

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, TIRUPPUR

**Present:- Thiru. N. Gunasekaran, M.B.A., B.L.,
Principal District Judge, Tiruppur**

Monday, the 28th day of April, 2025

I.A. No. 02/2023 in

C.O.S. No.83/2022

(CNR No.TNTI18 003675 2022)

1. M. Sridhar

2. M/s. MADHU PRODUCTS

3. Sridevi

4. Santhamani

... Petitioners / Defendants

/Vs./

M. Rajalakshmi

... Respondent / Plaintiff

On 14.02.2025, the petition came up before me for the final hearing in the presence of M/s. S.Ramamurthy, Counsel appearing for the petitioner and Thiru.Ramesh Ganapathy, Counsel appearing for the respondent and upon hearing both side and on perusal of case records, this Court delivers the following:-

ORDER

This petition is filed under Order VII, Rule 11 r/w. Sec. 141 and under Sec. 151 of C.P.C. to reject the plaint in suit in C.O.S. No.83/2022.

2) Case of the Petitioners / Defendants in brief from the affidavit accompanying the petition reads as follows:-

The 1st Petitioner herein is the 1st Defendant in the main suit and he filed this affidavit for himself and on behalf of other 3 Petitioners / Respondents. The 1st petitioner is carrying on business under the name and style of MADHU PRODUCTS from the year of 2007 by manufacturing and marketing "Instant Briyani Mix" under the trademark

of "MADHU" and other food paste products. The Respondent/Plaintiff is his own sister and separately carrying on business under the name and style of RAJIYAM FOOD PRODUCTS in his same area from the year of 2016 by manufacturing and marketing of "food products" first under the mark "RAJIYAM" and then adopted the deceptive mark "naMADHU/MADHU" for food products as like that of his packaging label "MADHU".

Since the 1st petitioner aggrieved against the adoption of the deceive mark by the respondent/plaintiff first by "naMADHU" and then "MADHU" for the same "Instant Briyani Mix" paste, he has obtained 'decree and judgment' dated 11/04/2022 in O.S.No.16/2021 from this Court permanently restraining the Respondent/Plaintiff from using such deceptive mark. In Spite of it, the Respondent/Plaintiff is continuously using the mark "MADHU" in relation to above said goods. Therefore, he was constrained to take execution proceedings.

On knowing the same, the Respondent/plaintiff has filed this vexatious suit for declaration that she is having coparcenary or joint rights in his trademark "MADHU" in respect of "instant Briyani Mix" and other food products merely on the false allegations of HINDU UNDIVIDED FAMILY (HUF) rights over the such mark "MADHU".

This court has already rendered Judgment in favour of the 1st petitioner in a suit for "Passing off" action against the Respondent/Plaintiff by holding that he is the Prior User of mark by upholding the basic principle of trademark 'priority in adoption are use prevails over priority in registration envisaged' under Sec 34 of Trademarks Act, 1999.

The main contention raised by the Respondent/Plaintiff the above suit is that her father was carrying on business under the name and style of M/s.MADHU FOOD PRODUCTS as a business unit of "Hindu Undivided Family" by establishing the same in the year of 01.01.2007. But actually her father namely R.Muthusamy was carrying on business under the name and style of MUTHU TRADERS from the year 1993 to 24.12.2008 on which date the trade name of her father has been changed into "MADHU FOOD PRODUCTS" the said trade name "M/S.MUTHU TRADERS" was adopted her father on 24.06.1993 by date by obtaining TNGST Registration on that date as a sole proprietor of the said business unit "MUTHU TRADERS" which was changed in to "MADHU FOOD PRODUCTS" with effect from 24.12.2008. Thereby the averments made by the Respondent/Plaintiff with regard to the father's business unit as a HUF is false one.

When their father was carrying on business under the name and style of "MUTHU TRADERS, the 1st petitioner started his business in the name of "M.S.AGENCIES" by obtaining TNGST Registration on 23.10.1996. The said name was changed into MADHU PRODUCTS" in the year of 08.02.2007. Both his trading style and his father's trading style have been changed in the year of 2007 and 2008, respectively.

