



Civil Suit No.453 of 2012

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 03.06.2024

JUDGMENT DELIVERED ON : 19.07.2024

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Civil Suit No.453 of 2012

M/s.K.A.S.Zainulabdin & Co.,
No.196, Angappan Street,
Chennai – 600 001,
rep.by its Partner K.M.Saleem.

.. Plaintiff

Vs.

1. P.Manicka Chettiar
2. P.M.Powgaiya
[Amended as per order dated 26.08.2022
in A.No.3047 of 2022 in C.S.No.453 of 2012]
3. M.A.Nagoor Pitchai
4. MAA Annapoorna Transport Agency
New No.46, Old No.311,
Thambu Chetty Street,
Chennai – 600 001.

.. Defendants



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Prayer :

Civil Suit has been filed under Order VII Rule 1 CPC and Order IV Rule 1 of O.S.Rules of this Court read with Sections 27, 28, 29, 134 and 135 of the Trade Marks Act, 1999 and Sections 51, 55 and 62 of the Copyright Act, 1957, praying for judgment and decree against the defendants as follows :

a) a perpetual injunction restraining the defendants, by themselves, their partners/proprietors, servants, heirs, successors, agents, distributors, stockists, advertisers, retailers, representatives or any of them from in any manner infringing the plaintiff's trademark LOCK BRAND label under No.237944 in Class 24 by use of the deceptively similar trademark GOLD LOCK BRAND label or any other trademark, deceptively similar to the plaintiff's registered trademark LOCK BRAND label, with unique and distinctive features in respect of lungies and textiles goods or in any other manner whatsoever;

b) a perpetual injunction restraining the defendants, by themselves, their partners/proprietors, servants, heirs, successors, agents, distributors, stockists, advertisers, retailers, representatives or any of them from in any manner infringing the plaintiff's copyright in the artistic work LOCK BRAND label and its roundel label with its distinctive artistic works,



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colour scheme, get-up, layout, arrangement of features and packaging by use of imitative GOLD LOCK BRAND label or any other label which is a substantial re-production of and slavish imitation of plaintiff's copyright in the artistic work in LOCK BRAND label and the roundel label in colour scheme, get-up, lay-out, arrangement of features and packaging or in any other manner whatsoever ;

c) a perpetual injunction restraining the defendants, by themselves, themselves, their partners / proprietors, servants, heirs, successors, agents, distributors, stockists, advertisers, retailers, representatives or any of them from in any manner passing-off and enabling others to pass-off their lungies as and for the plaintiff's lungies by use of the trademark GOLD LOCK BRAND label or any other trademark deceptively similar to the plaintiff's trademark LOCK BRAND label with identical / deceptively similar colour scheme, get up and lay out or in any other manner whatsoever ;

d) the defendants be ordered to pay to the plaintiff a sum of Rs.1,00,000/- jointly and severally, as damages for their wrongful and illegal activities in use of trademark GOLD LOCK BRAND label with



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identical colour scheme, get-up, lay-out, arrangement of features and packaging;

e) The defendants be ordered to surrender to the plaintiff for destruction of lungies, labels, blocks, dies, screen prints, packing materials etc., bearing the mark GOLD LOCK BRAND label and GOLD LOCK BRAND pouch / carton or any material containing any mark deceptively similar to the plaintiff's registered trademark and copyright in artistic work LOCK BRAND label and roundel label;

f) a preliminary decree be passed in favour of the plaintiff directing the defendants to render account of profits made by use of trademark GOLD LOCK BRAND label and final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendants, after the latter have rendered accounts ; and

g) for costs of the suit.

For Plaintiff	:	Mr.Arun C. Mohan
For Defendants	:	Dr.A.Thiyagarajan
		Senior Counsel for Mr.M.Nallathambi
		for D1 and D2
		D3 and D4 – set <i>ex-parte</i> on 03.11.2022



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J U D G M E N T

The suit has been filed by the plaintiff for the following reliefs to :

i) a perpetual injunction restraining the defendants, by themselves, their partners/proprietors, servants, heirs, successors, agents, distributors, stockists, advertisers, retailers, representatives or any of them from in any manner infringing the plaintiff's trademark LOCK BRAND label under No.237944 in Class 24 by use of the deceptively similar trademark GOLD LOCK BRAND label or any other trademark, deceptively similar to the plaintiff's registered trademark LOCK BRAND label, with unique and distinctive features in respect of lungies and textiles goods or in any other manner whatsoever;

b) a perpetual injunction restraining the defendants, by themselves, their partners/proprietors, servants, heirs, successors, agents, distributors, stockists, advertisers, retailers, representatives or any of them from in any manner infringing the plaintiff's copyright in the artistic work LOCK BRAND label and its roundel label with its distinctive artistic works, colour scheme, get-up, layout, arrangement of features and packaging by use of imitative GOLD LOCK BRAND label or any other label which is a



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substantial re-production of and slavish imitation of plaintiff's copyright in the artistic work in LOCK BRAND label and the roundel label in colour scheme, get-up, lay-out, arrangement of features and packaging or in any other manner whatsoever ;

c) a perpetual injunction restraining the defendants, by themselves, themselves, their partners / proprietors, servants, heirs, successors, agents, distributors, stockists, advertisers, retailers, representatives or any of them from in any manner passing-off and enabling others to pass off their lungies as and for the plaintiff's lungies by use of the trademark GOLD LOCK BRAND label or any other trademark deceptively similar to the plaintiff's trademark LOCK BRAND label with identical / deceptively similar colour scheme, get-up and lay-out or in any other manner whatsoever ;

d) the defendants be ordered to pay to the plaintiff a sum of Rs.1,00,000/- jointly and severally, as damages for their wrongful and illegal activities in use of trademark GOLD LOCK BRAND label with identical colour scheme, get-up, lay-out, arrangement of features and packaging;



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e) The defendants be ordered to surrender to the plaintiff for destruction of all lungies, labels, blocks, dies, screen prints, packing materials etc., bearing the mark GOLD LOCK BRAND label and GOLD LOCK BRAND pouch / carton or any material containing any mark deceptively similar to the plaintiff's registered trademark and copyright in artistic work LOCK BRAND label and roundel label;

f) a preliminary decree be passed in favour of the plaintiff directing the defendants to render account of profits made by use of trademark GOLD LOCK BRAND label and final decree be passed in favour of the plaintiff for the amount of profits thus found to have been made by the defendants, after the latter have rendered accounts ; and

g) for costs of the suit.

