

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

CORAM

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

C.S(Comm.Div.).No.451 of 2018

ITC Limited,
69 (Old No.41),
Chamiers Road,
Chennai 600 018.
Rep.by its Constituted Attorney
Mr.V.S.Sridhar

... Plaintiff

Vs.

1.Sri Adhi Parasakthi match
Hanuman Nagar, Padanthal Post,
Sattur-626 203.

2.Thirupathi Match Works,
Padanthal, Sattur-626 203.

3.Sri Balaji Transport,
NH-44 Service Road, Sattur,
Tamil Nadu 626 203.

4.Kanna Match Company,
1st Street, Gandhi Nagar,
Kovilpatti-628 501.

5.Thilagaratnam Match Works,

1st Street, Gandhi Nagar,
Kovilpatti-628 501.

6.Suresh Match Works,
1st Street, Gandhi Nagar,
Kovilpatti-628 501.

7.R.K.V.Transport,
627, Balaji Nagar,
Near fly over,
Kovilpatti 628 501.

8.Ashok Kumar,
Unknown persons,
India.

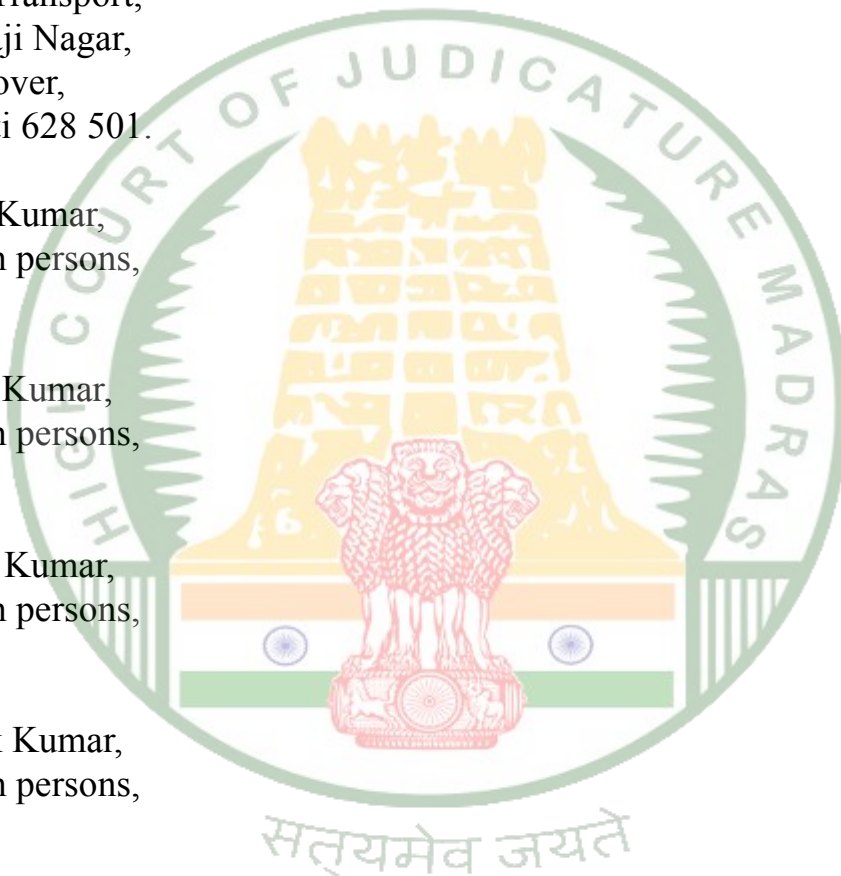
9. Ashok Kumar,
Unknown persons,
India.

10.Ashok Kumar,
Unknown persons,
India.

11.Ashok Kumar,
Unknown persons,
India.

12.Ashok Kumar,
Unknown persons,
India.

13.Ashok Kumar,
Unknown persons,
India.



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14.Ashok Kumar,
Unknown persons,
India.

15.Ashok Kumar,
Unknown persons,
India.

16.Saravana Bhava,
NH-44, Service Road,
Sattur, Tamilnadu-626 203.

17.Mr.Guruswamy,
No.1/376 Srirangapuram village,
Sattur Taluk, Tamil Nadu-626 203.

18.Rama Trading Company,
1054/6, Rajiv Nagar,
5th Street, Kovilpatti-628 501.

19.Nagappa Match Works,
No.9, UCC Street, Bodipet,
Gudiyattam-632 602.

