



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 23rd DAY OF JUNE 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

A.No.2362 of 2020
in
C.S.D.No.14485 of 2020

P.R.Karuppusamy,
Trading as M/s Parvathi Vilas Vennai & Nei Store,
No.-4, Aranmanai Veethi,
Ramanathapuram – 623 501.

Having Sales Office at
No.16-A, Sarvodaya 2nd Cross Street,
Ellis Nagar,
Madurai – 625 010.

... Applicant/ Plaintiff

-Versus-

M/s Sri Parvathi Nei (Ghee) Store,
No.-786/2, 7th Bharathi Nagar,
Ramanathapuram – 623 503

... Respondent/Defendant

A.No.2362 of 2020:-

Application praying that this Hon'ble Court be pleased to grant
leave to sue the Respondent before this Hon'ble Court.

This application having been heard on 21.06.2021 in the presence
of Mr.A.K.Rajaraman, Advocate for the Applicant herein and
Mr.M.Karpagam, Advocate for the respondent herein, and upon reading the

Judge's Summons and the Affidavit of P.R.Karuppusamy filed herein and
having stood over for consideration till this date and coming on this day



before this court for orders through video conferencing in the presence of said advocates for the parties hereto and this court having observed that when the parties are residing at Ramanathapuram and the business of the defendant is only within Ramanathapuram, no part of cause of action arise within the jurisdiction of this court, it is ordered as follows:-

That the A.No.2362 of 2020, be and is hereby dismissed.

2. That the Registry is directed to return the plaint for to be presented before appropriate jurisdiction court.

3. That the plaintiff herein, shall be at liberty to present the plaint before the appropriate court within a period of 60 days from the date of receipt of a copy of this order.

4. That there shall be no order as to costs.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
23rd DAY OF JUNE 2021.

Sd/-

ASSISTANT REGISTRAR (COMM.CASES)
//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.



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06.08.2021

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A.No.2362 of 2020
in
C.S.D.No.14485 of 2020

ORDER:

DATED: 23.06.2021

THE HON'BLE DR.JUSTICE

G.JAYACHANDRAN

FOR APPROVAL: 06.08.2021

APPROVED ON: 09.08.2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :21.06.2021

Pronounced on :23.06.2021

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

A.No.2362 of 2020

in

C.S.D.No.14485 of 2020

P.R.Karuppusamy

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Having sales office at

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.. Applicant/Plaintiff

/versus/

M/s Sri Parvathi Nei (Ghee) Store

No.786/2, 7th Bharathi Nagar,

Ramanathapuram 623 503.

.. Respondent/Defendant

Prayer: Application has been filed under Order XIV Rule 8 O.S. Rules read with Order III Rule 1 of O.S. Rules and Clause 12 of Letters Patent praying to grant leave to sue the respondent before this Court.

For Applicant :Mr.A.K.Rajaraman

For Respondent :M/s M.Karpagam

**ORDER**

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(This case has been heard through Video Conferencing)

This application is filed seeking leave to sue the respondent, who is residing and carrying on business outside the jurisdiction of this Court.

2.The case of the plaintiff is that, he is a reputed manufacturer and trader of butter, ghee, edible oils having its registered office at Ramanathapuram and sales office at Madurai. According to the plaintiff, its product “Parvathi Nei” under the trade style “M/s Parvathi Vilas Vennai and Nei Store” is very popular among the consumers and widely sold throughout the State including Chennai. The said trademark Parvathi Nei has been adopted by the plaintiff for a long time and the same has been duly registered under the Trademarks Act for Clause 29 and 35 in the year 2019. Recently, the plaintiff has come to know that the defendant exploits the goodwill of the plaintiff's trademark by using illegally the plaintiff brand name. The mark used by the defendant is Sri Parvathi Vennai Store/Sri Parvathi Nei Store, which are phonetically identical. The defendant use the plaintiff's registered trademark to mislead the illiterate customers.