Their father was carrying on business as a sole proprietorship unit and submitted Income Tax Returns in his name only, not in the name of HUF. The HUF is neither a firm nor an association of persons. It is separate entity by itself in the eye of Tax Law mainly for Income Tax purpose. And such facts of HUF should have been reflected in the Income Tax Assessment and other Tax purposes. Their father has settled one immovable property in favour of the 1st petitioner under a settlement

deed; dated: 27.07.2015 and the said settled property meant was his father's self-acquired property.

The averments made by the Respondent/Plaintiff with regard to their father's business as HUF business is raised for the first time in the above suit but not in the written statement filed by her in O.S. No.16/2021 and also in other suit in O.S. No.172/2022 filed by her against the 1st petitioner pending on the file of the Additional District Court, Udumalpet, Tirupur. Further no such documents have been filed along with the above said suit for supporting that their father was carrying on business as HUF unit. No cause of action arises in the above suit with reference to the declaratory relief prayed by the respondent/Plaintiff.

The mere reading of the above relief sought for in para No.26 (a) of the above said suit by the Respondent/Plaintiff itself reveals that the suit is one for Declaration under section 34 of the 'Specific Relief Act, 1963' but instead the above suit is said to have been filed under Section 134 and 135 of Trademarks Act for which the Respondent/Plaintiff has totally valued the suit for Rs.10,000/- and paid a court fee of Rs.300/- only as per Section 25 and 28 (c) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955. But the pecuniary jurisdiction of this court is Rs.10 lakhs and above. Therefore, the Respondent/Plaintiff should have paid a court fee Rs.30000/- by valuing the suit for Ten Lakhs under section 25 and 25 (c) of the said Act as on the date of the plaint for such declaration relief only. Suppose the above suit is filed for passing off action or infringement of trademark, then the dispute may be a commercial dispute and the court fee paid by the plaintiff is sufficient. Further, such suit for declaration relief could not be sought for before the Commercial Court because the suit is not for 'commercial dispute' but it seems from the

averments of the plaint, that is a suit for dispute over the inheritance rights over HUF property.

The Respondent/Plaintiff has under-valued the above suit for declaratory relief under the pretext of Trademarks Act, 1999 under which no Declarative Relief could be sought for except for "infringement and Passing off" actions and also any rights in a registered trademark. Hence the plaint is liable to be rejected under Order 7 Rule XI (b) of CPC for under valuation.

The mere reading of the relief prayed in para no 26 (b) indicates that the Respondent/Plaintiff has derived the joint proprietary rights over the trademark "MADHU" as such rights derived from HUF business of her father. But actually, there was no such averments made by the Respondent/Plaintiff in her written statements filed in O.S. No.16/2021 and no such issues were framed to the effect whether the rights over the trademark "MADHU" is derived from HUF. Hence, the cause of action sought in the above said plaint is not in real and therefore the suit is liable to be rejected under Order 7 Rule 11 (a) of Civil Procedure Code.

Most of the averments in the suit plaint is unnecessary, scandalous and vexatious to abuse the process of the Court and therefore it is liable to be struck down. Hence, the petition.

3)Case of the Respondent / Plaintiff in brief from her counter statement reads as follows:-

The suit in C.O.S. No.16/2021 was filed by the petitioner No.1 / Defendant No.1 against the Respondent / Plaintiff to stop using the Trade Mark, "Namadbuth and the said suit was decreed in favour of the Petitioner No.1 / Defendant No. 1 herein. Whereas, the present suit is

with regard to the trade mark, "Madhu" and not the trade mark "Namadu". It is denied that the current suit is in response to the execution of the decree and judgment in C.O.S. No. 16/2021 against the Respondent / Plaintiff. The core contention of the Respondent / Plaintiff is that the trade mark, 'Madhu' was adopted by Mr. R. Muthusamy, the father of the Respondent/Plaintiff, Petitioner No. 1 /Defendant No 1 and Petitioner No.3 / Defendant No.3 and the husband of Petitioner No. 4 / Defendant No. 4. Hence, it is Hindu Undivided Family Trade Mark, therefore the Respondent/Plaintiff herein has the right to file the suit for declaring equal right over the trade mark "Madhu". It is further denied that the petitioner/defendant is the prior user of the trademark "Madhu" and hence cannot claim protection under Section 34 of Trade Marks Act, 1999.

