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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
21.07.2026	12.11.2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

OP(TM) No. 529 of 2023

M/s.Seematti Silks,
No.58, Srinagar Colony,
Kumbakonam, Tamil Nadu.

..Petitioner(s)

Vs

1. Ms.T.Beena

2. The Registrar Of Trademarks,
   Office of the Trade Marks Registry,
   IPR Buildings, Industrial Estate SIDCO RMD,
   G.S.T Road, Guindy,
   Chennai-600032

..Respondent(s)

PRAYER: To call for and examine the records of the said registered trademark No.1839635 in class 35 registered and to direct the registrar of trademarks to rectify the said trademark No.1839635 in class 35 in the register by expunging all the entries relating to the said trademark No.1839635 and the registrant be ordered to pay the costs of the present proceedings.

For Petitioner(s): Mr.Rajesh Ramanathan
For Respondent(s): Mr.Ramesh Ganapathay for R1
Mr.A.R.Sakthivel SPCGSC for R2

ORDER

The present petition has been filed seeking to call for and examine the records of the records of the said registered trademark "***Seematti***" under

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No.1839635 in Class 35 registered in favour of the first respondent and to direct the Registrar of Trademarks to rectify the said trademark No. 1839635 in Class 35 in the register by expunging all the entries relating to the said trademark No. 1839635 in Class 35 along with the costs of the present proceedings.

2. The fact giving rise to present case is that, the petitioner is one of largest retail textile establishment, which was opened in the year of 1986 and has been in the textile business for about three decades and the first respondent is the registered proprietor of the impugned trademark, engaged in the same lane of business as that of the petitioner. It is averred that the petitioner is the *bonafide* first adopter, sole and the exclusive owner of the trademark "**SEEMATTI**". The petitioner had adopted the impugned "**SEEMATTI**" mark in the year 1986 and has been using the said mark in the vast range of products and services, as a key and essential portion of the petitioner's house mark, trade name and trading style in respect of various aspects of its operation and activities and had gained a significant degree of fame and reputation among the public in relation to their activities and business. The impugned trademark "**SEEMATTI**" was registered under the Registration No.1839635 in class 35 in the name of the first respondent trading as Seematti, with a use claim of 01.06.1910. It is averred that the First Respondent had made a false claim of use to secure registration of the impugned trademark, which can be substantiated by

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the different dates mentioned as the use of claim in the various applications. Therefore petitioner avers that the first respondent had obtained the registration of the impugned trademark "**SEEMATTI**" under Registration No.1839635 in Class 35 by playing fraud upon the Registrar of Trademark, thereby rendering the impugned trademark liable to be rectified and expunged from the Trademarks Register. The petitioner also asserts that it is the prior user of the impugned trademark and the existence of the impugned trademark would only result in prejudice to the rights of the petitioner. Therefore the petitioner had filed the present Original Petition seeking for rectification of the impugned trademark.

3. The first respondent had filed a counter affidavit, wherein the respondent states that she had been engaged in the textile and fashion-designing business, with her predecessors having established the first textile store under the name of "**SEEMATTI**" in the year 1910. The predecessors of the first respondent had been doing the business under the trade name "**SEEMATTI**" and the same was subsequently taken over by the first respondent.The First Respondent submits that its predecessor obtained registration of the trademark "**SEEMATTI**" as early as 1963. Thereafter, several registrations incorporating the "**SEEMATTI**" mark were also obtained in the subsequent years, in respect of which the First Respondent owns exclusive rights. The trade name

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"**SEEMATTI**" has acquired considerable popularity and reputation among the public, both within India and abroad. It is further averred that the Petitioner had wilfully infringed the First Respondent's registered trademark despite being aware of the latter's exclusive rights therein. Accordingly, the First Respondent contends that the Petitioner has infringed her trademark rights and that the present Original Petition is devoid of merits and prays the same to be dismissed.

4. Upon consideration of the pleadings and documents available on record, this Court framed the following issues for determination.