(Defendant 16 to 19 impleaded as per order
in A.No.6673/2018 dated 08.08.2019)

20.Malaimman Transporter Godown,
Near Magalir Police Station,
Sattue Taluk-626 203.

(20th defendant impleaded as per order
dated 13.03.2020 in A.No.558/2020)

... Defendants

Prayer: The Civil Suit has been filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of C.P.C r/w Sections 27, 28, 29, 134 and 135 of the Trade Marks Act, 1999 and Sections 51, 54, 55 & 62 of the Copyright Act, 1957 and Section 7 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, No.4 of 2016, praying for

(a) A permanent injunction restraining the defendants 1-7, themselves, their respective proprietors/directors/partners as the case may be, successors-in-business, servants, agents, distributors, dealers, stockists, shop keepers, wholesalers, retailers, representatives, assigns and all other persons claiming through or under them from infringing the registered trade mark/label AIM of the plaintiff by manufacturing, selling and/or distributing matches under the almost identical mark/label ATM or any other similar or identical or deceptively similar mark and artistic work and in any other manner whatsoever;

(b) A permanent injunction restraining the defendants 1-7, themselves, their respective proprietors/directors/partners as the case may be, successors-in-business, servants, agents, distributors, dealers, stockists, shop keepers, wholesalers, retailers, representatives, assigns and all other persons claiming through or under them from manufacturing, selling, offering for sale and/or distributing matches which would amount to passing off their goods as and for the goods of the plaintiff or as being in some way connected with the plaintiff by using the mark/label ATM or any other mark

similar or identical or deceptively similar to the plaintiff's trade mark/label AIM and artistic work and in any manner whatsoever;

(c) A permanent injunction restraining the defendants 1-7, themselves, their respective proprietors/directors/partners as the case may be, successors-in-business, servants, agents, distributors, dealers, stockists, shop keepers, wholesalers, retailers, representatives, assigns and all other persons claiming through or under them from manufacturing, selling, offering for sale and/or distributing matches from committing acts of copyright infringement by making substantial reproduction of the plaintiff's copyright in the artistic work AIM label by use of identical colour scheme or any other label similar or identical or deceptively similar thereto and in any other manner whatsoever;

(d) A permanent injunction restraining the defendants 8 to 15 and any other person or entity infringing, by themselves, their respective proprietors/directors/partners as the case may be, successors-in-business, servants, agents, distributors, dealers, stockists, shop keepers, wholesalers, retailers, representatives, assigns and all other persons claiming through or under them from manufacturing, selling, offering for sale and/or distributing matches from committing acts of trademark and copyright infringement by making substantial reproduction of the plaintiff's copyright in the artistic work AIM label by use of identical colour scheme or any other label similar or identical or deceptively similar thereto and in any other manner whatsoever;

(e) The defendants be ordered to surrender to the plaintiffs for destruction of all goods viz., matches, matchboxes, labels, cartons, dyes, blocks, screen prints, advertisement materials, packing materials and other goods containing the trademark ATM or any other mark similar or identical or deceptively similar to plaintiff's registered trademark AIM;

(f) The defendants be ordered to pay, jointly and severally, to the plaintiff a sum of Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lakhs only) as damages for committing acts of infringement of trademark and passing off;

(g) A preliminary decree be passed in favour of the plaintiff directing the defendants to render true and faithful account of profits earned by them by use of trademark ATM for matches, which is deceptively similar to the plaintiff's trademark AIM and a final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendants after the latter have rendered accounts;

(h) For entire costs of the suit.

For Plaintiff : Mr.Arun C.Mohan

For D3, D6 and D18 : Mr.C.Kasirajan

For D2, D5 : Set ex-parte

For D1, D4, D16, D19 & D20 : No appearance

JUDGMENT

(This case has been heard through video conference)

The suit is of the year 2018. Some of the defendants were served suit summons directly and the rest of the defendants, service was completed through substitute service by way of paper publication. None filed their written statement.

2. The learned counsels appeared through video conference and represented the defendants 3, 4, 17 and 18. For non appearance, the defendants 2, 3, 5 and 6 were set ex-parte on 30.09.2019. The 1st defendant before this Court gave an undertaking to file a memo that he will not infringe the registered Trademark of the plaintiff. However, no such memo filed in the Registry. Today, there is no representation for the 1st defendant.

