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C.S.No.314 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.S.No.314 of 2020

S.V.S Oil Mills,
Rep. By its Partner,
V.R.Jayakumaran,
New No.11, Thruvottiyur High Road,
Chennai – 600 019.

[Amended as per order dated 09.03.2023
in Application No.1148 of 2023]

... Plaintiff

Vs.

1. S.V.S.Velkumar

2. S.V.S.Sakthikumar

3. S.V.Sivalinga Nadar & Sons,
No.866, Pandit Jawaharlala Nehru Road,
Villupuram – 605 602.

... Defendants

PRAYER: The Complaint filed under Order IV Rule 1 of Original Side Rules of this Court read with Order VII Rule 1 of C.P.C., read with Sections 27(2), 29, 134 and 135 of the Trademarks Act, 1999, and numbered as C.S.No.314 of 2020, praying for judgment and decree against the defendants, as follows:



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(a) granting a permanent injunction, restraining the defendants, by themselves, their servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the Trademark "SVS"/Original "SVS" (word) & (device) or any other similar Trademark name or similar sounding expression in any media and use the same in name board, invoices, letter heads and visiting cards or by using any other trademark/name which is in any way visually or deceptively or phonetically similar to the plaintiff's registered Trademark "SVS"/S.V.S.OIL MILLS and use the same in respect of Edible refined Oil pouches, packets or use the mark in invoices, letter heads and visiting cards and use the same as part of their Super Market name or with respect to edible oils or vanaspathi or sunflower oil or rice & provisions or any other trade literature by using any other trademark which is in any way visually, or phonetically similar to the plaintiff's registered trademark Nos.285501, 976934, 976935, 976936, 1000939, 1000940, 1035469 & 1261119 or in any manner infringing the plaintiff's registered trademarks referred herien.

(b) granting a permanent injunction restraining the defendants by themselves, their servants, agents, distributors, or anyone claiming through them from reproducing by selling, advertising and offering for sale using the Trademark "SVS"/Original "SVS" (word) & (device) or in relation supermarket name or with respect to edible oils or vanaspathi or or sunflower oil or rice & provisions and use the same pouches, bottles, packets or use the mark in invoices, letter heads and visiting cards or any



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other trade literature or by using any other trademark which is in any way substantially reproduce the plaintiff's trademark "SVS" or which is in any manner deceptively or phonetically confusingly similar to the plaintiff's trademark or in any manner, passing of the plaintiff's trademark "SVS";

© directing the defendants to surrender to the plaintiff all the packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the trademark Original "SVS" (word) & (device) or other identical trademark used in the pouches and packets bearing the work "SVS",

(d) directing the defendants to render an account of profits made by them by the use of the impugned trademark **Original "SVS"** (word) & (device) on the goods/service referred and decree the suit for the profits found to have been made by the defendants after the defendants have rendered accounts and

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

For Plaintiff : M/s.Gladys Daniel

For Defendants : Mr.V.Selvaraj
for M/s.D.Jayasingh
& V.S.Manimekalai



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J U D G M E N T

The suit is filed by the plaintiff seeking permanent injunctions and directions.

2. Heard the learned counsel for the plaintiff and the learned counsel appearing for defendants and perused the materials available on record.

3. The case of the plaintiff is as follows :

(i) The plaintiff is a leading manufacturer and marketer of “Edible Refined Oil” of various kinds. The plaintiff started a partnership firm in the year 1969 under the trademark “SVS”. In the course of business, the plaintiff has coined and adopted the abbreviation "SVS" to be used along with all its “Edible Refined Oil”. No one is entitled to use the trademark "SVS" or in relation to their goods, without the leave and license of the plaintiff. The plaintiff/ Firm was originally started with seven partners, who are sons and daughter of Late S.Velayudha Perumal Nadar. Dispute arose between the partners which led to arbitration proceedings. The arbitrator passed the Award on 09.07.1984. As per the



