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C.S. No.159 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2024

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S. No.159 of 2020

M/s.Nalli Chinnasami Chetty,
A partnership Firm,
represented by its Partners
Nalli Kuppuswami Chetty and
Nalli K.Ramanathan

.. Plaintiff

Vs

1.Sivakumar G.Nalli
2.Ajitha S.Nalli
3.M/s.Nalli Silks

.. Defendants

Prayer: Civil Suit filed under Order IV Rule 1 of Original Side Rules and Order VII Rule 1 of the Civil Procedure Code read with Sections 134 & 135 of the Trademarks Act, 1999 prays for judgment and decree for the following reliefs:

a)Pass and pronounce a decree of permanent injunction against infringement of plaintiff's registered Trademark by restraining the defendants or their assigns, successors-in-interest, licensees, franchisees, sister concerns, representatives, servants, distributors, agents, family members, employees, etc. and/or any person or entity acting for or on behalf of them, from using plaintiff's trade mark 'Nalli', components thereof, or



any other mark(s) deceptively similar thereto, including 'Nalli Silks', singularly or in conjunction with any other words or monogram/logo, as a trade mark, service mark, corporate name, trade name, trading style, domain name, website address, electronic mail identity or in any other manner whatsoever, on or in relation to or any product or Silk Sarees, Garments business, including advertising, business papers, etc.;

(b) Pass and pronounce a decree of permanent injunction against the Defendants, their assigns, successors-in-interest, licensees, franchisees, sister concerns, representatives, servants, distributors, agents, family members, employees, etc. and/or any person or entity acting for or on behalf of them, from passing off their business or goods as or for the goods of the Plaintiff by restraining them from using Plaintiff's trade mark 'Nalli', Impugned Branding, or any other mark(s) deceptively similar thereto including, 'Nalli Silks', singularly or in conjunction with any other words or monogram/logo, as a trade mark, service mark, corporate name, trade name, trading style, domain name, website address, electronic mail identity or in any other manner whatsoever; on or in relation to or any product, service/business including advertising, business papers, etc.;

(c) Pass and pronounce a decree of permanent Injunction restraining Defendants, their assigns, successors-in-interest, licensees, franchisees, sister concerns, representatives, servants, distributors, agents, family members, employees, etc. and/or any person or entity acting for or on behalf of them, from indulging in acts of unfair competition by use of the Impugned Branding or any other mark(s) or any other mark deceptively similar thereto, including 'Nalli Silks', or perpetrating confusion and deception regarding the



source of the defendants' products verbally or in writing or in any other manner whatsoever;

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(d) Pass and pronounce a decree directing defendants and/or their representatives, officers, etc. to deliver up to plaintiff for the purpose of destruction/erasure all infringing materials including but not limited to product packaging consisting of impugned branding, plaintiff's registered Trademark, catalogues, pamphlets, brochures, billboards, stationery, business cards, bill books, vouchers, letterheads, signage, reprographic material, labels or any other material bearing the name 'Nalli Silks' and/or any other mark deceptively similar to plaintiff's Trademark 'Nalli' used upon or in relation to manufacturing, marketing, selling, promoting and/or advertising defendants' goods or business;

(e) Pass a preliminary decree for rendition of account directing Defendant No.3 to produce before this Court or any person nominated/designated/appointed by this Court all accounts in general and invoices and sales figures/revenues in particular from the date of infringement/passing off of the Plaintiff's trademark by using the Mark 'Nalli Silks' and upon such enquiry to pay such profits earned by the Defendants as may be found to be due and payable to the Plaintiff on such account being taken;

(f) Pass and pronounce a final money decree in favour of Plaintiff for payment of damages in the sum of INR 1,01,00,000/- (Rupees One Crore and One Lakh only) or any such higher sum as may be determined/ascertained pursuant to the rendition of accounts;

(g) Pass and pronounce an order directing the Defendants to pay the Plaintiff for costs of the proceedings.



