



O.A.Nos.407 to 409 of 2021
in C.S.(Comm.Div).No.16 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on : 28.09.2021

Pronounced on : 01.10.2021

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

O.A.Nos.407 to 409 of 2021

in

C.S.(Comm.Div).No.16 of 2021

M/s.Aarthi Scans Private Limited,
60, 100 Feet Road, Vadapalani,
Chennai – 600 026.

Rep. by its Managing Director Mr.Govindarajan.V ... Applicant/Plaintiff
in O.A.Nos.407 to 409 of 2021

/versus/

1. RT Diagnostics,
3/23, Plot No.62, 1st Street, Rajeshwari Nagar,
Karambakkam, Porur,
Chennai – 600 116.
Rep. by its Managing Partner,
Dr.S.Thiruvengadaswamy,

Also at
No.23, Friends Avenue,
Arumbakkam, Chennai – 600 116.
(Appasamy Medical Center).

2. Dr.S.Thiruvengadaswamy,
3/23, Plot No.62, 1st Street, Rajeshwari Nagar,
Karambakkam, Porur,
Chennai – 600 116.

3. T.Vijay Srinivas,
3/23, Plot No.62, 1st Street, Rajeshwari Nagar,
Karambakkam, Porur,
Chennai – 600 116.

... Respondents/Defendants
in O.A.Nos.407 to 409 of 2021



Prayer in O.A.No.407 of 2021:- This application is filed under Order XIV Rule 8 of High Court Original Side Rules read with Order XXXIX Rule 1 & 2 and Section 151 of C.P.C., 1908, praying for:-

(i). This Court should not be pleased to grant a temporary injunction restraining the respondents by themselves, their partners, men, affiliates, manufactures, dealers, representatives, servants, agents, legal representatives, successors in business or any other person claiming under it from in any manner using the marks Aarthi Diagnostics or RT Diagnostics as their domain name www.aarthidiagnostics.com, email ids, facebook page or any other social media or google maps or any mark deceptively similar to the applicant's registered trademark or in any other manner whatsoever pending disposal of the suit?

Prayer in O.A.No.408 of 2021:- This application is filed under Order XIV Rule 8 of High Court Original Side Rules read with Order XXXIX Rule 1 & 2 and Section 151 of C.P.C., 1908, praying for:-

(i). This Court should not be pleased to grant a temporary injunction restraining the respondents by themselves, their partners, men, affiliates, manufactures, dealers, representatives, servants, agents, legal representatives, successors in business or any other person claiming under it from in any manner trading under, using advertising directly or indirectly or dealing in diagnostics, scan and lab facility or any other goods or services under the mark Aarthi Diagnostics or RT Diagnostics or formerly Aarthi Diagnostics any other mark that is identical and/or deceptively similar as that of the Applicant's mark Aarthi so as to pass off the respondent's goods as and for that of the Applicant and/or in



any other manner whatsoever pending disposal of the suit?

WEB COPY

Prayer in O.A.No.409 of 2021:- This application is filed under Order XIV Rule 8 of High Court Original Side Rules read with Order XXXIX Rule 1 & 2 and Section 151 of C.P.C., 1908, praying for:-

(i). This Court should not be pleased to grant a temporary injunction restraining the respondents by themselves, their partners, men, affiliates, manufactures, dealers, representatives, servants, agents, legal representatives, successors in business or any other person claiming under it from in any manner trading under, using advertising directly or indirectly or dealing in diagnostics, scan and lab facility under the mark Aarthi Diagnostics or RT Diagnostics or formerly Aarthi Diagnostics thereby infringing Applicant's registered trademark or any mark deceptively similar to Applicant's registered Trademark or in any other manner whatsoever pending disposal of the suit?

For Applicant : Mrs.Suba Shiny
in all applications

For Respondents : Mr.S.R.Sundar
in all applications

ORDER

The main prayer in the suit is for permanent injunction against infringement of Trademark and passing off. Three Original Applications under consideration are filed for temporary injunctions.