2. The averments made in the plaint, in a nut-shell are as follows:-

2.1. The plaintiff/Firm, which was established in the year 1910, is involved in manufacture and marketing of textile goods such as lungies, vests, briefs etc., for more than a century. The plaintiff's hand loom,



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cotton lungies, vests etc., are sold under several distinctive labels with popular and prestigious brand names and the same are sold extensively throughout India and also exported to various foreign countries extensively. During the course of their trade, honestly conceived and adopted the trademark "LOCK BRAND" label for their lungies and they have been extensively using the said trademark since 1950, throughout India and the products under the said trademark are also exported abroad. The plaintiff/Firm had obtained trademark registration for the mark "LOCK BRAND" label under No.237944 in Class 24, dated 30th September 1966 in respect of "Lungies" and the said registration has been duly renewed and is still valid and subsisting. The plaintiff's registered trademark "LOCK BRAND" label contains the following features :

- a) A square outer border with the name of plaintiff-firm printed on the top side and the address of the plaintiff-firm in English, Bengali and Urdu on the other three sides.
- b) A square inner border, wherein the device of LOCK is depicted at the centre.
- c) Words "LOCK BRAND" in English and the words "POOTU

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MAARKU" in Tamil written in bold font along with words "TRADE MARK".

2.2. The pictorial depiction of the Plaintiff's registered trademark and label is as follows :



2.3. The plaintiff-firm is also the proprietor of the copyright in the artistic work in "LOCK BRAND" label and the same was published in India in the year 1910 and has since then been published continuously all over India. The artistic work in the "LOCK BRAND" label has been published exclusively by the plaintiff and none else. The plaintiff's artistic work in "LOCK BRAND" label was published in three coloured variants and the same has the following distinctive features :



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Label 1 :

a) The shape of the label is a combination of a square and rectangular parts appended to each other;

b) On the square part of the label:

1.A colour combination of red and white with black and red lettering;

2.Black outer border wherein the name of the plaintiff-firm is printed on the top side with the address of the plaintiff-firm in English, Bengali and Urdu on the other three sides;

3. The words "Regd. No.237944" and "K.A.S. ZAINULABDIN & CO" are depicted below the outer border;

4. A black inner border has a red background, wherein the device of LOCK is depicted at the centre and the words "LOCK BRAND" is written in both English and Tamil along with word "TRADE MARK".

c) On the rectangular part of the label :

1. A multicoloured border flanks at the top and bottom on a green background ;



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2. The numerals "80 X 80" is depicted on a golden star shaped device overlaying the top side border ;

3. The logo of the plaintiff-firm and the words "EXPORT QUALITY" are depicted at the centre.

Label 2 :

a) The shape of the label is a combination of a square and rectangular parts appended to each other;

b) On the square part of the label :

1. A colour combination of gold, white and black with gold, black, white and red lettering;

2. Black outer border with a white background wherein the name of the plaintiff-firm is printed on the top side with the address of the plaintiff-firm in English, Bengali and Urdu on the other three sides;

3. The words "Regd. No. 237944" and "K.A.S. ZAINULABDIN & CO" are respectively depicted above and below the outer border on a gold background;

4. A black inner border has a black background, wherein the device of LOCK is depicted at the centre and the words 'LOCK BRAND' is written in both English and Tamil along with word "TRADE MARK".



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c) On the rectangular part of the label:

1. A red and blue coloured borders at the top and bottom respectively on a silver background;
2. The logo of the plaintiff-firm is depicted at the centre flanked by the words "EXPORT" and "QUALITY" on both sides;

Label 3:

a) The shape of the label is a combination of a square and rectangular parts appended to each other;

b) On the square part of the label:

1. A colour combination of silver, white and green with black lettering;
2. Black outer border with a white background wherein the name of the plaintiff-firm is printed on the top side with the address of the plaintiff-firm in English, Bengali and Urdu on the other three sides;
3. The portion outside the outer border has a silver background with the words "K.A.S.ZAINULABDIN & CO" and 'LOCK' is inlaid in a continuous diagonal stream;
4. The words "K.A.S.ZAINULABDIN & CO" and



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"REGD No.237944" are depicted below the outer border on a red background;

5. A black inner border has a black background, wherein the device of LOCK is depicted at the centre and the words "LOCK BRAND" is written in both English and Tamil along with word "TRADE MARK". A circular device with a lock device and the words "ORIGINAL" is watermarked below the words "LOCK BRAND".

c) On the rectangular part of the label:

1. A multicoloured border at the top on a silver background;

2. The numerals "80 X 80" is depicted on a golden oval shaped device overlaying the multicoloured border;

3. The logo of the plaintiff-firm is depicted at the centre flanked by the words "EXPORT" and "QUALITY" on both sides.

2.4. The above mentioned trademark and artistic work in the said "LOCK BRAND" label is unique and distinctive. The plaintiff has been openly, continuously, exclusively and successfully using the aforesaid mark and artistic works till date. Further, the plaintiff/Firm has garnered tremendous goodwill and irrefutable reputation in respect of the trademarks and artistic works in "LOCK BRAND" label all over India and



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abroad. While that being so, the plaintiff/Firm came across lungies bearing deceptively similar trademark "GOLD LOCK BRAND" label being sold in the market by the defendants. The defendants' label has been marked as Ex.P.8. The plaintiff further came to know that the lungies under the deceptively similar "GOLD LOCK BRAND" label are being manufactured by defendants 1 and 2 at Chennai. Further, defendants 1 and 2 are involved in the business of manufacture, marketing and sale of lungies under the name and style of P.Manicka Chettiar, while on the other hand, through the 4th defendant, the 3rd defendant is involved in distribution of lungies manufactured and sourced by defendants 1 and 2, at Manipur under the name and style of Manp Amubacker Ibrahim & Co. The invoice for sale of the defendants' lungies bearing the infringing label, is marked as Ex.P.6.

2.5. It is further averred that the defendants' said "GOLD LOCK BRAND" label is almost identical/ deceptively similar to the plaintiff's registered trade mark "LOCK BRAND" label in all respects, viz., visually and structurally. The similarity between two marks / labels are *ex facie* and *prima facie* apparent. Further, the defendants adopted identical



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artistic works employing identical colour scheme, get-up, lay-out and arrangement of features, not only in relation to the above mentioned "LOCK BRAND" labels of the plaintiff, but also that of the packaging designed by the plaintiff in respect of its lungies. The use of the defendants identical trade mark and artistic works in respect of their products is a blatant violation of the plaintiff's exclusive rights in respect of its registered trademark and copyright in its artistic works, which amounts to infringement of plaintiff's statutory rights. Therefore, with a view to amicably settle the issue, the plaintiff has filed a complaint with Tamil Sangam, Moreh Town, Manipur. In the said complaint, the plaintiff had explained in detail, as to the nature of the violation committed by the defendants and the loss of business caused to the plaintiff in view thereof. The Judicial Board of the said Tamil Sangam, upon perusing the complaint, called upon the interested parties and conducted a negotiation, requesting the infringing defendants to stop using the identical trademark/label. However, in spite of their attempts, the defendants had categorically refused to change the infringing label. Hence, the Tamil Sangam, Moreh Town reporting failure of negotiations between the plaintiff and defendants, vide letter/Ex.P-10. Hence, the plaintiff has filed



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the present suit.