1. Whether the petitioner is a "person aggrieved" within the meaning of Sections 47 and 57 of the Trade Marks Act, 1999?

*2. Whether the petitioner is the bonafide adopter / user of the Trademark "**SEEMATTI**"?*

*3. Whether the petitioner is the prior adopter or user of the Trademark "**SEEMATTI**"?*

4. Whether the 1st respondent, an adoption user of its mark, is bonafide and honest?

5. Whether the petitioner herein is entitled to the relief as sought for in this Petition.

6. Whether the petitioner herein is entitled to any other relief?

5. Heard Mr. Rajesh Ramanathan learned counsel appearing on behalf of the petitioner, Mr. Ramesh Ganapathy learned counsel appearing on behalf of the first respondent and Mr. A.R.Sakthivel learned Senior Panel Counsel for Central Government appearing on behalf of the second respondent.

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6. Mr.Rajesh Ramanathan the learned counsel appearing on behalf of the petitioner would submit that the petitioner is the *bonafide* first adopter, sole owner and exclusive user of the impugned trademark "**SEEMATTI**", which was adopted by the petitioner in the year of 1986.It is submitted that the Petitioner has continuously used the impugned trademark in relation to a wide range of products and services for nearly three decades, thereby establishing the mark as a well-known trademark in the country and garnering considerable fame and reputation. Thereafter the petitioner had applied for the registration of the mark "**SEEMATTI**" on 20.01.1989 and the same was opposed by the predecessor of the first respondent, the said application was abandoned. The learned counsel submits the first respondent had filed an application on 14.07.2009 for the registration of the impugned trademark "**SEEMATTI**" under the Registration No.1839635 in class 35, with a claim of use since 01.06.1910. He submits that that the first respondent had been aware of the petitioner's exsistance at least since 27.09.1994. Thereafter, the First Respondent instituted a suit for trademark infringement against the Petitioner in O.S. No. 42 of 2018, in respect of its showroom at Thiruvarur, before the VII Additional District and Sessions Court, Ernakulam. The Court refrained from passing any orders concerning the Petitioner's other outlets, which had been in operation for a substantial period, particularly the outlet at Kumbakkonam

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7. Thereafter, the First Respondent instituted a suit for trademark infringement against the Petitioner in O.S. No. 42 of 2018 before the VII Additional District and Sessions Court, Ernakulam, in respect of the Petitioner's showroom at Thiruvarur. Wherein the *ex-parte* interim injunction granted by the Court was subsequently vacated by order dated 22.12.2018. The Court refrained from passing any orders in respect of the Petitioner's other outlets, which had been in operation for a considerable period, particularly the outlet situated at Kumbakonam. It is submitted that the predecessor of the first respondent had obtained earlier registrations of the impugned trademark "**SEEMATTI**" under Registration Nos. 215385 and 215386 both claim use since 1932, however, such claims remain uncorroborated by supporting evidence. Thereafter the first respondent had filed subsequent applications on 14.07.2009 under different class, namely, the Application Nos. 1839635 in class 35, 1839639 in class 24, 1839638 in class 25 and 1839637 in the class 35, wherein the Application No.1839635 was filed with respect to the impugned trademark "**SEEMATTI**" and the other applications, namely, 1839639, 1839638 and 1839637 were filed with respect to the mark "SEEMATTI". The learned counsel points outs that the aforesaid applications claim the use of impugned mark "**SEEMATTI**" and its formative mark "SEEMATTI" since 01.06.1910. The learned counsel submits that since the that the applications for both the trademarks, namely the impugned mark "**SEEMATTI**" and "SEEMATTI" had been filed under the same class 35, on

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14.07.2009 with the claim of use initially as 01.06.1910, which thereby corroborates that the respondent considers both the marksas identical.

