

A.S(MD)No.49 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.04.2026

Pronounced on : 22.06.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

A.S(MD)No.49 of 2017

and

C.M.P(MD)No.2774 of 2017

P.Gopal,
S/o.Palanisamy,
Residing at Mellur,
Sevalpatty Post,
Manapari Taluk,
Thuvarankurichi Via,
Tiruchy District.

... Appellant/Defendant

Vs.

M/s.Sama Food Products,
Rep. by its partner Wahidh Hussai,
S/o.J.Mohammed Hussain,
New Door No.53 (Old Door No.45),
Kalla Street,
Tiruchirapalli.

...Respondent/Plaintiff

PRAYER:- This Appeal Suit is filed under Section 96 of the Civil Procedure Code r/w Order 44 Rule 1 of CPC., against the judgment and decree passed in O.S.No.3 of 2011, dated 05.10.2015 on the file of the II Additional District Court, Trichy.

For Appellant : Mr.H.Arumugam
For Respondent : No Appearance



A.S(MD)No.49 of 2017

JUDGMENT

WEB COPY

This Appeal is directed against the judgment and decree, dated 05.10.2015 passed in O.S.No.3 of 2011 on the file of the learned II Additional District Judge, Trichy.

2.The appellant is the defendant in O.S.No.3 of 2011 on the file of the learned II Additional District Judge, Trichy. The respondent is the plaintiff therein. The respondent/plaintiff filed the suit for permanent injunction against the defendant.

3.For the sake of convenience, the parties are referred to as per their rank before the trial Court.

4.The brief facts are as below:

(a) The case of the plaintiff (Respondent herein):-

The plaintiff is a partnership firm doing business in the manufacturing, buying, and marketing of food products. The plaintiff has been selling its products in the name of "ROYAL" products. They applied for registration on 07.10.2009 of their service mark "ROYAL" and also the Logo. The application



A.S(MD)No.49 of 2017

WEB COPY

was allotted the number 1870534. The sale of products within Tamil Nadu has been registered U/s.7(1)27(2) of the Central Sales Tax Act. The plaintiff had already gained a good reputation and goodwill in the industry. The defendant is using the very same trademark "ROYAL" in a deceitful manner and supplying similar products in the name "ROYAL MASALA". The object of the defendant is clearly to deceive the public to lead them into purchasing the defendant's product as that of the plaintiff's product. Hence, the plaintiff filed the suit for permanent injunction restraining the defendant, his men etc., from infringing the plaintiff's trademark ROYAL by using the trade mark ROYAL MASALA or any other similar mark and to restrain the defendant from passing off the trademark and also mandatory injunction to deliver the infringing labels, marks and logo and other materials.

(b) The case of the defendant:-

The defendant has been doing his business in the name and style of M/s.Royal Food Products from 09.09.2009. He applied for registration of trademark with the Trade Mark Registry, and the application number is 1889948. The plaintiff applied for registration only on 07.10.2009, i.e., prior to that, the defendant was using the trade mark ROYAL. Further, the plaintiff launched Sama Food Product under the name of ROYAL MASALA from



A.S(MD)No.49 of 2017

WEB COPY

14.01.2010. So, the defendant sent a legal notice to the plaintiff not to infringe the trademark of the defendant on 13.09.2010. But the plaintiff, to defeat the defendant's right, has filed the suit in a frivolous manner. So, the suit is liable to be dismissed.

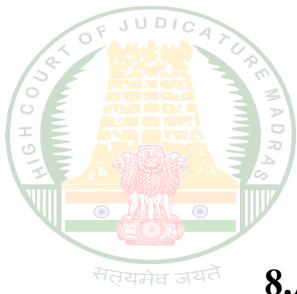
5.The trial Court framed the following issues upon the pleadings of both parties:

(1)Whether the plaintiff is entitled to a permanent injunction and a mandatory injunction as prayed for?

2) To what other relief?

6.During trial, on the plaintiff's side P.W.1 and P.W.2 were examined and Ex.A.1 to Ex.A.19 were marked. On the defendant's side, D.W.1 was examined and Ex.B.1to Ex.B.22 were marked.

7.On appreciation of evidence and on consideration of the arguments made on behalf of the parties, the trial Court has decreed the suit, granting a permanent injunction restraining the defendant from infringing and passing off the trade mark by its judgment and decree, dated 05.10.2015.



A.S(MD)No.49 of 2017

WEB COPY

8. Aggrieved by the judgment and decree of the trial Court, dated 05.10.2015, the defendant has preferred this appeal.

9. The name of the respondent/plaintiff printed in the cause list. But the respondent/plaintiff has not chosen to appear for the hearing of the appeal.