3. Defendants 1 and 2, in the written statement, denies the various allegations made in the plaint and has stated that the defendants 1 and 2 are carrying on business under the name and style of P.Manicka Chettiar, dealing in manufacturing and distribution of lungies under "GOLD LOCK BRAND" label and they are using the said trademark for the past many years, continuously without any disruption. In the plaint, the plaintiff/Firm has averred that they are using the trademark since 1950, which is bereft of any material or evidence. Further, the plaintiff has averred that the mark in dispute was applied by the then partners of the plaintiff/Firm trading as M/s.K.A.S.Zainulabdin & Co., and subsequently, in view of the changes made in the proprietorship, currently the mark stands registered in the name of K.Magloom Mohamed and 11 others trading as M/s.K.A.S.Zainulabdin & Co. However, the Trademark Registry does not reflect the plaintiff's representative partner K.M.Saleem as the owner of the trademark and hence the plaintiff cannot be said to be the lawful owner of the trademark "LOCK BRAND". It is settled law that where it is not established that the trademark is rightfully owned by



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present partners, they are not entitled to initiate action.

3.1. It is stated that the description of different labels given by the plaintiff in the plaint proves that the plaintiff has been using as many designs as they like for the trademark "LOCK". Therefore, the plaintiff cannot say that the first defendant has adopted a particular label of the plaintiff. It is further stated that only the word "LOCK" has been registered as trademark by the plaintiff. Further, the word "LOCK" is a generic term and it is well established principle that there cannot be any exclusive right over the use of a generic term. Further, there are many LOCK BRANDS available in the market viz., "GREEN LOCK BRAND", "SILVER LOCK BRAND" etc., and it is being freely used in the public domain and therefore, the plaintiff cannot claim any exclusive right over the label "LOCK BRAND". The further averment that art-work in the LOCK BRAND label has acquired secondary meaning, is false and baseless and the plaintiff has no plausible justification to make such assertion. It is pertinent to point out that generic terms are not protected under Trademarks' Law, even if they have acquired secondary meaning. Here the term and symbol "LOCK" itself is not distinctive. Therefore, the



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burden of proof to establish secondary meaning, rests at all times with the plaintiff. Therefore, in the absence of such proof, the plaintiff cannot claim any exclusive user right over such term and symbol.

3.2. The defendants further denies the allegations in the plaint that "GOLD LOCK BRAND" label lungies are being manufactured by defendants 1 and 2 at Chennai and is being distributed to the third defendant for sale at various places including the State of Manipur through the fourth defendant. As the products manufactured by the first defendant are sold exclusively in Moreh in the first defendant's own shop and not through anyone else including the third defendant. The plaintiff has only levelled a bald allegation without substantiating the same. It is the claim of the plaintiff that the label of the defendants is visually and structurally similar to that of the plaintiff's label. However, originally, the defendants' label is structurally and visually very different from the label of the plaintiff and as such, there is no confusion in the minds of the public. The defendant denies the averments made in paragraph No.12 of the plaint and states that the second defendant has no manner of right in the first defendant's business and no goods are supplied through the third



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defendant. Therefore, it is clear that the plaintiff, with a malicious motive and false intent stated in the plaint that all the defendants are colluding among themselves and that all the defendants form the intrinsic part in the chain of infringement and are jointly and severally liable. The first defendant also called upon the plaintiff to explain as to how all the defendants are colluding among themselves and are forming an intrinsic part of chain of infringement, jointly and severally liable. Therefore, the suit is defective for mis-joinder of parties. It is also the claim of the plaintiff before the Tamil Sangam, Moreh Town that the defendants have categorically refused to change the infringing label. Actually, no negotiations took place as averred by the plaintiff in the plaint. The first defendant further denies the claim of the plaintiff that the first defendant has used identical or deceptively similar mark "GOLD LOCK BRAND". As stated earlier, there are various labels available in the market that are sold in the market under the style of "GREEN LOCK BRAND", "SILVER LOCK BRAND" etc., and therefore, there cannot be any confusion likely to be caused in the minds of the public, specifically with respect to the plaintiff's label "LOCK BRAND" and defendant's label "GOLD LOCK BRAND". In case, the plaintiff owns the other labels, such as "GREEN



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LOCK BRAND", "SILVER LOCK BRAND" etc., the plaintiff will have no action against the first defendant's use of the label "GOLD LOCK BRAND". Since the other marks are used freely in the public, the plaintiff does not have a claim specifically against the first defendant's mark.

3.3. It is further stated that there is no oral and documentary evidence to prove that the first defendant has deliberately adopted a deceptively similar mark of the plaintiff. Further, the plaintiff has to prove dishonest use by the first defendant to be entitled for a claim of passing-off. Further, the first defendant denies the allegations made by the plaintiff that defendants 1 and 2 are involved in the manufacture of sub-standard lungies, since neither the lungies are substandard, nor the second defendant is connected with the trademark in any way. Further, the first defendant denies the allegation of the plaintiff as regards the sale in Myanmar, is not questionable based on the existing right as claimed by the plaintiff in the suit. Further, the first defendant denies the allegations that the defendants have passed-off their goods at Chennai, because the first defendant is engaged in the sale of goods at his own shop exclusively in Moreh town of Manipur alone for the last 50 years. Further, the first



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defendant denies all the averments made in the plaint and therefore, the plaintiff does not have sufficient cause of action to institute the suit.

4. Upon considering the pleadings and the other documents, the following issues have been framed by this Court on 06.10.2021 :

i) Whether the trademark "GOLD LOCK BRAND" of the defendant is deceptively similar, both phonetically and visually, to the registered mark of the plaintiff "LOCK BRAND" ?

ii) Whether the use of the mark "GOLD LOCK BRAND" by the defendant would amount to infringement of the plaintiff's registered trademark "LOCK BRAND" ?

iii) Whether the use of the trademark "GOLD LOCK BRAND" by the defendant would amount to infringement of the copyright of the plaintiff in the mark "LOCK BRAND".

iv) Whether the plaintiff is entitled to the injunctive reliefs sought for ?

v) Whether the plaintiff is entitled to damages and accounting ?



