



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-03-2026

CORAM

THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

(T)OP(TM) No. 245 of 2023
(ORA No.16 of 2017/TM/CHN)

Thiruvalluvar Modern Rice Mill Rep by Managing
Partner D. Balasubramani
S.F. No. 1145,8A-1,9A-1,
Nandavannpudur,
Tirupur Road, Sivanmalai (PO)
Kangayam - 638 701,
Tirupur District

..Petitioner(s)

Vs

1.R.R. Chidambarasamy, Trading as Thirumurugan
Modern Rice Mill
Palani Road,
Achiyur Post
Dharapuram - 638 656

2.Registrar of Trademarks
Office of the Trademarks Registry
GST Road, Guindy,
Chennai – 600032.

..Respondent(s)

PRAYER:(T)OP(TM) No.245 of 2023: This transfer original petition (Trademarks) has been filed under Section 57 of the Trade Marks Act, 1999, praying to rectify the register by removing, expunging, modifying or cancelling the 1st Respondent's registration in respect of the trademark registered under no. 1220037 in class 30.

For Petitioner(s):

Mr.Rajesh Ramanathan
for M/s. Factum Law

For Respondent(s):

Mr. R. Sathishkumar for R1
Mr.R.Subramanian, CGSC for R2



ORDER

The first respondent is the registered proprietor of the following device mark:



Such registration took effect from 04.08.2003. The user claim therein is from 03.08.2003. The petitioner's registered trademark is the following device mark:



2. On the strength of the registered trade mark of the first respondent, the first respondent instituted O.S. No.97 of 2016 against the petitioner before the Principal District Judge, Tiruppur. Said suit was dismissed on 23.08.2021 by granting leave to the plaintiff therein to institute a fresh suit after a decision is taken by the Intellectual Property Appellate Tribunal (the IPAB). The rectification petition was filed on or about 20.07.2017 before the IPAB, and subsequently transferred to the file of this Court.



3. The contentions of Mr.Rajesh Ramanathan, learned counsel, in support of the request for rectification may be summarized as under:

(i) VALLUVAR and THIRUVALLUVAR are widely used not only by the petitioner but also by third parties, including in relation to rice and related products. The documents at pages 103 to 137 of the paper book of the petitioner support this contention.

(ii) The first respondent has relied on invoices issued between 02.11.2003 and 07.03.2016. These invoices do not substantiate a user claim from 03.08.2003. These invoices also do not contain the registered trade mark except by way of the affixing of a rubber stamp on the invoices. The invoices have been issued in the name of Thirumurugan Modern Rice Mill and even the products sold under the invoice do not make reference to the VALLUVAR brand. There is sufficient reason to conclude that the rubber stamp or seal was affixed on these invoices subsequently.

(iii) The petitioner had approached this Court against the order of interim injunction granted in O.S. No.97 of 2016. This Court in a judgment reported in *Thiruvalluvar Modern Rice Mill v. R.B.Chidambarasamy, 2017 SCC OnLine 37798*, at paragraphs 16 to 18, concluded that the name VALLUVAR is associated with the Saint Poet of Tamil, who is revered by the Tamil diaspora, and that no one can claim a monopoly or exclusivity over the name



VALLUVAR or THIRUVALLUVAR. The said order attained finality and the suit was dismissed later, albeit with liberty to file a fresh suit.

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(iv) In *Lal Babu Priyadarshi v. Amritpal Singh*, MANU/SC/1260/2015, the Hon'ble Supreme Court held that the word "RAMAYAN" is *publici juris* and common to the trade. In *IHHR Hospitality Pvt. Ltd. v. Bestech India Pvt. Ltd.*, AIR 2013 Delhi 32, the Division Bench of the Delhi High Court concluded that the trademark 'Ananda' is *publici juris* and that the registered proprietor had failed to provide evidence that it had acquired secondary meaning. In *Chandra Bhan Agarwal and another v. Arjundas Agarwal and others*, AIR 1979 Calcutta 280, the Division Bench of the Calcutta High Court held that the mark 'Dora' is descriptive and that a condition or limitation should be imposed by the Registrar of Trade Marks in relation to such marks.

(v) Relying on these judgments, learned counsel contended that the first respondent cannot be permitted to claim a monopoly over VALLUVAR applied in relation to rice products. Such mark being inherently non-distinctive and weak, at a minimum, a disclaimer should be incorporated so as to prevent the first respondent from abusing the registration and causing prejudice to persons such as the petitioner.

(vi) Although the petitioner's mark contains the element 'VALLUVAR', such mark is a composite mark.

(vii) The petitioner is not aggrieved by the registration in favour of M/s. Meenambiga Rice Mill and is referring thereto to corroborate the contention



that the registrar should not have permitted registration of the first respondent's later deceptively similar mark so as to maintain the purity of the register.