10. Heard the arguments of the appellant/defendant.

11. The points for consideration in this appeal are:

- 1. Whether the judgment and decree of the trial Court is perverse and the same is liable to be set aside?*
- 2. Whether the appeal is to be allowed?*

12. Points 1 and 2:

The learned counsel for the appellant/defendant mainly submitted that the defendant has been using the trade mark ROYAL since 09.09.2009 and he filed an application for registration under application number 1889948. But, the plaintiff is using the very same trademark from 07.10.2009 as ROYAL MASALA and though the plaintiff filed an application, his trademark has not been registered, only an acknowledgement for receipt of their application is



A.S(MD)No.49 of 2017

WEB COPY

marked as Ex.A.3. Mere filing of an application will not be a ground for granting a decree in respect of a trademark. For granting a decree, the trade mark must be registered. Hence, the trial court has erred in decreeing the suit. In support of his contention, the learned counsel for the defendant has relied on the decision of the Hon'ble Supreme Court in the case of **Dhodha House /v/ S.K.Maingi reported in (2006) 9 Supreme Court Cases, 41.**

13.On perusal of appeal records, trial Court records and on consideration of arguments advanced by the defendant, it is clear that both the plaintiff and the defendant are using the trade name ROYAL. Both parties submitted applications for registration of their trade name before the Trade Mark Authority. The plaintiff has sought relief based on Ex.A3, which is an acknowledgement of the application for registration of a trademark. The defendant has also marked Ex.B.4 for registration of their name, Royal Masala Food Products. The defendant claims they are running their business in the name Royal Masala Rood Products from prior to that of the plaintiff and filed an application for registration on 21.07.2009, i.e., prior to the filing of the application for registration by the plaintiff on 07.10.2009.

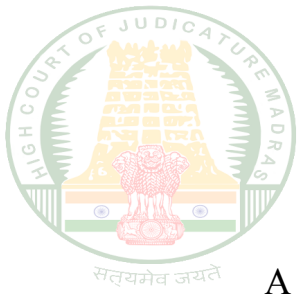


A.S(MD)No.49 of 2017

WEB COPY

14.The main contention of the defendant is that in the absence of registration, the plaintiff cannot be entitled to relief in a trademark suit, so the suit is not maintainable. A careful perusal of the ruling relied on by the defendant, the Hon'ble Supreme Court clearly held in the **Dhodha House case (2006) 9 Supreme Court Cases 41**, it is held in paragraph No.31 as follows:

"31.A cause of action will arise only when a registered trade mark is used and not when an application is filed for registration of the trade mark. In a given case, an application for grant of registration certificate may or may not be allowed. The person in whose favour, a registration certificate has already been granted indisputably will have an opportunity to oppose the same by filing an application before the Registrar, who has the requisite jurisdiction to determine the said question. In other words, a suit may lie where an infringement of trade mark or copyright takes place but a cause of action for filing the suit would not arise within the jurisdiction of the court only because an advertisement has been issued in the Trade Marks Journal or any other journal, notifying the factum of filing of such an application."



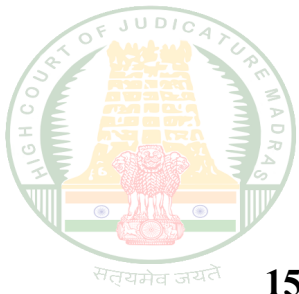
A.S(MD)No.49 of 2017

WEB COPY

A perusal of above verdict, makes it very clear that a cause of action would arise when a registered mark is used and not when an application is filed for registration of the trade mark. In this case, the plaintiff has not marked any certificate of his registered trade mark, but only filed Ex.A.3 - Acknowledgment for registration and number 1870534 is allotted to him. A careful perusal of Ex.A.3 it is revealed as

"The above number is allotted to your application for future correspondence and shall not be mistaken as if the application is accepted or registered."

Hence, it is very clear that the plaintiff's trademark was not registered. The plaintiff who approached the Court has to prove his case and cannot take advantage of the defence. The plaintiff has not marked any certificate of registration of his trademark except ExA.3. Ex.A.3 is only an acknowledgment and allotment of a number, in which it is clearly mentioned that the number is only for correspondence and shall not be mistaken as if the application is accepted or registered. The trial Court has erred in accepting the case of the plaintiff. In this appeal, in spite of the respondent/plaintiff's name being printed in the cause list, there has been no representation on his behalf. Therefore, the plaintiff is not entitled to the relief sought in the suit.



A.S(MD)No.49 of 2017

WEB COPY

15.Considering the above facts and circumstances, the trial Court has not properly adjudicated the case in proper perspective without appreciating both sides evidence and thereby erred in decreeing the suit in favour of the plaintiff. Therefore, the judgment and decree of the trial Court warrant interference by this court by way of this appeal. Thus, the appeal succeeds. The points are answered accordingly.

16.In the result, this Appeal Suit is allowed. The judgment and decree, dated 05.10.2015 passed in O.S.No.3 of 2011 on the file of the learned II Additional District Judge, Trichy are set aside. The suit in O.S.No.3 of 2011 on the file of the II Additional District Court, Trichy is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

22.06.2026

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
VSD



WEB COPY



A.S(MD)No.49 of 2017

To

- 1.The II Additional District Judge,
Trichy.
- 2.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



A.S(MD)No.49 of 2017

P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
A.S(MD)No.49 of 2017
and
C.M.P(MD)No.2774 of 2017**

22.06.2026