8. The learned counsel draws attention to the fact that the Registrar of Trademarks, the second respondent herein had allowed the registrations of the aforesaid applications, namely, Application Nos. 1839635, 1839639 and 1839637 without any objection, however the Application No. 1839638 was alone objected, wherein the first respondent was asked to prove its claim of use, namely the date 01.06.1910. Subsequent to which the first respondent had covertly filed an application and amended the claim of use from 01.06.1910 to 16.02.1995 and had further sworn an affidavit affirming the correctness of the amended claim. The learned counsel vehemently contends that the aforesaid fact alone clearly establishes that the first respondent's claim of use of the impugned mark "**SEEMATTI**" is false and fabricated. The learned counsel submits that the first respondent has until now failed to substantiate its claim of use of the impugned mark since 1910 through any documentary evidence. Thereby clearly establishing the fact that the first respondent had obtained the registration of the impugned mark "**SEEMATTI**" by playing fraud upon the second respondent and the impugned registration is dishonest and the same is *void ab initio*. He further submits that even the first respondent's claim of use since 1932 of the earlier registrations of the impugned "**SEEMATTI**" mark

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stands uncorroborated. Therefore the learned counsel submits that the registration entries of the impugned trademark "**SEEMATTI**" under No.1839635 in Class 35 is liable to be rectified under Sections 57(1) and 57(2) of the Trade Marks Act, 1999 (hereinafter referred to as 'Act'), as the same was effected in contravention of the said provisions.

9. It is submitted that even the subsequent registrations of the impugned mark and its formative marks in the abroad were made only subsequent to the petitioner's adoption of the mark. It is further submitted that the "**SEEMATTI**" mark had only attained the status of the well-known Trademark in connection with the petitioner's business. The learned counsel further submits that the Petitioner is an aggrieved person within the meaning of Section 57 of the Act, and that the continued presence of the impugned trademark on the Trademark Register of the second Respondent would cause irreparable loss and hardship to the Petitioner. Therefore, in view of the foregoing submissions, the learned counsel prays that this Hon'ble Court be pleased to allow the present Original Petition.

10. *Per Contra* opposing the aforesaid arguments Mr. Ramesh Ganapathy learned counsel appearing on behalf of the first respondent would submit that the predecessor of the first respondent is the prior user of the trademark

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"**SEEMATTI**" and had been using the same since 1910. He contends that the Application No.215384 dated 07.05.1963 and the subsequent Application No.215385 dated 07.05.1977, for the Registration and use of the trade mark "**SEEMATTI**" under class 25 and class 24 respectively, clearly substantiates that the first respondent is the prior adopter of the impugned trademark "**SEEMATTI**". He submits that the First Respondent is the proprietor of the impugned mark and its formative marks, and holds registrations for the same under various classes, both in India and abroad. He further submits that the first respondent is the sole and exclusive owner of the "**SEEMATTI**" mark by the virtue of its use and registrations. The learned counsel submits that the Petitioner has knowingly infringed the Respondent's trademark "**SEEMATTI**" and has no legal rights whatsoever in respect of the impugned mark. It is further contended that the claims advanced by the Petitioner are motivated by *malafide* intentions to deprive the Respondent of her lawfully vested rights in the said trademark.

11. It is submitted that the injunction against the petitioner's business outlet in O.S.No.42 of 2018 is still operating against the petitioner till date and a prosecution petition is also pending against the petitioner. The learned counsel submits that the Petitioner has instituted the present rectification petition under Sections 47 and 57 of the Act, which deal with the grounds of non-use and other

