



IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	21.12.2024
<i>Pronounced on</i>	02.01.2025

CORAM:

THE HONOURABLE Mr. JUSTICE P.VELMURUGANC.S. No.319 of 2009

Madras Fertilizers Limited,
(A Government of India Undertaking)
Post Bag No.2, Manali,
Chennai 600 068
and having its City Office at
No.2, Chittranjan Road,
Teynampet,
Chennai – 600 018
Represented by General Manager
(Personnel & Administration)
R.Lawrence

... Plaintiff

Vs.

S.Saraswathi Velayutham

... Defendant

Civil Suit is filed under Order IV Rule 1 of Original Side Rules r/w.
Order VII Rule 1 of Civil Procedure Code read with Sections 27, 134 & 135
of Trade Marks Act, 1999 and Sections 58 & 62 of the Copyright Act, 1957,
to pass a judgment and decree for:

a) granting a permanent injunction, restraining the defendant, by
herself, her servants, agents, her printers and distributors or anyone claiming



though her by an order of this Court from committing any infringement of the Copyright of the Plaintiff's have in the artistic work found in M.O.No.1, by displaying, printing or causing to be printed the impugned work as found in M.O.2 or any other work or creation or using such work in any pamphlet, wrapper, containers, bags etc., in the course of the trade which is colourable imitation or an infringement of the plaintiff's artistic work displayed in M.O.1 to the plaint;

b) granting a permanent injunction, restraining the defendant, by herself, her servants, agents, or any one claiming through her from infringing the plaintiff registered Trade Mark No.331470 in Class 1 by the use of the offending Trade Mark as found in M.O.No.2 or using the mark containing their essential and main features or any part thereof or from manufacturing or selling or offering for or advertising for sale any product, trading style bearing the said Trade Mark VIJAI / VIJAY or part of it using either prefix or suffix or any other Trade Marks which are any way deceptively or phonetically similar or a colourable imitation of the plaintiff's aforesaid registered Trade Mark as found in M.O.No.1 to the plaint;

c) directing the defendant to render a true and faithful account of the profit earned by using of the artistic work and the infringing mark 'VIJAY' as shown in M.O.No.2 and directing such profit to be paid to the plaintiff's for the infringement of their Copyright and Trade Mark in Document No.1 and 2;

d) directing the defendant to surrender to the plaintiffs all the bags, containers, labels, packets and any other printed matters containing or consisting of the offending artistic work / Trade Marks as found in M.O.No.2



together with blocks used for the purpose of printing the same for destruction;

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e) directing the defendant to pay to the plaintiffs the costs to the suit.

For Plaintiff : Mr.C.Daniel

For Defendant : Mrs.Brindha Mohan

JUDGMENT

This Civil Suit has been filed by the plaintiff seeking the relief of permanent injunction restraining the defendant from infringing the trademark and copyright of the plaintiff and to direct the defendant to render a true and faithful account of the profit earned by using the plaintiff's trademark and also to pay such profit derived from thereof and to surrender to the plaintiff all the bags, containers, labels, etc., containing the and plaintiff's trademark.

2. The averments made in the plaint are as follows:

The plaintiff was incorporated on 08.12.1966 as a Joint Venture between the Government of India and Amoco India which was a subsidiary of Amoco USA. According to the Fertilizer Formation Agreement executed on 14.05.1966, the equity contributions between the Government of India and Amoco was in the ratio of 51:49. On 22.01.1972, a participation



agreement was entered into with National Iranian Oil Company (hereinafter referred to as “NIOC”), an undertaking of Government of Iran. Thereafter, NIOC acquire 50% of the shares of Amoco USA and hence Amoco and NIOC were at 24.5% each and the Government of India share holding was at 51%. Subsequently, on 22.07.1985, the share holding of Amoco was proportionately purchased by the Government of India and NIOC and therefore, the share holding was revised to 67.55% and 32.45% respectively. In the year 1997, due to a public issue, the shareholding was changed as 59.5% for Government of India, 25.77% for NIOC and 14.73% for Public.

2.1 The plaintiff is the manufacture of Ammonia, Urea, Complex Fertilizers and Bio-fertilizers. The plaintiff is also involved in marketing of these fertilizers and trading in Agro Chemicals in accordance with the corporate objective. The product is sold in specifically made gunny bags in which 50 kgs of fertilizers can be packed. One side of the gunny bag carries the trademark of the plaintiff, particulars regarding the product and the address of the plaintiff and the other side remains blank.

2.2 The plaintiff is the registered proprietor of the Trade Mark



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No.331470 in Class 1, Part A, dated 12.12.1977 and it is in respect of Urea and Complex Fertilizer. The said Trade Mark No.331470 is black and white in colour and it consists of three parts. The first part is the picture of a farmer with a turban, mustache and hands folded and the second part consists of word mark “VIJAY” in English Work *per se* and the third part is the address of the plaintiff written in block letters “MADRAS FERTILIZERS”. The plaintiff has been vigilant about its rights in the registered trademark “VIJAY” and has taken appropriate legal action as and when required against unscrupulous traders who have tried to imitate its well known trademark.

2.3 The defendant was a dealer of the plaintiff and entered into a dealership agreement on 07.04.1999. During the month of August, 2008, the plaintiff found that the defendant was surreptitiously selling substandard fertilizer under the trademark “VIJAI” by adopting all the essential features of the plaintiff's gunny bag. The plaintiff immediately terminated the dealership agreement with the defendant on 28.08.2008 and blacklisted the defendant on the same date. The defendant's gunny bag contains the picture of a farmer with a turban and mustache with folded hands similar as that of



the plaintiff's gunny bag and the word mark used by the defendant is "VIJAI" which is also phonetically identical as of the plaintiff's trademark "VIJAY". The defendant has merely replaced the letter 'Y' with the letter 'I'.

