

A.Nos.2390, 2391, 2392, 2393, 2394 and 2395 of 2020
in
C.S.No.644 of 2019

C.V.KARTHIKEYAN,J.

All these applications have been filed under Order 1 Rule 10 of the Code of Civil Procedure, 1908 individually by 3rd, 4th, 5th, 6th, 7th and 8th defendants seeking to strike them out as defendants from the suit.

2.In the affidavit filed in support of the said application each one of the said applicants have stated that they are not part of M/s.Apollo Diagnostic Centre, which is claimed by the plaintiff to have infringed the trademark of the plaintiff. It had been stated that the plaintiff had not submitted any document as evidence with respect to their specific involvement with the said infringement. It had been stated that therefore they are not necessary party to the suit.

3.The applicant in A.No.2390 of 2020 has stated that she is a student studying medicine in Maharashtra. The applicant in A.No.2391 of 2020 has also stated that she is also only a student studying in Mumbai. The applicant in A.No.2392 of 2020 has stated that he has an independent

business in the name of Kamlesh Agro Tech. The applicant in A.No.2393 of 2020 has stated that she is a senior citizen leading a retired life. The applicant in A.No.2394 of 2020 has stated that he has an independent business in readymade garments. The applicant in A.No.2395 of 2020 has stated that she is a senior citizen and is a house wife.

4. In effect all these applicants stated that they have no relationship at all with Apollo Diagnostic Centre, which is claimed to have infringed the trademark of the plaintiff.

5. A common counter affidavit has been filed on behalf of the plaintiff claiming that the applicants herein, who are 3rd to 8th defendants, have an association with Apollo Diagnostic Centre. They have also not specifically denied their association with Apollo Stone Clinic. It had been stated that it is the case of the plaintiff that the defendants had launched 'Apollo Diagnostic Centre' and 'Apollo Stone Clinic' on 05.03.2019. Reliance has been placed on the invitation which was issued for the inauguration of said ventures on 05.03.2019, wherein, the present applicants and also the 1st and 2nd defendants had, calling themselves as

'Apollo Family' intimated that any communication with respect to attendance to the said opening ceremony should be addressed to them. It had also stated that legal notices had been issued on 25.03.2019 and again on 16.09.2019 for which none of the applicants had bothered to reply. It had been stated that their failure to deny involvement in 'Apollo Stone Clinic' amounts to admission.

6.Heard Mr.Abhay Mani Tripathi, learned counsel for the applicants / defendants 3 to 8 and Mr.Vineet Subramani, learned counsel for the respondent / plaintiff.

7.The grievance of the present applicants is that they are neither partners nor have any juridical relationship with the firm 'Apollo Diagnostic Centre'. In support of the said statement, my attention has been drawn to the documents filed along with the written statement filed by the 1st and 2nd defendants, wherein one of the documents filed was a Registration Certificate of the Partnership firm dated 07.05.1992 in which the partners are given 1st and 2nd defendants namely, Dr.Paras Jain and Mrs.Sangeetha Jain.

8.The learned counsel for the applicants expressed grievance that students of medicine and senior citizens had been dragged to face the suit for no fault of theirs and they are neither directly involved with the Partnership firm 'Apollo Diagnostic Centre' nor are they involved with the running of the said Partnership firm. They have neither any financial interest nor have can exercise control over the said Partnership firm. The plaintiff has impleaded them as parties on the basis of an invitation, a copy of which had also been filed along with the counter affidavit. This invitation is with respect to an inauguration by 'Apollo Family' of their new ventures 'Apollo Diagnostic Centre' and 'Apollo Stone Clinic' on 05.03.2019 at Apollo Tower, Near Express Highway Flyover, Devendra Nagar, Raipur, Chhattisgarh. The name of the eight defendants have been given in the said invitation.

9.The learned counsel for the Respondent / Plaintiff pointed out the said invitation and stated that it is highly improbable that the names of the applicants would have be reflected on the said invitation, if the said applicants / defendants have no direct or indirect connection with either

'Apollo Diagnostic Centre' and / or 'Apollo Stone Clinic'. The learned counsel therefore stated that they are proper parties to the suit and the application should be dismissed.

