

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **04.03.2021**

CORAM:

THE HON'BLE JUSTICE **C.V.KARTHIKEYAN**

C.S.No.747 of 2017

A.Rajendran,
S/o.P.V.Alagarswamy Naidu,
Proprietor A R Film Factori,
No.4/30, NRN Colony,
Thirumangalam Road, Villivakkam,
Chennai - 600 049.

... Plaintiff

..Vs..

1.Thenandal Studios Limited,
Represented by its Director N.Ramasamy
No.15, Old No.8,
Lake Area 5th Street,
Nungambakkam,
Chennai - 600 034.

2.N.Ramasamy,
Proprietor Sri Thenandal Films,
2/8, 80ft Road, Devar Garden,
Saligramam,
Chennai - 600 093.

... Defendants

PRAYER : Plaint filed under and Order IV Rule 1 of the Original Side
Rules read with Order VII Rule 1 of Code of Civil Procedure read with

Sections 134 and 135 of Trademarks Act, prayed for a Judgment and Decree:-

(a) By way of a Permanent Injunction restraining the defendants, their men, agents, servants, or anyone acting through them from passing off the title "MERRASALAITAN" with "MERSAL".

(b) Directing the defendant to pay the cost of the suit.

For Plaintiff : Mr.A.V.Arun

For Defendants : Mr.R.Parthasarathy for D1
Ms.R.Suriya Sivakumar for D2

J U D G M E N T

The suit had been filed under Sections 134 and 135 of the Trademarks Act, 1999, seeking protection from passing off the title MERRASALAITAN with MERSAL and also for costs.

2. Since the lis involved is an attempt to protect the Intellectual Property Right with respect to the mark MERRASALAITAN, the

Commercial Division of this Court has jurisdiction to examine the lis under Section 2(1)(c)(xvii) of the Commercial Courts Act, 2015.

3. A perusal of the notespaper reveals that the interim injunction application came up for consideration originally on 22.09.2017 and ad-interim injunction was granted restraining the respondents from taking any further action. Thereafter, the injunction application came up for consideration on again 06.10.2017 when the learned Single Judge after examining the issues in depth had dismissed the injunction application.

4. I am informed by the learned counsel for the plaintiff that an Original Side Appeal in O.S.A.No.280 of 2017 was then filed and the same was also dismissed on 13.10.2017. Thereafter, the plaintiff appears to have faded away and did not come forward to give instructions to the learned counsel for the plaintiff. As is obvious in matters of similar nature, the plaint either survives or is abandoned depending on the order granted in the injunction application.

5. In this case, the injunction application had been dismissed. It is only natural that the plaintiff had taken a sensible decision not to move further pursuing the suit.

6. The matter was thereafter listed only on 25.01.2021 and again on 09.02.2021 and again on 23.02.2021. It has been listed today i.e., on 04.03.2021. The learned counsel for the plaintiff again reiterated that the plaintiff had not come forward to instruct him with the further course of action to be taken.

7. In view of these facts, the suit is dismissed for non-prosecution.
No order as to costs.

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Index : Yes / No

Web : Yes / No

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