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grounds for removal of a registered trademark, respectively. It is contended that the grounds invoked by the Petitioner are not applicable to the facts of the present case, as the Respondent has been engaged in the continuous use of the trademark. The learned counsel further submits that the Petitioner's challenge to the claimed date of use does not, in itself, constitute a ground for rectification under the aforesaid provisions of Sections 47 and 57 of the Act. The learned counsel further submits that the Petitioner has taken inconsistent in its claims with regard to the impugned trademark "**SEEMATTI**". While the Petitioner initially contended that the mark was devoid of distinctive character within the meaning of Section 9(1)(a) of the Act, it subsequently claimed that the impugned mark had acquired distinctiveness exclusively in its favour alone. The learned counsel contends that such contradictory claims are untenable and liable to be rejected. In support of his contention the learned counsel places reliance upon the judgement made by the Hon'ble Apex Court in the case of ***Suzuki Parasrampuria Suitings (P) Ltd. Vs Official Liquidator***, reported in ***(2018) 10 SCC 707*** along with the judgements issued by the Hon'ble High Court of Delhi in the cases of ***Mind Gym Ltd. Vs Mindgym Kids Library Pvt. Ltd.***, reported in ***2014 SCC Online Del 1240*** and ***PEPS Industries (P) Ltd. Vs Kuron Ltd.,*** reported in ***2022 SCC Online Del 3275.*** The aforesaid judgments have consistently held and reiterated that a party cannot be permitted to take inconsistent pleas and cannot approbate and reprobate, particularly where such contradictory positions are detrimental to its own case.

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12. The learned counsel further contends that the present petition is not maintainable as it has been hit by the Doctrine of Waiver, Delay, Laches and Acquiescence. He submits that the dispute between the parities dates back to the year of 1989, wherein the petitioner had admitted that the first respondent's predecessor had objected to the petitioner's Trademark Application with respect to the use of impugned "**SEEMATTI**" mark. He further highlights the fact that petitioner in the present petition had also asserted that the first respondent was aware about the petitioner's existence at least from 27.09.1994. The learned counsel contends that the petitioner has waived off or acquiesced their right to file a rectification petition as the aforesaid circumstances clearly establish the fact that the Petitioner was aware of the existence of the First Respondent's impugned mark "**SEEMATTI**" for more than ten years prior to the filing of the present rectification petition. Therefore it is submitted that the present rectification petition is hit by section 33 of the Act and is not maintainable. In support of his above contention the learned counsel placed his reliance upon the Hon'ble Apex Court judgement made in the case of ***Ramdev Food Products (P) Ltd. Vs Arvindbhai Rambhabi*** reported in ***(2006) 8 SCC 726***, wherein the Hon'ble Apex Acquiescence has been defined as a situation in which one party knowingly stands by while another infringes upon its rights and incurs expenditure in connection therewith, without taking timely action to prevent such infringement. The Hon'ble Apex court had reiterated the decision made in *Ramdev (supra)* in its judgement made in the case of ***Khoday Distilleries Ltd.***

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Vs Scotch Whisky Assn reported in ***(2008) 10 SCC 723***.

13. The learned counsel further submits that the petitioner had approached this court with unclean hands and has suppressed the crucial facts of the present case, such as, the petitioner in his petition had only mentioned about order dated 07.12.2019, wherein the ex-parte temporary injunction granted against the petitioner in order dated 22.12.2018 was vacated. However, the petitioner has not mentioned about the subsequent appeal filed by the respondent before the Hon'ble High Court of Kerala and the injunction being restored *vide* order dated 20.03.2020. He submits that the present rectification petition had been filed in the month of September 2020 which clearly proves that the petitioner had filed the present petition much after the aforesaid order dated 20.03.2020, thereby clearly substantiating that the petitioner's *malafide* intention. Further it is submitted that the different use of claim in the Applications for registration is with respect to use of corresponding different calligraphic styles or artistic designing of the "**SEEMATTI**" marks mentioned therein, but the fact that the first respondent had been the authentic user of impugned "**SEEMATTI**" mark since 1910, will remain unchanged and the same can be substantiated by the documents. Therefore the learned counsel submits that the petitioner is not an aggrieved person, but rather an infringer who has dishonestly adopted the respondent's registered trademark

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"**SEEMATTI**". Therefore in view of forgoing submissions, the learned counsel prays to dismiss the present Original Petition.

14. I have considered the submissions made by the learned counsels appearing on either side and perused the materials placed on record.

15. A primordial objection had been raised by the learned counsel appearing for the first respondent that the application for rectification filed by the petitioner is hit by the principles of acquiescence /waiver which had been repelled too by the counsel for the petitioner by contending that such grounds could not be raised, as the claim of the petitioner for rectification is primarily on the ground that such registration was not made on the grounds of good faith. In that regard, this Court is of the view that the issues 4 & 5 as framed by the Courts would obtain relevance to be decided first before proceeding further on the other issues framed by this Court.

