



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 05TH DAY OF AUGUST 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

C.S.(Comm.Div) No.255 of 2020

And

O.A.No.471 of 2020

And

A.Nos.2622 of 2020 & 743 of 2021

C.S.(Comm.Div) No.255 And O.A.No.471 of 2020:-

Mr.T.G.Arumugam,
S/o.T.S.Ganesan,
31A/C, 1st Street, New Colony,
VOC Nagar, Anna Nagar East,
Chennai – 600 102.

...Applicant/Plaintiff
in O.A.No.471 of 2020

Vs

1. Mr.T.G.Harigopal,
S/o. T.S.Ganesan,
No.16, NewStreet, Mannady,
Chennai – 600 001.

2. Mr.T.S.Ganesan,
S/o.T.Sambandamurthy Chetty,
No.16, New Street, Mannady,
Chennai – 600 001.

...Respondents/Defendants
in O.A.No.471 of 2020

C.S.(Comm.Div) No.255 of 2020:-

Civil Suit Praying that this Hon'ble Court be pleased to judgment



(a) Declaring that the alleged Deed of Assignment dated 05/09/2019 executed between the Defendants is sham and nominal and not binding on the Plaintiff in any manner whatsoever;

(b) Declaring that the Plaintiff has the sole and exclusive proprietorship over the registered trademark UMBRELLA BRAND registered under no. 200391 in class 34;

(c) Granting a permanent injunction restraining the Defendants by themselves, their men, servant, agents, representatives, assigns or any one claiming through it from in any manner interfering with the use and exclusively proprietorship of the trademark UMBRELLA BRAND or any mark deceptively similar thereto in any manner whatsoever;

(d) Directing the Defendants to pay to the Plaintiff the cost of the suit;

O.A.No.471 of 2020:-

Original Application praying that this Hon'ble Court be pleased to grant an order of temporary injunction restraining the Respondents by themselves, their men, servant, agents, representatives, assigns or any one claiming through it from in any manner interfering with the use of the trademark UMBRELLA BRAND or any mark deceptively similar thereto in any manner whatsoever, pending disposal of the suit.



WEB COPY

A.No.2622 of 2020 And 743 of 2021:-

Mr.T.G.Harigopal,
S/o. T.S.Ganesan,
No.16, New Street, Mannady,
Chennai – 600 001.

...Applicant/1st Defendant
in A.No.743 of 2021

Vs

1. Mr.T.G.Arumugam,
S/o.T.S.Ganesan,
31A/C, 1st Street, New Colony,
VOC Nagar, Anna Nagar East,
Chennai – 600 102.

...1st Respondent/Plaintiff
in A.No.743 of 2021

2. Mr.T.S.Ganesan,
S/o.T.SAmbandamurthy Chetty,
No.16, New Street, Mannady,
Chennai – 600 001.

...2nd Respondent/2nd Defendant
in A.No.743 of 2021

A.No.2622 of 2020:-

Application praying that this Hon'ble Court be pleased to return/reject the plaint in C.S.(Comm.Div)No.255 of 2020.

A.No.743 of 2021:-

Application praying that this Hon'ble Court be pleased to refer the dispute in C.S.(Comm.Div) No.255 of 2020 to arbitration.

This Civil Suit along with these applications coming on this day before this court for hearing in the presence of Mr.S.Diwakar, advocate for the plaintiff in C.S.No.255 of 2020 and for the applicant in O.A.No.471 of 2020 and for the 1st respondent in A.No.2622 of 2020 and



