

O.A.Nos.185 & 186 of 2020
in C.S.(Comm. Div.).No.140 of 2020

DR.G.JAYACHANDRAN, J.

Heard the learned counsel for the applicant and the learned counsel for the respondents.

2. The suit is filed for injunction, declaration of trademark and passing off. These two applications are filed for injunction restraining the respondents from using the infringing trademark INITIUM.

3. The short point in this case is that the applicant along with the 1st defendant had started the LLP (i.e.) the 2nd defendant firm and the trademark Registry has granted trademark for the word INITIUM. The applicant is the exclusive owner of the domain name “initiumpartners.in”. The 2nd respondent LLP came into existence on 17.02.2015. The subject trademark was granted to the LLP on 08.08.2016. The application for the trademark was made by the plaintiff and the 1st defendant on behalf of the 2nd defendant LLP showing the address of the plaintiff. It is also admitted that the domain name “initiumpartners.in” stands in the name of the plaintiff and registered on 05.02.2015. The dispute between the plaintiff/applicant and the 1st respondent has arisen after the applicant has resigned from the partnership on 29.02.2020.

4. It is brought to the notice of this Court that for the settlement of shares, parties have already initiated arbitration proceedings and the same is pending.

5. The learned counsel for the respondent would submit that he has filed an application under Section 8 of the Arbitration Act, to refer the matter to the Arbitrator and the same is pending in the Registry. However, the present dispute in the suit is prima facie regarding the intellectual property right of using the trademark INITIUM. Whether the said dispute is arbitral or not is the subject matter for further deliberations. Since the suit is filed for declaration of title claiming exclusive ownership, prima facie it is a matter to be decided by the Court.

6. As far as the relief sought in the interim application is concerned, the applicant claims exclusive right whereas the 1st defendant claims the plaintiff have no right over the trademark "INITIUM". The said trademark application is jointly made by the plaintiff and the 1st defendant. As a partner of the LLP, the plaintiff was enjoying the subject trademark. It was even prior to LLP incorporation the word has been coined. The applicant has obtained domain name. The ownership of the trademark whether can now be exclusively

enjoyed by the 2nd respondent taking advantage of the retirement of the applicant without settling his share is intrinsically connected and not a issue purely within the domain of the Arbitrator. The LLP which was incorporated with the plaintiff and defendant as its partners without a legally accepted causation, cannot claim ownership over the Trademark independent of its partners.

7. For the present, this Court is of the view that the respondents have no right to use the domain name initiumpartners.in platform, which exclusively stands in the name of applicant and came into existence even prior to incorporation of LLP and also instantly this Court finds that the domain name and the trade name are identical, but if any injunction is granted against the respondent for using the trademark, it may substantially curtail the business of the respondents, who also happens to be the co-owner of the trademark. Hence the application in A.No.186 of 2020 filed for injunction restraining the respondent from using the trademark INITIUM is dismissed. Prayer in A.No.185 of 2020 restraining the respondent from using the domain name “initiumpartners.in” is allowed.

8. The dismissal of the injunction against the respondents 1 and 2 will not be an impediment or bar for the applicant to use the trademark, since there is a prima facie material to show the applicant is a co-owner of the trademark and prior user of the name.

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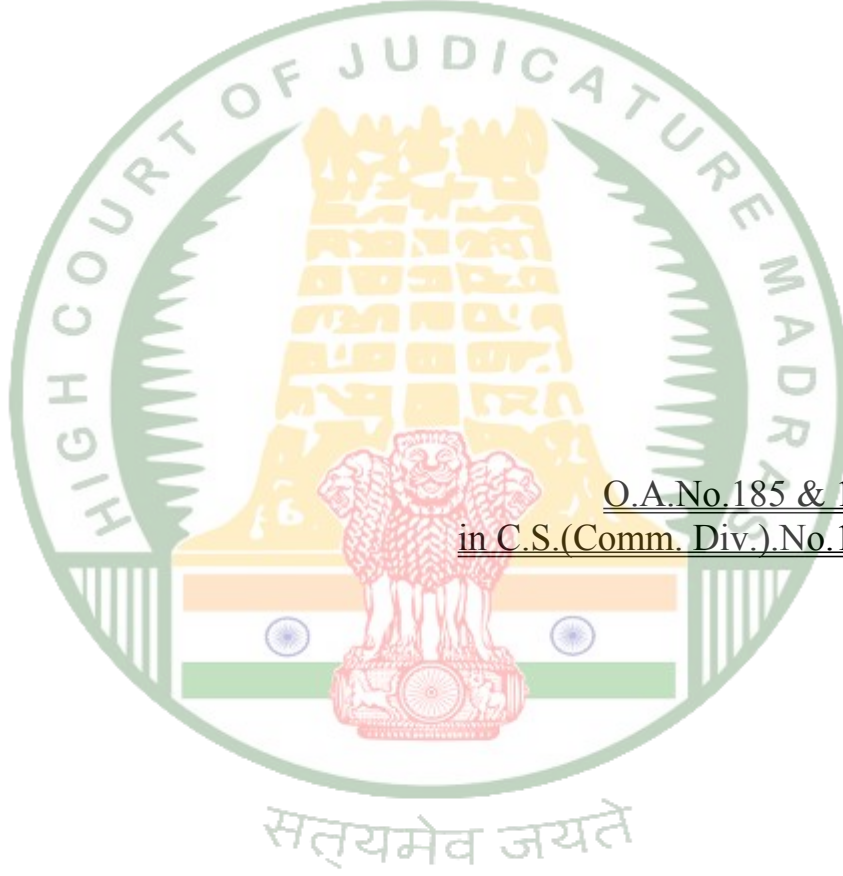


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