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vi) Whether the defendant attempted to pass off its products as the products of the plaintiff ?

vii) To what other reliefs the parties are entitled to ?

5. After framing of issues, during trial, on the side of the plaintiff, one K.M.Mahmood Sulaiman was examined as P.W.1 and 12 documents were marked as Exs.P1 to P12. On the side of the defendants, defendants 1 and 2 were examined as D.W.1 and D.W.2 and two documents were marked as Ex.D1 and Ex.D2.

6. Learned counsel for the plaintiff submitted that the plaintiff/Firm is the registered proprietor and prior adopter of the trademark and label "LOCK BRAND". The plaintiff obtained registration of the mark and label "LOCK BRAND" as early as on 30.09.1966 and the same has been marked as Ex.P-2. The plaintiff/Firm has openly, continuously, exclusively and successfully using the aforesaid mark and artistic works mentioned above from 1950 to till date. The sales figures of the plaintiff's lungies bearing the said trademark and artistic works, have been marked as Ex.P-4 and advertisement materials and others have been



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marked as Ex.P-5. The learned counsel for the plaintiff further submitted that the defendants have adopted the plaintiff's trademark and used as "GOLD LOCK BRAND" for their products, which is almost identical to the plaintiff's registered trade mark "LOCK BRAND" label in all respects, viz., visually and structurally. The similarity between two marks / labels are *ex facie* and *prima facie* apparent. The comparison of the plaintiff and defendants' labels have been marked as Ex.P-9. The learned counsel for the plaintiff further submitted that apart from re-producing the plaintiff's registered trademark, the defendants have also copied the artistic features of the plaintiff's "LOCK BRAND" labels. The defendants have adopted their infringing label by merely adding a dictionary / laudatory word "GOLD". All other features of the defendants' infringing label are almost identical to the plaintiff's prior adopted and extensively used "LOCK BRAND" label. Therefore, the defendants have infringed the statutory rights of the plaintiff. The learned counsel for the plaintiff further submitted that the defendants are the subsequent adopters of the mark and label and have adopted the mark with the knowledge of the plaintiff's presence in the market, in view of its prior adoption and use.



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The *mala fide* intent of defendants' adoption is thus apparent. Therefore, when adoption itself is dishonest, no amount of use can camouflage the liability of the defendants.

7. Learned counsel for the plaintiff further submitted that the defendants have adopted a deceptively similar trademark and the over-all trade dress as that of the Plaintiff. As per the decision of the Hon'ble Supreme Court in *Amritdhara Pharmacy Vs. Satya Deo Gupta* reported in *AIR 1963 SC 449*, an unwary purchaser of average intelligence with imperfect recollection, would purchase the product basis on the overall structural and phonetic similarity and would not dissect the parts of the label and packaging.

8. Learned counsel for the plaintiff further submitted that the defendants' trademark and label is deceptively similar to that of the plaintiff and is used for identical products, the likelihood of confusion as regards the source of goods and the purchasing public would assume that the defendants' products originate from the plaintiff or the end purchasers



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would be led to believe that the Plaintiff somehow authorized the defendants to sell the products.

9. It is settled law relating to trademarks that there can be only one mark, one source and one proprietor. The defendants use the deceptively similar trademark and label for identical products, may confuse the public and it is possible that the public may get misled into believing that the defendants are also a branch of the plaintiff, which is clearly not the truth.

10. Learned counsel for the plaintiff further submitted that both the plaintiff and defendants are engaged in the same field of activity and the products are capable of being sold in the same shops, across the same counters and to the same class of purchasers. Considering the class of customers, channels of trade and the price involved, an ordinary person with average memory and imperfect re-collection, would not be able to differentiate between both the marks and labels. The plaintiff apprehends that the products sold by the defendants under the identical trademark



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and trade dress are of substandard quality. The defendants' *mala fide* adoption of identical trademark, would seriously affect the business of the plaintiff and spoil their hard-earned goodwill and reputation. He further submitted that the defendants are passing-off their products as that of the plaintiff's products. Though the plaintiff's registered trademark and label "LOCK BRAND" has attained immense reputation and goodwill, the defendants, with an intention to deceive the public, has adopted a deceptively similar mark and label on identical products. The purchasers would be deceived on account of the wrongful activities of the defendants. It is well settled principle that the plaintiff in a passing-off action, need not prove that they have actually suffered damage by loss or in any other way. A probability of damage is sufficient and therefore, the plaintiff may not prove that individual sales will be diverted to the defendants in order to claim damages. Hence, the learned counsel for the plaintiff prays to pass a judgement and decree as prayed for in the present suit.

11. Learned Senior counsel appearing for defendants 1 and 2 submitted that, as the plaintiff/Firm is an unregistered partnership firm,



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the suit is not maintainable under Section 69 (2) of 'the Indian Partnership Act, 1932' [for brevity 'the Act']. It is relevant to extract Sections 69 (1) and (2) of the Act as follows :



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69. Effect of non-registration -

"1. No suit to enforce a right arising from a contract of conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of firms as a partner in the firm.

2. No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of firms as partners in the firm."

12. Learned Senior Counsel appearing for defendants 1 and 2 further submitted that the plaintiff/Firm has not come forward to enter into the witness box to prove the pleadings made in the plaint and they have made an endorsement that they are not going to examine any witness to give oral evidence. Hence, this Court, after recording the statement made by the plaintiff, had fixed Case Management Schedule on 27.10.2021. Thereafter, the matter was posted before the learned Additional Master-II on 24.11.2021 and 07.12.2021, respectively. Before the learned Master, as the plaintiff's counsel represented that plaintiff's evidence is not required, the suit was posted before this Court. Thereafter,



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as the plaintiff made an endorsement that they do not intend to adduce oral evidence, this Court fixed the schedule for examination of witnesses by the defendants on 07.03.2022. During the course of examination of defendants' side witnesses, Ex.D1 – series of Bill / invoices from the year 2012, were marked to prove the prior use of the trademark by the defendants for the past so many years. It is submitted that in view of the conflict, the defendants had registration of "Gold Open Lock Brand", in which the defendants have established their *bona fide* use of the trademark. Thereafter, the suit was posted for oral arguments on 22.04.2022. At that stage, the plaintiff filed applications in A.Nos.454 and 455 of 2023 seeking to re-open and recall the witness. It is submitted that, since the plaintiff has not examined any witness and when the defendant pointed out the legal position of the same by filing a detailed counter affidavit before this Court, defendants 1 and 2 pointed out that the order was passed based on the endorsement made by the plaintiff that they are not examining any witness to record oral evidence and hence, the plaintiff withdrew the applications and sought time to file a review application. Thereafter, on 02.06.2023, 05.06.2023 and 19.06.2023, on



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the same ground, the matter was adjourned. Besides the above said facts, it is also imperative to state that Order XVI, Rule 20 of CPC clearly gives power to the Court to pronounce the judgment on failure to produce any document then and there, in his possession or avoids the Court willfully. Subsequently, an application for clarification in A.No.3182 of 2023 was filed by the plaintiff. This Court, by an order dated 07.07.2023, permitted the plaintiff to file Proof Affidavit merely for the limited purpose of listing and identifying the documents. Taking advantage of the order passed by this Court, the plaintiff filed proof affidavit and marked the documents.

