



O.S.A.(CAD) Nos.80 and 81 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

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Vasanta Bhavan Hotels India Private Limited
rep. by its Director, Anand Krishnan
having its office at No.34
Developed Plots (South Phase)
Industrial Estate, Guindy
Chennai – 600 032.

.. Appellant

Vs

Vasantha Bhavan
No.115, 144, Gandhi Bazaar
Opp. Bus Stand, Gingee
Tamil Nadu – 604 202.

.. Respondents

Prayer: Appeals under Section 13 of the Commercial Courts Act against the common fair and decretal order passed by the learned Single Judge dated 9.1.2023 in O.A.Nos.567 and 568 of 2022 in C.S. (Comm. Div.) No.190 of 2022.

For the Appellant

: Mr.Sathish Parasaran
Senior Counsel
for Mr.M.V.Bhaskar



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For the Respondent : Mr.R.Sathish Kumar

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COMMON JUDGMENT

(Delivered by the Hon'ble Chief Justice)

The present appeals are filed against the common order passed by the learned Single Judge of this court rejecting the applications filed by the appellant for injunction restraining the respondent from using the offending trademark "Vasanta Bhavan" and the trading style "Vasantha Bhavan".

2. Mr.Sathish Parasaran, learned Senior Counsel for the appellant, submits that the trademark "Vasanta Bhavan" has been used by the plaintiff since the year 1974 for its hotel business. The device of "Namma Veedu Vasanta Bhavan" was registered vide TM.No.2272730 under Clause 43, wherein a user has been claimed since 7.1.2003 and that word "Namma Veedu Vasanta Bhavan" has been in use since 1974. Learned Senior Counsel submits that in the teeth of registration



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obtained by the appellant, it is not open for the respondent to use the offending mark for their hotel business.

3. Learned Senior Counsel for the appellant further submits that the respondent firm was dissolved in the year 2011, i.e., on 31.1.2011. The partners have clearly admitted that there is no goodwill and, therefore, only the appellant has enjoyed the goodwill in the eyes of the consumers in entirety.

4. Learned Senior Counsel for the appellant also submits that it cannot be a case of acquiescence as observed by the learned Single Judge. The respondent is guilty of fraud, and if the respondent is guilty of fraud, the question of acquiescence does not arise. Learned Senior Counsel relies upon the judgment of the Apex Court in the case of *Power Control Appliances and others v. Sumeet Machines Private Limited*, (1994) 2 SCC 448. It is submitted that Late A.Muthukrishnan is related to the appellant. However, the respondent claimed that



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he is their grandfather.

5. Learned counsel for the respondent submits that the hotel business "Vasanta Bhavan" was started by Late A.Muthukrishnan. He is relative of the respondent as well. The appellant and the respondent belong to the same village and are neighbours. As such, the appellant cannot claim ignorance of the business carried on by the respondent in the name and style of "Vasantha Bhavan" since 1967 at Arni and 1983 at Gingee. The said Late A.Muthukrishnan also helped the respondent in setting up its business in several ways. There was a dispute amongst the partners of the respondent partnership firm. The dispute was resolved through the mediation of Late A.Muthukrishnan. Learned counsel for the respondent relies upon the settlement memo dated 29.5.2011 signed in the presence of of Late A.Muthukrishnan.

6. Learned counsel for the respondent further submitted



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that the respondent is using the word "Vasantha Bhavan" for its hotel business since 1983, through the predecessor, namely V.Selvaraj. The partnership firm was leading from 1.10.1983 and the said partnership firm also received registration before the Regional Commissioner, Employees Provident Funds, Tamil Nadu and Puducherry, and a TAN number was also allotted to the respondent on 5.5.1998. The business was done at Gingee and Arni.

7. We have considered the submissions canvassed by learned counsel for the parties.

8. The learned Single Judge has observed that the facts on record prima facie indicate that the trademark was adopted by Late Muthukrishnan, during his lifetime, as is evident from the paper advertisement made during the year 1974.

9. The learned Single Judge has also observed that the



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documents filed by the respondent also confirm that the word “Vasanthā Bhavan” was used by them in Gingee and Arni and the business in Gingee, which was in the hands of the predecessor of the respondent, was continued by the respondent. The documents prima facie also depict that several statutory proceedings have been initiated against the respondent by the statutory authorities when the word “Vasanthā Bhavan” has been used. It is clear that the said mark/word “Vasanthā Bhavan” was used by the respondent at least since the year 1983. The learned Single Judge, prima facie, came to the conclusion that the user of the respondent is also prior to the trademark application filed by the appellant for registration of the respective trademarks in the year 2012.

10. That apart, the learned Single Judge has restrained the adoption of the legend “V” above the word “Vasanthā Bhavan” by the respondent in all the communications and business transactions, including the board and advertising



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material. Learned counsel for the respondent, on instructions, has undertaken that during the pendency of the suit, the respondent would not use the mark/word "Vasantha Bhavan" outside Gingee.

11. In view of the aforesaid, it cannot be said that the learned Single Judge has committed error while rejecting the applications seeking temporary injunction. It is trite that the Appellate Court would be loath in interfering with the discretion exercised by the trial court. The learned Single Judge has arrived at a plausible conclusion, as such we are not inclined to interfere with the order passed by the learned Single Judge.

In the result, the appeals, as such, are disposed of. However, with no order as to costs. Consequently, C.M.P.Nos.15949, 15954 and 15974 of 2023 are closed.



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(S.V.G., CJ.)

(P.D.A., J.)

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Index : No
Neutral Citation : No
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To:

The Sub Assistant Registrar
Commercial Cases
High Court, Madras.



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THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESAVALU,J.

(sasi)

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