

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.09.2021

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.S.(Comm.Div).No.408 of 2020

M/s.Y.V.Seshachalam & Co,
A partnership firm represented by its
Partner Mr.Y.V.Nirajan Krishna,
No.138, Audiappa Street,
Chennai – 600 001. ... Plaintiff

/versus/

M/s.Sri Om Sai Traders,
No.4-41-C-289,290,
Papireddy Nagar,
Hyderabad,
Telangana – 500 072. ... Defendant

Prayer:- The Suit has been filed under Order IV Rule 1 of Original Side Rules and Order VII Rule 1 of C.P.C read with Section 27, 28, 29, 134 and 135 of the Trademarks Act, 1999 and Sections 51, 55, 62 of the Copyright Act, 1957 and Sections 2(1)(c)(xvii) and 7 of the Commercial Courts Act, 2015.

(a). For a Permanent Injunction restraining the Defendant, their men, agents, servants or anyone claiming through them from in any manner infringing the Plaintiffs registered trademark GOPURAM by using the trademark GOKULAM or any other trademark, which is identical and/or deceptively similar to and/or a

colourable imitation of the Plaintiff's registered trademark GOPURAM.

(b). for a Permanent Injunction restraining the Defendant, their men agents, servants or any one claiming through them from in any manner infringing the Plaintiff's registered trademark label GOPURAM as annexed hereto by using the offending trademark label, which is identical and/or deceptively similar to and/or a colourable imitation of the Plaintiff's registered trade dress, trademark label or any other mark, label or device which is identical or deceptively similar to or a colourable imitation of the plaintiff's registered trademarks described in the schedule hereunder;

(c). For a Permanent Injunction restraining the Defendant their men, agents servants or anyone claiming through them from in any manner infringing the Plaintiff's copyright over the artistic work in the trademark label GOPURAM by using the offending trademark label/trade dress or any other trademark label/trade dress, which is identical or substantial reproduction of the first Plaintiff's artistic work in the trademark label/trade dress GOPURAM;

(d). For a Permanent injunction restraining the Defendant, their men, agents, servants, or any one claiming through them from in any manner passing off their goods as that of the Plaintiff's by using the identical Trademark, label, trade dress, colour combination, get-up and layout, which is identical and/or deceptively similar to that of the Plaintiff's trademark label/trade dress GOPURAM or any other mark or device which is similar or deceptively similar to that of the Plaintiff's trademark label/trade dress either by manufacturing or offering for sale of the products under

the offending trademark, trade label/trade dress or any manner advertising the products under the offending trademark, trade dress and artistic work;

(e). Directing the Defendant to surrender to the Plaintiff the entire stocks, cartons with the infringing artistic work and the unused infringing Trademark label together with blocks and dies for destruction.

(f). Directing the Defendant to render a true and faithful accounts of the Profits earned by them through the sale of their products bearing the infringing labels. which is similar and/or deceptively similar to the Plaintiffs' Trademark label and trade dress and directing the payment of such profits to the plaintiff.

(g). Directing the defendant to pay the costs of the suit to the plaintiff.

For Plaintiff : Mr.A.Prasanna Venkat
for M/s.APR Associates
For Defendant : set *exparte*

J U D G M E N T

(The case has been heard through video conferencing)

The plaintiff herein in the trade of selling pooja products, such as, turmeric power (manjal), kumkum, benzoin (sambrani), incense sticks/powders and other related product, are carrying on business ever since in the year 1945. The trade products are sold under the trade mark 'Gopuram' with the device of

Gopuram/Temple Tower.

2. According to the plaintiff, they are leading manufacturer and marketer of Pooja products and the products with the trade mark 'Gopuram' was very well received by the members of the public. It has gained tremendous reputation and goodwill among the members of the trade and public. The trade mark 'Gopuram' is being used continuously ever since 1945 and the same is widely advertised all over southern India. The products of the plaintiff under the trade mark 'Gopuram' have reached every nook and corner of South India household and holy places. To assure the quality, the plaintiff he has obtained "Agmark" certificate for their products. While the plaintiff is trying to maintain extremely high quality of the goods, the defendant in order to exploit the goodwill and the reputation of the plaintiff, had adopted the device 'Gopuram' and phonetically similar word mark 'Gokulam', which is phonetically similar to that of the plaintiff. The colour dress, get up and the artistic work of the plaintiff's is adopted by the defendant to make these products deceptively similar to that of the plaintiff product. Hence, the suit is filed for injunction restraining the defendant from infringing the trade mark 'Gopuram' by using phonetically similar mark 'Gokulam' using the word mark 'Gokulam' adopting

the colour scheme infringement of copyright and passing off, surrender the impugned products, rendition of account and payment of exemplary costs for dishonestly using the deceptively similar trade mark colour scheme device.