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C.S. No.159 of 2017

For Plaintiff : Mr.P.Siddarth
for M/s.BFS Legal

JUDGMENT

This suit has been filed for infringement and passing off.

2.The plaintiff is the registered proprietor of the Trademark “NALLI”.

As seen from the plaint averments, they claim that they have adopted the said Trademark ever since 1935 and they have obtained registration for the said Trademark under Classes 24 and 25 in the year 1987 as well as in the year 2000. They have also renewed their Trademark registration periodically. According to them, the defendants have blatantly copied the plaintiff's Trademark “NALLI” by using the name ‘NALLI SILKS’ in respect of the very same business. In the aforementioned circumstances, the suit has been filed.

3.In the plaint, the plaintiff has made adequate averments and has also filed supporting documents to prove that they are in the market for a long number of years and they have a reputation of their own. They have also filed documents, which have been marked as exhibits to prove that they have incurred huge amount of expenditure towards advertisement costs. The sales



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turnover of the plaintiff is also huge as seen from the documents filed along with the plaint. The plaintiff has also filed documentary evidence to prove that the defendants have fraudulently copied the plaintiff's registered Trademark "NALLI" in respect of the very same business as that of the plaintiff.

4.The defendants were served with the suit summons. Despite receipt of the suit summons, they have chosen not to defend the suit. Hence, this Court had earlier set the defendants exparte. Thereafter, the plaintiff has let in both oral and documentary evidence before the learned Additional Master III in respect of the prayers sought for in the plaint. The plaintiff was represented by Mr.K.V.Balasubramanian, Authorised Signatory of the plaintiff and he has deposed on behalf of the plaintiff (PW1). He has filed a proof affidavit before the learned Additional Master III reiterating the contents of the plaint and he has also filed the following documents, which were marked as exhibits on the side of PW1:

Ex.P1 is the original authorization dated 28.09.2023.

Ex.P2 is the certified copy of booklet containing 20 documents issued by Prothonotary and Senior Master, High Court, Bombay.



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Ex.P3 is page No.45 in EX.P2.(telephone bill for the telephone number 24344115)

Ex.P4 is page Nos.46 to 60 in Ex.P2. (Registered settlement deed dated 19.01.1948)

Ex.P5 is page No.119 in Ex.P2. (Advertisement and promotional expenditure certificate of the plaintiff)

Ex.P6 is page No.61 in Ex.P2. (family tree of the plaintiff's partner)

Ex.P7 is page Nos.68 to 74 in Ex.P2. (Release deed dated 11.11.2001)

Ex.P8 is page Nos.75 to 80 in Ex.P2. (Partnership deed dated 11.11.2001)

Ex.P9 is page Nos.120 to 150 in Ex.P2. (Advertisement and promotional materials)

Ex.P10 is page Nos.91 to 105 in Ex.P2. (Trademark registration certificate obtained by the plaintiff)

Ex.P11 is the certified copy of booklet containing 7 documents issued by Prothonotary and Senior Master, High Court, Bombay.

Ex.P12 is page No.231 in Ex.P11. (List of addresses of the plaintiff's stores)

Ex.P13 is page No.238 in Ex.P11. (Cheque issued by Former President of India Dr. Rajendra Prasad)



Ex.P14 is page Nos.239 to 257 in Ex.P11. (Articles published in respect of the awards received by the plaintiff)

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Ex.P15 is page No.258 in Ex.P11. (ISO 9001: 2000 certificate)

Ex.P16 is page Nos.208 to 230 in Ex.P11. (Invoices evidencing the use of the mark Nalli by the plaintiff)

Ex.P17 is the printout of the photograph of the defendants' visiting card.

Ex.P18 is the printout of the photograph of the defendants' shop.

Ex.P19 is the office copy of the notice with original postal receipt and acknowledgment card.

Ex.P20 is the office copy of the rejoinder issued by the plaintiff dated 24.12.2018 with postal receipt and acknowledgment card.

Ex P21 is the original of the Trademark Registration Certificate.

