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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

O.S.A.No.217 of 2021

- 1 TIRUMALAA DAIRY LIMITED
REP. BY ITS DIRECTOR SURESH DNYANOBARAO KUTE ,
S.NO.406 AND 407 AT NIMBHORE
POST SURWADI TALUKA
PHALTAN SATARA SATARA
MAHARASHTRA 415 523.
- 2 TIRUMALAA FRESH DAIRY FARMS PVT LTD
REP. BY ITS DIRECTOR
ARCHANA SURESH KUTE
S.NO.406 AND 407 AT NIMBHORE
POST SURWADI TALUKA
PHALTAN SATARA SATARA
MAHARASHTRA 415 523.
- 3 SURESH DNYANOBARAO KUTE
DIRECTOR FRESH N NATURAL DAIRY FARMS (P) LTD.
RADHA CLOTH CENTER
HIRABAI CHOWK BEED
MAHARASHTRA 431 122.
- 4 ARCHANA SURESH KUTE
DIRECTOR FRESH N NATURAL DAIRY FARMS (P) LTD.
RADHA CLOTH CENTER
HIRABAI CHOWK BEED
MAHARASHTRA 431 122.

...Appellants

Vs

TIRUMALA MILK PRODUCTS PRIVATE LTD
NO.125 1ST FLOOR 7TH CROSS
STREET SENTHIL NAGAR CHENNAI 600 099
REPRESENTED BY ITS
MANAGER (LEGAL) MR.S.MUKUDH

...Respondent



Appeal filed against the order dated 19.04.2021 in A.No.181 of 2021 in C.S.No.190 of 2020.

Prayer in A.No.181 of 2021:

Application is filed under order XIV Rule 8 of O.S.Rule read with Order 7 Rule 11(4) of the Civil Procedure Code, 1973, prayed to reject the plaint in C.S.No.190 of 2020 and impose heavy cost.

Prayer in C.S.190 of 2020:

(a) Pass and pronounce a Decree of Permanent Injunction against infringement of Plaintiffs' registered Trademark by restraining the Defendants or their assigns, successors-in-interest, licensees, franchisees, sister concerns, representatives, servants, distributors, agents, family members, employees, etc. and/or any person or entity acting for or on behalf of them, from using Plaintiffs' trade mark 'THIRUMALA'/'THIRUMALA MILK', components thereof, or any other mark(s) deceptively similar thereto, including 'TIRUMALAA DAAIRY', singularly or in conjunction with any other words or monogram/logo, as a trade mark, service mark, corporate name, trade name, trading style, domain name, website address, electronic mail identity or in any other manner whatsoever; on or in relation to or any product or diary business including advertising, business papers, etc.,

(b) Pass and pronounce a decree of permanent injunction against Defendants, their assigns, successors-in-interest, licensees, franchisees, sister concerns, representatives, servants, distributors, agents, family members, employees, etc. and/or any person or entity acting for or on behalf of them from passing off their business or milk and diary products as or for the products of the Plaintiff by restraining them from using Plaintiff's trade mark "THIRUMALA"/'THIRUMALA MILK', Impugned Branding, or any other mark(s) deceptively similar thereto including, 'TIRUMALA DAAIRY', singularly or in conjunction with any other words or monogram/logo, as a trade mark, service mark, corporate name, trade name, trading style, domain name, website address, electronic mail identity or in any other manner whatsoever; on or in relation to or any product, service/business including advertising, business papers, etc.,

(c) Pass and pronounce a Decree of Permanent Injunction restraining, Defendants, their assigns, successors-in-interest, licensees, franchisees, sister concerns, representatives, servants, distributors, agents, family members, employees, etc. and/or any person or entity acting for or on behalf of them, from indulging in acts of unfair competition by use of the



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Impugned Branding or any other mark(s) or any other mark deceptively similar thereto, including 'TIRUMALAA DIAARY', or perpetrating confusion and deception regarding the source of the 'Defendants' products verbally or in written or on any other manner whatsoever;

(d) Pass and pronounce a Decree directing Defendants and/or their representatives, officers, etc. to deliver up to Plaintiff for the purpose of destruction/erasure all infringing materials including but not limited to product packaging consisting of Impugned Branding, Plaintiff's registered trademark, catalogues, pamphlets, brochures, billboards, stationery, business cards, bill books, vouchers, letterheads, signage, reprographic material, labels or any other material bearing the name 'TIRUMALLA DIAARY' and/or any other mark deceptively similar to Plaintiff's trademark 'THIRUMALA'/'THIRUMALA MILK' used upon or in relation to manufacturing, marketing, selling, promoting and/or advertising Defendants' products or dairy business;

(e) Directing the Defendants, to jointly and severally, pay the Plaintiff a sum of Rs.1,01,00,000/- (Rupees One Crore and One Lakh Only) as Damages;

(f) Pass and pronounce an order directing the Defendants to pay the Plaintiff for costs of the proceedings; and

(g) pass such further or other Order or Orders, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of Plaintiff and against Defendants, and thus render justice.

For the Appellants : Ms.S.Nithya

J U D G M E N T

(Delivered by the Hon'ble Chief Justice)

It is submitted on behalf of the appellants that since the interim order impugned has elapsed by efflux of time, the appeal need not be pursued. Accordingly, O.S.A.No.217 of 2021 is disposed of without going into the merits thereof. C.M.P.No.9195 of 2021 is closed.

2. In the event the order impugned herein is extended, it will be open to the appellants to prefer a fresh appeal in accordance with law.



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3. There will be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

tar

To:
The Sub Assistant Registrar,
Original Side,
High Court, Madras.

O.S.A.No.217 of 2021

RLD(CO)
LS(14/09/2021)