3.Coming to know about the infringement of the trademark and the copyright, the plaintiff issued cease and desist notice to the defendant. In response to that notice, the defendant has denied any infringement saying that the word 'Gokulam' is different from 'Gopuram'. However, the phonetic similarity in the name and identical adoption of the label would clearly indicate that, the defendant is not a bona fide user of the name and had intentionally adopting the mark and device of the plaintiff in order to capture the goodwill of the plaintiff established in the market for their product. Hence, the suit is filed for the aforesaid prayer.

4.Suit summon was served on the defendant. Initially, he entered appearance through a counsel, but did not file any written statement. Hence, the defendant was set exparte and the exparte evidence was recorded.

5.On behalf of the plaintiff side, one Mr.A.Kalathi, Authorised Signatory of

the plaintiff company mounted the witness box and deposited. 34 documents and 2 material objects were marked in respect of the plaintiff.

6.Learned counsel appearing for the plaintiff would submit that the defendant cannot take umbrage on the basis of the visually difference between the word 'Gopuram' and 'Gokulam'. The plaintiff is aggrieved by the phonetic similarity adopted by the defendant to infringe upon the plaintiff's trade mark and copyright and also to pass off its goods as that of the plaintiff. The defendant is dealing with the identical product as that of the plaintiff. While so, the high quality and reputation maintained by the plaintiff will get diluted by mischievous act of the defendant.

7.In support of his submission, the learned counsel would rely upon the judgment of the Hon'ble Supreme Court rendered in ***K.r.Chinna Krishna Chettiar v. Shri Ambal and Co., Madras and Another reported in 1969 (2) SCC 131*** wherein, the Hon'ble Supreme Court has held that, even though there is no visual resemblance between the two marks, yet there is a close affinity of sound between the words “Ambal” and Andal” and they are deceptively in similar sound.

8.In the instant case also, the word 'Gokulam' of the defendant is not visually similar to that of the plaintiff's trade mark 'Gopuram'. However, the phonetic similarity is very sticking and deceptively similar. Therefore, there is a force in the submission of the learned counsel for the plaintiff.

9.As far as the colour scheme, on comparison of M.O.1 and .M.O.2, it clearly indicates that the defendant had knowingly adopted the said colour scheme so that any public i.e. consumers with average intelligent and poor power of recollection will be misled by the defendant's product as that of the plaintiffs product. The device 'Gopuram' and the colour scheme red and blue, which is identical to that of the colour scheme adopted by the plaintiff, goes to show that, there is a deliberate act of infringement committed by the defendant by using the identical label. This is in violation of the trade mark and copyright enured under law on the plaintiff. Ex.P2 to Ex.P19 are the certificates related to the plaintiff's trade mark 'Gopuram' for its products including 'Gokulam' kukumum in class 3 and the Chartered Accountant Certificates marked as Ex.P22 and Ex.P23 indicate strong presence of the plaintiff's market and its reputation, which is suffice to prove that the plaintiff is enjoyed reputation and goodwill for their product under the trade

mark 'Gopuram' with a particular registered logo. Intentional adoption of the registered trade mark for the identical product amounts to infringement.

10.The reply of the defendant, which is marked as Ex.P25 clearly show that, it is not an honest adoption by the defendant, but a deliberate adoption of phonetically similar mark by the defendant with identical colour scheme which impulse to this Court to impose exemplary cost of Rs.50,000/- for wilful act of infringement. As far as rendition of accounts, since the plaintiff has not made out any specific plea through evidence about unjust enrichment of the trademark by infringement, this Court is not inclined to grant the relief (f). Since the adoption of phonetically similar trademark by the defendant is proved through evidence, this Court is granted relief (a) to (e).

11.Accordingly, the Civil Suit is partly allowed with exemplary cost of Rs.50,000/- along with the regular costs of the suit.

