3:-

38. Though a prayer for punitive damages has been made, there is total absence of evidence on the quantum of punitive damage and now that the relief of accounting has been sought for and granted, it will be open to the plaintiffs to seek accounts from the defendant and seek damages after accounting on the basis of the final decree that would be passed after the accounts are taken.

39. In fine, the suit is decreed granting the reliefs of injunction, permanent injunction, mandatory injunction and accounting viz., covered by prayers a, b, c and d. The relief of punitive damages is rejected. The plaintiffs would be entitled to costs of the suit also.

Sd./-R.S.M.J.
17/08/2021

List of the Witnesses examined on the side of the Plaintiffs:

PW1 – Uvaraj



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List of Exhibits marked on the side of the Plaintiffs:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	Ex.P1 (series)	Photocopies of Certificate of Registered Trademark No.1706433 Class 35	03.07.2008
2	Ex.P2	Photocopy of Trade mark Journal No.1422 in Class 35 of the 2 nd plaintiff	16.08.2009
3	Ex.P3	Copy of PAN Card	16.08.2009
4	Ex.P4	Photocopy of Certificate of Registration (VAT) (Tamil Nadu)	31.03.2009
5	Ex.P5 (series)	Photocopies of VAT Returns of the 2 nd plaintiff in the year 2009-2014	--
6	Ex.P6 (series)	Photocopies of Sales Invoices of the 2 nd plaintiff	19.09.2009 to 13.01.2009
7	Ex.P7	Photocopy of VAT Registration Certificate (Pondicherry) of the 2 nd plaintiff	08.12.2009
8	Ex.P8 (series)	Photocopies of Balance Sheet and Account of Profit and Loss of the 2 nd plaintiff	31.03.2010 to 31.03.2014
9	Ex.P9	Photocopy of Income tax Returns of the 2 nd plaintiff 2010-2015	--
10	Ex.P10	Photocopy of Certificate of Registration -CST	27.02.2013
11	Ex.P11	Photocopy of VAT Registration Certificate (Karnataka) of the 2 nd plaintiff	06.12.2013
12	Ex.P12	Photocopy of certificate of enrollment under Karnataka Tax on Profession, Trades, Callings and Employments Act of the 2 nd plaintiff	06.12.2013
13	Ex.P13	Photocopy of License Deed in favour of	08.04.2014



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<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
		the 2 nd plaintiff	
14	Ex.P14	Photocopy of Notice sent to Poorliya Mobiles World and Electronics	17.12.2014
15	Ex.P15	Photocopy of Reply sent to plaintiff's notice	06.01.2015
16	Ex.P16	Photocopy of Sales Bills of Poorliya Mobiles World and Electronics	16.02.2015
17	Ex.P17	Photocopy of trademark Application POORLIYA (English) No.2909077 in Class 35 TM-1	24.02.2015
18	Ex.P18	Photocopy of trademark Application POORLIYA (Tamil) No.2912586 in Class 35 TM-1	27.02.2015
19	Ex.P19	Photocopy of GSS & Associates (Chartered Accountant certificate of turnover and expenses)	16.06.2015
20	Ex.P20 (series)	Photocopies of Brochures, visiting card, advertisements and name board of POORLIYA Trademark.	--
21	Ex.P21	Photocopy of "Dinamalar" Report publishing news of the 2 nd plaintiff receiving Certificate from his Excellency, the Governor for being selected as No.1 Mobile Retailer in State of Tamil Nadu.	27.09.2015
22	Ex.P22	Photocopy of depiction of the plaintiff's Trademark	--
23	Ex.P23	Photocopy of Depiction of the defendant's Trademark	--



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List of the Witnesses examined on the side of the Defendant:

DW1 - J.Muthukrishnan

List of Exhibits marked on the side of the Defendant:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
1	Ex.D1	Photograph of present lettering style, get-up and colour combination of trade name 'POORLIYA' in tamil version	--
2	Ex.D2	Photograph of present lettering style, get-up and colour combination of trade name 'POORLIYA' in english version	--
3	Ex.D3	Photograph of show room at No.58-D/1, North Main Road, Vallioor	--
4	Ex.D4	Photograph of show room at 292K, North Main Road, Near Kalaimagal Paints, Vallioor	--
5	Ex.D5	Photograph of show room at 361, Main Road, Near Old Asoka Textiles, Vallioor	--
6	Ex.D6	Photograph of show room at Kalakad, Tirunelveli	--
7	Ex.D7	Photograph of present trade mark of plaintiff	--
8	Ex.D8	Photograph of plaintiff's show room at No.63A, Thompson Building, North Main Road, Vallioor	--
9	Ex.D9	Photocopy of Certificate of Registration issued by Commercial Tax Department	27.08.2015
10	Ex.D10	Printout copy of GST Registration Certificate	24.09.2017



<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description of documents</i>	<i>Date</i>
11	Ex.D11	Computer printout copy of Tax Invoice issued in show room at No.58-D/1, North Main Road, Vallioor	01.04.2018
12	Ex.D12	Computer printout copy of Tax Invoice issued in show room at 292K, North Main Road, Near Kalaimagal Paints, Vallioor	25.08.2019
13	Ex.D13	Computer printout copy of Tax Invoice issued in show room at 361, Main Road, Near Old Asoka Textiles, Vallioor	25.08.2019
14	Ex.D14	Computer printout copy of Tax Invoice issued in show room at Kalakad, Tirunelveli	25.08.2019
15	Ex.D15	Computer printout copy of Income tax Returns for Assessment year 2017-2018	19.07.2017
16	Ex.D16	Computer printout copy of Income tax Returns for Assessment year 2017-2018	30.03.2018
17	Ex.D17	Computer printout copy of Income tax Returns for Assessment year 2018-2019	28.01.2019

Sd./-R.S.M.J.
17/08/2021

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.