



A.S.(MD)No.147 of 2007

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 20.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S.(MD)No.147 of 2007

and

M.P.(MD)No.1 of 2007

M/s.Arya Bhavan Group of Hotels,
Madurai, rep. by B.Devendra Kumar

... Appellant / Plaintiff

-Vs-

Nellai Arya Bhavan (Vegetarian),
Madurai.
Rep. by Muthukrishnan

... Respondent / Defendant

PRAYER: Appeal Suit is filed under Section 96 of the Code of Civil Procedure to set aside the judgment and decree dated 05.03.2007 made in O.S.No.4 of 2002 on the file of the learned Principal District Judge, Madurai.

For Appellant : Mr.K.Kubendran

For Respondent : Mr.S.Natesh Raja



A.S.(MD)No.147 of 2007

WEB COPY

JUDGMENT

The appellant / plaintiff has filed a suit in O.S.No.4 of 2002 against the respondent / defendant on the file of the Principal District Judge, Madurai, seeking for declaration that the plaintiff alone is having exclusive right to use the Trade Mark “Arya Bhavan”, to manufacture and sell the sweets, savories, vegetarian meals, tiffin and all eatable goods and articles in the said Trade Mark “Arya Bhavan” under a registered Trade Mark No.415832 dated 09.01.1984 and to pass off the same to the general public and all other customers in all manner and consequently, seeking for permanent injunction, restraining the defendant from carrying on any business or trade or Hotel in respect of sweets, savories, vegetarian meals and other eatable foods, articles and goods by manufacturing, selling and passing-off the same to the general public and other customers by using the plaintiff's Trade Mark “Arya Bhavan” in any manner whatsoever at any places in India at any costs.

2.The brief facts of the plaint are as follows:-

(i)M/s.Arya Bhavan Group of Hotels, Madurai is an unregistered firm,



A.S.(MD)No.147 of 2007

WEB COPY

in which the plaintiff is one of the partners and his name is also found in the Trade Mark Registry. Hence, the plaintiff is entitled to file this suit in respect of Suit Trade Mark. The plaintiff is doing business and trade in manufacturing and selling the sweets, savories and other eatable foods and also carrying on vegetarian Hotel Business in various places in Madurai Town under the name and style of “Arya Bhavan” for the past 18 years and also in the names and style of Arya Bhavan By-Night, Arya Bhavan Caterers, Arya Bhavan Sweets, Arya Bhavan Rasoi (Kitchan), Poonga Arya Bhavan, and Delhiwala Sweets. The plaintiff registered its business and trade as “Arya Bhavan Sweets and Manufacturers and Merchants” under Trade and Merchandise Marks Act, 1958, (hereinafter referred to as 'the Act') dated 09.01.1984 under Trade Mark Registration No.415832 in respect of sweets and savories. The trade mark is exclusive one and it belongs to the plaintiff alone. Except the plaintiff, no other person is having any right or title interest over the said trade mark "Arya Bhavan”. The plaintiff has duly paid commercial taxes as per section 32 of the Act.



A.S.(MD)No.147 of 2007

WEB COPY

(ii)The plaintiff has a very good reputation and obtained several awards from various Public Institutions, Social Services Organisation in Madurai Town. All of a sudden and to a great surprise, the defendant has started to carry on hotel business for vegetable meals in Madurai Town in the name of "Nellai Arya Bhavan (Vegetarian) on 15.10.2002, within 150 metres from the plaintiff's business premises, knowing fully well that the suit trade mark "Arya Bhavan" belongs to the plaintiff and he has duly registered the same. The defendant is purposely and fraudulently using the said trade mark "Arya Bhavan" of the plaintiff for his business and trade and thereby, he is passing his goods and articles to the general public, as if those goods are manufactured and sold by the plaintiff. Therefore, the defendant infringed the trade mark of the plaintiff with an intention to impress the customers and general public, who are coming to the Meenakshi Amman Temple as well as Madurai Town. The customers belong to North India are making several complaints to the plaintiff that the defendant has carried out his trade and business with inferior quality in the name of "Arya Bhavan", as if the plaintiff is conducting and carrying on the business. The reputation of the plaintiff has been very much affected and on account of the false



A.S.(MD)No.147 of 2007

WEB COPY

representation, the profits of the plaintiff has also been affected. One of the customers of the plaintiff has also sent a letter to the plaintiff that their name “Arya Bhavan” has been misused by the defendant by giving inferior products to the public. Hence, the suit is filed.

