

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2021

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.S(Comm.Div.).No.694 of 2019
and
O.A.Nos.1096 & 1097 of 2019

Mr.M.Anees Ahmed,
Represented by its Proprietor,
M/s.Ambur Star Briyani,
Having its office at No.116/1,
Arcot Road, Vadapalani,
Chennai-600 026.

... Plaintiff

Vs.

1.B.Firdous Ahmed,
Sole Proprietor,
Star Ambur Briyani,
No.1, Malar complex,
Padi Pudhu Nagar Main Road,
Anna Nagar West Extension, Chennai-600 101.

2.B.Firdous Ahmed,
Sole Proprietor,
Star Ambur Briyani,
No.99/9 New Avadi Road,
Kilpauk Garden, Chennai-600 010.

3.B.Firdous Ahmed,

Sole Proprietor,
Star Ambur Briyani,
No.72, Pulianthope High Road,
Chennai-600 012.

4.B.Firdous Ahmed,
Sole Proprietor,
Star Ambur Briyani,
No.125/60, Dr.Natesan Road,
Triplicane, Chennai-600 005.

5.B.Firdous Ahmed,
Sole Proprietor,
Star Ambur Briyani,
70, Pantheon Road,
Egmore, Chennai-600 008.

6.B.Firdous Ahmed,
Sole Proprietor,
Star Ambur Briyani,
No.451, M.T.H.Road,
Ambattur O.T., Chennai-600 053.

7.B.Firdous Ahmed,
Sole Proprietor,
Star Ambur Briyani,
No.G-10 (HPCL), First Floor,
1st Main Road, Ambattur Estate,
Chennai-600 058.

... 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, and Sections 134 & 135 of Trade Marks Act 1999, praying for

(a). Granting a permanent injunction restraining the defendants, their men, servants, agents or anyone claiming through or under them from in any manner infringing the plaintiff trademark and trade style “AMBUR STAR BRIYANI” by using the offending trademark and trading style “STAR AMBUR BRIYANI” or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiff's trademark “AMBUR STAR BRIYANI”

(b). Granting a permanent injunction restraining the defendants, their men, servants, agents or anyone claiming through or under them from in any manner passing off the plaintiff trademark and trade style “AMBUR STAR BRIYANI” by using the offending trademark and trading style “STAR AMBUR BRIYANI” or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiff's trademark “AMBUR STAR BRIYANI”;

(c). Directing the defendant to render a true and faithful account of the profits earned by them through the sale of food products bearing the offending trademark “STAR AMBUR BRIYANI” and directing payment of such profits to the plaintiff by way of damages for infringement committed by the defendant;

(d). Directing the defendant to surrender to plaintiff the entire stock of unused offending goods with trademark “STAR AMBUR BRIYANI” with name boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisements, materials, reports, envelops, brochures, printing blocks, etc., bearing the offending trademark for destruction;

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

For Plaintiff : Mr.Vijayan Subramanian

For Defendants : No appearance

J U D G M E N T

(Case has been heard through video conference)

After filing the suit and having the interim order in his favour, now the plaintiff wants to withdraw the suit with liberty to file a fresh suit for the same cause of action on the ground that Mr. B.Firdous Ahmed who was running a business, infringing the trademark of the plaintiff had died. The learned counsel who was representing the defendant also withdrawn his appearance. The plaintiff is unable to obtain the present address of the legal heirs of the deceased sole defendant and also the person who is in charge of the business run by the deceased defendant Firdous Ahmed.

2. This Court, in the given facts and circumstances, is of the view that liberty sought by the plaintiff may be granted. Accordingly, the suit is dismissed with liberty to the plaintiff to file fresh suit for the same cause of action against the current owners of the business, who are allegedly infringing the trademark of the plaintiff. Consequently, connected original applications are also dismissed. No costs.

01.10.2021

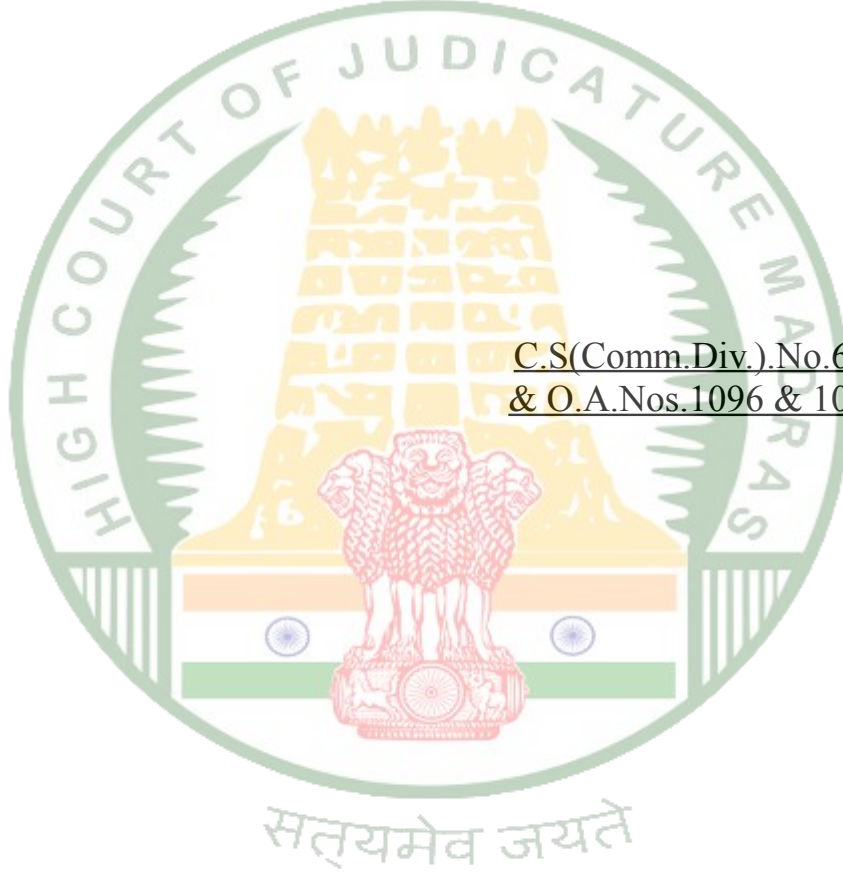
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DR.G.JAYACHANDRAN, J.
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