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Award, three of the present partners of the plaintiff (namely SV.Chandrapandian, SV Ramachandran and SV Kasilingam) are entitled to use the trademark "SVS" along with their brother SV Natesan. On receipt of the award, the abovesaid four persons constituted a partnership firm. The said S.V.Natesan retired from the partnership on 22.02.2001. Hence, the three sons of S.Velayutha Perumal Nadar became the subsequent proprietors of the trademark "SVS" with respect to "Edible Refined Oil". Later three of the partners retired from the partnership with effect from 01.04.2021 leaving behind the remaining partners. The plaintiff registered the trademark in the year 1973 under No.285501 in Class-29 on 22.01.1973.

(ii) Subsequent to the Arbitral Award and consequent proceedings, the plaintiff/Firm was re-constituted. By virtue of the Award and registration, the plaintiff is entitled to exclude all others from using the trademark "SVS".



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(iii) The third defendant/Company was started by the erstwhile partner of the plaintiff in the year 1983. Since the third defendant was unable to sell their goods in the market, they started using the trademark “Original SVS” Hence the plaintiff filed C.S.No.1016 of 1987 before this Court, when the Arbitral proceedings were pending between the parties and the matters had not culminated before the Supreme Court of India, seeking to restrain the use of the trademark Original "SVS" by the third defendant. Hence, the suit came to be withdrawn on 24.02.1997 with liberty to file a fresh suit. As soon as the matters concluded before the Hon'ble Supreme Court of India on 12.11.1999, the partners of the plaintiff filed a complaint under Section 19 of the Trade and Merchandise Marks Act, 1958 seeking to withdraw the acceptance given to the mark “Original "SVS"”. The Trademark Registry has also withdrawn the acceptance to the registration and passed the order on 05.02.2001. The defendants have challenged the abovesaid order before the Intellectual Property Appellate Board and the Appellate Board has also upheld the said order on 08.09.2004. Against the order of the Appellate Board, the defendants have filed a writ petition in W.P.No.34305 of 2004 before



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this Court. This Court, vide order dated 10.01.2019, in W.P.No.34305 of 2004, has given direction to mark the “Original "SVS"” to proceed for registration in favour of the erstwhile partners of the third defendant. Aggrieved by the said order of this Court, the plaintiff filed S.L.P.No.8819-8821 of 2019 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India granted interim stay, staying the operation of the said order dated 10.01.2019 in W.P.No.34305 of 2004 and the same is pending before the Hon'ble Supreme Court of India. One Late S.V.Sivalinga Nadar established the firm "SVS" Sivalinga Nadar & Brothers, "SVS" Oil Mills and other business establishments. The Late Sivalinga Nadar, who was an erstwhile partner of the plaintiff, participated in the Arbitral Proceedings and he was well aware of the Award. The third defendant along with his sons, has no right to use the trademark "SVS" or “Original SVS”. Hence the plaintiff has filed the present suit.

4. The case of the defendants, is as follows:



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One Late S.V.Sivalinga Nadar established a firm called "SVS" Sivalinga Nadar & Brothers, "SVS" Oil Mills and other business establishments. The said Sivalinga Nadar and his brothers were jointly doing business and on account of dispute that arose between them, they jointly agreed for settlement of their disputes by the Arbitrators. Under the Arbitration Award, A schedule property was allotted to S.V.Sivalinga Nadar, B Schedule property was allotted to S.V.HariKrishnan, C schedule property was allotted to S.V.Chandra Pandian, D schedule property was allotted to S.V.Kasilingam, E schedule property was allotted to S.V.Ramachandran and F schedule property was allotted to S.V.Natesan. The Award does not deal with the good-will of firms called as S.V.Sivalinga Nadar and Brothers and S.V.S.Oil Mills. The trademark registered on 22.01.1973 under trademark application No.285501, was jointly owned by S.V.Sivalinga Nadar, S.V.HariKrishnan, S.V.Chandra Pandian, S.V.Kasilingam, S.V.Ramachandran, S.V.Natesan and Kanthimathi Ammal. The said Kanthimathi Ammal filed a suit and received money towards her claim. As per Section 24 of the Act 43 of Trade and Merchandise Marks Act, 1958, joint owners of the trademark