10. Neither of the two counsels had referred to Order I of the Code of Civil Procedure, 1908. Order I Rule 3 is instructive as to, who may be joined as defendants. Order I Rule 3(a) is as follows:-

“O1 R3: "Who may be joined as defendants.- All persons may be joined in one suit as defendants where-

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transaction is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b)"

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11.If a series an act or series of acts is “alleged to exist” against any person / persons, then those persons against whom such allegations are raised may be joined as defendants.

12. Order I Rule 5 of the Code of Civil Procedure, 1908 is also instructive. It is as follows:

“O.I R 5.-Defendant need not be interested in all the relief claimed.- It shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him.”

The said provision states that not all the defendants need be interested with respect to the reliefs claimed in any suit.

13. Order I Rule 9 speaks about mis-joinder and non-joinder of parties. It very specifically provides that no suit shall be defeated by reasons of mis-joinder of parties to the suit.

14. In the present case whether the present applicants namely defendants 3 to 8 have anything to do either with 'Apollo Diagnostic Centre' or with 'Apollo Stone Clinic' are matters to be decided only on appreciation of evidence adduced to that effect. The plaintiff is aggrieved

with the usage of the name 'Apollo' over which the plaintiff claims rights as registered trademark. Proprietors and over the defendants describing themselves as 'Apollo Family'.

15. The onus is on the plaintiff to let in evidence, giving the necessity to implead the defendants to the suit. That is an issue which the plaintiff will have to answer in the course of trial. Insofar as the present application is concerned, it would only have to be examined whether the plaintiff has a cause of action to institute the suit against the defendants. That cause of action, insofar as the present suit is concerned is the usage of the trademark 'Apollo' and its infringement. The plaintiff believes that owing to the said invitation all the defendants are in some manner or the other responsible for such infringement. They may not be partners of the said partnership firm but if they, by any other manner assist such infringement, then the plaintiff will have cause against them. Even if they were to turn a blind eye over the infringement by D1 and D2, and participate in the function and as a matter of fact had consented their names to be printed in the invitation for inauguration of 'Apollo Diagnostic Centre' and 'Apollo Stone Clinic', then the present applicants will have to give an explanation as to why they

permitted their names to be so included in the said invitation. The onus to provide such explanation lies on the applicants / defendants. The plaintiff will only have to prove that they are in some manner either directly or indirectly or remotely connected with 'Apollo Diagnostic Centre' and 'Apollo Stone Clinic'.

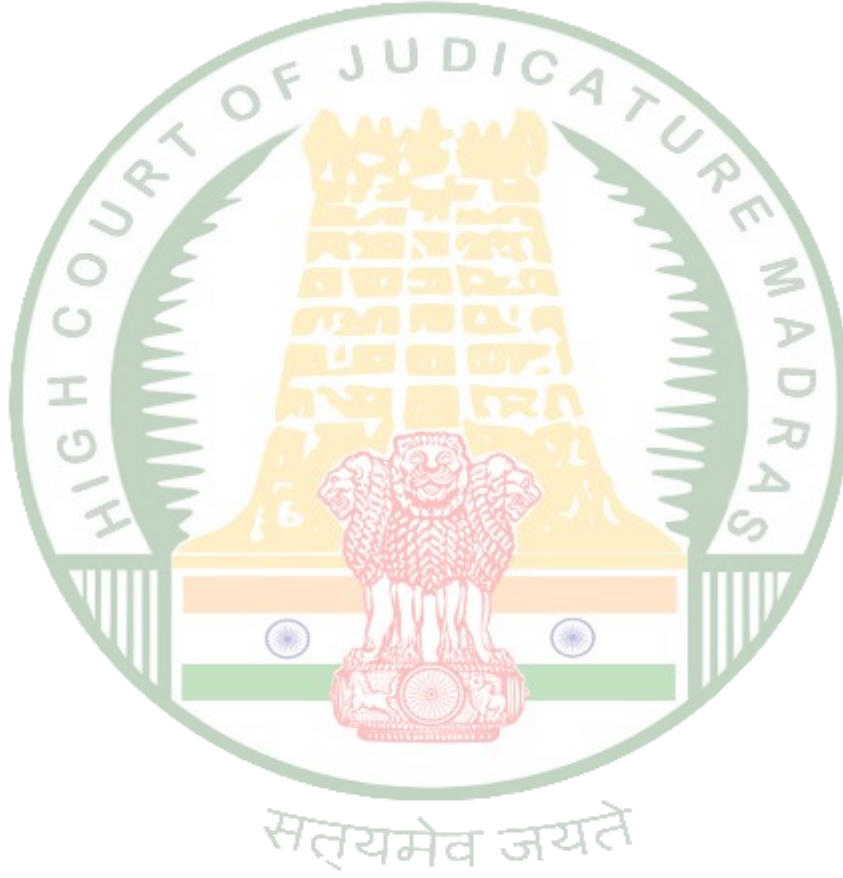
16. The plaintiff is aggrieved that by promoting infringement of the trademark 'Apollo' and by projecting themselves as 'Apollo Family', all the defendants are directly involved with active participation in promoting such infringement. The issues whether they are necessary parties / proper parties / interested parties would have been to be determined only during the trial. It is also noted that these applicants have also filed their written statement. Having taken up a substantial issue denying the contentions of the plaintiff by way of filing written statement, it would only be appropriate that they are granted an opportunity and invited them to graze the witness box and speak for themselves. Naturally then, trial is the answer to decide whether they are necessary or proper parties to the suit.