The combination of the picture of a farmer along with the trademark "VIJAI" which is very similar as that of the plaintiff's trademark mislead the public and it amounts to infringement of plaintiff's registered Trade Mark No.331470. Apart from copying the two distinctive portions of the registered Trade Marks, the defendant has copied the other distinctive features of the plaintiff's trademark also.

2.4 The entire artistic work / trademark produced by the plaintiff's company has been the property of the plaintiff since 1971. Thus the plaintiff is the owner of the Copyright of the artistic work of the defendant. The defendant is using the deceptively similar mark of the plaintiff. The use of the trademark "VIJAI" is bound to create confusion and deception in the market. The trade and general public will assume that there is a business relationship between the plaintiff and defendant because of the long standing dealership agreement between the two parties, which is no longer in existence. The defendants are well aware of the goodwill and the reputation



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of the plaintiff's trademark. Hence, the adoption and use of the impugned mark and the label amounts to fraud under the Trademarks Act. The defendants have no valid reasons to use the mark / word "VIJAI" which is visually, phonetically and deceptively identical as that of the plaintiff's trademark. The defendant's acts are dishonest and motivated purely by *mala fide* intentions to poach upon the reputation and goodwill enjoyed by the plaintiff. The conduct of the defendant amounts to falsification of Trademark which is an offense punishable under the Trade Marks Act, 1999.

2.5 This Court has got jurisdiction to entertain and try the suit with respect to infringement of Trademark and Copyright as the plaintiff have their city office at No.2, Chittaranjan Road, Teynampet, Chennai – 600 018 within the jurisdiction of this Court. As per the provisions under Section 134(2) of the Copyright Act, 1957, the plaintiff is entitled to file the suit before this Court. The suit is also within the period of Limitation.

2.6 The defendant has infringed the plaintiff's registered trademark under No.331470. The loss suffered by the plaintiff on account of the above infringement is incalculable in view of the enormous popularity of the



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plaintiff's product. The plaintiff's product has acquired great reputation because of the quality control exercised in the choice of raw material, high quality, dependability and purity. The conduct of the defendant in initiating the plaintiff's trademark and copyright in the artistic work is not only causing loss to the plaintiff but also gravely impaired its reputation. Hence, for the aforesaid reasons, this Court may grant an order of permanent injunction restraining the defendant from infringing the plaintiff's registered trademark and copyright.

3. Denying the averments made in the plaint, the defendant has filed her written statement and in which it is stated as under:

The defendant is the partner of “M/s.Vijai Agro” and the defendant is the erstwhile dealer of the plaintiff company. The defendant's father one P.V.Subramaniyam started the proprietary concern under the name and style of Vijai Agro in the year 1992 and the said concern has been engaged in the business of manufacturing and marketing of urea and fertilizers since then in gunny sack package containing the word “VIJAI” with the device of a farmer and other descriptive matters. The name “VIJAI” was adopted as the name of business concern and for selling fertilizers, honestly and bonafidely from



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defendant's son name and the business was established by defendant's father for his welfare. From the year 1992-1993 onwards the defendant has been manufacturing and distributing Vijai Agro standard mixture to the farmers / agriculturalists. Standard mixture No.18 comes under the physical mixture fertilizer category and it is manufactured by using straight fertilizers of urea, DAP potash and filler materials. The defendant has also obtained registration from the department of agriculture for manufacturing and selling fertilizers which has been duly renewed from time to time.

3.2 The defendant's father P.V.Subramaniam entered into a dealership agreement with the plaintiff in the year 1992 for sale of complex fertilizers manufactured by the plaintiff and the dealership code is DC 16-322. However, the plaintiff managed to suppress the said fact in the pleadings filed in this proceeding. Since the year 1992, through the concern “M/s.Vijai Agro” the defendant's father has been manufacturing and selling Standard Mixture in packaging containing the word “VIJAI” and the device of a farmer and at the same time selling the plaintiff's “VIJAY” complex fertilizers and the plaintiff is fully aware of the same. Further, the plaintiff's officials have inspected the defendant's manufacturing units and go-downs



regularly on periodical visits with regard to their complex fertilizers and found no fault. This shows that the defendant had sold their standard mixture fertilizers and plaintiff's complex fertilizers to common customers in same bill.

3.3 After the demise of the defendant's father in the year 1998, the dealership in his name was terminated and the defendant entered into a fresh dealership agreement in the month of April, 1999 and continued the business in the name of “M/s.Vijai Agro”. Later in the month of August, 1999, the proprietary concern M/s.Vijai Agro was converted into a partnership firm comprising the defendant and her mother as partners. The defendant concern “M/s.Vijai Agro” in addition to dealing in plaintiff's complex fertilizer has also been selling physical standard mixture fertilizers independently in gunny sacks / bags containing the name “VIJAI” along with a farmer device having in his left hand a basket of fertilizer and his right hand in the action of sowing fertilizer to the plants in front of him underneath that the device of Swastik in a rounded logo and the words “Fertilizers” written in Tamil language.



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3.4 The plaintiff has no separate registration for the name “VIJAY” or the farmer device. The plaintiff has obtained registration only for a composite label. The name “VIJAY” and the farmer device used by the plaintiff is common in India, more particularly in fertilizers trade. The device of farmer used by both parties is totally different. However, in the absence of separate registration for the name “VIJAI” and the device of farmer, the plaintiff is not legally entitled to claim any exclusive right over the same.

3.5 The picture of farmer is common to fertilizer trade and almost all the fertilizer companies are using it since the produce is meant for the farmers. The name “VIJAI” used by the defendant is taken from her son's name and is also a common surname in India. Therefore, the plaintiff cannot claim exclusive right over the same. The adoption of use of the mark “VIJAY” and trading style “VIJAI AGRO” by the defendant is honest and bonafide.