WEB COPY

O.A.Nos.407 to 409 of 2021
in C.S.(Comm.Div).No.16 of 2021

2. Facts as pleaded by the applicant/plaintiff:-

In the year 1988, Dr.V.Govindarajan, the Managing Director of the plaintiff Company and his wife Dr.Gomathi established a hospital at Kovilpatti named after their daughter Aarthi. In the year 1996, they started a Kalyana Mandapam in Kovilpatti and named it as Aarthi Mahal. In the year 2000, started Aarthi Scans and Labs. Later the proprietor concern was converted into a Private Limited Company in the year 2004. During 2009, Dr.V.Govindarajan got acquaintance with the 2nd defendant Dr.S.Thiruvengadaswamy, who was running a diagnostic Center at Kolathur, Chennai under the name and style of REEDS DIAGNOSTICS. They both joined together as partners and started a B2B (Business to Business) a referral laboratory as a partnership Firm under the trading style/service mark M/s.Aarthi Diagnostics. This partnership firm was established in addition to the existing scan centres, labs and diagnostic facility under the name Aarthi Scans and Labs, Aarthi diagnostics, Aarthi Mahal and Aarthi scans. In the partnership firm, Dr.V.Govindarajan held 70% and Dr.S.Thiruvengadaswamy held 30%. Dr.V.Govindarajan was in-charge of the entire management, staff employment, finances and administration.

Dr.S.Thiruvengadaswamy was in-charge of Marketing.

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



WEB COPY

O.A.Nos.407 to 409 of 2021
in C.S.(Comm.Div).No.16 of 2021

3. In order to protect the plaintiff trademark Aarthi in respect of hospital, scans, labs and diagnostic centers, the plaintiff applied and obtained registration of trademark for word AARTHI SCANS (Class 42), AARTHI SCANS & LABS (class 42 and class 44), AARTHI DIAGNOSTICS (class 42 and class 44), AARTHI SPECIALITY LABS (class 42 and class 44), AARTHI SCANS (class 42 and class 44), AARTHI DIAGNOSTICS (class 42 and 44) and for the DEVICE OF “AS” (class 42 and class 44). While so, difference arose between the partners Dr.V.Govindarajan and Dr.S.Thiruvengadaswamy. After negotiation, Dr.V.Govindarajan, the Managing Director of the plaintiff herein agreed to get retired from the partnership firm on certain terms. The retirement deed dated 12.05.2020 was executed. The retirement deed categorically specifies that the trademark ‘Aarthi diagnostics’ belongs to the plaintiff and the 2nd defendant undertake to change the name of the center within a period of 6 months. The defendant fail to change the name Aarthi completely even after lapse of the agreed 6 months. Hence, the plaintiff gave a police complaint on 11.03.2021 before the Assistant Commissioner of Police, Maduravoyal. The plaintiff believed that the 2nd defendant will revert back to its name REEDS DIAGNOSTIC or any other name. Whereas, the 2nd defendant, on 15.03.2021 contacted Mr.Prasanna, who is one of the Directors of the Plaintiff Company

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



and entered into a MOU, whereby the 2nd defendant agreed to change its name as R.T.Diagnostics. The said MOU is not enforceable since Mr.Prasanna, who is one among the two signatories of the document dated 15.03.2021 is not authorised to sign on behalf of the Company by the Board. The 2nd defendant was informed about the non ratification of the agreement dated 15.03.2021 by the Board and told the agreement is non-est in law. Despite, the defendant is carrying on business under the name and style R.T.Diagnostics. In Tamil, the defendants display the plaintiff's mark as "Mu;jp laf;Ndh];bf;];" instead of "Mu;b.laf;Ndh];bf;];". The dishonest intention of the 2nd defendant using the identical mark of the plaintiff is palpable seen. Further, the 2nd defendant has also filed rectification application for the plaintiff's Trademark "Aarthi Diagnostic" for Class No.44.

4. Defence raised in the common counter of the Respondents/Defendants:-

The suit and applications thereof are filed by the Company run by Dr.V.Govindarajan and his son-in-law Prasana as the Directors suppressing all material facts to defraud the respondents/defendants rights. The suit is filed to sabotage the business of the Respondents/Defendants.



WEB COPY

O.A.Nos.407 to 409 of 2021
in C.S.(Comm.Div).No.16 of 2021

5. The 2nd defendant was part of the initiatives of the REED FOUNDATION in Mumbai, which was dedicated to providing services, including medical services, to the physically challenged people. As a continuation of same, He was providing medical diagnostic services under the aegis of REEDS DIAGNOSTICS, free of cost, to the physically challenged and under privileged people. M/s.AARTHI DIAGNOSTICS a partnership concern was constituted vide deed dated 12.02.2009 consisting of the Mr.Govindarajan (Managing Director of the plaintiff Company) and the 2nd defendant Mr.Thiruvengadaswamy (Managing Partner of the first defendant partnership firm) holding shares in the ratio 70:30 respectively. The 2nd defendant as in-charge of operations owing to his technical expertise. Mr.V.Govindarajan was in control of finances and administration of the firm. While, the 2nd defendant was promoting the firm “AARTHI DIAGNOSTICS” in Chennai and Tamil Nadu through his tireless efforts successfully, without his knowledge, Mr.V.Govindarajan was expanding his business in M/s.Aarthi Scans Pvt. Ltd (Plaintiff herein), along with other Directors. Consequently, the business of the partnership firm namely “AARTHI DIAGNOSTICS” was neglected and incurred steady loss. The deliberate acts undermining the business of “AARTHI DIAGNOSTICS” with an ulterior motive to develop the plaintiff business lead



