



C.R..P.(PD)(MD).No.434 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(PD)(MD)No.434 of 2025

and

C.M.P(MD) No.2498 of 2025

Periyasamy Servai Chandran
S/o. P.Periyasamy Servai,
Proprietor of SMAART HOME FURNITURE,
Having Head Office at
No.3, New Natham Road,
Iyer Bungalow,
Madurai.

... Petitioner/Petitioner/
Defendant

Vs.

1. A.Ganesan
S/o. Mr.Annamalai,
Partnership of
“Smart Home Grand”,
having head office at
No.232, Nayakkar New Street,
Madurai – 625 001.

2. A.Venkat Annamalai,
S/o. Mr.Annamalai,
Partnership of
“Smart Home Grand”,
having head office at
No.232, Nayakkar New Street,
Madurai – 625 001.

... Respondents/Respondents/
Plaintiffs



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PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order passed in I.A.No.915 of 2020 in O.S.No.126 of 2019, on the file of the Principal District Court, Madurai, dated 12.01.2024.

For Petitioner : Mr.H.Arumugam

ORDER

The defendant in O.S.No.126 of 2019 on the file of the Principal District Court, Madurai, is the revision petitioner herein.

2. The respondents herein as plaintiffs have filed the above said suit for the relief of permanent injunction restraining the defendant from in any way infringing the registered trade mark of the plaintiffs by using, adopting or copying the word “SMART HOME GRAND” either individually or collectively. They have also sought for a permanent injunction restraining the defendant from in any way to start new business at any place in Tamil Nadu in the name and style of “SMART HOME FURNITURE” and for mandatory injunction to close all the shops running business in the name and style of “SMAART HOME FURNITURE” especially at Madurai and anywhere in Tamil Nadu.



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3. The defendant has filed a written statement contending that the plaintiffs in paragraph No.5 of the plaint have contended that they are a registered partnership firm and they have sought for infringement of a registered trade mark. However, no records have been produced by the plaintiffs to establish the fact that they are a registered partnership firm. Pending suit, the defendant has filed I.A.No.915 of 2020 under Order 7 Rule 11 of C.P.C, to reject the plaint under Section 69 of Indian Partnership Act, 1932. According to the defendant, the suit by an unregistered partnership firm is not maintainable and therefore, the suit is liable to be rejected.

4. The plaintiffs have filed a counter contending that they have simply stated that they are partners running a business and they are not a registered partnership firm. It was further contended that they have filed the present suit seeking a permanent injunction to prevent infringement of the registered trade mark as against the third parties. In such circumstances, the non registration of a firm would not be a bar for filing the present suit. This plea of the plaintiffs was accepted by the trial Court and the application filed under Order 7 Rule 11 of C.P.C, was dismissed. Challenging the same, the present Civil Revision Petition has been filed.



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5. According to the learned counsel appearing for the revision petitioner, in paragraph No. 5 of the plaint the plaintiffs have specifically contended that they are a registered partnership firm as per the Indian Partnership Act, 1932. In such circumstances, unless the documents are placed before the Court to establish that they are registered partnership firm, the suit is not maintainable and therefore, the plaint ought to have been rejected.

6. This Court has perused the plaint as well as the application filed by the revision petitioner herein in I.A.No.915 of 2020. This Court has also considered the legal effect of Section 69 of Indian Partnership Act, 1932.

7. A perusal of the plaint averments reveal that the suit has been filed by two individuals describing themselves as business partners of “SMART HOME GRAND” and nowhere it is mentioned that they are a registered partnership firm. Admittedly, the plaintiffs in the suit have not entered into any type of contract with third parties to the business run by



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them. A perusal of Section 69 of Indian Partnership Act, 1932, reveals that the suit cannot be filed by an unregistered firm to enforce the right arising from a contract or any other right conferred under the Indian Partnership Act.

8. In the present case, the plaintiffs have not tried to enforce any right arising from the contract or any of their rights conferred under the Indian Partnership Act. The learned trial judge has also relied upon the judgment of the Hon'ble Supreme Court in **2000 (2) Supreme Court 145 (M/s. Haldiram Bhujiweala and another Vs. M/s.Anand Kumar Deepak Kumar and another)**, wherein, the Hon'ble Supreme Court has categorically held that a suit by an unregistered firm for protecting the registered trade mark is not barred by Section 69(2) of the Indian Partnership Act, 1932. In such circumstances, this Court does not find any merits in this petition.



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9. Accordingly, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

18.02.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Principal District Court,
Madurai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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