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have to use the trademark jointly, as if the rights were vested with single person and in the event of any dispute among the joint proprietors, none of them can claim ownership of the trademark to the exclusion of others. If there is no assignment or transmission, the trademark remains the joint property of the disputants. The Hon'ble Division Bench of this Court, vide order dated 10.01.2019 in W.P.No.34305 of 2004, held that, no one can claim exclusive right over the mark "SVS". Hence the plaintiff is not entitled to file the present suit.

5. On the basis of the above pleadings, this Court, by order dated 15.12.2021, framed the following issues and they are as follows:-

i. Whether the use of the Trademark original "SVS" by the defendants is an infringement of the plaintiff's registered trademark "SVS"?

ii. Whether the use of the Trademark original "SVS" by the defendants amounts to passing off the plaintiff's trademark "SVS"?

iii. Whether the claim of the plaintiff that the



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trademark was allotted to the plaintiff is tenable?

*iv. Whether the suit is liable to be dismissed in-
liminie, in view of the order dated 10.01.2019 in
W.P.No.34305 of 2004?*

*v. When liberty was not granted to file a fresh
suit, whether the plaintiff is precluded from filing this
suit, in view of the withdrawal of C.S.No.1016 of
1987?*

*vi. Whether the suit is barred by limitation and
latches?*

*vii. Whether the plaintiff is entitled for the
relief of permanent injunction as sought for on
account of infringement of registered trademark and
passing off? and*

viii. To what other reliefs?

After framing issues, in order to substantiate the case of the plaintiff, on



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the side of the plaintiff, one witness was examined as P.W.1 and 36 documents were marked as Exs.P1 to P.36. In order to substantiate the defence taken by the defendant, on the side of the defendants, one witness was examined as D.W.1 and two documents were marked as Exs.D1 and D2.

6. Learned counsel for the plaintiff submitted that the plaintiff's ancestors were running several businesses including "SVS Oil Mill business". In the course of business, the plaintiff coined and adopted the abbreviation "SVS" to be used along with all "Edible Refined Oil". The plaintiff/firm was originally started with seven partners, who are sons and daughter of Late S.Velayudha Perumal Nadar. Due to differences that arose between the partners, arbitration proceedings came to be started. The subject matter of the arbitration covered the business carried out by the sons and daughter of one Late one S.Velayudha Perumal Nadar. The Arbitrator passed an award on 09.07.1984. The relevant clause in the Arbitration Award are as follows:



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“12. S.V.S.Oil Mills: We direct that the books of account of the Mills be closed at the close of business on 14th July 1984 and firm dissolved. The mills owns by way of Fixed Assets. Plant and Machinery besides go-downs and Drying yards in the free hold land belonging to S.V.Sivalinga Nadar & Brothers and Drying Yard and Godowns in the leasehold rights shall be written off to the accounts of the partners of book values. These have been allotted by us to S.V.Chandrapandian, S.V.Kasilingam, S.V.Ramachandra and S.V.Natesan in equal shares. The business and current assets and liabilities of S.V.S. Oil Mills shall also be taken over by S.V.Chandrapandian, S.V.Kasilingam, S.V.Ramachandran and S.V.Natesan in equal moieties subject to monetary adjustments to square up accounts among the disputants.

14(b) Pending final settlements agreed the



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disputants, soon after obtaining inventory of check of trade, consumable stores, spare parts, tools etc., The Fixed Assets if any not allocated by us in the various schedules, the various business unites may start functioning under new ownerships to whom they have respectively been allotted either singly or jointly.