to misunderstanding among the partners. Mr.V.Govindarajan had secretly registered the mark “AARTHI DIAGNOSTICS” in the name of his family Company without the knowledge of the respondents/defendants using the PAN card and IT Returns of the partnership firm. When these act of deceit confronted, Mr.V.Govindarajan compelled the 2nd defendant to dissolve the firm. Upon the refusal of the second defendant, Mr.V.Govindarajan agreed to exit from the firm on settling the value of 70% of the stakes in the firm including the goodwill. Accordingly, a Deed of Partnership (Amendment/Alteration) dated 05.02.2020 was entered between Mr. Govindarajan (Managing Director of the plaintiff), Mr.Thiruvengitaswamy (2nd defendant) and Mr.T.Vijay Srinivas (3rd defendant). Mr.Govindarajan received Rs.70,00,000/- as consideration for his exit from the firm “AARTHI DIAGNOSTICS” towards his share, goodwill and royalty to the brand name.

6. Subsequently, Mr.Govindarajan, on 12.05.2020 pressured the 2nd defendant to sign a new deed of Partnership (Amendment/Alteration) with several self-serving clauses including to change the name of the partnership firm from Aarthi Diagnostics. Under threat and harassment, the 2nd defendant signed the deed dated 12.05.2020 at a much later date. In order to avoid further conflict, necessary steps to change the name as required under the deed dated



12.05.2020 taken and presently the partnership firm name is changes as R.T.Diagnostics, wherein, RT are the initial letters of Radha (wife of the 2nd defendant) and Thirvenkitaswamy (2nd defendant). Pursuant to this, a supplement/Amendment Partnership Deed Dated 06.11.2020 was executed. Mr.Thiruvankitaswamy was in fact appreciative of the name change and assisted in changing the name in all the Bank records, PAN, Laboratory Information System (LIS), PF records etc. Since outstanding around Rupees Ninety Seven Lakhs is due to the firm from its customers, the respondent is using the phrase “formerly M/s.Aarthi Diagnostics” in parenthesis. The said inclusion is necessary since a sudden name change would severely affect the business and goodwill generated over the years.

7. Not satisfied with the name change, Mr.Govindarajan and his son-in-law Prasanna with an intention to close down the business of the respondents unlawfully locked the Office of the respondent on 10.03.2021 and also gave a complaint to Assistant Commissioner of Police, Koyambedu. Parties appeared before the police on 14.03.2021. On the advice of the Police, parties arrived at a compromise and executed a memorandum of understanding dated 15.03.2021. Mr.Prasanna signed the MOU at the behest of

Mr.Govindarajan.

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



WEB COPY

O.A.Nos.407 to 409 of 2021
in C.S.(Comm.Div).No.16 of 2021

8. In suppression of all these facts, the suit alleging infringement and passing off. The applications for injunction filed with malice and ulterior motive due to business rivalry. Hence, liable to be dismissed.

9. Reply Affidavit of V.Govindarajan:-

In response to the common counter, Mr.V.Govindarajan has filed a 21 pages reply affidavit. Wherein, new facts which were within his knowledge but omitted to place on record at the first instances were canvassed. There is no explanation for not disclosing all the material facts at the first instances.

10. Heard the Learned Counsels. Records perused.

11. At the outset, it is to be noted that, the plaintiff along with the suit, relied upon 25 documents and through the applications sought for *ex parte* interim order.

12. The partnership dated 12.02.2009 entered between

Dr.V.Govindarajan and Dr.S.Thiruvengadaswamy is the plaintiff document No.13.

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



The deed of partnership (amendment/alteration) dated 12.05.2020 is the plaintiff document No.15. The MOU dated 15.03.2021 entered between the Prasanna and 2nd defendant (Dr.S.Thiruvengidaswamy) is the plaintiff document No.17. After filing common counter by the defendants, the plaintiff/applicant has chosen to file 11 more documents as additional documents.