13. Learned Senior counsel for defendants 1 and 2 further submitted that it is also pertinent to point out that proof affidavit filed by PW1, namely Mr. K.M. Mahmood Sulaiman is an after-thought at the stage of oral arguments, only to fill up the lacuna. The order of this Court dated 07.07.2023, modifying the order dated 08.02.2023 in A. No. 3182 of 2023 could not be accepted, as the same was permitted the plaintiff to fill up the lacuna in the evidence already led, whereas it has been clearly held by the Apex Court in **(2009) 4 SCC 410 (Vadiraj Naggapa**



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Vernekar (D) Through Lrs. Vs. Sharad Chand Prabhakar Gogate), as

follows:

"29. It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit, but as indicated herein above, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination"

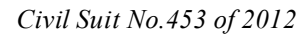
Reliance is also placed on the judgment in the case of ***Mohinder Kaur v. Sant Paul Singh, [(2019) 9 SCC 358]*** wherein the Apex Court has held that if a party to the suit does not appear in the witness box to state his own case on oath and does not offer himself to be cross examined by other side, would suffer a presumption, because, the case set up by him would not be genuine, natural or honest and real one. In the present case, the plaint was filed arraying Mr. K.M. Saleem, however Mr. K.M. Mahmood Sulaiman has only filed the affidavit for examination-in-chief. However, no witness is examined, who appears to be the real owner/author of the Exhibits marked by PW1.

14. Learned Senior Counsel appearing for defendants 1 and 2



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further submitted that the Partnership Deeds dated 01.04.2022, 06.06.2005, 03.05.2008 and 15.03.2011 which are marked as Ex.P.12 (photo copy) series, were signed by as many as 19, 18, 17 and 17 signatories respectively. He further submitted that, on the face of it, it is proved that it was not a registered partnership deed. It is pertinent to point out that the original partnership deed was not filed and not marked and only photocopy was filed and hence Ex.P-12 is liable to be rejected, as the same are unregistered documents and such photocopy is not admissible in evidence and therefore, the suit is not maintainable and it is barred by Section 69 (2) of the Act. He further submitted that Ex.P.1- certified copy of the Partnership Deed, dated 14.03.1995, on the face of it, is neither a certified copy, nor does it look like a copy taken from the Original, and it is only a typed photo-copy, which the plaintiff has marked, which is not admissible in evidence. As far as Ex.P.2 is concerned, the same is obtained after filing of the suit before this Court and hence, the same is not admissible. Further, as far as Ex.P.3/invoices are concerned, the same are self serving documents which are not admissible. Ex.P.4 is not relevant as it only refers to the turnover. Ex.P.5 is again self-serving documents of the plaintiff, which has not been



Therefore, the present suit is not maintainable in law and on facts and the same is liable to be dismissed. However, the plaintiff initiated the present suit without adding the necessary parties (Partners) and hence the same is liable to be dismissed. The learned Senior Counsel for defendants 1 and 2 relied upon judgment of the Hon'ble Supreme Court in ***Shalimar Chemical Works Limited Vs. Surendra Oil and Dal Mills (Refineries) and Others reported*** in [(2010) 8 SCC 423], wherein it is held as follows :

"...15. On a careful consideration of the whole matter, we feel that serious mistakes were committed in the case at all stages. The trial court should not have "marked" as exhibits the Xerox copies of the certificate of registration of trade mark in face of the objection raised by defendants. It should have declined to take them on record as evidence and left the plaintiff to support its case by whatever means it proposed rather than leaving the issue of admissibility of those copies open and hanging, by marking them as exhibits subject to objection of proof and admissibility. The appellant, therefore, had a legitimate grievance in appeal about the way the trial proceeded."



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15. Learned Senior Counsel appearing for defendants 1 and 2 further submitted that the first defendant is carrying on business under the name and style of "P. Manicka Chettiar" dealing in manufacturing and distribution of lungies under "GOLD LOCK BRAND" label without any disruption at his own shop exclusively in Moreh town of Manipur for the past 50 years. He further submitted that the plaint was filed arraying Mr. K.M.Saleem, as the owner of the trademark, however he cannot be admitted to be the lawful owner of the trademark, as his name is not reflected in the Trademark Registry and moreover, the trademark is obtained under the category "Single Firm" instead of "Partnership Firm", and hence, the present trademark does not belong to the plaintiff. Further, no application was filed to record the names of the present partners at the time of initiation of the suit. Therefore, the present suit is filed without following any procedures as prescribed under law, making mockery of the judicial process by filing applications after applications, as and when found convenient to them, when at the initial stage, ample opportunity was granted to the plaintiff, thereby harassing the defendants by obtaining an interim stay. Such a negligent act of plaintiff is a clear abuse



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of process of law, and against the Rules of procedures, which are fundamental to the course of litigation. It is the contention of the plaintiff that they have been using the brand label continuously and extensively since 1950 is false, as they have been altering the basic features of the artwork from time to time to the market conditions. When the plaintiff's firm has been using different designs, the plaintiff cannot say that the defendants have adopted the particular label of the plaintiff. Further, "LOCK BRAND" is a generic term and the plaintiff cannot claim exclusive right over the usage of the generic term, as the same is not unique and distinctive, and hence the same cannot be protected under Trademarks' Law, even if they have acquired secondary meaning. The plaintiff has not discharged the burden of proof to establish the secondary meaning. He further submitted that no proof is filed to prove that PW1 is a partner of the registered firm and only photocopy of the partnership deed was filed, which cannot be relied upon, as the same is against the procedures established under the Indian Evidence Act. Reliance is also placed on the judgment of Apex Court reported in **(2013) 14 SCC 1 (Baigai Construction Thr. Its Proprietor Mr. Lalit Bagai Vs. Gupta**



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WEB COPY ***Building Material Store).***

16. Learned Senior Counsel appearing for defendants 1 and 2 further submitted that the plaintiff has not filed any legally acceptable documents to prove the assertion made in the plaint. Therefore, the burden of proof cast on the plaintiff, was not discharged as contemplated under Sections 101 and 102 of Indian Evidence Act. Hence the suit is liable to be dismissed. He further submitted that the plaintiff has not rebutted the certificate of registration filed by the defendants, which is open "LOCK BRAND", whereas the plaintiff's trademark is close "GOLD LOCK BRAND". The plaintiff has several partners and each partner has a place of business in separate District and therefore, there is a large scale of sale and also available in the open market. Defendants 1 and 2 are also a wholesale dealer dealing with all types of lungies and as per the plaintiff's evidence, all the partners are carrying on business and they are allowed to sell the plaintiff's trademark lungies. The plaintiff's trademark lungies are very much available in the wholesale market. Therefore, every wholesale dealer and retailer would buy and sell such lungies, as the same



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is available in the open market. Therefore, the plaintiff's claim is neither maintainable in law, nor in facts. Hence, defendants 1 and 2 pray to dismiss the above suit with exemplary costs.