26. The name of “ S.V.Sivalinga Nadar” shall not be used by any of the parties except Sivalinga Nadar himself as business name. Similar restriction shall also applied to the various firewood depots, Ambica Oil Mills, Maligai Stores, Shakti Oil Mills hitherto run by the firm of S.V.Sivalinga Nadar & Brothers.

27. Disputants 3,4,5 & 6 shall be entitled to use the name of “S.V.S.Oil Mills” as it is represented to us that “S.V.S” represents S.Velayutha Perumal Sons. S.Velayutha Perumal Sons representing the name of the father of the disputants”.



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7. It is seen from the Award that there were three of the partners of the plaintiff/firm namely S.V.Chandrapandian, S.V.Ramachandran and S.V.Kasilingam who are entitled to use the trademark "SVS" along with their brother S.V.Natesan. Though the "SVS" Oil Mill was originally allotted to four brothers, out of whom, one of the brothers retired from the said partnership and remaining three brothers were running oil mill in the name of "SVS" Oil Mill and thereafter, their legal heirs are continuously running the same. Neither the defendants, nor other brothers, in other words the other sons, except the abovesaid three sons of S.Velayudha Perumal Nadar or legal heirs, are entitled to use the trademark "SVS" Oil. Since the defendants are also party to the Arbitration Award and subsequently they violated the Award and also are using the "SVS" in prefix as Original, which is against the Arbitral Award and it is also infringement of the trademark of the plaintiffs. Earlier suit in C.S.No.1016 of 1987 was dismissed as not pressed on 24.02.1997 with liberty to file the fresh suit and in which, the defendants have made endorsement and therefore, the present suit is not hit by either “res-judicata” with regard to C.P.C., and also there is continuous cause of



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action. Therefore, now the plaintiff has filed the present suit for the relief of permanent injunctions and directions. Though the defendants have filed the application before the Trademark Registry for registration of their trademark, the same was rejected by the authority and they have filed an appeal before the appellate authority and the appeal was also rejected. Thereafter, they filed the writ petition before the Division Bench of this Court. The Division Bench of this Court, set aside the order of the trademark Authority and challenging the same, the plaintiff has filed the SLP before the Hon'ble Supreme Court and the Hon'ble Supreme Court has stayed the operation of the order passed by the Division Bench of this Court in W.P.No.34305 of 2004. Therefore, the right of the defendants in using the trademark by the defendants is not in dispute. Therefore, the dispute is pending with Supreme Court and even as per Arbitration Award, the plaintiffs are entitled to use the trademark. Since the defendants were acting against the Award and also infringed the plaintiffs' trademark, the plaintiff has filed this suit. Further, even the Award passed by the arbitral Authority and the order passed by the Trademark Authority and also order of the Division Bench of this Court



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in W.P.No.34305 of 2004 and also as per stay order of the Hon'ble Supreme Court, as on date, right of the defendants have not been established. However, the Arbitration Award and the subsequent documents clearly shows that the appellant/plaintiff has got the right of using the trademark "SVS". Further, the defendants themselves admitted during the cross examination with regard to the right of the plaintiff. Therefore, the plaintiff has proved the case. The suit may be decreed.

8. Learned counsel for the defendants submitted that the Arbitration Award has been mis-interpreted and no exclusive right of using the trademark "SVS", has been allotted to the plaintiff alone. All the sons S.Velayutha Perumal Nadar are entitled to use the same. All the sons have right to use the trademark jointly. Earlier a suit was filed and therefore, the present suit is hit by resjudicata. A Division Bench of this Court setaside the order passed by the Trademarks Registry and the appellate authority found that the defendants are having right to use the "SVS" Oil trademark. Once the Division Bench has held that the plaintiff has no exclusive right to use the trademark "SVS" Oil, the Arbitration