3.The relevant statement regarding cause of action and jurisdiction in the plaint says, “the product of the plaintiff carrying the name

'Parvathi' is widely offered to sell in the city of Chennai within the



jurisdiction of this Hon'ble Court and also the plaintiff product is available through online. Hence, part cause of action arise within the jurisdiction of this Court". Hence, leave to sue is sought.

4.The said application is strongly contested and opposed by the respondent/defendant on the ground that no cause of action arise within the jurisdiction of this Court. Both the plaintiff and the defendant are carrying on business within the jurisdiction of Ramanathapuram District. The defendant has shop only at Ramanathapuram and meet the requirement of the customers within Ramanathapuram. Mere registration of the trademark within the jurisdiction of Chennai will not confer jurisdiction to the Courts in Chennai. Relying upon the dictum laid down by the Hon'ble Division Bench of this Court in ***Duro Flex Pvt. Limited v. Duroflex Seatings System*** reported in **[2014 (6) CTC 577]** and the dictum laid in ***Madanlal Jalan v. Madanlal and others*** reported in **[AIR 1949 Cal.495]**, the defendant sought for dismissal of the application.

5.The learned counsel appearing for the plaintiff would submit that the jurisdiction of this Court to entertain the present suit arose on the following grounds:-

The products of the plaintiff have strong presence in Chennai and the defendant's product with identical trademark infringes the registered trademark of the plaintiff. The product of the plaintiff as well as the



defendant are available through online. Therefore, part cause of action arose within the jurisdiction of this Court.

6. In support of his argument, the learned counsel appearing for the plaintiff/applicant would rely upon the judgment of the Hon'ble Delhi High Court rendered in *Burger King Corporation and Techchand Shewakramani and others* reported in *[(2018) SCC OnLine Del 10881]* and would submit that the concept of infringement and passing off is not fixed in time. It is elastic in nature. While online trade has become very common, the infringement of the plaintiff trademark in all possibility cause within the territorial jurisdiction of this Court.

7. In the normal course, the suit for infringement of trademark and passing off are to be instituted before the District Court in tune with Section 134 of the Trademark Act. Under Section 2(xvii) of the Commercial Courts Act, the dispute relating to trademark falls under the definition of Commercial Dispute and Commercial Courts is vested with the jurisdiction to decide the suits arising from trademark infringement. However, for this Court to entertain the suit regarding infringement and passing off, either the person instituting the suit, or the defendant should actually and voluntarily reside and carry on business within the jurisdiction of this Court or cause of action must be within this Court. In case, part cause of action arise within



mandates leave of the Court. In the case in hand, there is no pleadings that the defendant's product is sold within the jurisdiction of this Court and thereby infringement is caused within the territorial jurisdiction of this Court.

8. Though the learned counsel appearing for the plaintiff would place certain web pages, where the defendant address is shown as dealer in butter and ghee, there is no indication that the defendant is involved in online trade. The Division Bench of this Court in ***Duro flex Pvt. Limited Case*** has clearly laid the guidelines when leave to sue to be granted. In this case, admittedly, both the plaintiff and the defendant are carrying on business outside the jurisdiction of this Court. The products of the plaintiff though may be available for customers within the jurisdiction of this Court, there is no pleadings that the defendant's product is also available within the territory of Chennai causing infringement and passing off. Infact, in the counter, the defendant has clearly stated that they have shop only at Ramanathapuram District and their customers are only at Ramanathapuram.

9. When the parties are residing at Ramanathapuram and the business of the defendant is only within Ramanathapuram, no part of cause of action arise within the jurisdiction of this Court applying the principle of *Forum Convenience*. Hence, leave to sue application is dismissed.



10. Registry is directed to return the plaint for to be presented before appropriate jurisdiction Court. The plaintiff is given liberty to present the plaint before the appropriate Court within a period of 60 days from the date of receipt of a copy of this order. No order as to costs.

Sd./-G.J.J.
23.06.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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