

**IN THE COURT OF THE XVIII ADDITIONAL CITY CIVIL JUDGE  
AT BANGALORE CITY**

PRESENT: SRI PADMA PRASAD

B.A.(Law) LL.B.,  
XVIII Additional City Civil Judge.

Dated this the 13<sup>th</sup> day of October 2022

**ORIGINAL SUIT 2487/2021**

PLAINTIFF

Srinivas S. Devathi,  
Aged 44 years,  
S/o Late D. Satyanarayana,  
Residing at No.63, 11<sup>th</sup> 'B' Cross,  
3<sup>rd</sup> Main, Prashanthnagar,  
Bangalore-560 079,  
INDIA.  
Mobile (91)-903-589-4251  
E-mail ID:  
Srinivas@Coolcartechnology. com.

[By Party in Person]

**/v e r s u s/**

- DEFENDANTS: 1. Office of general council,  
United States Patent & Trademark  
Office, Madison Building East,  
Room 10B20, 600, Dulany St,  
Alexandria, VA22314, USA.  
Ph:001-571-272-7000 or (general  
line 001-581-272-1000).  
Represented by Mr. Drew  
Hirshfeld, Director of USPTO.
2. Hulse P.C. (Law firm)  
3300, North I-35, Suite 700,  
Austin, TX-78705, USA  
Ph.No. 001-512-478-9190  
Represented by Mr. Bill Hulse,  
Senior Counsel at Hulse PC.

3. World Intellectual Property Organization (WIPO)  
International Bureau,  
34, chemin des Colombettes  
CH-1211 Geneva 20, Switzerland  
Tel:+41 22 338 8338 or +41 22 338 9111.  
Represented by Mr. Daren Tang,  
Director General at WIPO.
  
4. Office of the Controller General of Patents, Designs and Trade Marks,  
Intellectual Property India,  
Boudhik Sampada Bhavan,  
Antop Hill, S.M.Road,  
Mumbai-400037  
Tel:+ 022-24132735 or 022-24141026.  
Represented by Mr. O.P.Gupta,  
Controller General of Patents,  
Designs & Trade Marks.

## **ORDERS ON MAINTAINABILITY**

The present suit filed by the plaintiff in person for mandatory injunction to revoke the fabricated prior art patents as claimed in the plaint.

2. The case made out by the plaintiff namely Srinivas S.Devathi is that, he has invented a technology of Repeatable Vehicle Color Change Technology in the quarter of the year 2007 in USA

and also got the patent in USA from United States patent and trade marks office (USPTO) on 16/12/2014 bearing no.US8,910,998 and also filed 17 applications in various countries etc., and also got patents about his invention. On that basis, the plaintiff claims for the reliefs claimed in the suit. The plaintiff also claimed that there is a fraud etc., and claimed that there is some fabrication. Further, he states that his invention brings lots of income to the Indian Government etc.,

The prayer claimed by the plaintiff is to revoke and withdraw prior art patent price etc., as claimed in the plaint. The plaintiff filed this suit without disclosing any cause of action and the defendants 1 to 3 are the foreign state authorities and defendant no.4 is the Office of the Controller General of Patents, Designs and Trade marks, Intellectual property, India. Hence, this court raised the objection regarding the maintainability of the suit in the present form.

Accordingly the court directed the plaintiff to advance the arguments regarding the maintainability of the present suit.

3. On the basis of the above, point for consideration is that – **Whether the suit is maintainable in the present form under law or on facts?**

4. Heard the plaintiff in person.

5. Perused the pleading / plaint along with materials placed before the court. On that basis, my findings on the above point is in **negative** for the following:

## **REASONS**

6. At the outset, it is relevant to note that the present suit is filed against the defendants 1 to 3 who are all foreign authorities. The entire plaint nowhere discloses the cause of action for the suit. Any suit can be filed before the court if there is a cause of action for the suit, and there should not be any bar under law to entertain the suit, otherwise the suit is liable to be

dismissed under Order 7 Rule 11 (a) and (d) of the CPC that reads as -

“11. **Rejection of plaint** – The plaint shall be rejected in the following cases:

(a) Where it does not disclose a cause of action;

(d) where the suit appears from the statement in the plaint to be barred by any law.”