17. In view of these reasons, I am not inclined to concede the requests sought by the present applicants. Accordingly, the applications are dismissed. No order as to costs.

03.03.2021

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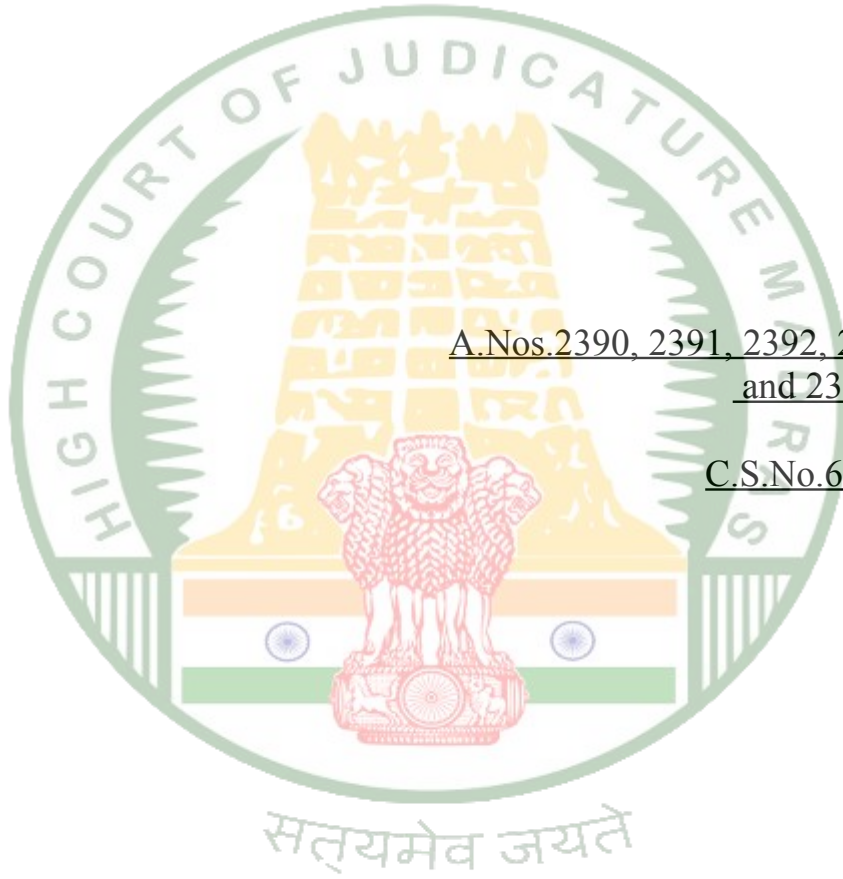
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