



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.12625 of 2019

and

W.M.P.Nos.12854 & 12857 of 2019

1. K.A.Velayutham
 2. K.V.Sukumar
 3. M/s.Ambika Foods
Rep. By Partner
Mr.K.V.Sukumar,
(P3 impleaded as per petitioner vide
order dated 22.02.2021 made in
W.M.P.No.3461/2021 in W.P.No.12625/2019)
- ...Petitioners

Vs.

- 1 The Registrar of Trademarks,
Trademarks Registry,
Industrial Estate SIDCO RMD,
Godown Area, GST Road,
Guindy Chennai - 600032.
- 2 The Controller General of Patents
Designs and Trade Marks
Intellectual Property Bhavan,
Near Antop Hill Head Post Office,
S.M.Road Antop Hill,
Mumbai - 400037.
- 3 Ambika Appalam Company
Old No. 25, New No. 4,
Dr. Nair Road, T.Nagar,
Chennai - 600017.
- 4 K.V.VIJAYARAGHAVAN,
Ambika Appalam Company, Old No. 25,
New No. 4, Dr. Nair Road,
T.Nagar Chennai - 600017.
- 5 R.N.JAYA



6 K.V.VYAS
(RR4 to 6 impleaded as per order
dated 25.10.2019 made in WMP 29217/2019
in W.P.No.12625/2019)

...Respondents

WEB COPY

Prayer:Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus Calling for the records on the file of the 1st respondent pertaining to proceedings taken towards allowing Form TM-24 filed by the 3rd respondent in trademark application no. 948965 in class 30 along with certificate dated 04.03.2019 issued in pursuance thereof and quash the same.

For Petitioners : Mr.P.H.Aravind Pandian
Senior counsel
For Mr.Rajesh Ramanathan

For Respondents : Mr.K.S.Jayaganesh R1 & R2
Special Panel Counsel
Mr.K.Raja sekaran R3

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus Calling for the records on the file of the 1st respondent pertaining to proceedings taken towards allowing Form TM-24 filed by the 3rd respondent in trademark application no. 948965 in class 30 along with certificate dated 04.03.2019 issued in pursuance thereof and quash the same.

2.The case of the petitioners is that the petitioners are co-ownes and joint proprietors of the trademarks Ambika, Ambika Appalam and Ambika Appalam Depot. The first petitioner is the first person to coin the word as early as in the year 1948 and subsequently, continued to use the same in partnership with his sons viz., K.V.Sukumar and K.V.Vijayaraghavan. That being the case, the said three persons applied for registration of the trademark ''Ambika Appalam Depot'' label under No.948965 in class 30 in the year 2000. Apart from the above trademark, the said three persons jointly applied and obtained copyright registration for the very same label under No.A56754/99, wherein the first petitioner is mentioned as the author of the label. All the three said persons are continuously using the said marks till date in their respective business and are enjoying equal rights over the said marks.



3. While so, in the year 2015, the petitioners came to know about a request for recordal of assignment of trademark (Form TM 24) filed by the 3rd respondent in the trademark application No.948965 using fabricated documents in the style of deed of retirement and deed of reconstitution of partnership. The petitioners immediately filed with the first respondent, a letter of objection against allowing the request for recordal of assignment to which the 3rd respondent filed the reply before the first respondent. Subsequent to filing of letter of objection, the petitioners also filed a civil suit against the 3rd respondent seeking to declare the deed of retirement as illegal. In spite of the knowledge of the above facts, which have been brought to the notice of the first respondent through various oppositions proceedings pending between the parties and also upon receipt of the letter of objection from the petitioners, the first respondent passed the impugned certificate dated 04.03.2019 in favour of the third respondent. Challenging the said certificate, the present writ petition has been filed before this Court seeking to quash the same.

4. Learned Senior counsel for the petitioners submitted that the impugned certificate granted in favour of the 3rd respondent is completely against the principles of natural justice. The first respondent has completely ignored the provisions of law under Section 45 of the Trademarks Act, 1999 while allowing the claim of the 3rd respondent. The learned Senior counsel further submitted that without disturbing the impugned certificate passed by the first respondent, this Court may issue a direction to the first respondent to consider the petitioner's objection by way of remanding the matter to the first respondent and pass orders within the reasonable time as fixed by this Court.

5. For better understanding, Section 45 of the Trademark's Act 1999 is extracted hereunder:

''45. Registration of assignments and transmissions

''(1) Where a person becomes entitled by assignment or transmission to a registered trade mark, he shall apply in the prescribed manner to the Registrar to register his title, and the Registrar shall, on receipt of the application and on proof of title to his satisfaction, register him as the proprietor of the trade mark in respect of the goods or services in respect of which the assignment or transmission has effect, and shall cause particulars of the assignment or transmission to be entered on the register:

PROVIDED that where the validity of an assignment or transmission is in dispute between the parties, the Registrar may refuse to register the assignment or transmission until the rights of the parties have been



determined by a competent court.

(2) Except for the purpose of an application before the Registrar under sub-section (1) or an appeal from an order thereon, or an application under section 57 or an appeal from an order thereon, a document or instrument in respect of which no entry has been made in the register in accordance with sub-section (1), shall not be admitted in evidence by the Registrar or the Appellate Board or any court in proof of title to the trade mark by assignment or transmission unless the Registrar or the Appellate Board or the court. as the case may be, otherwise directs.''

6.The learned Special Panel Counsel appearing for the respondents 1 & 2 submitted that the respondents have no serious objection to remand the matter back to the first respondent.

7.Heard the learned counsel for the petitioners, the learned Special Panel Counsel and the counsel appearing on behalf of the respondents and perused the materials available on record.

8.Considering the limited request made by the petitioner and after perusing the Section 45 of the Trademark's Act, 1999, this Court, without going into the merits of the case and without quashing the impugned certificate passed by the first respondent, is inclined to remand the matter back to the first respondent. The first respondent shall take a decision after affording sufficient opportunity to both the parties by conducting a personal enquiry and shall take a decision within a period of twelve weeks from the date of receipt of the order.

9.In the result, the matter is remanded back to the file of the first respondent to conduct a fresh enquiry in accordance with law. With the above directions, this writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

rli



To

1 The Registrar of Trademarks,
Trademarks Registry,
Industrial Estate SIDCO RMD,
Godown Area, GST Road,
Guindy Chennai - 600032.

2 The Controller General of Patents
Designs and Trade Marks
Intellectual Property Bhavan,
Near Antop Hill Head Post Office,
S.M.Road Antop Hill, Mumbai - 400037.

+1cc to M/s.Rajesh Ramanathan, Advocate, S.R.No.61708

+1cc to M/s.M.R.Gokulakrishnan, Advocate, S.R.No.61819

W.P.No.12625 of 2019
and
W.M.P.Nos.12854 & 12857 of 2019

BP (CO)
RGA (27/01/2022)