17. Heard the learned counsel for the plaintiff and the learned Senior Counsel for defendants 1 and 2 and perused the materials available on record.

18. Since there was no representation for defendants 3 and 4, they have been set *ex-parte* by this Court on 03.11.2022.

19. The case of the plaintiff/Firm is that the plaintiff's trademark and artistic work in "LOCK BRAND" label is unique and distinctive, which has garnered tremendous goodwill and irrefutable reputation all over India and also abroad. The plaintiff has been openly, continuously, exclusively and successfully using the aforesaid mark and artistic works till date. While that being so, the plaintiff-firm came across lungies bearing deceptively similar trademark "GOLD LOCK BRAND" label



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being sold in the market by the defendants. The defendants' trademark "GOLD LOCK BRAND" label is almost identical/deceptively similar to the plaintiff's registered trademark "LOCK BRAND" label in all respects i.e., visually and structurally. Further, the defendants adopted identical artistic works employing identical colour scheme, get-up, lay-out and arrangement of features not only in relation to the above mentioned "LOCK BRAND" labels of the plaintiff, but also to that of the packaging designed by the plaintiff in respect of its lungies. The use of the defendants' identical trademark and artistic works in respect of their products, is a blatant violation of the plaintiff's exclusive rights in respect of its registered trademark and copyright in its artistic works, which amounts to infringement of plaintiff's statutory rights. Therefore, the plaintiff has filed a complaint before Tamil Sangam, Moreh Town, Manipur. The Judicial Board of the said Tamil Sangam had conducted a negotiation, requesting the infringing defendants to stop using the identical trademark / label. However, in spite of their attempts, the defendants had categorically refused to change the infringing label. Hence, the present suit.

20. The case of defendants 1 and 2 is that defendants 1 and 2 are



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carrying on business under the name and style of P.Manicka Chettiar dealing in manufacturing and distribution of lungies under "GOLD LOCK BRAND" label and they are using the said trademark for the past many years, continuously without any disruption. However, the plaintiff has come with the present suit alleging that the defendants are infringed their copyrights and its artistic works. In the plaint, the plaintiff/Firm has averred that they are using the trademark since 1950, which is bereft of any material or evidence. Further, the plaintiff has averred that the mark in dispute was applied by the then partners of the plaintiff/Firm trading as M/s.K.A.S.Zainulabdin & Co. and subsequently, in view of the changes made in the proprietorship, currently the mark stands registered in the name of K.Magloom Mohamed and 11 others trading as M/s.K.A.S.Zainulabdin & Co. However, the Trademark Registry does not reflect the plaintiff's representative partner K.M.Saleem, as the owner of the trademark and hence the plaintiff cannot be said to be the lawful owner of the trademark. Further, the word "LOCK" is a generic term and it is well established principle that there cannot be any exclusive right over the use of the generic term. Therefore, the plaintiff cannot claim any exclusive right over the label "LOCK BRAND" and the art-work in the



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WEB COPY said "LOCK BRAND" label, has acquired secondary meaning which is false and baseless and the plaintiff has no plausible justification to make such assertion. It is pertinent to point out that generic terms are not protected under Trademarks' Law, even if they have acquired secondary meaning.

21. Learned Senior Counsel appearing for defendants 1 and 2 vehemently contended that the plaintiff's partnership firm is an unregistered partnership firm and hence, the suit filed by the plaintiff/Firm is not maintainable under Section 69(2) of the Act.

22. Section 69(2) of the Act clearly shows that no suit to enforce a right arising from a contract, shall be instituted in any Court by or on behalf of a firm against any third party, unless the firm is registered and the persons suing or have been shown in the Register of firms as partners in the firm. Therefore, as per Section 69(2) of the Act, unregistered partnership firm cannot file the suit as against the third party regarding contract liability.



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23. In the present suit, the dispute is not arising from the contract, either between the partners or partnership firm of the third parties. Admittedly, the plaintiff has filed the present suit for infringement of trademark, copyright and passing off by the defendants. There is no breach of contract between the plaintiff and the defendants and hence, the defence taken by defendants 1 and 2 in the suit is hit by Section 69(2) of the Act, is not acceptable. Further, no specific issues framed regarding the dispute is arising from the contract, either between the partners or partnership firm of the third parties.

24. It is settled proposition of law that the question of law need not be pleaded and evidence need not be let in on that ground and it can be raised at any time.

25. Issue No.1:

I) Whether the trademark "GOLD LOCK BRAND" of the defendant is deceptively similar, both phonetically and visually, to the registered mark of the plaintiff "LOCK BRAND?"



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25.1. It is the contention of the plaintiff that they are registered proprietor and prior adopter of the trademark and label "LOCK BRAND". The plaintiff obtained registration of the mark and label "LOCK BRAND" as early as on 30.09.1966 and the same has been marked as Ex.P2. The plaintiff-firm has openly, continuously, exclusively and successfully using the aforesaid mark and artistic works mentioned above from 1950 to till date. The sales figures of the plaintiff's lungies bearing the said trademark and artistic works, have been marked as Ex.P.4 and advertisement materials and others have been marked as Ex.P.5. It is the further contention of the plaintiff that the defendants have adopted the plaintiff's trademark and used as "GOLD LOCK BRAND" for their products, which is almost identical and similar to that of the plaintiff's registered trade mark "LOCK BRAND" label in all respects, viz., visually and structurally. To prove the same, Ex.P9, the comparison of the plaintiff and defendants' labels, have been marked. The further contention of the plaintiff is that, apart from re-producing the plaintiff's registered trademark, the defendants have also copied the artistic features of the plaintiff's "LOCK BRAND" labels. The defendants have adopted their infringing label by