in C.S.No.255 of 200 and for the 1st defendant in C.S.No.255 of 2020 and for the 1st respondent in O.A.No.471 of 2020 and for the applicant in A.Nos.2622 of 2020 and 743 of 2021 and Mr.R.Sathishkumar, advocate for the 2nd defendant in C.S.No.255 of 2020 and for the 2nd respondent in O.A.No.471 of 2020 and A.Nos.2622 of 2020 and 743 of 2021 and upon reading the plaint and joint memo of compromise dated 03/08/2021 filed in C.S.No.255 of 2020 and the Judges summon and the affidavit of T.G.Arumugam, Counter affidavit of T.G.Hargopal and reply affidavit of T.G.Arumugam filed in O.A.No.471 of 2020 and the Judges summon and the affidavit of T.G.Harigopal and the counter affidavit of T.G.Arumugam filed in A.No.2622 of 2020 and the Judges summon and the affidavit of T.G.Harigopal and the counter affidavit of T.G.Arumugam filed in A.No.743 of 2021 and the Joint memo of compromise signed by the plaintiff and the defendants herein and their respective advocates and the said advocates for the parties hereto praying this court to take on record the Joint memo of compromise morefully setout in the schedule hereunder and pass a decree and **it is interms thereof ordered and decreed as follows:-**

That the parties hereto agreed and confirmed that both the Plaintiff and the 1st Defendant should be owners of the trademark UMBRELLA BRAND in class 34, independently.



2. That the 1st Defendant and the Plaintiff herein agreed and undertake to do the needful to effectively record the names of the Plaintiff and the 1st Defendant as joint proprietors of the trademark UMBRELLA BRAND in class 34, by filing a Form TM.P and all other necessary corresponding documents in this regard.

3. That the 1st Defendant herein agreed and undertakes to file request in Form TM P including the Plaintiff as a Joint Proprietor before the Registrar of Trademarks within two weeks from the date of executing this memo of compromise and record the joint proprietorship of the registered trademark UMBRELLA BRAND under no.200391 in class 34 in the Trademarks Register;

4. That the 1st Defendant and Plaintiff herein agreed and undertake to file request in Form TM M for Division of Application before the Registrar of Trademarks within two weeks from the date of executing this memo of compromise and record the geographical split of the trademark UMBRELLA BRAND under no.200391 in class 34 in the Trademarks Register allotting the districts of Bangalore-Urban & Rural and Udipi in the state of Karnataka and entire state of Kerala in favour of the Plaintiff and the entire state of Karnataka (other than the districts of Bangalore-Urban & Rural and Udipi), entire states of Tamil Nadu and



Andaman and Nicobar Island in favour of the 1st Defendant, as regards, other States, Union Territories in India and Exports from India, herein after referred as non-demarcated territories, both the Plaintiff and the 1st Defendant shall have equal rights.

5. That the 1st Defendant herein further agreed and undertakes to file request in Form TM M including the plaintiff as a joint proprietor before the Registrar of Trademarks within two weeks from the date of execution of this memo of compromise and record the joint proprietorship of the trademark UMBRELLA BRAND under no.4415656 in class 34 in the Trademarks Register;

6. That the 1st Defendant and Plaintiff herein agreed and undertake to file request in Form TM M for Division of Application before the Registrar of Trademarks within two weeks from the date of executing this memo of compromise and record the geographical split of the trademark UMBRELLA BRAND under no.4415656 in class 34 in the Trademarks Register allotting the districts of Bangalore-Urban & Rural and Udipi in the state of Karnataka and entire state of Kerala in favour of the Plaintiff and the entire state of Karnataka (other than the districts of Bangalore-Urban & Rural and Udipi), entire states of Tamil Nadu and Andhra Pradesh and the entire Union Territories of Puducherry and

Andaman and Nicobar Islands in favour of the 1st Defendant, as regards,



other States, Union Territories in India and Exports from India, herein after referred to as non-demarcated territories, both the Plaintiff and the 1st Defendant shall have equal rights.

7. That the Plaintiff and 1st Defendant herein agreed to exercise their ownership in respect of the registered trademark UMBRELLA BRAND in class 34 in the following manner:

i. The Plaintiff herein shall have and hold complete control over the markets in the Districts of Bangalore-Urban and Rural and Udipi in the state of Karnataka and entire state of Kerala.

ii. The 1st Defendant herein shall have and hold complete control over the markets in the entire state of Karnataka (other than the Districts of Bangalore-Urban and Rural and Udipi), entire states of Tamil Nadu and Andhra Pradesh, and the entire Union Territories of Puducherry and Andaman and Nicobar Islands.