3.6 It is absolutely false and wrong to allege that the defendant's dealership is from the year 1999. However it dates back to the year 1992 and



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the defendant's use of name “VIJAI” and the picture of farmer were used since then. The defendant's dealership with the plaintiff is for complex mixture fertilizer which is used for heavy soil whereas, the defendant is manufacturing standard mixture fertilizer which is used for light soil. It is pertinent to note that the plaintiff is not manufacturing standard mixture fertilizer. It is absolutely false to state that the defendant was surreptitiously selling substandard fertilizer under the trademark “VIJAI” by adopting all the essential features of the plaintiff's gunny bag. The blacklisting of the defendant by the plaintiff on the ground of infringement and communicating the same to others is contrary to law and justice.

3.7 The defendant's gunny bag contains the picture of farmer but it is incorrect to state that the farmer's picture in the defendant's bag is similar to that of the farmer's picture with folded hands in the plaintiff's label. The person shown in the plaintiff's label is wearing white shirt and Punjabi turban and having a long mustache, however, the farmer in the defendant's bag is having in his left hand a basket of fertilizer and his right hand is in the action of sowing fertilizer to the plants in front of him underneath which the device of Swastik in a rounded logo and the words fertilizers are written in



Tamil were placed.

3.8 The nutrients like NPK and its ratio are in red colour because of the instructions from the Agriculture Department for clear visibility. Further the defendant has provided the details of weight, manufacturer's name and address, registration number, batch no., date of manufacturing, MRP which are essentially required to sell a product in the market. The plaintiff does not have any right over the two horizontal lines as there is no imitation of any portion of the plaintiff's label by the defendant. The plaintiff is not entitled to dissect its trademark label into parts and portions for comparison to suit its convenience. The plaintiff has no copyright registration for the alleged artistic work. The plaintiff has made the allegation only to lay a false claim for infringement of copyright.

3.9 The Director of the plaintiff company stated that NPK production has been drastically fallen from the year 2003 to 2009. Unable to digest the steady growth of the defendant and in order to camouflage the business losses, the plaintiff issued a letter of termination of the dealership in the month of July, 2008 leveling false allegation of infringement and had chosen to file the instant suit for injunction after a lapse of 10 months with ulterior



motives.

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3.10 The suit suffers from gross delay and laches as the defendant has been selling standard mixture fertilizer since the year 1992. Having allowed the defendant to invest and expand the business and acquiesced to use the name of “VIJAI” by the defendant for nearly 17 years, now the plaintiff cannot complain infringement according to their whims and fancies. Considering this factual matrix, while deciding the applications in A.Nos.364 & 365 of 2009, this Court has permitted the defendant to use her trade name “VIJAI” in same font size and with regard to usage of colour, this Court allowed the defendant to use any colour for their product except green and white and also directed the defendant to use the farmer device in its full form.

3.11 The suit is filed out of personal vendetta and business rivalry. The purchasers are fully guided by the various materials contained in the defendant's label. There is not even a remote possibility of confusion and deception in the minds of public till date. Merely because the plaintiff has a registered trademark, they are not entitled to injunction when there is no infringement. The defendant has not adopted the trademark of the plaintiff.



The defendant's trademark is independent and different. The plaint as filed by the plaintiff is not maintainable as the same does not disclose proper cause of action so as to enable the plaintiff to invoke the jurisdiction this Court. The plaintiff has filed the present suit with an unexplained delay. Hence, the present suit deserves to be dismissed on the ground of delay and acquiescence.

4. The plaintiff has filed its reply statement against the written statement filed by the defendant, in which it is stated as under :

The defendant has not produced any documentary evidence to show that she is a partner of M/s.Vijai Agro and Vijai Agro is a partnership firm. The defendant entered into the dealership agreement with the plaintiff in the year 1999 and when the plaintiff came to know about the use of the impugned trademark, the dealership agreement was cancelled and the above suit was filed immediately. The defendant in order to escape from the legal consequences, cooked up a story stating that the defendant's father adopted the name from his grandson and thereby adopted the mark “VIJAI AGRO”. The adoption is dishonest and the defendant is knowingly violating the



plaintiff's right.

4.1 The defendant has not furnished any evidence to prove that she is using the trademark “Vijai Agro” since the year 1992. Moreover, the plaintiff is using its trademark since the year 1971. The defendant in a *mala fide* manner copied the plaintiff's trademark with a view to ride upon the plaintiff's hard earned reputation and goodwill.

4.2 There is no necessity on the side of the defendant to enter into a dealership agreement with the plaintiff, when she herself is manufacturing and marketing the fertilizers. The plaintiff has no knowledge that the defendant was having a clandestine business and was illegally manufacturing fertilizer using the trademark “VIJAI”. As soon as the plaintiff came to know about defendant's impugned goods, they immediately terminated the dealership agreement with the defendant and approached this Court. The delay of 10 months in filing the suit is not material. Such delay was on account of obtaining statutory permission from the higher authorities to proceed against the defendant. On being satisfied with the *prima facie* case of the plaintiff, this Court directed the defendant to change her impugned trademark.



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4.3 The plaintiff is the first person in the industry to adopt the device of a farmer with respect to fertilizers in the year 1971. Hence, the plaintiff alone is the exclusive proprietor of their Trademark “VIJAY” along with the device since the year 1971. The order passed in the interim applications are only an interim arrangement pending disposal of the suit. The defendant intentionally copied the plaintiff's trademark in a dishonest manner who has to be permanently enjoined by the order of this Court.

4.4 The defendant has entered into dealership agreement with the plaintiff only in the year 1999 and not from the year 1992 as alleged by the defendant. It is the settled principle under the Trademark law that infringement is definite even with respect to dissimilar goods. In the instant case, the goods dealt with by the plaintiff and the defendant are similar and the defendant cannot claim any vague differentiation of goods. After coming to know about that the infringement committed by the defendant, the dealership agreement was immediately terminated. If the defendant is really aggrieved by the termination of the dealership agreement, she would have taken appropriate legal action against the plaintiff. But, till date no such



steps have been taken by the defendant against the plaintiff. The defendant knowing well about the legal consequences has chosen to remain silent.