3.The brief facts of the written statement filed by the defendant are as follows:-

(i)The suit is not properly framed and not instituted by proper person. The plaintiff has no *locus standi* to file this suit. The partnership firm is the registered proprietor of the suit trade mark, wherein one B.Devendra Kumar is one of the partners. The plaintiff is not joint owner or co-owner of the suit trade mark. As per the provisions of the Act, there cannot be any joint proprietor for a trade mark, as the registration of the trade mark in the name of the plaintiff or more persons is not permitted. The document No.1 (Trade Mark Certificate) filed by the plaintiff reveals the fact that Kantiswarup, Devendrakumar, Chandrasekaran, Subash Chandra Agarwal, Anand Dayal Dadu, Smt.Jayasu Mittal and minor Deepak Kumar represented by his father and guardian Radheeyam Gupta are the proprietors of the registered trade mark “abs”



A.S.(MD)No.147 of 2007

WEB COPY

surrounded by the capital “A” letter in a circular form and also reveals that the partnership firm, in which the above said persons are partners, are carrying on business at Santhosh Shopping Centre, Kembagowda Circle, Bangalore. The plaintiff is an unregistered firm, which was constituted only in the year 1999 long after the constitution of the firm, which is the registered proprietor of the said trade mark. Hence, the plaintiff firm is neither a registered proprietor nor the registered user of the suit trade mark. The plaintiff and the proprietor of the registered trade mark "abs" are two different legal entities.

(ii) It is settled law that only the registered proprietor or the registered user of the trade mark alone can maintain the suit for its infringement of the trade mark. The document sent by the plaintiff to the defendant shows that they have no right to exclusive use of the expression of "Arya Bhavan" even as a part of the trade mark for trade style and also it is not a completed document. In fact the expression of "Arya Bhavan" in relation to the hotel business has become common and it is open to the trade mark in South India. There are several hotels, restaurants located all over India the name of "Arya Bhavan" and all those hotels have been in existence for quite long time. The registered trade mark certificate



A.S.(MD)No.147 of 2007

WEB COPY

No.415832 dated 09.01.1984 is issued in the name of the seven persons, who have constituted the partnership firm. The plaintiff cannot take advantage of the name "Arya Bhavan" sweets manufacturers and merchants. This will show that the proprietor of the trade mark are trading in the name of "Arya Bhavan" sweets and savories and they are also manufacturing the same and merchants of the same. This does not denote the word name "Arya Bhavan" has been registered as a trade mark. Actually the word mark "Arya Bhavan" has not been registered at all. The logo "abs" surrounded capital "A" letter in a circular form alone is registered and the logo reported in a Trade Mark Journal marked as Ex.B.1 on the side of the defendant. The allegation of infringement of the trade mark and loss to the business, confusing the minds of the general public is false. There is no cause of action. Hence, the suit is liable to be dismissed.

4. Based on the above said pleadings, the trial Court framed the following issues:-

- “1. Whether the defendant has infringed the trade mark?*
- 2. Whether the plaintiff has locus standi to file suit as contended by defendant?*
- 3. Whether the plaintiff is estopped by his conduct?*



A.S.(MD)No.147 of 2007

WEB COPY

4. *Whether the plaintiff has no cause of action to file suit?*
5. *Whether the plaintiff is entitled to declaration?*
6. *Whether the plaintiff is entitled to decree of permanent injunction?*
7. *To what relief the plaintiff is entitled? ”*

5. In order to substantiate the case of the parties, during the trial on the side of the plaintiff, one witness was examined as P.W.1 and 19 documents were marked as Exs.A.1 to A.19. On the side of the defendant, one witness was examined as D.W.1 and 2 documents were marked as Exs.B.1 and B.2.

6. On conclusion of the trial, after hearing the arguments advanced on either side and considering the oral and documentary evidence, the trial Court dismissed the suit on 05.03.2007, stating that the plaintiff is not entitled for the relief as prayed for.

7. Challenging the said judgment and decree dated 05.03.2007, the plaintiff has filed the present Appeal Suit before this Court.



