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OP(TM).No.36 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-12-2024

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

OP(TM).No.36 of 2024

ASHTAVAIDYAN DR. E. T. YADU NARAYANA
MOOSS
AGES 34 YEARS, S/O ASHTAVAIDYAN E.T.
PARAMESWARAN MOOSS, ELEDATHU
THAIKKATTU MANA, OLLUR,
THAIKKATTUSSERY P.O, THRISSUR, PIN - 680 306.
AND ANOTHER

PETITIONERS

Vs

MR. A V SANKARAN NAMBOOTHIRI,
AGES 59 YEARS, S/O VISHNU NAMBOOTHRI,
TRADING AS M/S. ASHTAVAIDYA HERBAL
PHARMA, EP VIII/251, 252, ETTUMANOOR,
KOTTAYAM, KERALA, PIN - 686 631. AND
ANOTHER

RESPONDENTS

For Petitioners : MR.SHIVAKUMAR

For Respondent(s): MR.S.JANARTHANAM, SPCGSC

ORDER

The draft issues have been filed by both the learned counsels.

This Court, after giving due consideration to the pleadings and the draft

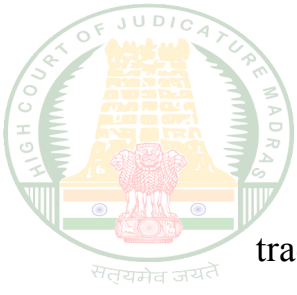


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issues filed by both the learned counsels, frames the following issues:

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1. Whether the term or word 'ASHTAVAIDYA' specifically refers only the petitioner's family and as such the first respondent cannot claim ownership of the trademark?
2. Whether the trademark 'ASHTAVAIDYA' of the first respondent is not a trademark u/s.2(1)(zb) of the Trade Marks Act, 1999?
3. Whether the petitioner has been able to establish that the use of trademark 'ASHTAVAIDYA' by the first respondent has caused or likely to cause deception or confusion in the minds of general public?
4. Whether the registered mark 'ASHTAVAIDYA' of the first respondent is devoid of any distinctive character?
5. Whether the first respondent has adopted the trademark 'ASHTAVAIDYA' to take undue advantage of the petitioner family's reputation and is attempting to pass off his products as that of the petitioners?
6. Whether the trademark 'ASHTAVAIDYA' of the first respondent is a false trade description U/s.2(1)(1) and 2(1)(IV)(a) of the Trade Marks Act, 1999?
7. Whether the user date 01.05.1941 as declared by the petitioners in their



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trademark has been established and proved beyond any reasonable doubt?

8. Whether the user date 07.12.1989 as declared by the petitioners in their subsequent registered trademark has been established and proved beyond any reasonable doubt?
9. Whether the order of abandonment dated 17.08.2017 passed by the second respondent has become final and if so the subsequent fresh application is maintainable?
10. Whether the petitioners had suppressed the fact of filing a subsequent trademark application before the second respondent in the name of 'ASTAVAIDYA THAIKKATTU MOOSS VAIDYARATHNAM'?
11. Whether the registration of the Trademark No.4190562 in class 3 for ASHTAVAIDYA in the name of the first respondent is liable to be prevented under Section 11(3) of the Trade Marks Act, 1999?
12. Whether the trademark ASHTAVAIDYA of the first respondent has been entered in the Register of Trademarks without sufficient cause and is wrongly remaining in the Register of Trademarks and is liable to be

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cancelled and expunged from the Register of Trade Marks under Section 57(2) of the Trade Marks Act, 1999?

Post this case for Case Management Hearing on 09.01.2025.

Both the learned counsels are directed to file a Joint Draft Case Management Schedule on the next hearing date.

10-12-2024

GM

To

1. MR. A V SANKARAN NAMBOOTHIRI,
AGES 59 YEARS,
S/O VISHNU NAMBOOTHRI,
TRADING AS M/S. ASHTAVAIDYA HERBAL
PHARMA,
EP VIII/251, 252, ETTUMANOOR, KOTTAYAM,
KERALA, PIN - 686 631.

2. THE REGISTRAR OF TRADEMARKS,
OFFICE OF THE TRADE MARKS REGISTRY,
GUINDY, CHENNAI , PIN - 600 032.

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