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4.5 The defendant has chosen to describe the right descriptive material on the gunny bags using the exact same shade and colour in the exact same form with the same get up and lay out of the plaintiff. The guilty intention of the defendant is in the choice of colour scheme, get up and the layout. In every manner possible, the defendant has copied the plaintiff's trademark. The copyright in the farmer device and trademark "VIJAY" in the artistic font belong to the plaintiff and there is no mandatory requirement for obtaining registration under the Copyright Act. The defendant copied and reproduced all the substantial features of the plaintiff's copyright. The plaintiff alone is the registered proprietor of the trademark and copyright "VIJAI" along with the device of a farmer. The device of farmer is not common to trade as alleged by the defendant. The plaintiff is very cautious and alert in protecting its valuable statutory rights and taking legal action against the infringers. The defendant being one such infringer cannot take the false defense such as the trademark is common to the trade. Moreover, the plaintiff has produced all relevant supporting documents and undertake



to produce additional documents as and when required.

4.6 The general public associate the defendant with the plaintiff as she was the dealer of the plaintiff company since the year 1999 because they will not be aware of the termination of the dealership agreement by the plaintiff and they continue to believe that the spurious goods under the impugned trademark also arose from the plaintiff. The defendant has copied the essential features of the plaintiff's trademark and continues to use the same despite termination of dealership agreement. Hence, the nature of goods which sold across the same counter and the class of consumers are also one and the same. In such circumstances, no further proof is required for grant of permanent injunction.

4.7 The defendant is making false allegations against the plaintiff stating that the plaintiff stopped manufacturing NPK fertilizer under the plaintiff's trademark. However, the turnover details of the plaintiff reflect the continuous use of the trademark "VIJAY". The plaintiff is continuously using the same since the year 1971 and they are renewing their registration time to time. The instant suit is filed only to protect its statutory rights in its Trademark and not to claim any monopoly over any generic mark as alleged



by the defendant.

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4.8 The defendant has copied every basic features of the plaintiff's trademark. The plaintiff's goods are widely available in the market. It is irrelevant to state that the fertilizers are different and are used for different soils however, the nature of goods are one and the same. The defendant, being the dealer of the plaintiff, has passed on his products to the public claiming that they are from the same source. The plaintiff's trademark has its own unique and distinctive trademark. The defendant is carrying on an illegal business with *mala fide* intention to trade on the goodwill and reputation of the plaintiff. Such illegal conduct does not deserve any equitable relief from this Court.

4.9 The trademark "VIJAY" and farmer device are registered in favour of the plaintiff and the registration is valid and subsisting in favour of the plaintiff as on date and continuously using the same. The broad and essential features of the plaintiff's trademark is taken out dishonestly by the defendant. The defendant should not be placed side by side to find out if there are any differences as alleged by the defendant. Such an overall similarity to the plaintiff's registered mark would mislead the public. Hence, no further proof



is necessary for grant of permanent injunction.

5. On the basis of the above pleadings and materials available on record, this Court has framed the following issues:

“(i) Whether this Court has jurisdiction to entertain and try the suit ?

(ii) Whether the plaintiff has acquiesced use of the mark “VIJAY” by the defendant ?

(iii) Whether the defendant has committed infringement of Copyright ?

(iv) Whether the defendant's trademark is deceptively similar to the plaintiff's trademark ?

(v) Whether the defendant has committed infringement of trademark ?

(vi) To what relief, the plaintiff is entitled to ?

6. During the course of trial, on the side of the plaintiff, the Additional Manager (Legal) of the plaintiff's company has been examined as PW.1 and Exs.P1 to P9 were marked and M.O.1 and M.O.2 also marked. No



documentary or oral evidence were adduced on the side of the defendant.

7. Heard the submissions made by the learned counsel for the plaintiff and the learned counsel for the defendant and perused the materials available on record.

8. The learned counsel for the plaintiff submitted that the plaintiff is a registered Proprietor of the trademark “VIJAY” under Trade Mark No.331470 in Class 1, Part A, dated 12.12.1977 used in respect of Ammonia, Urea, Complex Fertilizers and Biofertilizers. Legal use certificate of the Trade Mark No.331470 dated 12.12.1977 is marked as Exhibit P2. The plaintiff is engaged in the manufacture of Ammonia, Urea, Complex Fertilizers and Bio-fertilizers and also marketing the fertilizers and trading in Agro Chemicals in accordance with the corporate objective. The plaintiff's trademark “VIJAY” was conceived in the year 1971 by M/s.Hindustan Thompson Associated Limited, Commander-in-chief Road, Madras who were employed by the plaintiff on a professional basis for consideration to do the job. The entire artistic work produced by this company has been the property of the plaintiff since 1971. The plaintiff is also the owner of the copyright of the artistic work in M.O.1.



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8.1 It is the contention of the learned counsel for the plaintiff that in the month of August, 2008 the plaintiff learnt that the defendant was surreptitiously selling substandard fertilizer under the trademark “VIJAY” by adopting all the essential features of the plaintiff's gunny bag. The plaintiff immediately terminated the dealership agreement on 28.08.2008 and blacklisted the defendant on the same date. The termination letter by the plaintiff dated 04.07.2008 is marked as Ex.P6. Thus without any delay, the plaintiff has approached this Court for a remedy against the unauthorized usage of the defendant and to protect the plaintiff's exclusive rights over the trade mark.

8.2 The learned counsel for the plaintiff further submitted that the artistic work consisting the picture of the farmer, the word “VIJAY”, the numbers in black and red and the division of the entire work into three distinct parts was conceived and executed by the employees of the plaintiff in the year 1971. Hence, the plaintiff is the owner of the copyright of the artistic work in M.O.1 and when M.O.1 and M.O.2 are compared, it will be evident that the defendant has infringed the trademark of the plaintiff.