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Index : Yes/No.
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List of Witness examined on the side of the Plaintiff:-
Mr.A.Kalathi- PW-1

List of Witness examined on the side of the Defendant :-
Nil

List of the Exhibits marked on the side of the Plaintiff:-

Sl. Nos.	Exhibits	Dated	Description of documents
1.	Ex.P.1	31.08.2021	Original Authorization Letter dated 31.08.2021
2.	Ex.P.2	06.05.1993	Photocopy of the certificate of Registration of the Partnership Firm (Plaintiff) dated 06.05.1993.
3.	Ex.P.3	15.03.2000	Photocopy of the certificate of Registration of the Trademark "GOPURAM" in class 3 under Application number 548622 dated 15.03.2000.
4.	Ex.P.4	14.08.2000	Photocopy of the certificate of Registration of the Trademark "GOPURAM" in class 30 under Application number 586262 dated 14.08.2000.
5.	Ex.P.5	15.03.2001	Photocopy of the certificate of Registration of the Trademark "GOPURAM" in class 3 under Application number 654067 dated 15.03.2001.
6.	Ex.P.6	31.01.2002	Photocopy of the certificate of Registration of the Trademark "GOPURAM" in class 3 under Application number 652774 dated 31.01.2002.
7.	Ex.P.7	14.10.2002	Photocopy of the certificate of Registration of the Trademark "GOPURAM" in class 3 under Application Number 65044 dated 14.10.2002.
8.	Ex.P.8	31.05.2005	Photocopy of the certificate of Registration of the Trademark "GOPURAM" in class 3 under Application number 652771 dated 31.05.2005.
9.	Ex.P.9	20.09.2005	Photocopy of the certificate of Registration of the Trademark "GOPURAM" in class 30 under Application number 1270901 dated 20.09.2005.
10.	Ex.P.10	01.09.2006	Photocopy of the certificate Registration of the Trademark "GOPURAM" in class 30 under Application number 889498 dated 01.09.2006.

Sl. Nos.	Exhibits	Dated	Description of documents
11.	Ex.P.11	20.09.2006	Photocopy of the certificate of Registration of the Trademark "GOPURAM" in class 30 under Application number 889497 dated 20.09.2006.
12.	Ex.P.12	13.04.2006	Photocopy of the certificate of Registration of the Trademark "GOPURAM" in class 3 under Application number 1447031 dated 13.04.2006.
13.	Ex.P13	13.04.2006	Photocopy of the certificate of Registration of the Trademark "GOPURAM" in class 3 under Application number 1447032 dated 13.04.2006.
14.	Ex.P14	13.04.2006	Photocopy of the certificate of Registration of the Trademark "GOPURAM" in class 3 under Application number 1447032 dated 13.04.2006.
15.	Ex.P15	19.02.2015	Photocopy of the Renewal certificate issued by the Trademark Registry in respect of the Trademark "GOPURAM" in class 3 under Application number 548623 dated 19.02.2015.
16.	Ex.P16	16.08.2017	Photocopy of the certificate of Registration of the Trademark "GOPURAM" in class 3 under Application number 1828688 dated 16.08.2017.
17.	Ex.P17	07.05.2018	Photocopy of the Renewal certificate issued by the Trademark Registry in respect of the trademark "GOPURAM" in class 3 under Application number 652770 dated 07.05.2018.
18.	Ex.P18	04.02.2019	Photocopy of the Renewal certificate issued by the Trademark Registry in respect of the Trademark "GOPURAM" in class 3 under Application number 1828687 dated 04.02.2019
19.	Ex.P19	04.02.2019	Photocopy of the Renewal certificate issued by the trademark registry in respect of the trademark "GOPURAM" in class 3 under application number 1828689 dated 04.02.2019.
20.	Ex.P20	12.05.2016	Photocopy of the Deed of Assignment of the Trademark in favour of the plaintiff dated 12.05.2016.
21.	Ex.P21	04.07.2016	Photocopy of the Form TM-23 filed before the Trademark Registry on behalf of the Applicant dated 04.07.2016.
22.	Ex.P22	13.09.2016	Photocopy of the chartered Accountant's certificate