iii. The Plaintiff herein and all those claiming through and under him agreed and undertakes that they shall not interfere with or object to or oppose the business of 1st Defendant in any manner whatsoever in the territories demarcated for 1st Defendant namely the entire state of Karnataka (other than the districts of Bangalore – Urban & Rural and Udipi), entire states of Tamil Nadu and Andhra Pradesh and the entire



the trademark UMBRELLA BRAND or any mark identical and/or deceptively similar thereto.

iv. The 1st Defendant herein and all those claiming through and under him agreed and undertake that they shall not interfere with or object to or oppose the business of Plaintiff in any manner whatsoever in the territories demarcated for the plaintiff namely the districts of Bangalore-Urban & Rural and Udipi in the state of Karnataka and entire state of Kerala using the trademark UMBRELLA BRAND or any mark identical and/or deceptively similar thereto.

8. That the Plaintiff and 1st Defendant herein agreed that any application filed for the UMBRELLA BRAND in class 34 in future by the Plaintiff and the 1st Defendant or their successors in interest shall be restricted to the states as set out in clauses (i) and (ii) above.

9. That the Plaintiff and 1st Defendant, herein further agreed that their heirs, agents, successors, assigns and/or anyone claiming through them or under them shall be entitled to use and/or register the trademark UMBRELLA BRAND in class 34 in the respective demarcated territories as mentioned above, such heirs, agents, successors, assigns and/or anyone claiming through or under the Plaintiff or 1st Defendant shall

have no right to oppose the other party's use and/or registration of the



trademark UMBRELLA BRAND in class 34 in pursuance to the above terms.

10. That the parties hereto further agreed that the Plaintiff shall submit the above terms before the Madras High Court or in any other appropriate forum, in the pending Rectification Petition, Viz., ORA/26/2020/TM/CHN for appropriate orders to be passed by the Hon'ble Court based on the above terms.

11. That further, in pursuance of the above terms and upon written confirmation from the 1st Defendant about his filing request in for TM-M before the Registrar of Trademarks for joint proprietorship and geographical split in application no.4415656 in class 34, the Plaintiff shall withdraw the opposition no.1045378 pending before the Registrar of Trademarks, within two weeks from the said communication.

12. That as regards, the markets in other States, Union Territories in India and Exports from India, herein after referred as non-demarcated territories, the Plaintiff and the 1st Defendant mutually agreed that they shall both have equal rights in respect of UMBRELLA BRAND, the Registered Trademark under class 34.

13. That the Plaintiff and 1st Defendant herein agreed that if either of the parties wish to assign their rights, either in full or in respect of any



specific territory, in respect of the mark UMBRELLA BRAND in class 34, the other party shall have the right of pre-emption which should be intimated to the other party giving 3(Three) months time to the other party to respond, if, however, the other party is unable to match the available market price the party wishing to assign the trademark shall be at liberty to sell it to any third party of their choice at any time after the expiry of the period of 3(Three) months available to respond to the right of pre-emption.

14. That the Plaintiff and 1st Defendant herein agreed and acknowledged that the above terms shall also bind their respective heirs, legal representatives, assigns, successors, men, servants, agents or anyone claiming through them or under them in any manner whatsoever.

15. That the Partnership firm, Perumal Snuff Company shall be dissolved and neither party shall use the name for their independent businesses, the Plaintiff and the 1st Defendant herein shall be at liberty to start their own businesses and the use of the trademark allotted to them under the Memo of Compromise and such other brands and trade names as the respective parties.

16. That the Trademark “DEVI KRISHNA” under class 34, shall be owned and used by the 1st Defendant, the Plaintiff has no objection to the use and registration of the mark in the name of the 1st Defendant his



heirs, assigns and successors in interest, the 1st Defendant his heirs, assigns and successors in interest shall no use Devi Krishna brand under Class 34 in the territories demarcated in favour of Plaintiff, namely, the district of Bangalore-Urban & Rural and Udipi in the state of Karnataka and entire state of Kerala.