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Award will not bind the defendants and the order of appellate authority was set aside and the finding given by the Division Bench was stayed by the Apex Court. Only a portion of the order of the Division Bench has been stayed by the Hon'ble Supreme Court of India. Now the matter is pending before the Supreme Court. Therefore, for the same subject matter, present suit has been filed by the plaintiff which is not maintainable. Once the Supreme Court is seized of the subject matter, the plaintiff has no right to file a separate suit on the very same subject. The present suit itself is not maintainable and the same is liable to be dismissed. Since the defendants are also the legal heirs of the original owner S.Velayudha Perumal Nadar, as legal heirs of S.Velayudha Perumal Nadar, the defendants are also entitled to use the very same trademark. Neither the trademark, nor the goodwill was assigned exclusively to the plaintiff. Therefore, this suit filed by the plaintiff, is not maintainable. Even otherwise, since the matter is pending before the Supreme Court, this Court has no jurisdiction to decide the issues.

9. Issue No.1:

i. Whether the use of the Trademark original "SVS" by the



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defendants is an infringement of the plaintiff's registered trademark "SVS"?

As far as the issue No.1 is concerned, as contended by the learned counsel for the plaintiff, originally the ancestors of the plaintiff and the defendants ie., one S.Velayudha Perumal Nadar was carrying out various business and S.Velayudha Perumal Nadar has got six sons and daughter. There was an arbitral award dated 09.07.1984 in which, para 12 of the arbitral award, stated as follows:

“12. S.V.S.Oil Mills:We direct that the books of account of the Mills be closed at the close of business on 14th July 1984 and firm dissolved. The mills owns by way of Fixed Assets. Plant and Machinery besides go-downs and Drying yards in the free hold land belonging to S.V.Sivalinga Nadar & Brothers and Drying Yard and Godowns in the leasehold rights shall be written off to the accounts of the partners of book values. These have been allotted by us to S.V.Chandrapandian, S.V.Kasilingam, S.V.Ramachandra and S.V.Natesan in equal shares. The



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business and current assets and liabilities of S.V.S. Oil Mills shall also be taken over by S.V.Chandrapandian, S.V.Kasilingam, S.V.Ramachandran and S.V.Natesan in equal moieties subject to monetary adjustments to square up accounts among the disputants.

Admittedly both the plaintiff and the defendants are the legal heirs of the said S.Velayudha Perumal Nadar and they are parties to the arbitral award dated 09.07.1984 and the Arbitral Award attained finality.

Clause 27 of the Arbitral Award which reads as under”

27. Disputants 3,4,5 & 6 shall be entitled to use the name of “S.V.S.Oil Mills” as it is represented to us that “S.V.S” represents S.Velayutha Perumal Sons. S.Velayutha Perumal Sons representing the name of the father of the disputants”.

A reading of the pleadings and the Arbitral Award clearly shows that the plaintiff has got right to use the trademark "SVS" Oil Mills. From the written statement and also the other litigations, it is seen that the plaintiff



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are using the trademark,"SVS". There was an earlier round of litigation between the parties and subsequently, the defendants filed any application before the Trademark Registry for registering their trademark. Admittedly, Trademark Registry rejected the application filed by the defendants and appeal was filed before the Appellate Authority and the Appeal was also rejected. Thereafter, they filed an appeal before the Division Bench of this Court. The Division Bench set aside the order passed by the Trademark Authority. Thereafter, the plaintiff filed an appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court has stayed the operation of the order of the Division Bench. Therefore, as on date, from the Arbitral Award and the other proceedings show that the plaintiff is entitled to use the trademark "SVS". As on date, the defendants have no right to use the "SVS" trademark. Since the right of using the the trademark as "SVS" is pending before the Supreme Court, the defendants cannot use the trademark, unless they registered the trademark before the Registering authority or unless the Supreme Court has taken different view. As of now, the plaintiff has established that they have the right to use the



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trademark “SVS” and the defendants do not have any right to use the said trademark as claimed in the written statement. The first issue is answered accordingly in favour of the plaintiff.