It is vehemently denied that R.Muthusamy, the father of the Respondent / Plaintiff changed the name and style of business from MUTHU TRADERS to MADHU FOOD PRODUCTS in the year 2008. M/s. MUTHU TRADERS is a departmental store and MADHU FOOD PRODUCTS was started along with it by the KARTHA of the HUF Mr. R. Muthusamy for diversifying the HUF business. Mr. R. Muthusamy is the original proprietor and adopter of the trade mark, "MADHU" and it was adopted solely for the purpose of the Hindu Undivided Family (HUF) business M/s. MADHU FOOD PRODUCT, therefore the Respondent / Plaintiff herein being one of the members of the Hindu Undivided Family Member, has equal rights over the trade mark, "MADHU" on par with the Petitioner No. 1/ Defendant No.1 herein.

The cause of action for C.O.S. No. 16/2021 and this present suit are not one and the same. When the trade mark is different, the cause of action is also different and separate. O.S. No. 172/2022 is a 'suit for

partition' and the same is pending before the Additional District Judge, Udumalpet. Whereas, the present suit is a 'suit for declaration' with regard to the Intellectual Property Rights more specifically for trade mark, "MADHU". Trade Mark suits are considered as Commercial suits, both trade mark suits and commercial suits can only be tried by the Principal District Judge. Therefore, the earlier suits C.O.S No. 16/2021 and O.S. No.172/2022, will not hamper the right of the Respondent / Plaintiff herein for seeking a declaration from this Court.

The present suits filed seeking rights under Section 39 and Section 45 of Trade Marks Act, 1999, therefore the present suit is a "commercial dispute" as per Section 2(1) (c) (xvii) of the Commercial Courts Act, 2015 and this Court has jurisdiction by virtue of Section 6 of the Commercial Courts Act, 2015 r/w Sections 39, 45, 134 & 135 of the Trade Marks Act, 1999.

It is denied that the Respondent / Plaintiff has totally under-valued the suit and there is total lack of pecuniary jurisdiction in the present suit. The prayer for declaration of title has been valued as per Section 27(b) of the Tamil Nadu Court Fees & Suit Valuation Act, 1955. The Respondent/Plaintiff has paid sufficient court fees for the present suit and thus it is not liable to be rejected under Order 7 Rule XI (b) of CPC for the reason of under valuation of Court Fees.

The trade mark, "MADHU" is a Family Trade Mark and all the members of the HUF have equal rights over the trade mark, when the equal right is being prevented by other co-owners, or when one of the co-owners claim exclusive right, the Respondent / Plaintiff herein can move to the Court to seek for declaration that the respondent / plaintiff being one of the members of the HUF is also having equal rights.

The respondent / plaintiff cited the following case laws in support of her case:-

1) Shri Ram Education Trust Vs. SRF Foundation & Anr (2016 SCC Online Del 472: PLR (2016) 182 Del3)

2) Krishna Sweets Private Limited, Vs M. Murali 2017 SCC On Line Mad 4405: (2017) 8 Mad LJ 588: (2017) 5 LW 373: (2017) 72 PTC 301:

The petition is highly misconceived and the only intention behind is to delay the litigation and defeat the lawful rights of the Respondent. Thus, this petition is liable to be dismissed in limine. Jurisdiction issue cannot be taken as a ground for rejection of plaint under Order VII, Rule 11. The Petitioner / Defendant is trying to do the same by saying that there is no cause of action. The cause of action is very well explained in the plaint and sufficient court fee has been paid. Therefore, this Petition may be dismissed with exemplary cost.

4) The Point for consideration is

Whether the plaint in C.O.S. No.83/2022 is liable to be rejected or not?