17. That the 1st Defendant herein agreed to retrieve possession of all the original partnership documents, deeds, agreements and any other document of Significance from the court where they are currently deposited and shall ensure that the documents are deposited in a joint locker as soon as the courts return such documents for which the Plaintiff and the 1st Defendant shall pay the locker rents equally and have access to the locker at all times, the Plaintiff and the 1st Defendant herein shall however be entitled only to take photo copies of the documents, but shall not be entitled to keep any of these documents in original under their sole possession without the written consent of the other party.

18. That the parties hereto shall surrender all the necessary Government Registrations in the name of Perumal snuff Company on or before the 30th of September 2021, and the parties shall obtain fresh registrations in respect of GST, PAN etc., for their respective businesses.

19. That the firm Perumal Snuff Company shall stand dissolved with effect from 30th of September 2021.



20. That the Plaintiff and the Defendants herein submit that all the disputes between them stand resolved, and the O.A.No.456 of 2021 shall stand withdrawn and give up all the claims contained therein.

21. That the Plaintiff herein agreed to give up the reliefs claimed in the suit.

22. That these O.A.No.471 of 2020 and A.Nos.2622 of 2020 and 743 of 2021 do stand closed.

23. That there shall be no order as to costs of this suit.

Schedule



WEB COPY VSP

24/09/2021

13

C.S.(Comm.Div) No.255 of 2020
And
O.A.No.471 of 2020
And
A.Nos.2622 of 2020 & 743 of 2021

ORDER

DATED : 05.08.2021

THE HON'BLE DR. JUSTICE
G.JAYACHANDRAN

FOR APPROVAL:01/10/2021

APPROVED ON:04/10/2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.08.2021

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.S.(Com.Div.) No.255 of 2020
and O.A.No.471 of 2020
& A.Nos.743 of 2021 & 2622 of 2020

Mr.T.G.Arumugam,
S/o.T.S.Ganesan,
31A/C, 1st Street, New Colony,
VOC Nagar, Anna Nagar East,
Chennai-600 102

...Plaintiff

/versus/

1.Mr.T.G.Harigopal,
S/o. T.S.Ganesan,
No.16, New Street, Mannady,
Chennai-600 001.

2.Mr.T.S.Ganesan,
S/o.T.Sambandamurthy Chetty,
No.16, New Street, Mannady,
Chennai-600 001.

.. Defendants

This Civil Suit is filed under Order IV Rule 1 Original Side Rules read with Order VII Rule 1 of CPC and under Sections 134 and 135 of the Trade Marks Act, 1999a. Declaring that the alleged Deed of Assignment dated 05.09.2019 executed between the Defendants is sham and nominal and not binding on the Plaintiff in any manner whatsoever;

b. Declaring that the Plaintiff has the sole and exclusive proprietorship over the registered trademark UMBRELLA BRAND registered under No.200391 in class 34;



c. Granting a permanent injunction restraining the Defendants by themselves, their men, servant, agents, representatives, assigns or any one claiming through it from in any manner interfering with the use and exclusively proprietorship of the trademark UMBRELLA BRAND or any mark deceptively similar thereto in any manner whatsoever;

d. Directing the Defendants to pay to the Plaintiff the cost of the suit.

For Plaintiff : Mr.S.Diwakar
For Defendants : Ms.Gladys Danial for D1
: Mr.R.Sathishkumar for D2

JUDGMENT

The suit is filed for permanent injunction and other consequential relief in respect of the registered trademark UMBRELLA BRAND for class 34.

2. The dispute is between the father and son on one side and the other son on other side. Now the parties have agreed to coexist in the business by sharing the area of operation and using the same trademark UMBRELLA BRAND for their product.

3. For the said purpose they agreed to approach the Registrar of Trademark and to record the proprietorship upon both the parties. The compromise has been arrived between the parties to the above fact on 03.08.2021 and the same is filed before this Court.



4. In the light of the settlement arrived between the parties, the suit is decreed in terms of Memo of Compromise. The terms of Memo of Compromise shall form part of the decree. Consequently, all other connected applications are closed. There shall be no order as to costs.

Sd./-G.J.J
05.08.2021

//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.