10. Issue No.ii & iii

ii. Whether the use of the Trademark original "SVS" by the defendants amounts to passing off the plaintiff's trademark "SVS"?

iii. Whether the claim of the plaintiff that the trademark was allotted to the plaintiff is tenable?

The defendants have not denied that they are running the business even till now and the defendants are using the same trademark, but the only reason stated that the plaintiff mis-interpreted the Award of Arbitration. The Division Bench has upheld the right of the defendants. Therefore the defendants can use the trademark. As already discussed, as of now, the defendants' claim of registering the trademark has been rejected and the same is pending before the Hon'ble Supreme Court. As on date, the defendants have no right to use the trademark as they have no registered trademark. However, the plaintiff has established their right through Arbitral Award and also with other document and also the admission



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made by the defendant. The defendants are still using the same trademark. Therefore, Issue No.ii is answered in favour of the plaintiff.

As on date, Arbitral Award dated 09.07.1984 has not been set-aside which attained finality. On a reading of the Arbitral Award and also both the pleadings and oral and documentary evidence, it is clear that the defendants themselves have admitted that now the plaintiff is using the trademark. Unless the Arbitral Award is set-aside, the plaintiff has the right of using the trademark, which depends on the outcome of the pending dispute before the Hon'ble Supreme Court. Therefore, till then, the defendant is not entitled to use the trademark. Paragraphs 14 and 27 of the Arbitral Award clearly show that the subject trademark allotted to the plaintiff, is valid, since both are the parties to the arbitration Award and so far Arbitral Award has not been setaside or cancelled by the Appellate Authority. Issue Nos.ii and iii are answered in favour of the plaintiff.

11. Issue No.iv.

Whether the suit is liable to be dismissed in-liminie, in view of the order dated 10.01.2019 in W.P.No.34305 of 2004?



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As far as the Issue No.iv is concerned, the plaintiff has challenged the order passed by the Trademark Registering Authority and the judgment of the Division Bench of this Court which stayed by the Hon'ble Supreme Court, and therefore, the subject matter of the SLP is different. Unless the order passed in writ petition attains finality, right of the defendant could not be confirmed. Since the Hon'ble Supreme Court had stayed the operation of the order passed by the Division Bench of this Court, as on date, the defendants have not registered their trademark. As per the Award, the plaintiff is entitled to use the trademark. Therefore, under the above facts and circumstances, the plaintiff has filed the suit only for infringement of trademark and passing off and other consequential reliefs. As on date, the right of the plaintiff has been confirmed by the Arbitral Award. However, the right of the defendant has not been confirmed by any of the judicial proceedings. Issue No.iv is answered in the above terms.

12. Issue No.v:

When liberty was not granted to file a fresh suit, whether the



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plaintiff is precluded from filing this suit in view of the withdrawal of C.S.No.1016 of 1987?

As far as the Issue No.v is concerned, though the defendant has marked the earlier order of this Court in C.S.No.1056 of 1987, which was withdrawn in which this Court has given opportunity to file a fresh suit and the suit earlier was not decided on merits. Therefore, under the facts and circumstances, the right of using the trademark by the plaintiff, is continuous cause of action and the infringement allegedly made by the defendants is also continuous cause of action. Hence earlier suit in C.S.No.1016 of 1987 was not decided on merits between the parties after trial. The issue No.v is answered accordingly as against the defendants and in favour of the plaintiff.

13. Issue No.vi:

Whether the suit is barred by limitation and latches?

