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C.S.(Comm.Div.) No.14 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.07.2024

CORAM:

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

C.S. (Comm. Div.) No.14 of 2024

M/s.Thalappakatti Naidu Anandha Vilas Biriyan Hotel LLP,
Represented by its authorized signatory
V.Kamesh
Having is branch office at Flat No.B3,
New No.17, Old No.18A,
11th Street, Nandanam Extension,
Chennai – 600 035.

... Plaintiff

Vs.

TAJ THALAPAKATTU BRIYANI,
Old No.1/62, New No.2/23,
GST Road, Singaperumal Koil,
Chengalpattu, Kanchipuram,
Tamil Nadu – 603 204.

... Defendant

Civil Suit is filed under Order VII Rule 1 Civil Procedure Code read with Order IV Rule 1 of the High Court Original Side Rules and Section 134 and Section 135 of the Trade Marks Act, 1999, praying for a judgment and decree against the defendant:

a) granting a permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any



manner infringing the plaintiff trademark and trading style “Thalappakatti Briyani Hotel” by using the offending Trademark and Trading style “TAJ THALAPAKATTU BIRYANI” on any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiffs Trademark “Thalappakatti Briyani hotel”.

(b) granting a permanent injunction restraining the defendant, their men, servants, agents or anyone claiming through or under them from in any manner passing-off the plaintiff trademark and trading style “Thalappakatti Briyani Hotel” by using the offending trademark and trading style “TAJ THALAPAKATTU BIRYANI” or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiffs trademark “Thalappakatti Briyani Hotel”.

(c) directing the defendant to render a true and faithful account of the profits earned by them through a sale of food products bearing the offending trade mark “TAJ THALAPAKATTU BIRYANI” 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 “TAJ THALAPAKATTU BIRYANI” with name boards, labels, wrappers, boxes, covers, bags, packets, cartons, bills, advertisements, materials, reports, envelopes, brochures, printing books, etc., bearing the offending trademark for destruction.

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



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For Plaintiff : Mr.Vijayan Subramanian

For Defendants : Set *ex parte* on 26.03.2024

JUDGMENT

The plaintiff has filed this Civil Suit seeking permanent injunction restraining the defendant from in any manner infringing and passing off the plaintiff's trademark and trading style “Thalappakatti Briyani Hotel” by using the offending Trademark and Trading style “TAJ THALAPAKATTU BIRYANI” and to direct the defendant to render the account of profits earned by them through the sale of food products bearing the said trademark and also to surrender the entire stock of unused offending goods with the said trademark.

2. It is the case of the plaintiff that originally in the year 1957, one P.Nagasamy Naidu alias Thalappakkatti Naidu commenced hotel business in the name and style of “Thalappakatti Naidu Anandha Vilas Biriyani Hotel” and the business has acquired enormous popularity for the extraordinary quality and unique flavour and taste, particularly in preparation of Biriyani by the name “THALAPPAKATTI NAIDU Biriyani”. Since the hotel is being run in Dindigul town, it has acquired the name “Thalappakatti Naidu



Biriyani Hotel”. After the demise of P.Nagasamy Naidu in the year 1978, his son N.Dhanabalan continued to run the said hotel in the name and style of “Thalappakatti Naidu Biriyani Hotel” with the picture of P.Nagasamy Naidu with turban, referred as “Thalapakattu”. After the demise of N.Dhanabalan, the said hotel is being run in the name and style of “Thalappakatti Briyani Hotel” since the year 1978,

3. It is claimed by the plaintiff that the trademark and trading style “Thalappakatti Biriyani Hotel” is being associated exclusively with the original business commenced by Thalappakatti P.Nagasamy Naidu at Dindigul and subsequently extended to other cities in Tamil Nadu by the said D.Nagasamy. There is extensive patronage by the general public for the products prepared and served in their restaurants and hotels. The plaintiff is maintaining an unique taste and quality by meticulous efforts and is having branches all over the world including Singapore, Dubai, Malaysia, USA, France and Sri Lanka. The plaintiff has taken steps to protect its trademark and trading style of “Thalappakatti” by seeking information from various Government Authorities under the Right to Information Act, 2005 and also issued legal notices to the persons known to be illegally and unauthorizedly



using the plaintiff's trademark. The plaintiff company has been converted into “Thalappakatti Naidu Anandha Vilas Briyani Hotel” on 16.07.2019 and registered pursuant to Section 58(1) of the LLP Act, 2008 as a Limited Liability Partnership and Legal Usage Certificate for the word mark and device mark “Thalappakatti” has been issued on 11.10.2023.

4. It is the contention of the plaintiff that except the plaintiff no one has any right to use the said trademark and trading style. However, the defendant is runs a restaurant in the name of “TAJ THALAPAKATTU BIRYANI” which is structurally, visually, phonetically and deceptively identical to the plaintiff's trademark “Thalappakatti”. Despite receiving the cease and desist notice on 17.07.2023, the defendant is continuing to use the trademark “TAJ THALAPAKATTU BIRYANI”. Hence, the present suit has been filed.