5) No oral evidence was let in from both side. Ex.P.1 to P.10 and Ex.R.1 to R.19 were marked on the side of petitioners and respondent, respectively.

6) POINT:-

Both side heard. Records perused. Admittedly, the suit in C.O.S. No.12/2024 and O.S. No.172/2022 are pending on the file of the Principal District Court, Tiruppur and IV Additional District Court at Udumalpet, respectively. The suit in O.S. No.172/2022 is for the relief of Partition having filed by the respondent / Rajalakshmi herein against the

1st petitioner herein and others. The case in C.O.S. No.12/2024 is filed by the respondent / Rajalakshmi herein and her husband against the 1st petitioner herein for the relief of permanent injunction against the passing off and to deliver the materials in doing so along with damages and to render the account. The case of the petitioners is as follows:-

“The business being carried out under the name and style of ‘MADHU PRODUCTS’ from the year 2007 and the respondent / plaintiff being the sister of the 1st petitioner herein is carrying on the business separately in the name and style of ‘Rajiyam Food Products’ from the year 2016. Later, she adopted the deceptive mark ‘naMADHU/ MADHU for food products as like that of the petitioners packing label ‘MADHU’. In view of the same, the respondent / plaintiff was restrained from using such deceptive mark as per the judgment and decree of this Court; dated:11.04.2022 in O.S. No. 16/2021. In spite of the same, she is continuously using the trade mark ‘MADHU’. The suit for declaration that the trade mark ‘MADHU’ is of Hindu Undivided Family is on false allegation. The suit is undervalued and incorrect Court fee is paid even though the pecuniary jurisdiction of this Court is Rs.10,00,000/- and above. Further, the relief of declaration cannot be asked before the Commercial Court since the same is not under commercial dispute. There is no cause of action in the suit and for the reasons stated above, the plaint in C.O.S. No.83/2022 is to be rejected.”

In contra, the respondent would submit that “The trade mark viz. ‘MADHU’ was adopted by her father viz. Muthusamy and the same is the Hindu Undivided Family Trade Mark in which each member of it had equal right. The cause of action in the suit on hand and C.O.S. No.16/2021 are not one and the same. The suit in O.S. NO.172/2022 is

for partition and the suit on hand is for declaration. The dispute on trade mark is to be considered as a commercial suit and can be tried by this Court. The respondent / plaintiff had valued the suit and paid ad-voleram Court Fee in accordance with law and hence, the petition is liable to be dismissed.”

7) The suit is for declaration and injunction in respect of trade mark ‘MADHU’. The respondent / plaintiff had claimed it to be of her Hindu Undivided Family Trade Mark.

8) As per Sec.2 (1) (c) (xvii) of the Commercial Courts Act, the commercial dispute includes intellectual property rights relating to registered and unregistered trademarks. Suit in relation to infringement of trade mark shall not be instituted in any Court inferior to the District Court having jurisdiction to try the suit as per Sec. 134 of the Trade Marks Act, 1999. On conjoint reading of Sec.2 (1) (c) (xvii) of the Commercial Courts Act and Sec. 134 of the Trade Marks Act, 1999, this Court is competent to try the suit of this nature irrespective of pecuniary jurisdiction. Therefore, the contention of the petitioners / defendants that this Court lacks pecuniary jurisdiction and the relief of the declaration cannot come under commercial dispute are unsustainable. The averment made in the plaint alone is to be looked into in determining the petition seeking rejection of the same. The plaint discloses the cause of action and whether the trade mark viz. ‘MADHU’ belonged to the Hindu Undivided Family or the suit relief is hit by the principle of res judicata or not can be determined only upon trial. The ground of objection with regard to the jurisdiction of Court is not a ground to reject the plaint as per Order VII, Rule 11 of Civil Procedure Code. Queries relating to

return of the plaint was also attended by the plaintiff to the satisfaction of this Court on re-presentation.

9) By considering the facts and circumstances of the case, this Court hold that the suit is maintainable and the petition seeking to reject the plaint is liable to be dismissed and accordingly, the point is answered.

