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C.S.(Comm.Div.) No.36 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.36 of 2024

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

... Plaintiff

Vs.

Vasantha Bhavan,
No.144, Ennore High Road,
Tondiarpet, Chennai – 600 081.

... 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:



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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 “VASANTA BHAVAN” by using the offending Trademark and Trading style “VASANTA BHAVAN” or any other mark or marks which are similar or in any way deceptively similar to or a colorable imitation of the plaintiffs Trademark “VASANTA BHAVAN”.

(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 “VASANTA BHAVAN” by using the offending trademark and trading style “VASANTA BHAVAN” or any other mark or marks which are similar or in any way deceptively similar to or a colourable imitation of the plaintiffs trademark “VASANTA BHAVAN”.

(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 “VASANTA BHAVAN” and directing payment of such profits to



the plaintiff by way of damages for infringement committed by the defendant.

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(d) to pass an order of declaration, declaring the plaintiff's registered trademark Vasanta Bhavan as "well-known mark" within the meaning of Section 2(1)(zg) read with Section 11(6) of the Trademarks Act, 1999 along with a direction to the Registrar of Trademarks to notify the mark Vasantha Bhavan on the register of well-known marks.

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

For Plaintiff : Mr.Vijayan Subramanian

For Defendants : Set *ex parte* on 18.03.2024

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 "VASANTA BHAVAN" by using the offending Trademark and Trading style "VASANTA BHAVAN" 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 declare the plaintiff's registered trademark "VASANTA BHAVAN" as "well-known mark".

2. It is the case of the plaintiff that in the year 1960, one Muthukrishnan, the father of M.Ravi and grandfather of Anand Krishnan commenced hotel business in the name and style of "VASANTA BHAVAN". The plaintiff is also running restaurants along with the prefix "Namma Veedu Vasanta Bhavan" also. On account of long continuous and extensive use of the unique trademark "VASANTA BHAVAN" tremendous amount of goodwill and reputation has accrued in favour of the plaintiff's trademark "VASANTA BHAVAN". The trademark "VASANTA BHAVAN" used in conjunction with the hotel business was widely known and very popular among the public. The plaintiff has invested a substantial sum of money in order to create the awareness among the public with regard to the high quality hotel "VASANTA BHAVAN". The plaintiff hotel has acquired a turnover of a sum of Rs.7,00,44,76,989/- for the years 2003 to 2021.



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2.1 The plaintiff has taken steps to protect the trademark and trading style by applying for registration of the trademark and trading style “VASANTA BHAVAN”. It is submitted that the Registrar of Trademarks, Government of India, Mumbai has issued the certificate of registration on 15.07.2021 for the mark “VASANTA BHAVAN” in the name of the plaintiff. The plaintiff has also obtained the legal usage certificate dated 19.04.2022 from the Trademark Registry, Intellectual Property building, Guindy, Chennai – 600 032. The plaintiff has also taken steps to protect the trademark and trading style by applying for registration of the trademark and trading style “NAMMA VEEDU VASANTA BHAVAN”. The Registrar of Trademarks, Government of India, Mumbai has also issued the certificate of registration on 27.01.2012 for the mark “NAMMA VEEDU VASANTA BHAVAN” in the name of the plaintiff. Hence, except the plaintiff no one has any right to use the said trademark and trading style.

2.2 It is the case of the plaintiff that the defendant herein had commenced adopting identical or deceptively similar trademark and trading style “VASANTHA BHAVAN” in respect of their hotel business serving veg and non-veg foods. The defendant has adopted the identical trademark



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and trading style “VASANTHA BHAVAN” to deceive the general public and to make them believe the food preparations served at the defendant place has the connection with our hotel and the defendant is associated with the plaintiff. The defendant has no manner of right to adopt and use the said offending trademark or trading style “VASANTHA BHAVAN”.

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

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4. 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 18.03.2024.

5. In order to prove the case of the plaintiff, the Director of the plaintiff's hotel 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, 45 documents have been marked as Exs.P1 to P45.

6. Ex.P1 is the advertisement for Vasanta Bhavan in Maalai Malar newspaper dated 24.03.2005 and Exs.P2 to P5 are the advertisement bills issued by various newspaper companies. Exs.P6 to P8 are the advertisement for plaintiff hotel in various dates. Ex.P9 is the certificate issued by the Tamil Nadu Food Safety and Drugs and Administration Department. Exs.P10 and P11 are the ISO certificate and trademark registration certificate in the name of the plaintiff's hotel. Ex.P12 is the original board resolution



dated 21.03.2024. Exs.P13 & P14 are the legal usage certificate in the name of plaintiff's hotel. Exs.P15 to P18 are the inauguration photos of the plaintiff hotel and defendant hotel. Ex.P19 is the printout of the comparison chart of plaintiff and defendant hotel. Exs.P21, P23, P25, P29, P35 to P38, P40 & P42 are the advertisement for plaintiff's hotel in various newspapers. Exs.P20 & P24 are the lease deed to run the restaurant named Vasanta Bhavan along with clean copy dated 26.10.1974. Ex.P22 is the lease deed to run the restaurant named Vasanta Bhavan dated 19.10.1979. Exs.P26 to P28 are the copies of receipt received and issued by Krishna Agro Industries Corporation in the name of Vasanta Bhavan. Exs.P39, P41 & P43 are the advertisement bills issued by the various newspapers in the name of plaintiff's hotel.

7. 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.



