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A.No.3188 of 2024
in
C.S.(Comm. Div.) No.83 of 2024

SENTHILKUMAR RAMAMOORTHY J.

The plaintiffs filed a suit against the sole defendant, which is a private limited company, seeking injunctive relief, rendition of accounts and other reliefs in respect of alleged infringement of the plaintiffs' trademarks NAMMA VEETTU KALYANAM AND NVK NAMMA VEETTU KALYANAM through use of the marks NAMMA VEETTU KALYANAM or NVK or NVK CATERING.

2. The present application has been filed by the first defendant and the proposed second defendant. The applicants state that the proposed second defendant is the managing director of the sole defendant and registered proprietor of the trademarks NVK CATERING/Namma Veetu Kalyanam Catering, NAMMA VEETU KALYANAM and the like. It is also stated that the proposed second defendant has initiated rectification proceedings against the plaintiffs.



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3. Learned counsel for the applicants refers to paragraphs 4 and 5 of the counter of the plaintiffs and contends that the present suit is an abuse of process inasmuch as the cause of action is the same as that in C.S.No.508 of 2018. He also contends that the registered proprietor of the trademarks, the use of which is construed as infringing by the plaintiffs, is a necessary party to the suit.

3. Learned counsel for the plaintiffs, on the contrary, contends that the cause of action for the suit is the use of the impugned trademarks by the sole defendant/private limited company. He further submits that the plaintiffs are entitled to decide on the parties to the suit and that the proposed second defendant is neither a necessary nor proper party.

4. At the outset, it should be noted that the plaintiffs are the domini litis. On examining the plaint, it appears that the plaintiffs have referred to the earlier suit (C.S.No.508 of 2018) against Mr.T.N.Janarthanan/proposed second defendant. The plaintiffs state



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that Mr.T.N.Janarthanan floated a private limited company and that such private limited company uses the infringing trademarks. On those grounds, the plaintiffs seek injunctive and other relief against the sole defendant in the suit. If the case of the sole defendant is that the registered proprietor of the impugned trademarks is the earlier user of the trademarks, in comparison to the plaintiffs, it is always open to the sole defendant to rely upon the rights conferred on the sole defendant by the registered proprietor. On that basis, it is not necessary to implead the registered proprietor of such trademarks as a defendant to this suit. It is also not necessary to implead Mr.T.N.Janarthanan on the ground that the two suits may be connected. If so, it is possible to tag and even hear the suits jointly.

5. For reasons set out above, A.No.3188 of 2024 is dismissed without any order as to costs.

06.09.2024

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