5. The learned counsel for the plaintiff submitted that the defendant had commenced adopting identical or deceptively similar trademark and trading style “TAJ THALAPAKATTU BIRYANI” in respect of their hotel business only in order to deceive the general public and to make them believe



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the food preparations served at the defendant place has the connection with the plaintiff's hotel and the defendant is associated with the plaintiff. The defendant has no manner of right to adopt the use the said offending trademark. If the defendant is allowed to continue the illegal acts in adopting the plaintiff's trademark and vend food preparations under the offending trademark, the plaintiff would be put to very serious loss and hardship. There is also danger of the public being cheated by the defendant by adopting the offending trademarks by misleading the public to believe the food preparations being sold by the defendant in connecting with the plaintiff. The acts of the defendant also constitute criminal offences under the Trademark Act, 1999. Hence, the present suit has to be decreed with costs.

3. Despite notice being served on the defendant, they have not chosen to contest the matter. Hence, the defendant was set *ex parte* by this Court on 26.03.2024.

4. The plaintiff has recorded the *ex parte* evidence. The authorised signatory of the plaintiff is examined as P.W.1. He had also filed a proof affidavit by reiterating the contents of the plaint filed in support of this suit.



Through PW1, 23 documents have been marked as Exs.P1 to P23.

5. The defendant neither challenged the averments in the plaint nor challenged the proof affidavit of the plaintiff. Upon hearing the learned counsel for the plaintiff and on analysis of the oral and documentary evidence adduced on the side of the plaintiff, it is clear that the plaintiff has proved its case.

6. In view of the same, the Civil Suit is decreed with costs.

25.06.2024
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Plaintiff's witness: P.W.1 – Mr.V.Kamesh

Documents exhibited by the plaintiff:

SNo	Exhibit	Description of the document
1	Ex.P1	Photocopy of the order in O.A.No.298 & 299 of 2007 in C.S.No.203 of 2007 dated 07.11.2007
2	Ex.P2	Photocopy of the order directing registration of trademark of plaintiff dated 20.09.2010
3	Ex.P3	Printout of the trademark registration certificate of plaintiff under Clause 42 along with renewal letter dated 23.09.2010.
4	Ex.P4	Photocopy of the common order and decree in O.A.No.48 & 49 of 2011 in C.S.No.32 of 2011 dated 23.06.2011
5	Ex.P5	Photocopy of the common order in O.S.A.No.199 to 201 of 2011 dated 01.08.2011
6	Ex.P6	Photocopy of the order passed by Supreme Court in I.A.No.7 to 9 of 2012 in SLP No.23604 to 23606 of 2011 dated 11.05.2012.
7	Ex.P7	Photocopy of the order passed by Supreme Court in I.A.No.7 to 9 of 2012 in SLP No.23604 to 23606 of 2011 dated 04.04.2013.
8	Ex.P8	Photocopy of the order passed by IPAB in O.A.No.13 of 2011 and O.A.No.58 of 2010 dated 08.04.2013
9	Ex.P9	Photocopy of the common decree in C.S.No.203 of 2007 & C.S.No.32 of 2011 dated 02.09.2013
10	Ex.P10	Photocopy of the common Judgment in C.S.No.203 of 2007 and C.S.No.32 of 2011 and Cont.P.No.1412 of 2013 dated 02.09.2013
11	Ex.P11	Printout of the Partnership Deed / Form A dated 20.12.2013
12	Ex.P12	Photocopy of the order passed in O.A.Nos.120 to 127 of 2014 in C.S.No.92 to 99 of 2014 & O.A.No.85 of 2014 in C.S.No.53 of 2014 dated 10.06.2014
13	Ex.P13	Printout of the trademark registration certificate of plaintiff



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		under Clause 43 along with renewal letter dated 07.08.2014.
14	Ex.P14	Printout of the legal usage certificate of the plaintiff dated 27.03.2018
15	Ex.P15	Board Resolution passed by the plaintiff dated 12.12.2023
16	Ex.P16	Photocopy of the legal notice sent by the plaintiff along with the tracking receipt dated 15.07.2023
17	Ex.P17	Photocopy of the legal usage certificate of the plaintiff for Word Mark dated 11.10.2023
18	Ex.P18	Photocopy of the legal usage certificate of the plaintiff for Device Mark dated 11.10.2023
19	Ex.P19	Photocopy of the Certificate of Registration on conversation of Thalappakatti Naidu Anandha Vilas Biriyan Hotel to Thalappakatti Naidu Anandha Vilas Biriyan Hotel LLP dated 16.07.2019
20	Ex.P20	Photocopy of the GST Registration Certificate of Thalappakatti Naidu Anandha Vilas Biriyan Hotel LLP dated 30.09.2019
21	Ex.P21	Printout of the photo of plaintiff hotel
22	Ex.P22	Printout of the photo of defendant hotel
23	Ex.P23	Printout of the comparison chart of the plaintiff mark and the defendant mark.

Defendants' witness: Nil

Documents exhibited by the Defendant: Nil

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