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8.3 The learned counsel for the plaintiff submitted that the defendant's bag is marked as M.O.2 and it can be seen that M.O.2 contains the picture of a farmer with a turban and mustache with folded hands similar to the farmer on the plaintiff's label. The word mark used by the defendant is "VIJAI" which is phonetically identical to the plaintiff's trademark "VIJAY". The defendant has merely replaced the alphabet 'Y' with 'I' only to mislead the public. Thus there is high level of deceptive similarity of both the said marks. Since the defendant's trademark is deceptively similar to that of the plaintiff's registered trademark and copyright, the general public will assume that there is a business relationship between the plaintiff and the defendant because of the long standing dealership agreement between the two parties, which is no longer in existence. Thus, the defendant has infringed the plaintiff's registered Trade Mark No.331470. Therefore, it is contended by the learned counsel for the plaintiff that the profits earned from this impugned sale using the deceptively similar trademark ought to be surrendered to the plaintiff and the defendant ought not to have be permitted to continue marketing the product in the impugned label. For the aforesaid reasons, this Court ought to grant the relief of permanent injunction



restraining the defendant from infringing the trademark and copyright of the plaintiff.

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9. The learned counsel for the defendant submitted that the defendant is the partner of M/s.Vijai Agro and the defendant is none other than an erstwhile dealer of the plaintiff company. The defendant's father P.V.Subramaniam started the proprietary concern under the name and style of "Vijai Agro" in the year 1992 itself and the said concern has been engaged in the business of manufacturing and marketing of urea and fertilizers in gunny sack package containing the word "VIJAI" with the device of a farmer and other descriptive matters. The name "VIJAI" was adopted as the name of business concern from the defendant's son. The defendant's partnership firm M/s.Vijai Agro has been a dealer of the plaintiff and has been selling their fertilizers sold under the mark "VIJAY". The plaintiff is well aware that the defendant's firm has also been manufacturing and dealing with the fertilizers bearing the tradename "VIJAI" since from the date of the dealership agreement i.e. from the year 1999.



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9.1 It is further contended by the learned counsel for the defendant that after almost a decade of being in business with the defendant, the plaintiff has terminated the dealership with the defendant and initiated the present proceedings against the defendant challenging its usage of “VIJAI”. Having done business with the defendant under the tradename “VIJAI”, the objection raised by the plaintiff is wholly bereft of reason. If at all the plaintiff was vigilant in protecting trademarks, it ought to have initiated proceedings as and when it came to know that the defendant was using an allegedly similar mark as that of plaintiff, at the time of entering into the dealership agreement. The Hon'ble Supreme Court in the case of ***Power Control Appliances and others Vs. Sumeet Machines Pvt. Ltd., reported in (1994) 2 SCC 448***, held as under:

“ .. is a course of conduct inconsistent with the claim for exclusive rights in a trademark, trade name etc. It implies positive acts; not merely silence or inaction such as is involved in laches. “It is important to distinguish mere negligence and acquiescence”. Acquiescence is one fact of delay. If the plaintiff stood by knowingly and let the defendants build up an important trade until it had become necessary to crust it, then the plaintiffs would be stopped by their acquiescence. If the acquiescence in the infringement amounts to consent, it will be a complete defence. The acquiescence must be such



as to lead to the inference of a licence sufficient to create a new right in the defendant.”

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On the interpretation of the above propositions, the plaintiff, having complete knowledge of the fact that the defendant was using the mark “VIJAI”, during the entirety of its dealership with the plaintiff i.e., until 2008, waited for the right time until the defendant slowly grew in the business and started being recognized by the members of the trade.

9.2. The usage of farmer device in the gunny bags while selling the fertilizers is common to trade and the same cannot be curtailed by the plaintiff for its own gains. The plaintiff is not the sole user of such a device and it is to be noted that there are visual differences between the plaintiff's farmer device and the defendant's farmer device. The artistic work involved is wholly different and the theme of farmer cannot be appropriated by the plaintiff under any circumstances.

9.3 The learned counsel for the defendant further submitted that the plaintiff is not the patent holder of N-P-K 17% formulae and it is open to traders in the market to manufacture the same. The allegations pertaining to copying the contents of the plaintiff's gunny bag in order to pass off the



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defendant's gunny bag and fertilizer as that of the plaintiff's is entirely misplaced as it is a standard format of contents that the defendant has been producing since the time it started manufacturing. Hence, it is false to state that the defendant is attempting to pass off its "VIJAI" fertilizers as that of the plaintiff's "VIJAY". The defendant's use of the mark "VIJAI" is protected under Section 35 of the Trade Marks Act, 1999. The said provision extends protection to persons using their name, which in the present case, can be extended to the defendant's son.

9.4 It is the main contention of the learned counsel for the defendant that since the defendant and her products have been in existence even prior to the dealership agreement with the plaintiff, there cannot be any allegations of misappropriating the plaintiff mark "VIJAI". For the aforesaid reasons, the suit is liable to be dismissed.

10. The case of the plaintiff is that the plaintiff is a registered Proprietor of the trademark "VIJAY" under Trade Mark No.331470 in Class 1, Part A, dated 12.12.1977 used in respect of Ammonia, Urea, Complex Fertilizers and Biofertilizers. The plaintiff's trademark "VIJAY" was



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conceived in the year 1971 by M/s.Hindustan Thompson Associated Limited. Commander-in-chief Road, Madras who were employed by the plaintiff on a professional basis for consideration to do the job. The entire artistic work produced by this company has been the property of the plaintiff since 1971. The plaintiff is also the owner of the copyright of the artistic work in M.O.1. The plaintiff learnt that the defendant was surreptitiously selling substandard fertilizer under the trademark “VIJAY” by adopting all the essential features of the plaintiff's gunny bag.