7. I have repeatedly gone through the plaint that runs for 44 pages from paragraph 1 to 93 along with prayer found in page no. 42. The entire pleading nowhere discloses the cause of action for the suit. The entire plaint nowhere discloses that trade mark or patent obtained by the plaintiff has been infringed or any other person has obtained the trade mark on the patent obtained by the plaintiff. If at all, anybody has obtained similar patent, the plaintiff has to file a specific suit against that particular person or the authority that has been issued the patent. Infact, there is no material on record to show that the defendants have refused to entertain the claim of

plaintiff. In fact, the plaintiff approached the court without exhausting his rights as contemplated under Section 41 (h) of Specific Relief Act.

8. It is well settled principle of law that a cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is bundle of fact which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant. Since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all material facts on which it is founded. It does not comprise evidence necessary to prove such facts but every fact necessary for the plaintiff to prove to enable him to obtain a decree. But, in the case on hand, the plaintiff has not at all made out any case to show that any of the defendants have denied the claim of plaintiff nor the defendants are aware of the claim of plaintiff or the defendants

are liable to act upon the claim of plaintiff. In the absence of any such material before the court, certainly it cannot be accepted that there is any cause of action for the suit.

9. As the entire plaint nowhere discloses the cause of action, certainly this suit cannot be entertained, and plaint is liable to be rejected.

10. Apart from that, as the defendants 1 to 3 are foreign authorities or envoys, the plaintiff has to file the suit by following Section 86 of the Civil Procedure Code. Section 86 of the Civil Procedure Code speaks about the suits against foreign Rulers, Ambassadors or Envoys. **Section 86 (1) and (2) reads as under:**

**“86. Suits against foreign Rulers, Ambassadors and Envoys-** (1) No foreign State may be sued in any Court otherwise competent to try the suit except with the consent of the Central Government certified in writing by a Secretary to that Government:

Provided that a person may, as a tenant of immovable property, sue without such consent as aforesaid [a foreign State] from whom he holds or claims to hold the property.

(2) Such consent may be given with respect to a specified suit or to several specified suits or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which [the foreign State] may be sued, but it shall not be given, unless it appears to the Central Government that [the foreign State]-

(a) has instituted a suit in the Court against the person desiring to sue [it], or

(b) by [itself] or another, trades within the local limits of the jurisdiction of the Court; or

(c) is in possession of immovable property situated within those limits and is to be sued with reference to such property or for money charged thereon, or

(d) has expressly or impliedly waived the privilege accorded to [it] by this section.”

11. As per Section 86, the suits against foreign Rulers, Ambassadors and Envoys, no one can sue



without the express consent of the Central Government certified in writing by a Secretary to the Government. In the case on hand, the plaintiff has not produced any material before the court to show that he has obtained any such written permission from the Central Government to initiate the suits against defendant no.1 to 9 in the suit. As the defendant has failed to obtain any express consent/ permission from the Central Government to initiate the suit, certainly this suit is barred by law.

12. The defendant no.4 is the Office of Indian Government. Hence, notice under Section 80 CPC to the defendant no.4 is mandatory prior to institution of the suit against defendant no.4. The plaintiff has not caused any such notice to defendant no.4 prior to the filing of the suit. Therefore, considered from any angle, this suit in the present form is not maintainable as the plaintiff failed to make out any cause of action for the suit as well as not obtained any written permission from the Central Government, this plaint is liable to be rejected under Order 7 Rule 11 (a)

and (d) of CPC. Accordingly, this point is answered in **negative**. In the result, following:

## **ORDER**

- The suit is hereby dismissed as not maintainable in view of the non-obtaining of permission in writing from the Central Government to institute the suit against the defendants as per Section 86 (1) and (2) of CPC, and consequently plaint is rejected under Order 7 Rule 11 (a) and (d) of CPC.

\* \* \*

[Dictated to the Judgment Writer directly on computer, ***Script*** corrected, signed and then pronounced by me, in the Open Court on this the 13<sup>th</sup> day of October 2022.]

[PADMA PRASAD]  
XVIII Additional City Civil Judge.  
BANGALORE.

...Order pronounced in the Open Court.... (Vide separate detailed order..)

- The suit is hereby dismissed as not maintainable in view of the non-obtaining of permission in writing from the Central Government to institute the suit against the defendants as per Section 86 (1) and (2) of CPC, and consequently plaint is rejected under Order 7 Rule 11 (a) and (d) of CPC.

[PADMA PRASAD]  
XVIII Additional City Civil Judge.

BANGALORE.

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