A.S.(MD)No.147 of 2007

WEB COPY

8.The learned counsel appearing for the appellant would submit that the appellant has registered its business and trade as “Arya Bhavan Sweets and Manufacturers and Merchants” under the Act dated 09.01.1984. The trade mark “Arya Bhavan” is an exclusive one and it belongs to the plaintiff alone. The plaintiff is having absolute right and interest over the said trade mark and having exclusive right to use the said trade mark in its business in respect of manufacturing and selling sweets, savories and pass off the same to the general public. Except the plaintiff, no other person is having any right to title or interest over the said trade mark “Arya Bhavan”. The plaintiff is renewing the trade mark periodically. The plaintiff has acquired absolute and exclusive right, title and interest use of the trade mark throughout the India. The plaintiff is using the registered trade mark as a long extensive and continuous one in its business and thereby, he has built up commercial goodwill and reputation on the said trade mark “Arya Bhavan” for the past 18 years.

9.He would further submit that when the matter stood thus, the defendant has started hotel business for vegetarian meals at Door No.133, Nethaji Road, Madurai Town in the name of “Nellai Arya Bhavan (Vegetarian)” on



A.S.(MD)No.147 of 2007

WEB COPY

15.10.2002 and also to manufacture and sell sweets in the said trade mark. The customers, who are coming from North India, are making several complaints to the plaintiff that the defendant is carrying its business with inferior quality under the trade mark “Arya Bhavan” as if the plaintiff is carrying on the said business. Therefore, the defendant infringed the right of trade mark and caused loss and injuries to the plaintiff. Therefore, the plaintiff sent notice to the defendant. However, the defendant made false reply. Hence, the plaintiff was constrained to file the suit against the defendant for infringement of the trade mark. The trial Court failed to appreciate the oral and documentary evidence and erroneously dismissed the suit. Therefore, the same is liable to be set aside and this appeal is to be allowed.

10. In support of his contentions, he has placed the following judgments:-

(i) Pope the King Match Factory Vs. Thangammal Match Works reported in ***1987 (1) MLJ 391***;

(ii) Kaalai Malar Publications Pvt.Ltd., Vs Dinamalar reported in ***2000-3-L.W.165***;



A.S.(MD)No.147 of 2007

WEB COPY

(iii)M/s.Haldiram Bhujjiawala and another Vs. M/s.Anand Kumar Deepak Kumar and another reported in ***2001-1-L.W..742;***

(iv)Scientific Compounds and Processes Private Limited and another Vs. Hanuman Cottage Industry reported in ***2002-1-L.W.-726*** and

(v)Ramachander Laxminarayan Karva Vs.Jagannath Khubehand Karva and others reported in ***2003-1-L.W.429.***

11.The learned counsel appearing for the respondent would submit that the document No.1 filed along with the plaint reveals the fact that Kantiswarup, Devendrakumar, Chandrasekaran, Subash Chandra Agarwal, Anand Dayal Dadu, Smt.Jayasu Mittal and minor Deepak Kumar represented by his father and guardian Radheeyam Gupta are the proprietors and constituted the partnership firm and registered the trade mark “abs” surrounded by the capital “A” letter in a circular form and also reveals that they are carrying on business at Santhosh Shopping Centre, Kembagowda Circle, Bangalore. The appellant is an unregistered firm constituted only in the year 1999 long after the constitution of the firm. Hence, the appellant firm is neither a registered proprietor nor the



A.S.(MD)No.147 of 2007

WEB COPY

registered user of the suit trade mark. The appellant and the proprietor of the registered trade mark "abs" are two different legal entities.

12.Further he would submit that the registered proprietor or the registered user of the trade mark alone can maintain the suit for its infringement of the made mark. Therefore, the suit filed by the appellant is not maintainable and the trade mark certificate shows that the certificate No.415832 dated 09.01.1984 was issued in the name of 7 persons, who have constituted the partnership firm. The appellant cannot take advantage of the name of "Arya Bhavan". The respondent has not manufactured any sweets as alleged by the appellant. The respondent is carrying on the business only in preparing meals items and passing off the same to the public. The respondent never used the trade mark "abs" which is registered under the Act. The respondent has christened his hotel as Nellai Arya Bhavan. Nowhere in and out side the hotel premises, the defendant has used the trade mark "abs" and "Arya Bhavan Sweets". The respondent never invited the public. Because of the quality of foods and service rendered to the general public, considering the cost of the foods items, the public are visiting the hotel of the respondent. The appellant has not even examined any



A.S.(MD)No.147 of 2007

witness to prove that the person, who made complaint and has not established that the respondent infringed the registered trade mark of the appellant. The trial Court rightly appreciated the fact that the appellant is not entitled to file a suit and also the respondent never infringed the registered trade mark. Therefore, there is no merit in this appeal and the same is liable to be dismissed.