11. The defendant was the wholesale purchaser of the plaintiff fertilizer. Therefore, the plaintiff immediately terminated the dealership agreement on 28.08.2008 and blacklisted the defendant on the same date. The artistic work consisting of the picture of the farmer, the word “Vijai”, the numbers in black and red colour and the division of the entire work into three distinct parts was conceived and executed by the employers of the plaintiff in the year 1971. The defendant bag marked M.O.2 which contains the picture of the farmer with Turban and Mustache with folded hands similar to the farmer on the plaintiff's label. The word mark used by the defendant “VIJAI' is phonetically identical to the plaintiff's trademark



“VIJAY”. The defendant has merely replaced the alphabet 'Y' with 'I' only to mislead the public. There is a high level of deceptive similarity of both the trademarks. Since the defendant's trademark is deceptively similar to that of the plaintiff's registered trademark and copyright, the general public will assume that there is a business relationship between the plaintiff and the defendant because of the long standing dealership agreement between the two parties, which is no longer in existence. Soon after came to know about the infringement of the trademark and copyright, the plaintiff terminated the dealership agreement and also filed the suit.

12. The case of the defendant is that the defendant is the partner of M/s.Vijai Agro and she is none other than an erstwhile dealer of the plaintiff company. The father of the defendant Mr.P.V.Subramaniam started the proprietary concern under the name and style of “M/s.Vijai Agro” in the year 1992 itself and the said concern has been engaged in the business of manufacturing and marketing of urea and fertilizers in gunny sack package containing the word “VIJAI” with the device of a farmer and other descriptive matters. The name “VIJAI” was adopted as the name of business concern from the name of the defendant's son. The partnership firm M/s.Vijai



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Agro was the dealer of the plaintiff and selling their fertilizers under the mark “VIJAY”. The plaintiff is well aware that the defendant's firm has also been manufacturing and dealing with the fertilizers bearing the trade name “VIJAI” since from the date of the dealership agreement i.e. from the year 1999. Almost a decade after the plaintiff has terminated the dealership with the defendant and initiated the present suit challenging the usage of “VIJAI”.

13. The plaintiff having complete knowledge of the fact that the defendant was using the mark “VIJAI” during the entirety of its dealership with the plaintiff till 2008, waited for the right time until the defendant slowly grew in the business and started being recognized by the members of the trade. The fertilizers is common to trade and the same cannot be curtailed by the plaintiff for its own gains. The plaintiff is not the sole user of such a device and there are visual differences between the plaintiff's farmer device and the defendant's farmer device. The artistic work involved is wholly different and the theme of farmer cannot be appropriated by the plaintiff under any circumstances. Therefore, the plaintiff is not entitled to get any relief as sought for and hence the suit is liable to be dismissed.



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14. Issue No.1:***(i) Whether this Court has jurisdiction to entertain and try the suit ?***

According to the plaintiff, the plaintiff have their office at No.2, Chittaranjan Road, Teynampet, Chennai – 600 018 within the jurisdiction of this Court. As per the provisions under Section 134(2) of the Trademarks Act, and Section 62 (2) of the Copyright Act, the plaintiff is entitled to file the suit before this Court. Though the defendant has raised an issue with regard to the jurisdiction of this Court, the plaintiff's office is situated in Chennai and also the defendant entered into a dealership agreement with the plaintiff and the plaintiff also registered the trademark and copyright before the competent authority in Chennai. The suit is filed for the infringement of the trademark and copyright.

14.1 The main contention of the plaintiff is that the defendant was a dealer of the plaintiff and entered into a dealership agreement on 07.04.1999. The defendant continued to be dealer of the plaintiff from 07.04.1999 till the year 2008 and the plaintiff learnt that the defendant was selling sub-standard fertilizer under the trademark “VIJAI” by adopting all the essential features of the plaintiff's gunny bag. Hence, the plaintiff immediately terminated the



dealership agreement with the defendant on 28.08.2008 and blacklisted the defendant on the same date. The said termination letter sent by the plaintiff dated 04.07.2008 to the defendant is marked as Ex.P6.

14.2 The present suit is filed in respect to infringement of trademark and copyright. As the plaintiff is having their office at Chennai, under Section 138 (2) of the Trademarks Act and Section 62 of the Copyright Act, this Court has got the jurisdiction to try the suit. Accordingly, Issue No.1 is answered in favour of the plaintiff.

15. Issue No.2:

Whether the plaintiff has acquiesced use of the mark “VIJAY” by the defendant ?

According to the plaintiff, the plaintiff is the registered proprietor of the Trade Mark No.331470 in Class 1, Part A, dated 12.12.1977. In order to prove the same, the plaintiff also marked the legal certificate of the trademark No.331470 dated 12.12.1977 as Ex.P2. As per the registered trademark certificate, the plaintiff is the owner of the trademark and also the owner of the artistic work in M.O.1. According to the plaintiff, the plaintiff



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was vigilant about its right in the registered trademark “VIJAY” and has taken appropriate legal action as and when required against unscrupulous traders who have tried to imitate its well known trademark.

15.2 The plaintiff learnt during August, 2008 that the defendant started to use the trademark in marketing fertilizer with trademark “VIJAI” phonetically similar to that of the plaintiff. The deceptive similar trademark is able to be seen from the defendant's gunny bag which is marked as M.O.2. The defendant was the dealer of the plaintiff. There was also dealership agreement on 07.04.1999. The said dealership agreement is also marked as Ex.P5, as per which the defendant continued to be the dealer of the plaintiff from 07.04.1999 till 2004. During August, 2008 the plaintiff found that the defendant was surreptitiously selling substandard fertilizer under the trademark “VIJAI” by adopting all the essential features of the plaintiff's gunny bag and hence the plaintiff immediately terminated the dealership agreement with the defendant on 28.08.2008 and blacklisted the defendant on the same date. The termination letter sent by the plaintiff to the defendant has been marked as Ex.P6.



