



WEB COPY



O.A.Nos.808, 809 & 810 of 2021

O.A.Nos.808, 809 & 810 of 2021
in C.S(Comm Div).No.118 of 2021

SENTHILKUMAR RAMAMOORTHY,J.

In a suit for relief in respect of alleged infringement of the registered device mark of the plaintiff, the plaintiff has presented three applications for interim relief. In O.A.No.810 of 2021, the applicant/plaintiff seeks to restrain the respondent from infringing the registered trade mark of the applicant. In O.A.Nos.808 & 809 of 2021, the applicant/ plaintiff seeks to restrain the respondent from alleging that the course completion certificates are fake and to restrain the respondent from running and conducting vocational courses in Tamil Nadu, Andhra Pradesh, Karnataka and Maharashtra.

2. Learned counsel for the applicant submits that the applicant society applied for and obtained registration of the device mark. With reference to the registration certificate, he points out that the mark has been used from 01.01.2006 and that the registration is valid until 02.06.2026. By drawing reference to a communication issued by the respondent/defendant,



O.A.Nos.808, 809 & 810 of 2021

he points out that the respondent has made false allegations that the certificate issued by the applicant/plaintiff is a fake certificate. He states that the applicant/plaintiff is entitled to interim relief as prayed for in these facts and circumstances.

3. Learned counsel for the respondent/defendant made submissions to the contrary. He points out that the respondent was registered as a society on 30.09.1952 under the Societies Registration Act, 1860. By drawing reference to certificates issued to the BSS Computer College, Saidapet, Chennai on 14.06.2005 he states that the said certificate bears the logo. Therefore, he contends that the defendant has used the logo prior to the plaintiff. As the prior user of the logo, he states that the defendant cannot be restrained from using the logo. With regard to the allegation that a fake certificate was issued by the plaintiff, he states that the plaintiff's trade name is Pradesh Bharat Sevak Samaj whereas the certificate is issued in the name of Bharat Sevak Samaj.

4. By way of rejoinder, learned counsel for the applicant states that the defendant is a defunct society which did not file requisite returns. He



O.A.Nos.808, 809 & 810 of 2021

WEB COPY

further states that the defendant has not been registered to provide vocational courses in the States of Tamil Nadu, Andhra Pradesh, Karnataka and Maharashtra and should confine its services to Kerala.

5. In the context of trademark law, the date of use of the relevant mark is the paramount consideration. The documents produced by the defendant, particularly at pages 18 to 21 of the typed set of the respondent/defendant, show that the logo bearing the word Bharat Sevak Samaj with a representation of a man has been used at least from 10.05.2005. Although learned counsel for the applicant/plaintiff contends that paragraph 14 (f) of the counter of the respondent indicates that the applicant/plaintiff was a Franchisee between 2005-2010, the said averment does not establish that the parties were joint franchisees. The applicant relies upon the trademark registration certificate issued on 22.03.2017. The said certificate discloses that the applicant/plaintiff has used the device mark from 01.01.2006, which is subsequent to the use by the respondent/defendant. Therefore, the applicant is not entitled to the relief prayed for in O.A.No.810 of 2021 in as much as it does not appear prima facie that the applicant is the prior user of the trademark.



O.A.Nos.808, 809 & 810 of 2021

6. Turning to O.A.No.808 and 809 of 2021, these applications are to restrain the respondent from alleging that the course completion certificates are fake and to restrain the respondent from running and conducting vocational courses in Tamil Nadu, Andhra Pradesh, Karnataka and Maharashtra. As discussed above, the applicant has produced evidence that it is duly registered under the Tamil Nadu Societies Registration Act and has a registered device mark which is valid until 02.06.2026. Consequently, the applicant is entitled to issue certificates bearing the registered device mark. To that extent, the applicant is entitled to succeed. Consequently, the respondent is restrained from alleging in the media that the course completion certificates of the applicant are fake. This order shall operate until the disposal of the suit.

7. As regards the application to restrain the respondent from conducting vocational courses in Tamil Nadu, Andhra Pradesh, Karnataka and Maharashtra, the evidence on record indicates prima facie that the respondent/defendant is a registered society. In addition, there is evidence indicating that the respondent has been conducting vocational courses over a long period of time and issuing certificates in relation thereto. As such, at



O.A.Nos.808, 809 & 810 of 2021

the interlocutory stage, there is no case to restrain the respondent/defendant from conducting vocational courses. It is needless to say that the conduct of such vocational courses shall be in accordance with applicable law after obtaining necessary permissions and registrations in such regard. These Original Applications are disposed of on these terms.

20.07.2022

Anu



WEB COPY



O.A.Nos.808, 809 & 810 of 2021

SENTHILKUMAR RAMAMOORTHY,J.

Anu

O.A.No.808, 809 & 810 of 2021
in C.S(Comm Div).No.118 of 2021

20.07.2022