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4. The contentions of Mr.R.Sathishkumar, learned counsel, in response may be summarized as under:

(i) The first respondent has registered a device mark consisting of the words VALLUVAR brand and a pictorial device of VALLUVAR.

(ii) Apart from invoices, the first respondent has also filed the certificate of authorisation dated 20.12.2004 issued under the Agricultural Produce (Grading and Marking) Act, 1937 as also the Agmark registration by the Government of India on 07.09.2006.

(iii) The evidence of alleged use by third parties of VALLUVAR or THIRUVALLUVAR is in the form of photographs. Such photographs do not constitute valid evidence of use. In the judgment of the Hon'ble Supreme Court in *Corn Products Refining Co. v. Shangrila Food Products Ltd*, AIR 1960 SC 142, the Hon'ble Supreme Court concluded that a search report from the Registrar of Trade Marks does not constitute evidence of use. Similarly, these photographs do not establish use by third parties. The judgment of this Court in *P.M.Palani Mudaliar & Co. v. M/s.Jansons Exports and Another*, 2017 SCC OnLine Mad 1090 ("*Palani Mudaliar*"), is relied on for the contention that *publici juris* should be proved by establishing at least substantial use by third parties.



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5. On the basis of these rival contentions, the first question that falls for consideration is whether the petitioner has established that VALLUVAR in relation to rice products is *publici juris*. Neither of the contesting parties opted to adduce oral evidence in this case. As evidence of the alleged wide use of VALLUVAR in relation to rice products, the petitioner has filed photographs of probably packaging at pages 103 to 137 of the paper book of the petitioner. In *Palani Mudaliar*, the Division Bench of this Court examined the defence of *publici juris inter alia* at paragraphs 18 to 20. The Court held that the proper test is whether the use of the trade mark by other persons has ceased to deceive the public as to the maker of the article. In other words, there should be clear evidence of substantial use by third parties. Merely on the basis of the photographs placed on record by the petitioner, I am unable to conclude that VALLUVAR in relation to rice products is *publici juris*.

6. The second contention of learned counsel for the petitioner was that the user claim was made from 03.08.2003, whereas the first respondent has not adduced evidence of use from 03.08.2003. Several invoices have been filed by the first respondent. These invoices were issued between 02.11.2003 and about 07.03.2016. Many of these invoices contain a device with the words



VALLUVAR brand and the pictorial depiction of VALLUVAR. Learned counsel for the petitioner contended that such device appears to have been affixed later. In the absence of oral evidence, I am unable to accept the contention that the device containing the first respondent's mark was affixed subsequently and does not form part of the original invoices. As a consequence, I find that there is evidence of use from 02.11.2003. Although there is no evidence of use from 03.08.2003, the lack of evidence for a period of about three months is insufficient to conclude that the first respondent has committed a contravention warranting interference under Section 57 of the Trade Marks Act, 1999 (the TM Act).

7. The third contention of learned counsel for the petitioner is that the mark of the first respondent is not inherently distinctive and given the finding of this Court that VALLUVAR and THIRUVALLUVAR refer to the Poet Saint of the Tamil people and that no person can claim monopoly or exclusivity over the same, at a minimum, a disclaimer should be incorporated preventing the first respondent from asserting such exclusivity.

8. Under the Trade and Merchandise Marks Act, 1958, it was common to direct the incorporation of disclaimers. In the TM Act, Section 17 has been incorporated and this provision ensures that the proprietor of a composite mark has protection only in respect of such composite mark and not in respect of



elements thereof, unless such elements are separately registered. In the case on hand, the registered mark of the first respondent is a device mark consisting of the word element 'VALLUVAR brand' and a pictorial device of VALLUVAR.

The protection is also limited to such composite mark. Therefore, if the first respondent chooses to initiate an action for passing off upon disposal of this petition, it would obviously be open to the petitioner to contend that there was no misrepresentation by the petitioner in adopting and using its registered trade mark, which as is evident from the depiction, is a composite mark. The District Court would then have to compare the two rival composite marks and arrive at a conclusion in accordance with law.

9. The petitioner also contended that the first respondent's mark should not have been registered in view of the prior registered deceptively similar mark in respect of the same goods. The proprietor of said mark is not before this Court. There is nothing on record to show that said proprietor has approached a court alleging infringement or that rectification was applied for by said proprietor. In the absence of said party, it is not possible to ascertain whether the mark is still being used and, if so, in which geographies. The first respondent has used the trade mark for more than two decades. Hence the challenge on this ground is rejected.



10. For reasons discussed above, I conclude that no case is made out for rectification on any of the grounds canvassed by the petitioner. This petition is, therefore, disposed of subject to observations set out herein without any order as to costs.

11-03-2026

Neutral Citation: Yes/No

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To

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SENTHILKUMAR RAMAMOORTHY, J.

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