13.Heard both sides and perused the records.

14.Admittedly, the appellant is running “Arya Bhavan” group of hotels and the respondent is running the hotel in the name of Nellai Arya Bhavan Vegetarian. The appellant has filed the suit for declaration and injunction, stating that the respondent infringed the registered trade mark, which belongs to the appellant. It is the case of the appellant that the appellant registered the trade mark of Arya Bhavan under the registered Trade Mark No.415832, dated 09.01.1984 and the respondent infringed the same and also named his hotel as Nellai Arya Bhavan, which confuses the public. The appellant had earned good will and name. General public lost their reputation on the appellant and even some of the persons, who are coming from North India made complaints that the



A.S.(MD)No.147 of 2007

WEB COPY

respondent maintained inferior quality and they thought that the respondent hotel is also a group of appellant hotel. Therefore, the appellant was constrained to file the suit. The respondent refuted the same.

15.It is the specific case of the respondent that Ex.B.1 clearly shows that the name of Arya Bhavan was not registered and it is not the trade mark of the appellant. Actually, the appellant registered logo “abs” surrounded by capital “A” letter in a circular form. Therefore, the respondent never infringed the registered trade mark of the appellant. Therefore, it is the duty of the appellant to prove that whether the appellant has registered the trade mark of Arya Bhavan or the logo. The appellant has not proved that the Arya Bhavan is the registered trade mark of the appellant and he has *locus standi* to file the suit. The appellant has also not established that the respondent used the logo registered by the appellant as his trade mark and similar to that in order to confuse the public and also make use of the same and he gained profit. The appellant has not produced any other document to show that the name of Arya Bhavan alone has been registered. Except Ex.A.1 Trade Mark Registration Certificate, the appellant failed to mark any documents and prove that the name of Arya Bhavan was alone registered and it is the trade mark of the appellant.



A.S.(MD)No.147 of 2007

WEB COPY

16.The appellant marked Ex.A.13, written letter received from one of the customers stating that the name Arya Bhavan was misused by the respondent by giving inferior products to the general public and Ex.A.18 and 19 bills alleged to have been given by the respondent hotels, which are given by the respondent as Nellai Arya Bhavan, even after filing of the suit. Though the respondent has denied the same, in order to prove the same the appellant has not examined either person, who purported to have written letter or any of the persons, who knows about the letter or any other public, who used the hotel of the respondent on the basis of confusion of the trade mark and they lost reputation on the appellant. The appellant has also not proved that he established the hotel in the year 1984 and has also not established the fact that the registered trade mark of the appellant is misused by the respondent.

17.A perusal of the entire pleadings, oral and documentary evidence shows that absolutely, the appellant has not made any complaint before the Registrar of the Trade Mark to take action against the respondent. Therefore, since this Court is fact finding Court and Appellate Court, while re-appreciating



A.S.(MD)No.147 of 2007

WEB COPY

the entire oral and documentary evidence, this Court finds that the appellant has not established his case. It is settled propositions of law that the appellant has to prove his case on his own strength and he cannot take advantage of loopholes left by the respondent.

18.In this case, the appellant has not proved the name of Arya Bhavan or New Arya Bhavan is the registered trade mark of the appellant and the respondent infringed the said registered trade mark. As already stated that the logo alone is registered as trade mark, for which the respondent clearly stated that he never used that logo and never infringed the same. Further, the respondent clearly stated that at first in Thirumangalam, they started hotel business in the name of Nellai Arya Bhavan. When the appellant used to visit his place 4 years back, he never objected. While starting branch in Madurai, he has objected, since he could not compete with the quality of the respondent. Therefore, with an ulterior motive, the appellant filed the suit.

19.Considering the facts and circumstances of the case, this Court, after appreciating the evidence, finds that the appellant has not established his case and



A.S.(MD)No.147 of 2007

WEB COPY

therefore, this appeal is devoid of merits. As there is no valid ground or reason to interfere with the judgment of the trial Court, this Appeal Suit is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

20.06.2022

Index : Yes / No

Internet : Yes / No

Myr

To

1.The Principal District Judge,
Madurai.

2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



A.S.(MD)No.147 of 2007

P.VELMURUGAN, J.

Myr

Judgment made in
A.S.(MD)No.147 of 2007

20.06.2022