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merely adding a dictionary / laudatory word "GOLD". All other features of the defendants' infringing label are almost identical to the plaintiff's prior adopted and extensively used 'LOCK BRAND' label. Therefore, the defendants have infringed the statutory rights of the plaintiff. The defendants have adopted a deceptively similar trademark and over-all trade dress as that of the plaintiff. The defendants' trademark and label are deceptively similar to that of the plaintiff and is used for identical products, as the likelihood of confusion as regards the source of goods and the purchasing public, would assume that the defendants' products originate from the plaintiff or the end purchasers would be led to believe that the plaintiff somehow authorized the defendants to sell the products. The plaintiff apprehends that the products sold by the defendants under the identical trademark and trade dress, are of substandard quality. The defendants' *mala fide* adoption of identical trademark, would seriously affect the business of the plaintiff and spoil their hard-earned goodwill and reputation. Further, the defendants are passing-off their products as that of the plaintiff's products. Though the plaintiff's registered trademark and label "LOCK BRAND", have attained immense reputation and



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goodwill, and the defendants with an intention to deceive the public, has adopted a deceptively similar mark and label on identical products. The purchasers would be deceived on account of the wrongful activities of the defendants. It is well settled principle that the plaintiff in a passing-off action does not have to prove that it has actually suffered damage by loss or in any other way. A probability of damages is sufficient and therefore, the plaintiff need not prove that individual sales will be diverted to that of defendants in order to claim damages.

25.2. It is the contention of the defendants 1 and 2 that the first defendant is carrying on business under the name and style of "P. Manicka Chettiar" dealing in manufacturing and distribution of lungies under the "GOLD LOCK BRAND" label, without any disruption at his own shop exclusively in Moreh town of Manipur for the past 50 years and the first defendant succeeded the business from father and grandfather of defendants 1 and 2, namely Pulugan Chettiar. Further, the plaint was filed arraying Mr.K.M.Saleem, as the owner of the trademark, however he cannot be admitted to be the lawful owner of the trademark, as his name is not reflected in the Trademark Registry and moreover, the



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trademark is obtained under the category "Single Firm" instead of "Partnership Firm" and hence, the present trademark does not belong to the plaintiff. The plaintiff has been using the brand label continuously and extensively since 1950 is false, as they have been altering the basic features of the art-work from time to time to the market conditions. The label "LOCK BRAND" is a generic term and the plaintiff cannot claim exclusive right over the use of the generic term, as the same is not unique and distinctive, and hence the same cannot be protected under Trademarks' Law even if they have acquired secondary meaning. The plaintiff has also not discharged the burden of proof to establish the secondary meaning.

25.3. On a perusal of the records, it is seen that on the earlier occasion i.e., 08.02.2022, based on the representation made by the learned counsel for the plaintiff that the plaintiff does not intend to adduce oral evidence, but based on the said statement, no oral evidence is recorded on the side of the plaintiff at the first instance. During trial, after completion of the defendants' side evidence, the plaintiff has filed an application seeking for certain clarification, and this Court, vide order dated 07.07.2023, passed the following order and the relevant paragraphs



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are extracted hereunder :

" 4. While the order dated 08.02.2022 records the statement of learned counsel for the plaintiff that the plaintiff does not propose to adduce oral evidence, it does not deal with documentary evidence. To that extent, clarification is necessary.

5. The Commercial Courts Act, 2015 was enacted to expedite the resolution of commercial disputes, including by vesting considerable discretion in the Court with regard to the recording of evidence. In this case, the undisputed position is that the plaintiff had filed ten documents along with the plaint. The defendants filed a statement of admission/denial on 07.09.2022 in respect of such documents, and denied, without assigning any reasons, all the documents filed by the plaintiff. From the above, it is evident that the defendants were provided copies of the documents proposed to be relied upon by the plaintiff and, therefore, allowing the plaintiff to exhibit these documents, subject to the objections of the defendants, is warranted in the interest of justice.

6. Therefore, the order dated 08.02.2022 is clarified by permitting the plaintiff to exhibit the ten documents that were filed along with the plaint subject to the objections of the defendants *inter alia* with respect to admissibility, relevance and proof. Since the plaintiff opted not to adduce oral



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evidence, a proof affidavit may be filed by the plaintiff's witness for the limited purpose of listing and identifying the above mentioned ten documents."

Therefore, after completion of the defendants' side evidence, the plaintiff was permitted to file proof affidavit only for the purpose of exhibiting the said ten documents, since the defendants did not make any reason for objecting the affidavit of admission/denial and only the plaintiff was permitted to mark those documents. Since the plaintiff has not filed proof affidavit for chief examination and subjected to cross examination and establish their case, the plaintiff has not discharged their burden. Though the plaintiff has marked only the documents, mere marking of the documents itself, would not amount to proving of the documents and case, however, he has not established that the trademark "GOLD LOCK BRAND" label is deceptively similar, both phonetically and visually, to that of the registered mark of the plaintiff's "LOCK BRAND". Therefore, Issue No.1 is answered against the plaintiff.

26. Issue Nos.II and III :



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II) Whether the use of the mark "GOLD LOCK BRAND" by the defendant would amount to infringement of the plaintiff's registered trademark "LOCK BRAND" ?

III) Whether the use of the trademark "GOLD LOCK BRAND" by the defendant would amount to infringement of the copyright of the plaintiff in the mark "LOCK BRAND".

26.1. It is the claim of the plaintiff that the defendants' "GOLD LOCK BRAND" label is deceptively similar to that of the plaintiff's prior adopted and registered trademark "LOCK BRAND" label and the defendants have infringed their copyrights and its artistic works in the mark "LOCK BRAND". However, the plaintiff has not produced any oral evidence to prove that the mark "GOLD LOCK BRAND" used by the defendants would amount to infringement of the plaintiff's registered trademark "LOCK BRAND". The plaintiff has produced certain documents showing that the plaintiff's trademark "LOCK BRAND" is a registered trademark and artistic work in "LOCK BRAND" label is unique and distinctive one. However, the defendants have denied that the label "LOCK BRAND" is a generic term and the plaintiff cannot claim



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exclusive right over the use of the generic term, as the same is not unique and distinctive, and hence the same cannot be protected under Trademarks' Law. Further, they have denied that the mark "LOCK" is only a registered one. The defendants have also stated in their written statement as well as during trial that there are various labels are available in the market, which are sold in the market under the name and style of "GREEN LOCK BRAND" and "SILVER LOCK BRAND" etc., and the same are being freely used in the public domain. Therefore, there cannot be any confusion likely to be caused in the minds of the public, specifically with respect to the plaintiff's label "LOCK BRAND" and defendant's label "GOLD LOCK BRAND". The plaintiff knows the other labels mark such as "GREEN LOCK BRAND", "SILVER LOCK BRAND" etc., the plaintiff has not taken any action against them. Since the other marks are used freely in the public, the plaintiff does not have a claim specifically against the first defendant's mark. As already stated, the plaintiff has not come forward to examine any witness at the first instance to prove his case, however, this Court permitted the plaintiff to file proof affidavit only for the limited purpose of marking of the documents filed by the plaintiff which were annexed in the plaint. It is settled proposition