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15.3 The plaintiff, without any delay or laches has approached this Court for a remedy against the unauthorized usage of the defendant and to protect the plaintiff's exclusive right over the trademark "VIJAI". Therefore, the plaintiff has not acquiesced the use of the trademark "VIJAI" by the defendant.

15.4 According to the defendant the plaintiff is well aware that the defendant was also manufacturing and dealing with the fertilizer under the trade name "VIJAI" since the date of dealership agreement from the year 1999. Almost after a decade, the plaintiff has terminated the dealership with the defendant and filed the present suit challenging the usage of the defendant's mark "VIJAI". Having done business with the defendant under the trade name "VIJAI" the objection raised by the plaintiff is solely bereft of reason. If at all the plaintiff was vigilant in protecting the trademark, it ought to have initiated the proceeding as and when the defendant was using an already similar mark as that of the plaintiff at the time of entering into the dealership agreement.



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15.5 In support of the same, the learned counsel for the defendant has placed the reliance on the judgment of the Hon'ble Supreme Court in the case of ***Power Control Appliances and others Vs. Sumeet Machines Pvt. Ltd., (cited supra)***. The plaintiff having the complete knowledge of the fact that the defendant was using the mark “VIJAI” during the entirety of its dealership with the plaintiff i.e., until 2008, waited for the right time until the defendant slowly grew in the business and started being recognized by the members of the trade. Therefore, the plaintiff acquiesced the use of trademark “VIJAI” by the defendant.

15.6 The plaintiff has specifically stated in his pleadings and also the proof affidavit, they came to know about the infringement of the trademark and copyright by the defendant only in the year 2008 and immediately, they terminated the dealership and also filed the suit. However, the defendant has stated that the plaintiff knows the alleged infringement even from the date of dealership obtained by the defendant from the plaintiff. In order to substantiate the case, the plaintiff examined the Development Manager (Legal) Madras who was authorized to give evidence on behalf of the plaintiff and he has reiterated the averment made in the plaint in his proof



affidavit.

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15.7 The plaintiff has specifically stated about the knowledge of the infringement. It is for the defendant to establish that the plaintiff was aware of the infringement in the year 1999 or much prior to the year 2008. On the side of the defendant, no oral and documentary evidence has been produced. Therefore, the initial onus has been shifted to the defendant. It is for the defendant to discharge his onus that the plaintiff was aware of the infringement prior to 2008. Though the defendant was a dealer of the plaintiff and they entered into the dealership agreement, there is no material to show that prior to the year 2008, the plaintiff was aware of the infringement of the trademark committed by the defendant. Therefore, Issue No.2. is answered accordingly in favour of the plaintiff and against the defendant.

16. Issue Nos.3, 4 & 5:

3. Whether the defendant has committed infringement of Copyright ?



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4. Whether the defendant's trademark is deceptively similar to the plaintiff's trademark ?

5. Whether the defendant has committed infringement of trademark ?

According to the plaintiff, the plaintiff is the first person in the industry to adopt the device of a farmer with respect to fertilizers in the year 1971. Hence, the plaintiff alone is the exclusive proprietor of their Trademark “VIJAY” along with the device as shown in M.O.1, since the year 1971. The defendant intentionally copied the plaintiff's trademark in a dishonest manner who has to be permanently enjoined by the order of this Court. The defendant has entered into dealership agreement with the plaintiff only in the year 1999. It is the contention of the defendant that she is using the trademark M/s.Vijai Agro since the year 1992 but no material has been produced to show that she was using the said trademark. When the plaintiff specifically stated that they are using the trademark along with the device of a farmer from the year 1971 and defendant using the trademark since the year 1999 not from the year 1992, it is for the defendant to prove her case the same. However the defendant has not produced any document to show that she was using the trademark M/s.Vijai Agro from the year 1992.



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16.1 The defendant has neither come in to the witness box nor produced any documentary evidence to substantiate her claim that she was using the said trade mark since the year 1992. Further, the specific case of the plaintiff is that the goods dealt with by the plaintiff and the defendant are similar and the defendant cannot claim any vague differentiation of goods. After coming to know about the infringement committed by the defendant, the dealership agreement was immediately terminated, however, the defendant has not challenged the same. If at all the defendant is really aggrieved by the termination of the dealership agreement, she would have taken appropriate legal action against the plaintiff. But till date no such steps have been taken by the defendant against the plaintiff.

16.2 According to the plaintiff, the defendant has chosen to describe the right descriptive material on the gunny bags using the exact same shade and colour in the exact same form with the same get up and lay out of the plaintiff. The guilty intention of the defendant is in the choice of colour scheme, get up and the layout. In every manner possible, the defendant has copied the trademark of the plaintiff. The copyright in the former device and trademark "VIJAY" in the artistic font belong to the plaintiff and there is no



mandatory requirement for obtaining registration under the Copyright Act.

The defendant copied and reproduced all the substantial features of the plaintiff's copyright.

16.3 The plaintiff alone is the registered proprietor of the trademark and copyright "VIJAI" along with the device of a farmer. The device of farmer is not common to trade as alleged by the defendant. The plaintiff is very cautious and alert in protecting its valuable statutory rights and taking legal action against the infringer. The defendant being one such infringer cannot take the false defense such as the trademark is common to the trade.

16.4 In order to substantiate the case the plaintiff, the plaintiff has produced all relevant supporting documents. However, no oral or documentary evidence has been produced on the side of the defendant. Nothing has been brought on record by the defendants to prove that the defendant has not infringed the copyright of the plaintiff. The defendant did not even come into the witness box and subjected herself for cross-examination and not even produced any documentary evidence to prove her case. On producing the trademark certificate and also marking Ex.M.O.1, the



plaintiff has established its ownership of the trademark and copyright.

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16.5 Admittedly the plaintiff is the manufacturer of the mixture fertilizer and the defendant's dealership was terminated by the plaintiff especially on the allegation of infringement of trademark. The pleadings taken by the plaintiff was substantiated by oral and documentary evidence and hence the onus has been shifted to the defendant. Therefore, it is for the defendant to discharge her onus. As already stated that the defendant has neither come into the witness box nor examined any competent witness and have not marked any documentary evidence.