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

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ANNEXURE

Plaintiff's witness: P.W.1 – Mr.M.Ravi

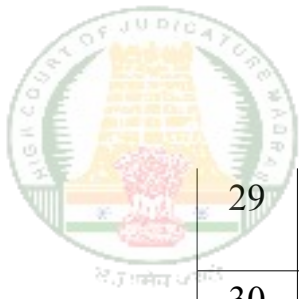
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Documents exhibited by the plaintiff:

SNo	Exhibit	Description of the document
1	Ex.P1	Photocopy of the advertisement for Vasanta Bhavan in Maalai Malar nespapers dated 24.03.2005
2	Ex.P2	Photocopy of the advertisement bill issued by Maalai Malar dated 24.03.2005
3	Ex.P3	Photocopy of the advertisement bill for Vasanta Bhavan in Maalai Malar newspaper dated 19.05.2005
4	Ex.P4	Photocopy of the advertisement bill for Vasanta Bhavan in Maalai Murasu newspaper dated 25.05.2005
5	Ex.P5	Photocopy of the advertisement bill issued by Maalai Murasu dated 25.05.2005
6	Ex.P6	Photocopy of the advertisement of Vasanta Bhavan in Hindu newspaper dated 02.07.2005
7	Ex.P7	Photocopy of the advertisement for plaintiff hotel for the year 2005
8	Ex.P8	Photocopy of the advertisement for plaintiff hotel for the year 2005
9	Ex.P9	Photocopy of the certificate issued in the name of the plaintiff by the Tamil Nadu Food Safety and Drugs and Administration Department dated 23.01.2018
10	Ex.P10	Printout of the ISO Certificate issued in the name of Vasanta Bhavan dated 22.08.2018
11	Ex.P11	Printout of the trademark registration certificate in the name of Vasanta Bhavan dated 23.12.2021
12	Ex.P12	Original board resolution dated 21.03.2024
13	Ex.P13	Printout of the legal usage certificate in the name of Vasanta Bhavan dated 19.04.2022



14	Ex.P14	Printout of the legal usage certificate in the name of Namma Vasanta Bhavan dated 19.04.2022
15	Ex.P15	Photocopy of the inauguration photo of the plaintiff hotel by Actor Rajinikanth
16	Ex.P16	Photocopy of the inauguration photo of the plaintiff hotel "Vasanta Bhavan" by Politicians, celebrities and businessman
17	Ex.P17	Photocopy of the photograph of the plaintiff hotel
18	Ex.P18	Photocopy of the photograph of the defendant hotel
19	Ex.P19	Photocopy of the printout of the comparison chart of plaintiff and defendant hotel
20	Ex.P20	Certified copy of the lease deed to run the restaurant named Vasanta Bhavan along with clean copy dated 26.10.1974
21	Ex.P21	Photocopy of the paper advertisement in Dinamani of the inauguration of plaintiff's restaurant at Egmore Chennai dated 30.10.1974
22	Ex.P22	Photocopy of the lease deed to run the restaurant named Vasanta Bhavan dated 19.10.1979
23	Ex.P23	Certified copy of the paper advertisement in the Hindu Paper dated 06.04.1984
24	Ex.P24	Photocopy of the lease deed to run the restaurant named Vasanta Bhavan dated 04.10.1984
25	Ex.P25	Certified copy of the paper advertisement in the Maalai Malar Paper dated 15.07.1987
26	Ex.P26	Certified copy of the receipt received by Krishna Agro Industries Corporation in the name of Vasanta Bhavan dated 14.12.1987
27	Ex.P27	Certified copy of the receipt received by Krishna Agro Industries Corporation in the name of Vasanta Bhavan dated 15.12.1987
28	Ex.P28	Certified copy of the letter issued by Krishna Agro Industries Corporation in the name of Vasanta Bhavan dated 15.12.1987



29	Ex.P29	Certified copy of the paper advertisement in the Hindu dated 20.10.1989
30	Ex.P30	Photocopy of the lease deed to run the restaurant named Vasanta Bhavan dated 15.10.1989
31	Ex.P31	Photocopy of the plaint filed by M.S.Tourist Homes Private Limited along with clean copy dated 02.01.1995
32	Ex.P32	Photocopy of the Vasanta Bhavan inauguration advertisement along with clean copy dated 19.09.1997
33	Ex.P33	Photocopy of the incorporation certificate of plaintiff dated 07.11.2003
34	Ex.P34	Certified copy of the advertisement bill issued by Amudha Surabhi dated 10.11.2004
35	Ex.P35	Certified copy of the advertisement for Vasanta Bhavan in Dinamalar Newspaper dated 01.01.2005
36	Ex.P36	Certified copy of the advertisement for Vasanta Bhavan in Dinamalar Newspaper dated 13.02.2005
37	Ex.P37	Certified copy of the advertisement for Vasanta Bhavan in Maalai Murasu Newspaper dated 16.03.2005
38	Ex.P38	Certified copy of the advertisement for Vasanta Bhavan in Maalai Malar Newspaper dated 17.03.2005
39	Ex.P39	Certified copy of the advertisement bill issued by Maalai Malar dated 17.03.2005
40	Ex.P40	Certified copy of the advertisement for Vasanta Bhavan in Maalai Murasu Newspaper dated 13.04.2005
41	Ex.P41	Certified copy of the advertisement bill issued by Maalai Murasu Newspaper dated 18.04.2005
42	Ex.P42	Certified copy of the advertisement for Vasanta Bhavan in Maalai Murasu Newspaper dated 18.04.2005
43	Ex.P43	Certified copy of the advertisement bill issued by Maalai Murasu dated 18.04.2005
44	Ex.P44	Certified copy of the certified copy of the certificate issued by the Chartered Accountant with regard to the turn over from 2003 to 2021 dated 15.02.2024



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45	Ex.P45	Photocopy of the cease and desist notice sent by the plaintiff to the defendant dated 09.02.2024 along with tracking receipt and acknowledgment card.
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Defendants' witness: Nil

Documents exhibited by the Defendant: Nil

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