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that mere marking of documents would not amount to proving of the documents and case. Therefore, the evidence of P.W.1 cannot be taken as proof of the case of the plaintiff. Once the defendants have stated that there are other LOCK brands i.e., "GREEN LOCK BRAND", "SILVER LOCK BRAND" which are also moving in the market, and the plaintiff has also not taken action against the persons, who are selling the goods under the name and style of those labels, however, the plaintiff has filed the present suit against the defendants alone, that too, the word "LOCK" is a generic term and it is well established principle that there cannot be any exclusive right over the use of a generic term. Even assuming that if the labels have acquired secondary meaning, the generic terms are not protected under Trademarks' Law. As stated by the learned Senior Counsel appearing for defendants 1 and 2, after completion of evidence of the defendants, only in order to fill up the lacuna, the plaintiff has filed an application for marking of those documents. As already stated, that this Court permitted the plaintiff to file proof affidavit only for the limited purpose of marking the documents filed by the plaintiff which were annexed in the plaint. Therefore, the plaintiff has not discharged his burden that the defendants have infringed the right of the plaintiff's



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trademark. Therefore, the issue Nos.II and III are answered as against the plaintiff.

27. Issue Nos.IV, V and VI :

IV) Whether the plaintiff is entitled to the injunctive reliefs sought for ?

V)Whether the plaintiff is entitled to damages and accounting ?

VI) Whether the defendant attempted to pass off its products as the products of the plaintiff ?

Since the issues 1 to 3 are answered as against the plaintiff, the plaintiff is not entitled to get any injunctive relief as against the defendants and also not entitled to get any damages and passing off. Issue Nos.IV to VI are accordingly answered as against the plaintiff.

28. Issue No.VII :

To what other reliefs the parties are entitled to ?

The plaintiff has filed the suit for infringement of the trademark,copyright and passing off and it is for the plaintiff to prove



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their case and they cannot take advantage of the loopholes left by the defendants. Though D.W.1 in the cross examination has stated that they have made out legitimate use of the trademark "GOLD LOCK BRAND" and they have admitted that they have not filed any document to make out any legitimate use of mark "GOLD LOCK BRAND", however, the defendants have denied that they have adopted the mark "GOLD LOCK BRAND", which would affect the reputation of the plaintiff. Therefore, it is for the plaintiff to prove their case.

29. As already stated that the plaintiff and defendants are in textile field and the plaintiff used the trademark "LOCK BRAND" and the defendants used the trademark "GOLD LOCK BRAND". Here the "LOCK" is a common word and it is a generic term and anybody can use the generic term. However, regarding the infringement of trademark and its copyright, it is for the plaintiff/Firm to prove their case by adducing oral and documentary evidence. The plaintiff apprehends that the products sold by the defendants under the identical trademark and trade dress of the plaintiff, are of substandard quality. The defendants' *mala fide* adoption of identical trademark would seriously affect the



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business of the plaintiff and spoil their hard-earned goodwill and reputation. However, it is for the plaintiff to prove that with ulterior motive and intention to make use of the plaintiff's trademark by the defendants, the defendants have obtained profit and due to that, the profit of the plaintiff is substantially reduced. The plaintiff has not come to the witness box and let in oral evidence in order to prove the case of the plaintiff and he has also not examined any one of the customers or any independent witness to prove the same. However, merely for filing of the plaint and also marking of the documents, itself would not amount to proving the case of the plaintiff. It is a settled proposition of law that the plaintiff has to prove their case on its own strength and they cannot take advantage of the loop-holes in the case of the defendants and also the defendants have specifically stated that there are other brands like "GREEN LOCK BRAND" and "SILVER LOCK BRAND" etc., available in the market and the plaintiff has not taken any action against them. That being the position, the plaintiff has to prove the same by examining any one of the witnesses to prove the confusion in the minds of the public by using deceptively similar brand and the defendants producing substandard materials, had caused loss to the plaintiff and profit as well



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as trade and good will.

30. Though the defendants have stated that various LOCK BRANDS are available in the market, the plaintiff has not taken any action against the owners, those who are using the other similar brands. It is for the plaintiff to establish that it is only deceptively similar and it will cause confusion in the minds of the public.

31. On a perusal of the oral and documentary evidence, except the averments made in the plaint, the plaintiff has not proved his case by preponderance of probabilities. Though the standard of proof may not be like the prosecution in criminal case to prove their case beyond all reasonable doubt, however, the plaintiff has to prove their case by preponderance of probabilities.

32. The decisions relied on by the learned counsel on either side, are distinguishable on facts and hence, they are not applicable to the facts of the present case.

33. For the aforesaid reasons, this Civil Suit is dismissed. Considering the facts and circumstances, both the parties are directed to bear their own costs of the suit.



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19.07.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

ms

List of Witness examined on the side of the plaintiff

K.M.Mahmood Sulaiman - PW1

List of documents marked on the side of the plaintiffs

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	Certified true copy of the partnership deed	14.03.1995
2.	P2	Original legal use certificate for trademark LOCK BRAND label under No.237944 in class 24	30.09.1966
3.	P3	Printout of the invoices regarding the sale of plaintiff's products under LOCK BRAND label	
4.	P4	Original chartered accountant certificate	28.04.2012
5.	P5	Original advertisement material pamphlets, newspapers, advertisement, hoardings for the sales promotion of plaintiff's products under LOCK BRAND label	
6.	P6	Original invoice for sale of defendant's lungies	
7.	P7	Original plaintiff's LOCK BRAND labels	
8.	P8	Original defendant's GOLD LOCK BRAND labels	
9.	P9	Printout of the comparison of plaintiff and defendant's label	
10.	P10	Original letter issued by Tamil Sangam, Moreh Town	26.03.2012
11.	P11	Original extract of registrar of firms	
12.	P12	Photocopies of the Partnership Deed	01.04.2002,



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06.06.2005, 03.05.2008 and 15.03.2011.
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List of Witnesses examined on the side of the defendants

P.Manicka Chettiar - DW1
P.N.Pulugaiya - DW2

List of documents marked on the side of the defendants

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	D1	Photocopy of the invoice series for the year 2012	
2.	D2	Printout of legal user certificate and certificate of registration of trademark No.4323043	04.02.2021.

19.07.2024



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P.VELMURUGAN, J

ms/skn

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