16.6 According to the plaintiff, the artistic consisting the picture of farmer, the word “VIJAY”, the numbers in black and red and the division of the entire work into three distinct parts was conceived and executed by the employees of the plaintiff in the year 1971. In order to substantiate the above claim, the artistic work done in the gunny sack is marked as M.O.1 and the defendant gunny bag is marked as M.O.2. When M.O.1 and M.O.2 are compared, it is evident that the defendant has infringed the trademark of the plaintiff. Though there are some differences here and there, however the



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main features are similar. The defendant's bag M.O.2 contains the picture of a farmer with a turban and mustache with folded hands similar to the farmer on the plaintiff's label. The word mark used by the defendant is “VIJAI” which is phonetically identical to the plaintiff's trademark “VIJAY”. The defendant has merely replaced the alphabet 'Y' with 'I' only to mislead the public. A bare perusal of M.O.1 and M.O.2 reveal that there is a high level of deceptive similarity of both the said marks.

16.7 Since the defendant's trademark is deceptively similar to that of the plaintiff's registered trademark and copyright, the general public will get confused. Though the defendant has stated that the defendant is the partner of “M/s.Vijai Agro” and the defendant is the erstwhile dealer of the plaintiff company, the defendant's father P.V.Subramaniam started the proprietary concern under the name and style of M/s.Vijai Agro in the year 1992 itself and engaged in the same business and the name “VIJAI” was adopted as the name of business concern from defendant's son name, however, as already stated, the defendant neither come into the witness box nor produced any document, to shows that they, started their business in the year 1992 and also they are partnership firm.



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16.8 Even though the defendant has stated that no remote possibility of confusion and deception in the minds of public and the defendant has not adopted the trademark of the plaintiff and the defendant's trademark is independent and different, but however a perusal of the M.O.1 and M.O.2, though there is a slight difference here and there, the defendant is using the deceptively similar trademark of the plaintiff. The use of the trademark “VIJAI” is bound to create confusion and deception in the trade market. Further both the products are similar and admittedly the defendant was the dealer and she took the dealership and naturally the general public will assume that there is business dealership between the plaintiff and the defendant because of the long standing relationship agreement between the two parties which is no longer in existence. The defence of the name “VIJAI” was adopted as the name of the business concern from the defendant's son, cannot be accepted because the defendant has not established that he was doing the business from the year 1992 and also there was no similarity. On the bare look of M.O.1 and M.O.2, which are the gunny bags used by the plaintiff and defendant for selling the fertilizers, it is found that the defendant's trademark is simply similar to the plaintiff's trademark. Accordingly, these issues are answered in favour of the plaintiffs.



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17. The plaintiff has pleaded and proved their case by oral and documentary evidence and all the issues are answered in favour of the plaintiff and against the defendant. Though the defendant has denied all the averment made by the plaintiff by way of written statements, he has not let in any oral or documentary evidence and nothing has been established from the evidence of P.W.1 during the cross-examination. The citations referred to by the learned counsel for the defendant are not applicable to the present case on hand. There is no quarrel on the settled proposition of law as laid down in the judgment of Hon'ble Supreme Court in the case of ***Power Control Appliances and others Vs. Sumeet Machines Pvt. Ltd., (cited supra)***. In this case the defendant has not established the fact that the plaintiff is aware of the infringement even from the year 1999.

18. The plaintiff has specifically stated that they came to know only in the year 2008 and immediately they terminated the dealership agreement and put the defendant also in blacklisted. The plaintiff also established their case through the oral and documentary evidence. The device adopted by the defendant is similar to that of the plaintiff's device and imitate the plaintiff's device. Further, the defendant has also not challenged the termination



agreement and therefore the reasons of infringement as stated by the plaintiff for termination of dealership agreement is also not challenged. The defendant has also not produced any oral and documentary evidence to prove her case. Therefore, under such circumstances, this Court comes to the conclusion that the plaintiff has proved its case.

19. In the result, the Civil Suit is decreed as prayed for and the Defendant is directed to render a true and faithful account of the profit earned by using the artistic work and the infringing mark 'VIJAY' as shown in M.O.No.2 and such profit to be paid to the plaintiff's for the infringement of their Copyright and Trade Mark in Document No.1 and 2, within a period of three months from the date of receipt of a copy of this Judgment. No costs.

02.01.2025

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
bkn

**ANNEXURE****Plaintiff side witness:** P.W.1 – Mr.R.K.Balamurugan

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Documents exhibited by the plaintiff:

SNo	Exhibit	Description of the document
1	Ex.P1	Original of Authorization letter dated 09.09.2021
2	Ex.P2	Photocopy of Legal use certificate of Trade Mark No.331470 dated 12.12.1977
3	Ex.P3	Photocopy of Renewal letters dated 19.12.1991 & 04.09.2006 of the Trademark
4	Ex.P4	Original of Cash Bill No.363 dated 28.08.2006 of Raj Agencies
5	Ex.P5	Photocopy of Dealership Agreement dated 07.04.1999 between the plaintiff and the defendant.
6	Ex.P6	Photocopy of Termination letter by the plaintiff dated 04.07.2008
7	Ex.P7	Photocopy of Sales Invoices from the year 1997 to 2008
8	Ex.P8	Original sales invoices from the year 2008 to 2019
9	Ex.P9	Photocopy of Plaintiff sent letter dated 28.08.2008 to the other fertilizer manufacture by them

	M.O.1	Plaintiff's Gunny bag using the Trademark “VIJAY”
	M.O.2	Defendant's Gunny bag using the Trademark “VIJAI”

Defendant side witness and Exhibits: Nil**02.01.2025
(2/2)**



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P.VELMURUGAN, J.

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