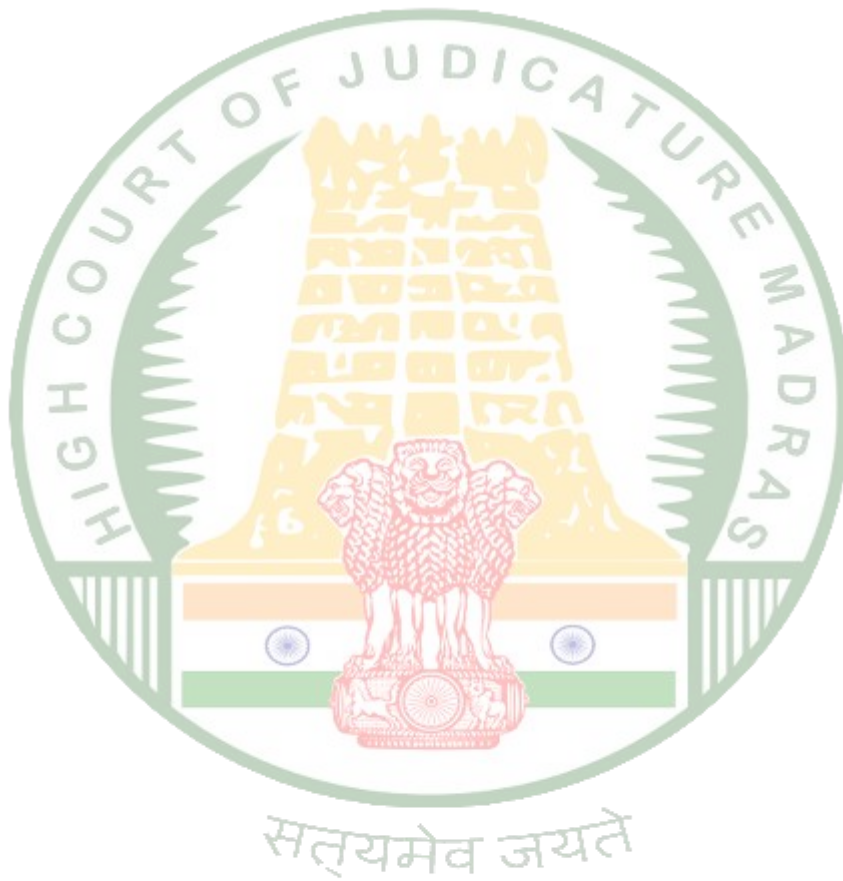
Sl. Nos.	Exhibits	Dated	Description of documents
			showing the total sales turnover and the advertisement expenses for the plaintiff partnership and its sister concerns under the trade mark GOPURAM dated 13.09.2016
23.	Ex.P23	13.09.2016	Photocopy of the chartered Accountant's Certificate showing the total sales turnover and the advertisement expenses for the applicant and its sister concerns under the trademark GOPURAM dated 13.09.2016.
24.	Ex.P24	27.09.2020	Photocopy of the Legal Notice issued by the plaintiff to the defendant dated 27.09.2020
25.	Ex.P25	20.10.2020	Photocopy of the Reply notice issued by the Defendant to the Plaintiff dated 20.10.2020.
26.	Ex.P26		Photocopy of the sachets and pouches of the plaintiff sold under the trademark GOPURAM.
27.	Ex.P27		Photocopy of the sachets and pouches of the Defendant's products.
28.	Ex.P28	28.03.1991	Photocopy of the certificate of Registration of the Trademark "GOPURAM" in class 3 under Application number 450092 dated 28.03.1991.
29.	Ex.P29	28.03.1991	Photocopy of the certificate of Registration of the Trademark "GOPURAM" in class 3 under Application number 450093 dated 28.03.1991
30.	Ex.P30	23.09.2006	Photocopy of the certificate of Registration of the Trademark "GOPURAM AGARBATHIES" in class 3 under Application number 1102875 dated 23.09.2006.
31.	Ex.P31	19.07.2017	Photocopy of the certificate of Registration of the Trademark "GOPURAM POOJA PRODUCTS" in class 3 under Application number 2209684 dated 19.07.2017.
32.	Ex.P32	19.07.2017	Photocopy of the certificate of Registration of the Trademark "GOPURAM HERBAL SAMBRANI" in class 3 under Application number 2209685 dated 19.07.2017.
33.	Ex.P33	28.07.2019	Photocopy of the certificate of Registration of the Trademark "GOPURAM TURMERIC POWDER" in class 3 under Application number 4082382 dated 28.07.2019.
34.	Ex.P34	02.03.2020	Photocopy of the certificate of Registration of the Trademark "GOPURAM GHEE" in class 29 under

Sl. Nos.	Exhibits	Dated	Description of documents
			Application number 4123849 dated 02.03.2020

List of Material Objected marked on the side of the plaintiff:

M.O.1 is the original Specimen of the Plaintiff's product.

M.O.2 is the original Specimen of the Defendant's product.



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Dr.G.Jayachandran,J.

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