3. The facts of the case as found in the plaint is that the plaintiff's company, which holds the registered Trademark/label AIM for its product matchbox, being aggrieved by the identical imitation by the defendants 1, 2, 4, 5, 6 and 19 who are the manufacturers of the Matches in the Sathur,

Srivilliputhur and Gudiyattam area and distributing it to various parts of the country through the other defendants had laid the suit for injunction and damages.

4. The plaintiff to mitigate the infringement and passing off had taken out an interlocutory applications appointing Advocate Commissioner to visit the premises of the defendants and to seize the infringed material and also an application for ad interim injunction. This Court considering the prayer in Application No.636 of 2018 granted ad interim injunction on 13.07.2018 also appointed four Advocate Commissioners to inspect the premises and seize the offending products. The relevant paragraph of the order passed by this Court in Application No.5084 of 2018 dated 13.07.2018 reads as under:

“12.The Advocate Commissioners are directed to file reports before this Court by 27.07.2018. The initial remuneration of the Advocate Commissioners is fixed at Rs.20,000/- each to be paid directly by the plaintiff. Registry to issue warrant immediately to (1)

Mr.S.Elumalai, Enrol.No.MS 3502/2015; Mobile No.9003030113; and (2) Mr.K.Mohanraj, Enrol.No.MS 2839/2015; Mobile No.9094853453/8438441849; for execution at the premises of the first, second and third defendants & (3) M/s.M.Stella, Enrol.No. MS 2224/2015; Mobile No.9500710059, 7299780159; and (4) Mr.N.Kannan, Enrol.No. MS. 2842/2015; Mobile No.8870910972, for execution at the premises of the fourth, fifth, sixth and seventh defendants. The Advocate Commissioners are directed to seize the offending products as enumerated in the application”

5. Thereafter, when the defendants came to know that some of the infringed material is stocked at Saravana Bhava, NH 44 Service Road, Sattur. Yet another application No.5874 of 2018 was filed for similar relief namely to visit the said premises and seize the infringed product. This Court allowed that application and issue warrant to the Advocate Commissioner to inspect the above said premises. The Advocate Commissioner who visited the premises have filed report indicating the match bundles carrying the

registered mark of the plaintiff either identical or similar were found in the Godown premises and seized after taking inventory of the infringed products, the goods were given to the custody of the respective defendants with an undertaking not to dispose it off.

6. Pending suit, yet another application No.96 of 2020 was filed by the plaintiff for appointing Advocate Commissioner to inspect the premises Maliamman Transporter Godown who is the 20th defendant impleaded. The Advocate Commissioner pursuant to the order passed by this Court in A.No.96 of 2020 dated 08.01.2020 inspected the premises of the 20th defendant and seized the infringed material from the premises and filed a report to that effect and over all appreciation of facts and evidence placed before this Court.

7. This Court finds that the plaintiff's case of infringement of its Trademark, copyright and passing off is well found from the material found in the defendants' premises during the inspection of the Advocate Commissioners. The various reports filed by the Advocate Commissioners

pursuant to the orders of this Court goes to show that in spite of the interim injunction against these defendants particularly the defendants 1, 2, 4, 5, 6 and 19 the manufacturers of matchbox had been continuously manufacturing Match sticks affixing the label ATM which is visually deceptive to that of the plaintiff's label AIM with Bulls Eye which is identical to that of the plaintiff.

8. The learned counsel for the plaintiff states that the plaintiff will be satisfied if relief of injunction against the defendants from infringing and passing off the plaintiff's registered trademark is granted. In respect of other reliefs the plaintiff is not pressed.

9. In view of the above said representation, there is no further evidence is required since the evidence from the Commissioner reports the manufacturing and circulation of the matchbox carrying label infringing the Trademark and copyright of the plaintiff, this Court is of the view that even without recording oral evidence, summary judgment under Order XIII Rule 1 shall be passed as below:

(a) A permanent injunction restraining the defendants 1-7, themselves, their respective proprietors/directors/partners as the case may be, successors-in-business, servants, agents, distributors, dealers, stockists, shop keepers, wholesalers, retailers, representatives, assigns and all other persons claiming through or under them from infringing the registered trade mark/label AIM of the plaintiff by manufacturing, selling and/or distributing matches under the almost identical mark/label ATM or any other similar or identical or deceptively similar mark and artistic work and in any other manner whatsoever

