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O.A.Nos.198 and 19
in C.S.Nos.674 of 2010 and 866 of 2002

O.A.Nos.198 and 199 of 2023
in
C.S.Nos.674 of 2010 and 866 of 2002

S.SOUNTHAR, J.

These applications are filed by the applicants/plaintiffs seeking interim injunction restraining the respondent from alienating/selling, transmitting or assigning the Trade Mark and Brand Name 'Annapurna', 'Sree Annapoorna' and 'Annapoorna' or any other deceptively similar name or brand name forming the subject matter of the suits in C.S.Nos.674 of 2010 and 866 of 2022.

2. According to the applicants, they are the owner of the Trade Mark and Brand Name 'Sree Annapoorna' and 'Annapoorna'. It was claimed by the applicants that they had been using the Brand Name of 'Sree Annapoorna and 'Annapoorna' since 1980. It was further claimed that the respondents suppressing the fact that the applicants were the previous user of Trade Mark and Brand Name 'Sree Annapoorna' Annapoorna' approached the Trade Mark Registry and obtained the registration of the above Trade Mark and Brand Name in their favour.

3. Earlier the applicants filed a suit in C.S.No.866 of 2002 before this Court seeking the relief of permanent injunction restraining the respondent from passing off their

Brand Name 'Annapoorna'. It is also asserted by the applicants that they got registration of

<https://www.mhc.tn.gov.in/judis>



their Brand Name 'Annapoorna' and 'Sree Annapoorna' subsequent to the filing of the said suit and thereafter, another suit in C.S.No.674 of 2010 was filed by the applicants for injunction restraining the respondent from infringing the Registered Trade Mark. It was asserted by the applicants that when the suit was pending, the respondent made attempts to sell the Trade Mark 'Annapurna' to M/s Uma Global Food Private Limited registered at Singapore. It was further stated by the applicants that when the suit is ripen for trial, if the respondent is allowed to sell the brand name to the third party, it would lead to multiplicity of proceedings and consequently, they should be restrained from alienating the brand name under dispute to a third party pending suit.

4. The respondent herein filed a counter affidavit and submitted that the Trade Mark 'Annapurna' along with its goodwill, business etc., were already assigned in favour of Uma Global Foods Pte Limited under Trade Mark Assignment Deed dated 06.03.2023. Hence, it is the contention of the respondent that these applications had become infructuous even at the inception. It was also asserted in the counter affidavit that entire sale consideration was transferred by the assignee on 06.03.2023 well prior to the filing of the present applications. It was averred in the counter affidavit of the respondent that the respondent is the registered proprietor of the Trade Mark 'Annapurna' and hence, the respondent is entitled to assign the same to third parties for consideration.

<https://www.mhc.sg.gov.lk/judic> 5. Heard the arguments of the learned counsel for the applicants and the learned



Senior Counsel for the respondent.

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6. The learned counsel for the applicants contended that pending the suit for passing off/infringement of registered trade mark, if the respondent/defendant is allowed to assign the trade mark in question to a third party, it would result in multiplicity of proceedings and hence, the right of the applicant would get prejudiced.

7. The applications were mainly opposed by the respondent on the ground that the applications were filed before this Court only on 07.03.2023, however, the assignment of Trade Mark in question by the respondent to Uma Global Foods Pte Limited had taken place even on 06.03.2023 and consequently, the petitions had become infructuous. It was further contended by the learned Senior Counsel for the respondent that the respondent is the registered owner of Trade Mark as it obtained the registration of Trade Mark 'Annapurna' even prior to the suit filed by the applicants, under Section 37 of the Trade Marks Act, 1999, the respondent is entitled to assign the same for valid consideration.

8. In reply, the learned counsel for the applicants submitted that the assignment of Trade Mark in favour of third party by the respondent would take effect only on registration of assignment with the Trade Mark Registry and in the absence of registration of assignment by the Trade Mark Registry, the assignment in favour of third party cannot

<https://www.mca2018.org/judis> be treated as completed. The learned counsel for the applicants also relied on Section 45



(4) of the Trade Marks Act, 1999 in this regard.

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9. As mentioned earlier that the applicant herein filed a suit for passing off/infringement of trade mark against the respondent. The first objection made by the respondent is that the present application had become infructuous even at the time of filing. The present applications have been filed before this Court on 07.03.2023. As per the counter affidavit filed by the respondent, the assignment of the trade mark of 'Annapurna' was completed on 06.03.2023. However, the respondent has not chosen to file Assignment Deed in favour of M/s Uma Global Food Private Limited before this Court. It was also asserted by the respondent that the entire sale consideration for assignment was paid in favour of the applicants on 06.03.2023 well prior to filing of the present applications.

10. A perusal of the annexure to the counter affidavit will not help this Court to come to a definite conclusion that amount was paid in favour of the applicants on 06.03.2023 as neither the name of the respondent nor the value of consideration was mentioned therein. Therefore, there is no materials available on record to come to a definite conclusion that assignment had taken place even prior to filing of these applications.



make it clear that registration of the trade mark 'ANNAPURNA', 'KISSAN ANNAPURNA' were made in favour of the respondent on 06.03.1995 and 21.08.1995 respectively. Therefore, the respondent is the registered owner of the trade mark even from the year 1995 well before the filing of the first suit by the applicants for passing off. The applicants herein claiming themselves as the previous user of the trade mark under dispute. However, the applicants have not challenged the registration in favour of the respondent so far in the manner known to law as provided by the special enactment viz., Trade Marks Act, 1999.

12. The first suit in C.S.No.866 of 2002 was filed for permanent injunction restraining the respondent from passing off their goods and products under the name and style of 'Annapoorna' or under any other name deceptively similar thereto. The second suit in C.S.No.674 of 2010 filed by the applicants is for injunction restraining the respondent from infringing Registered Trade Mark of the plaintiffs/applicants 'ANNAPOORNA' and other incidental relief. The second suit was filed by the applicants based on the registration of the trade mark 'ANNAPOORNA' obtained by the applicants subsequent to the filing of the earlier suit. However, the applicants were aware of the fact that the trade mark 'Annapurna' was registered in favour of the respondent before the Trade Mark Registry even in the year 1995. The registration in favour of the respondent was very well mentioned in the written statement filed by the respondent in the earlier suit.



13. So far, for the reason best known to them, the applicants have not challenged the registration in favour of the respondent. As a registered owner of the trade mark 'Annapurna', the respondent is entitled to assign the same to a third party. Any assignment made by him is only subject to the result of the suits pending before this Court. The assignee cannot acquire any better right than the one possessed by the respondent. Therefore, there is no balance of convenience in favour of the applicant for grant of ad-interim injunction against the registered owner of the trade mark. Hence, the present application seeking injunction are dismissed with an observation that any assignment by the respondent pending suit is subject to the decree likely to be passed in the present suits.

14. It is submitted by both the learned counsel for the applicants and the learned Senior Counsel for the respondent that they are ready to get along with the trial. It is seen from the records that the respondent served Letter of Interrogatories to the applicants and this Court by order dated 06.01.2023 directed the applicants/plaintiffs to answer the Letter of Interrogatories within a period of 30 days from the date of receipt of a copy of the order. The applicants are accordingly expected to answer the Letter of Interrogatories served by the respondent and comply with the directions already granted by this Court on 06.01.2023.



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