The specific case of the plaintiff is that ancestors of S.Velaudha Perumal Nadar conducted several businesses and thereafter there was an arbitration and in that arbitration proceeding sons and all the legal heirs



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of the original owner S.Velaudha Perumal Nadar participated. As per the Arbitration Award, the plaintiffs are using the trademark. Now from the pleadings and oral and documentary evidence, it is clear that the defendants have admitted that they are also using the trademarks in other forms and the defendants made application before the Registrar of Trademark for registering their trademark, which was rejected by the Appellate Authority. Even at the time of arguments, the learned counsel for the defendants submitted that they are only entitled to use the trademarks as on date and they are using the trademark, as the Hon'ble Division Bench has also upheld the right of the defendants and now the matter is pending before Hon'ble Supreme Court and hence, the present suit is not maintainable. However, admittedly, the plaintiff is running the business and using the trademark till now. The defendants have also infringed the right of using the trademark by the plaintiff till now. Therefore, cause of action is continuous one. Hence, the suit is not barred by limitation. There are no latches in filing this suit. One way or the other, the legal proceedings are going on and this is the third round of litigation. Therefore, under the above facts and circumstances, the



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contentions of the learned counsel for the defendants that the suit is barred by limitation and hit by latches, is not acceptable, Accordingly, the issue No.vi is answered in favour of the plaintiff and against the defendants.

14. Issue No.vii: *Whether the plaintiff is entitled for the relief of permanent injunction as sought for on account of infringement of registered trademark and passing off?*

As already held that the plaintiff is using the trademarks and also established their right to use the trademark through arbitral Award. The defendants have earlier filed an application before the Registrar of Trademark for registering their trademark, which was rejected by the Authority concerned. However, the same is pending before the Hon'ble Supreme Court. Till the outcome of the verdict of the Hon'ble Supreme Court, the defendants are hereby restrained from using the trademark. The Issue No.vii is answered accordingly.

15. Issue No.viii: *To what other reliefs?*

Though the plaintiff has filed the present suit for infringement of trademark, passing-off, the defendants are still using the trademark, of



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course, the defendants claim that they have the right to use that trademark as the legal heirs of the original owner S.Velayudha Perumal Nadar. However, the matter is still pending with Hon'ble Supreme Court and as on date, the defendants have not registered their trademark and therefore, the defendants have also admitted that they are using their trademark. Since the earlier issues were held in favour of the plaintiff, the defendants are liable to render accounts and profits made by them by using the impugned trademark original "SVS".

16. All the issues are answered accordingly in favour of the plaintiff and against the defendants. The suit is decreed as prayed for by the plaintiff with costs.

26.06.2024
(1/2)

mfa

Plaintiff's witness: P.W.1 – Mr.V.R.Jayakumaran

Defendants' witness: D.W.1 – Mr.Velkumar

Documents exhibited by the plaintiff:



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SNo	Exhibit	Date	Description of the document
1	Ex.P1	10.07.2023	The Original authorisation letter dated 10.07.2023
2	Ex.P2	15.07.1984	Photocopy of the Deed of Partnership of the plaintiff dated 15.07.1984
3	Ex.P3	-	Original Plaintiff's Trademarks "SVS"
4	Ex.P4	01.04.1999 and 22.02.2001	Photocopy of the Partnership Deed of the plaintiff and the retirement deed dated 01.04.1999 and 22.02.2001
5	Ex.P5	01.04.2005	Photocopy of the partnership deed of the plaintiff dated 01.04.2005
6	Ex.P6	04.01.2018	Photocopy of the Legal Use Certificate of Trade Mark No.285501 dated 04.01.2018
7	Ex.P7	20.12.2017	Photocopy of the Legal Use Certificate of Trade Mark No.976934 dated 20.12.2017
8	Ex.P8	20.12.2017	Photocopy of the Legal Use Certificate of Trade Mark No.976935 dated 20.12.2017
9	Ex.P9	17.01.2018	Photocopy of the Legal Use Certificate of Trade Mark No.976936 dated 17.01.2018
10	Ex.P10	20.12.2017	Photocopy of the Legal Use Certificate of Trade Mark No.1000939 dated 20.12.2017
11	Ex.P11	05.01.2018	Photocopy of the Legal Use Certificate of Trade Mark No.1000940 dated 05.01.2018
12	Ex.P12	17.01.2018	Photocopy of the Legal Use Certificate of Trade Mark No.1035469 dated 17.01.2018
13	Ex.P13	04.01.2018	Photocopy of the Legal Use Certificate of Trade Mark No.1261119 dated 04.01.2018
14	Ex.P14	29.06.2021	Photocopy of the Deed of Partnership dated