In the result, the petition is dismissed.

Dictated to the Steno-typist, typed by her directly on Computer, corrected and pronounced by me in the open Court dated this the 28th day of April, 2025.

Principal District Judge,
Tiruppur.

LIST OF WITNESSES ON BOTH SIDE: Nil

LIST OF EXHIBITS MARKED ON THE SIDE OF THE PETITIONERS:

Ex.P.1	11.01.2007	Photo copy of Registration Certificate of M.S. Agency
Ex.P.2	11.04.2022	Photo copy of Judgment in C.O.S. No.16/2021 on the file of this Court.
Ex.P.3	16.07.1993	Original Certificate of Registration of Muthu Traders
Ex.P.4	11.01.2007	Photo copy of Certificate of Registration of Muthu Traders
Ex.P.5	23.10.1996	Photo copy of Application for Registration as dealer submitted by M.S. Agencies
Ex.P.6		Photo copy of Income Tax Return Verification form submitted by Muthusamy for the Assessment years 2016- 2017, 2017-2018, 2018-2019, 2019 – 2020 and 2020-2021

Ex.P.7	10.12.2021	Downloaded copy of deposition of DW.1 in C.O.S.No.16/2021 on the file of this Court.
Ex.P.8	12.01.2023	Photo copy of Affidavit submitted by the respondent / plaintiff before the Registrar of Trade Marks
Ex.P.9	13.01.2023	Madhu Biriyani Instant Paste Mix packet with invoice
Ex.P.10	04.12.2022	NaMadhu Paramariyam Biriyani Masala Paste packet with 4 numbers of bill

LIST OF EXHIBITS MARKED ON THE SIDE OF THE RESPONDENT :-

Ex.R.1	--	Photo copy of Aadhar card of the respondent / plaintiff
Ex.R.2		Photo copy of Tax Information – Exchange system with respect to MADHU FOOD PRODUCTS
Ex.R.3	23.09.2017	On line copy of Registration Certificate of MADHU FOOD PRODUCTS
Ex.R.4	--	Certified photo copy of plaint in C.O.S. No.16/2021 on the file of this Court.
Ex.R.5	--	Photo copy of Written Statement in C.O.S. No.16/2021 on the file of this Court.
Ex.R.6	17.12.2021	Downloaded copy of the cross-examination of DW.1 in C.O.S. No.16/2021 on the file of this Court.
Ex.R.7	16.11.2021	Certified photo copy of deposition of PW.1 in C.O.S. No.16/2021 on the file of this Court.
Ex.R.8	26.11.2021	Certified photo copy of deposition of PW.2 in C.O.S. No.16/2021 on the file of this Court.

Ex.R.9		Downloaded copy of alerts received from the Karur Vysya Bank
Ex.R.10	10.02.2022	Downloaded copy of death Certificate of Muthusamy
Ex.R.11	--	Downloaded copy of search result based on GSTIN/UIN 33AEDPM7565H1ZD
Ex.R.12	--	Photo copy of plaint in O. S. No.172/2022 on the file of Principal District Court, Tiruppur
Ex.R.13	05.04.2022	Photo copy of letter addressed by Rajalakshmi to the Superintendent of Police, Tiruppur District
Ex.R.14	04.09.2022	Downloaded copy of Legal heirship certificate of Muthusamy
Ex.R.15	--	Covers and wall poster of Madhu products
Ex.R.16	07.06.2004	Bill issued for telephone No.4632833
Ex.R.17		Professional tax receipts, invoices, rental receipt, credit bill issued in the name of Muthu Traders
Ex.R.18	01.12.2022	Office copy of petition filed by Rajalakshmi to Assistant Commissioner, Udumalpet North under Right to Information Act, 2005
Ex.R.19	05.01.2023	Photo copy of Reply received from the Assistant Commissioner, Udumalpet North with enclosures.

P.D.J.,
Tiruppur.

Draft / Fair Order
I.A.No.02/2023
COS.No.83/2022
Dated:28.04.2025.