Issue Nos.4&5:-

16. The petitioner had filed the present petition for rectification primarily on the ground that the registration of the Trademark was not on good faith. In that regard, it is to be noted that the petitioner in an application to vacate an injunction which it had suffered, had admitted to certain facts, which would be relevant to be considered. It had admitted too the respondent filing an application for opposition on an application for registration of a Trademark filed

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by the petitioner, wherein it had made a claim that the first respondent was a prior user of the registered Trademark, that was sought to be registered. Such opposition petition was filed by the first respondent in an application filed by the petitioner as early as in the year 1994. Even though the said opposition had been abondoned by the first respondent, it would make clear that the first respondent had claimed usage of the Trademark as early as in the year 1932. It is also to be noted that the first respondent had been benefitted with registered Trademarks based upon its application as early as in the year 1963. It is an admitted case that the petitioner came into being in the year 1986, from which year, it had adopted the alleged Trademark which is also alleged to be used by the first respondent. The benefit of the registered Trademark as early as in the year 1983, would be sufficient enough to hold that the adoption of the Trademark by the first respondent is only in good faith. When the claim of the petitioner that the registration was not in good faith, has not been substantiated, it is for this Court to answer the claim of the respondent as to whether the petition would be hit by the provisions of Section 33 of the Trademarks Act, 1999. Section 33 of the Trademarks Act deals with the ‘effects of acquiescence’ in respect of a right of a proprietor of an earlier registered Trademark. The provision mandates that even a proprietor earlier registered Trademark would be acquiesced, if he had not taken any steps as against a registered Trademark having knowledge of its use of use of the later registered Trademark for continuous period of five years. The only exception that is

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carved out under the provision is that when the later Trademark was not applied in good faith.

17. In the present case, even though the petitioner denies the knowledge of registration of a Trademark by the first respondent as early as in the year 1963, the documents produced by the first respondent clearly indicates that the first respondent had been benefited with the Trademark with a Trade name "**SEEMATTI**" as early as in the year 1963. When that being so, the petitioner, who admittedly started a business using the Trade name "**SEEMATTI**" in the year 1936 and has a registration, is a later Trademark.

18. It is also not denied by the petitioner that on an application filed by the petitioner for registration of a Trademark, the predecessor of the first respondent had taken out an opposition application claiming to be in business from the eyar 1932 in the State of Kerala. When the first respondent had claimed a prior use of the said Trademark as early as in the year 1994, it embodies upon the petitioner to have been diligent in verifying the use of the Trademark by the first respondent and ought to have taken necessary action against the first respondent for rectification of its registered Trademarks. Having failed to do so, and having allowed, the first respondent to continue to use a Trademark atleast from 1994, it would only mean that the petitioner had

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acquiesced himself for the use of the Trademark by the first respondent. When that being so, by the principles that had been laid down in Section 33, even though the petitioner is a later user of the Trademark cannot be allowed to challenge the Trademark that had been registered in favour of the first respondent by taking out application under Section 47 & 57 of the Trademarks Act. In that regard, this Court comes to a conclusion that the petitioner is acquiesced of the usage of the Trade name by the first respondent and the petition as filed would be hit by principles of acquiescence and waiver.

19. In view of the findings arrived at for issue Nos.4 & 5, the further issues that had been framed by this Court and considered views of this Court, need not be dealt upon.

20. In view of the findings of the issue Nos.4&5, this Court is of the view that the petition for rectification of the first respondent Trademark at this length of time by the petitioner is not required to be examined. Accordingly, Original Petition stands dismissed. However, there shall be no order as to costs.

12 **-11-2026**

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To

1. The Registrar Of Trademarks Office of the Trade Marks Registry, IPR Buildings, Industrial Estate SIDCO RMD, G.S.T Road, Guindy, Chennai.

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K.KUMARESH BABU J.

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