(b) A permanent injunction restraining the defendants 1-7, themselves, their respective proprietors/directors/partners as the case may be, successors-in-business, servants, agents, distributors, dealers, stockists, shop keepers, wholesalers, retailers, representatives, assigns and all other persons claiming through or under them from manufacturing, selling, offering for sale and/or distributing matches which would amount to passing off their goods as and for the goods of the plaintiff or as being in some way connected with the plaintiff by using the mark/label ATM or any other mark similar or identical or deceptively similar to the plaintiff's trade mark/label

AIM and artistic work and in any manner whatsoever;

(c) A permanent injunction restraining the defendants 1-7, themselves, their respective proprietors/directors/partners as the case may be, successors-in-business, servants, agents, distributors, dealers, stockists, shop keepers, wholesalers, retailers, representatives, assigns and all other persons claiming through or under them from manufacturing, selling, offering for sale and/or distributing matches from committing acts of copyright infringement by making substantial reproduction of the plaintiff's copyright in the artistic work AIM label by use of identical colour scheme or any other label similar or identical or deceptively similar thereto and in any other manner whatsoever

(d) A permanent injunction restraining the defendants 8 to 15 and any other person or entity infringing, by themselves, their respective proprietors/directors/partners as the case may be, successors-in-business, servants, agents, distributors, dealers, stockists, shop keepers, wholesalers, retailers, representatives, assigns and all other persons claiming through or under them from manufacturing, selling, offering for sale and/or distributing matches from committing acts of trademark and copyright infringement by

making substantial reproduction of the plaintiff's copyright in the artistic work AIM label by use of identical colour scheme or any other label similar or identical or deceptively similar thereto and in any other manner whatsoever;

(e) Infringement material seized from the respective defendants as found in the report of the Advocate Commissioners shall be destroyed either by the respective respondents/defendants within a period of 15 days or the plaintiff shall be entitled to take the possession of the materials seized and destroy it. The costs for such exercise shall be paid by the respective defendants.

10. In the result, the relief (a) to (e) are allowed. The relief (f) and (g) are dismissed. There shall be no order as to costs.

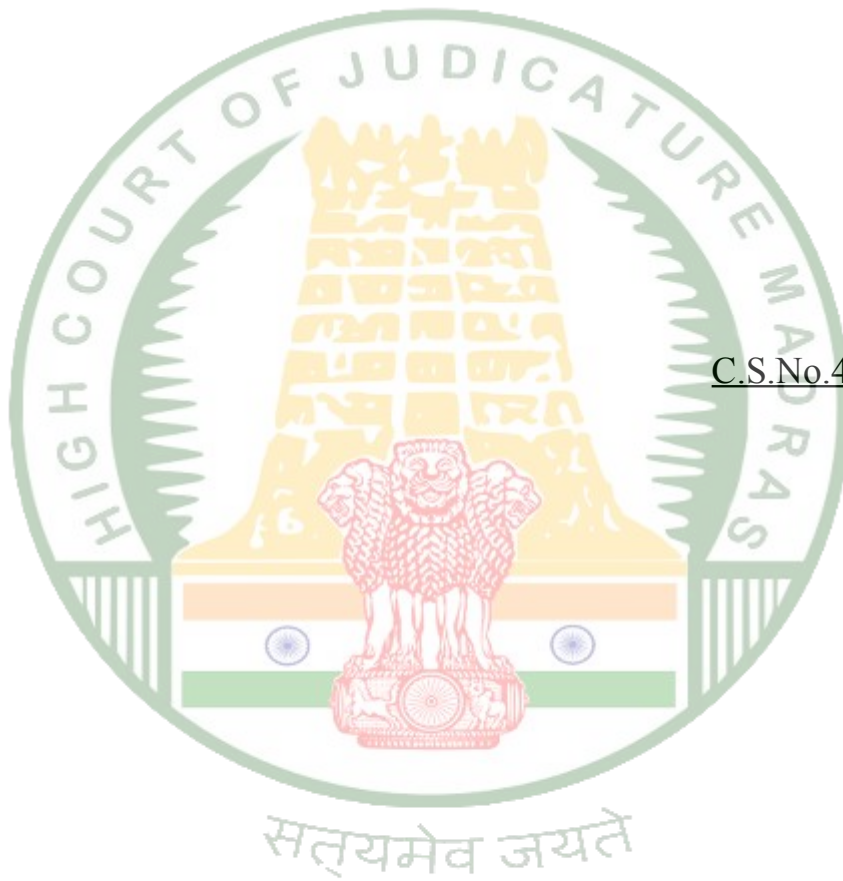
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DR.G.JAYACHANDRAN, J.
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