13. According to the applicant, the respondent suppose to change the name of the business within a period of 6 months as per the retirement deed dated 12.05.2020. The relevant clauses (i) and (ii) in Deed of Partnership, dated 12.05.2020, reads as under:-

Deed of Partnership (Amendment/Alteration)

“6.....

.
.

*(i). It has been mutually agreed between the parties that the said trade business shall be carried on by the second and third part with different name and style, as the name and style of “**AARTHI DIAGNOSTICS**” has been patented by M/s.Aarthi Scans Private Limited. The Second Party shall change the name and style of “**AARTHI DIAGNOSTICS**” within six months from the date of this deed.*



WEB COPY

O.A.Nos.407 to 409 of 2021
in C.S.(Comm.Div).No.16 of 2021

(ii). *The parties of the Second and Third part had agreed to that and will change the name of the firm from “AARTHI DIAGNOSTICS” to such other name or names as the parties of the Second and Third part may decided within a period of six months from the date of this deed.”*

14. On expiry of 6 months, another agreement has been entered between the parties on 06.11.2020 under the caption “SUPPLLEMENT/ AMENDMENT PARTNERSHIP DEED. The plaintiff herein has not whispered about the supplement amendment partnership deed dated 06.11.2020. The said deed dated 06.11.2020 is in respect of the actual name to be changed. The relevant Clause of the deed indicates that,

“2).....

.
. .

WHEREAS as agreed in the Clause I & II of the Partnership Deed dated 12.05.2020 the parties to this Agreement in the meeting held at the above registered Office of the firm on 06.11.2020 it has been resolved to change the name of the Firm “M/s.AARTHI DIAGNOSTICS” to M/s.RT DIAGNOSTICS”.



WEB COPY

O.A.Nos.407 to 409 of 2021
in C.S.(Comm.Div).No.16 of 2021

NOW THIS INDENTURE WITNESSETH AS UNDER:-

1). This Deed is Supplement/Amendment to the Deed of Partnership dated 05.02.2020 & 12.05.2020 and made between the said parties.

2). The parties to this Deed on 06.11.2020 in a meeting held at the registered address of the Firm Office had resolved to change the name of the Firm from M/S.AARTHI DIAGNOSTIC to RT DIAGNOSTIC as the firm name as agreed in the Clause I & II of the Partnership Deed dated 12.05.2020.”

15. In the above said deed, Dr.V.Govindarajan, Dr.S.Thiruvenkitaswamy and T.Vijay Srinivas are signatories. The plaintiff with an ulterior motive had suppressed this deed in his pleadings. In this deed, he has agreed for the 2nd defendant to change the name as “RT DIAGNOSTICS”. After suppressing this document had come to this Court with unclean hands, as if, the 2nd defendant is infringing the registered trademark of the applicant.

16. However, it is to be noted that, the 2nd respondent, who has changed the name as “RT DIAGNOSTICS” as agreed upon while writing it



“Mu;.B. laf;Ndh];bf;];” in Tamil, use the word “Mu;jp laf;Ndh];bf;];”. This Court is of the view that, same may cause confusion in the minds of the general public who know only Tamil. Therefore, the respondents/defendants are hereby directed to write its name in Tamil as “Mu;.B. laf;Ndh];bf;];” wherever required. Having agreed for the name change as “RT DIAGNOSTICS, the respondent should use the same words while writing it in Tamil or other languages. The applicant having agreed for the new name “RT DIAGNOSTICS” and assisted the respondents to carry that the necessary changes in all the records, the applicant/plaintiff herein is estopped from seeking restraint order against the respondents from using the new name.

17. This is a suit for infringement and copyright. Pending suit, relief of interim injunctions are sought. However, from the pleadings and documents, it is clear that, the name “RT DIAGNOSTICS” is adopted by the respondents pursuant to the agreement between the applicant and the respondents. The respondents/Defendants has honestly adopted the new name, “RT DIAGNOSTICS” after parting away with the applicant. After receiving the consideration for the release from the partnership and having consented to adopt new name “RT DIAGNOSTICS”, the applicant herein is estopped from challenging the defendants using the new name “AARTHI DIAGNOSTICS” on



O.A.Nos.407 to 409 of 2021
in C.S.(Comm.Div).No.16 of 2021

the ground that, it is similar to the registered mark of the applicant/plaintiff.

For the above said reasons, the applications are liable to be dismissed.

18. In the result, the *Original Application Nos.407 to 409 of 2021* are dismissed. With costs.

Sd./-G.J.J.
01.10.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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

jj 08/10/2021