5.As seen from the exhibits marked on the side of the plaintiff, the plaintiff has proved that they have adopted the mark “NALLI” ever since 1935 and they have obtained registration under Classes 24 and 25 under the Trademarks Act in the year 1987 and 2000. The registration certificates obtained by the plaintiff have been marked as Exhibits P10 and P21. The Trademark “NALLI” has acquired secondary meaning by the long usage of



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the same by the plaintiff and it is distinctive in nature and it is associated only with the plaintiff as seen from the evidence available on record. The defendants have chosen not to defend the suit. The defendants are using the very same Trademark 'NALLI SILKS' in respect of the very same business as that of the plaintiff. The Cease and Desist Notice was issued by the plaintiff's counsel to the defendants, which has been marked as Ex.P19. Despite the same, the defendants have continued to use the Trademark "NALLI", that too when it is evident that the Trademark "NALLI" used by the defendants is identical as that of the plaintiff's Trademark and is deceptively similar. Any person of average intelligence and imperfect recollection will certainly be deceived with the defendants' Trademark 'NALLI SILKS', which belongs to the plaintiff and the defendants' showroom is also run by the plaintiff. The documents marked as exhibits namely, P1 to P21 on the side of the plaintiff proves that the defendants have committed an act of infringement and passing off.

6.However, insofar as the claim for damages made by the plaintiff is concerned, no oral and documentary evidence has been let in by the plaintiff



to prove the same. Therefore, the claim for damages cannot be granted by this Court.

7.For the foregoing reasons, this suit is partly decreed by granting the following reliefs in favour of the plaintiff against the defendants:

a)A decree for permanent injunction against infringement of plaintiff's registered Trademark by restraining the defendants or their assigns, successors-in-interest, licensees, franchisees, sister concerns, representatives, servants, distributors, agents, family members, employees, etc. and/or any person or entity acting for or on behalf of them, from using plaintiff's trade mark 'Nalli', components thereof, or any other mark(s) deceptively similar thereto, including 'Nalli Silks', singularly or in conjunction with any other words or monogram/logo, as a trade mark, service mark, corporate name, trade name, trading style, domain name, website address, electronic mail identity or in any other manner whatsoever, on or in relation to or any product or Silk Sarees, Garments business, including advertising, business papers, etc.;

(b)A decree for permanent injunction against the Defendants, their assigns, successors-in-interest, licensees, franchisees, sister concerns,



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representatives, servants, distributors, agents, family members, employees, etc. and/or any person or entity acting for or on behalf of them, from passing off their business or goods as or for the goods of the Plaintiff by restraining them from using Plaintiff's trade mark 'Nalli', Impugned Branding, or any other mark(s) deceptively similar thereto including, 'Nalli Silks', singularly or in conjunction with any other words or monogram/logo, as a trade mark, service mark, corporate name, trade name, trading style, domain name, website address, electronic mail identity or in any other manner whatsoever; on or in relation to or any product, service/business including advertising, business papers, etc.;

(c)A decree for permanent Injunction restraining Defendants, their assigns, successors-in-interest, licensees, franchisees, sister concerns, representatives, servants, distributors, agents, family members, employees, etc. and/or any person or entity acting for or on behalf of them, from indulging in acts of unfair competition by use of the Impugned Branding or any other mark(s) or any other mark deceptively similar thereto, including 'Nalli Silks', or perpetrating confusion and deception regarding the source of the defendants' products verbally or in writing or in any other manner whatsoever;



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8.Insofar as prayers (d) to (f) in the plaint are concerned, the suit is dismissed. The defendants are directed to pay the costs of the suit to the plaintiff.

24.01.2024

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List of Witness examined on the side of the Plaintiff:-

(PW1) Mr.K.V.Balasubramanian

List of the Exhibits marked on the side of the Plaintiff:-

<i>S.Nos.</i>	<i>Exhibits</i>	<i>Description</i>
1	Ex.P1	Ex.P1 is the original authorization dated 28.09.2023
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ABDUL QUDDHOSE, J.

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