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			29.06.2021
15	Ex.P15	22.01.1973	Photocopy of the Trade Mark Application under No.285501 on the file of the Trade Mark Registry and covering letter dated 22.01.1973
16	Ex.P16	05.10.1974	Photocopy of the Affidavit filed under Trademark No.285501 on the file of the Trade Mark Registry dated 05.10.1974
17	Ex.P17	-	Printouts of the Renewal Certificates for the Trademarks under Nos.976934, 976935, 976936, 1000939, 1000940 and 1035469 along with under Section 65 B of the Evidence Act, 1872 is filed
18	Ex.P18	-	Photocopy of the sample advertisements of the mark ""SVS"" for 2004, 2014-2017, 2019, 2022
19	Ex.P19	-	Photocopy of the sample advertisement invoices of the mark ""SVS"" for 2019, 2021-2022
20	Ex.P20	21.10.2020	Original Chartered Accountant Certificate dated 21.10.2020
21	Ex.P21	-	Photocopy of the Award received by the plaintiff in the year 2012
22	Ex.P22	09.07.1984	Photocopy of the certified copy of the Arbitration Award dated 09.07.1984
23	Ex.P23	19.11.1998	Photocopy of the Supreme Court Judgement confirming the Arbitration Award dated 19.11.1998
24	Ex.P24	-	Carbon copy and office copy of the sample sales invoices from 1996 - 2022
25	Ex.P25	22.08.1983	Photocopy of the deed of partnership of the third defendant 22.08.1983



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26	Ex.P26	01.04.1997	Photocopy of the Journal Advertisement dated 01.04.1997 of 479367B & 479368B for registration of the trademark original "SVS" in favour of the erstwhile partners of the third defendant.
27	Ex.P27	24.02.1997	Photocopy of the order dated 24.02.1997 in C.S.No.1016 of 1987 permitting the plaintiffs to withdraw the suit with liberty to file a fresh suit.
28	Ex.P28	12.11.1999	Photocopy of the complaint dated 12.11.1999 under Section 19 of the Trade and Merchandise Marks Act, 1958.
29	Ex.P29	05.02.2001	Photocopy of the order dated 05.02.2001 of the Trademark Registry withdrawing acceptance of 479367B for registration of the trademark original "SVS"
30	Ex.P30	03.09.2004	Certified copy of the order dated 03.09.2004 of the IPAB in TA No.32 of 2003
31	Ex.P31	17.04.2017	Photo copy of the Deed of Partnership dated 17.04.2017 of the defendants
32	Ex.P32	10.01.2019	Certified copy of the order of this Court dated 10.01.2019 in W.P.No.34305 of 2004
33	Ex.P33	15.04.2019	Certified copy of the order of the Hon'ble Supreme Court of India dated 15.04.2019 in SLP No.8819 to 8821 of 2019
34	Ex.P34	22.08.2003	Photocopy of the order of the Hon'ble Supreme Court of India in CA No.4037 – 4039 of 1995 dated 22.08.2003.
35	Ex.P35	-	Photocopy of the defendants' trade mark original "SVS"



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36	Ex.P36	-	Photograph of the defendant's product
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Documents exhibited by the Defendants:

SNo	Exhibit	Date	Description of the document
1	Ex.D1	18.09.1968	Photocopy of the partnership deed dated 18.09.1968
2	Ex.D2	14.02.2018	Photocopy of the plaint in C.S.(Comm Div) No.8486 of 2018 dated 14.02.2018.

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P.VELMURUGAN, J.

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