
of the petitioner and respondent No. 4. I further hold that the promotion of respondent No. 4 as Superintendents is in accordance with law.

The petition is allowed only to the extent indicated above and the parties are left to bear their own costs.

NARULA, C.J.—I agree.

K.S.K.

Before Shri P. S. Pattar, J.

RANJIT SINGH,—*Defendant-Appellant.*

versus

JASWANT SINGH.—*Plaintiff-Respondent.*

R.S.A. 1337 of 1968

September 12, 1974.

Trade and Merchandise Marks Act (XLIII of 1958)—Sections 27 and 105(c)—Law of passing off—General principle as to —Stated—Person entering trade under a same or similar name of another firm gaining reputation in particular class of goods—Whether can be restrained by the Court from using such name—Suits relating to misuse of trade names—Whether covered by Section 105(c)—Such suits—Whether triable by ordinary civil Courts.

Held, that the general principle of the law of passing off is that no man is entitled to represent his goods as being the goods of another man; and no man is permitted to use any mark, sign or symbol, device or other means, whereby, without making a direct false representation himself to a purchaser who purchases from him, he enables such purchaser to tell a lie or to make a false representation to somebody else who is the ultimate customer. It is, therefore, an actionable wrong for any person to pass off his goods as and for the goods of another person. Further no man is entitled to represent his business as being the business of another by whatever means that result may be achieved. The object of passing off action is to restrain a trader from passing off his goods as and for the goods of another trader. The basis of such an action is deception and false representation by the defendant in regard to the trade origin of the goods.

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Held, that where the name of one particular individual or firm has gained universal reputation in connection with a particular class of goods and a second person enters the trade under a name which is the same or similar and which is likely to cause confusion in the minds of the intending purchasers and the harm thus caused is *prima facie* such as no compensation would be enough to counter-balance it, Court can restrain that person from trading under a name which is similar by granting injunction.

Held, that under section 27(2) of Trade and Merchandise Marks Act, 1958, the Act does not affect rights of action against any person for passing of goods as goods of another person or the remedies in respect thereof. However clause (c) of section 105 of the Act is an exception to section 27(2). Under this clause the passing off suits, which arise out of the use of trade mark, have to be instituted in the Court of the District Judge only. However, this does not deal with other passing off suits, such as those relating to trade names, i.e., misuse of trade names of the individuals, firms and companies, the misuser of the trade name of the goods and passing off goods by means of get up. The passing off suits relating to these i.e., the misuse of the trade name of the plaintiff or trade name of his goods etc. are not covered by section 105(c) and such suits have to be instituted in the ordinary civil Courts having jurisdiction to try the same.

Regular Second Appeal from the decree of the Court of Shri Joginder Singh Sekhon, Senior Sub-Judge with Enhanced Appellate Powers, Ludhiana, dated the 9th day of April, 1968 reversing that of Shri M. S. Lobana, Sub-Judge 1st Class, Ludhiana dated the 11th May, 1967 and decreeing the suit of the plaintiff for permanent injunction restraining the defendant, his servants and agents from using the plaintiff's trade name (business name) "Ex-Soldiers Stores" and dealing and doing the business or selling and offering for sale under that name and further restraining the defendant from using any material bearing the said name and also granting the plaintiff a decree for the recovery of Rs. 75 as damages and leaving the parties to bear their own costs.

K. S. Thapar, Advocate, with Mr. Deepak Thapar, Advocate, for the appellants.

R. K. Chhibber, Advocate, for the respondent.

JUDGMENT

Pattar, J.—This is a regular second appeal filed by Ranjit Singh, defendant, against the judgment dated 9th April, 1968 of the Senior Sub-Judge, Ludhiana, whereby he accepted the appeal of Jaswant

Singh, plaintiff, against the decree dated 11th May, 1967 of Sub-Judge, 1st Class, Ludhiana, dismissing his suit and passed decree in favour of the plaintiff for permanent injunction restraining the defendant, his servants and agents from using the plaintiff's trade name (business name) "Ex-Soldiers Store" and dealing and doing the business of selling and offering for sale under that name and from using any material bearing the same name. The plaintiff was also granted decree for Rs. 75/- as damages. The parties were left to bear their own costs.

(2) The facts of this case are that Jaswant Singh plaintiff and Ranjit Singh defendant were doing the business of purchase and sale of goods in the name and style of Messrs. R. J. Singh and Sons, Chaura Bazar, Ludhiana, since September, 1946. This firm was dissolved on 1st July, 1956 and the firm name was assigned to Ranjit Singh, defendant. The plaintiff Jaswant Singh was to run his business under a different name, with which the defendant was not to have any concern. After the dissolution of the firm, the plaintiff started doing his own business as a dealer in military goods under the name and style of "Ex-Soldiers Store". The plaintiff established his trade and gained his reputation and his business flourished under the said name. The defendant got envious of the plaintiff's increasing business and with a view to cause harm to him and to obtain wrongful gain, started using the trade name of the plaintiff as a part of his trade name and he started passing off and selling his goods so as to lead the general public and customers into an impression as if these were the products and goods of the plaintiff. The changed trade name of the defendant-firm was "R. J. Singh and Sons (Ex-Soldiers Store)". The plaintiff came to know of this practice of the defendant and he served him with a registered notice dated 3rd August, 1965 asking him to refrain from using his trade name, but he did not stop using plaintiff's trade name. The plaintiff, therefore, filed suit for permanent injunction restraining the defendant, his servants and agents from using his (plaintiff's) trade name (business name), namely, "Ex-Soldiers Store" and dealing and doing the business in the said name and from selling and offering for sale goods in that name and asking him to destroy all bills, receipts and records etc. bearing the said name. He also claimed Rs. 100/- as damages from the defendant.

(3) The suit was contested by the defendant. He pleaded that after the dissolution of his firm with the plaintiff, he started doing business under the name and style of R. J. Singh and Sons

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(Ex-Soldiers Store). He denied all other allegations made in the petition. On these pleadings of the parties, the following issues were framed by the trial Court :—

- (1) Whether the plaintiff has an established trade name under the name and style of "Ex-Soldier Store"?
- (2) Whether the defendant is or has used the name under issue No. 1 lawfully?
- (3) Whether the suit for account is maintainable?
- (4) If issue No. 3 is proved, to what damages, if any, is the plaintiff entitled from the defendant?
- (5) Whether the plaintiff is entitled to the injunction prayed for?
- (6) Relief.

The trial Court decided issue Nos. 1, 3, 4 and 5 against the plaintiff and decided issue No. 2 in favour of the defendant. As a result, the suit of the plaintiff was dismissed with no order as to costs. Feeling dissatisfied, the plaintiff filed an appeal against the decree in the Court of the Senior Sub-Judge, Ludhiana. The Senior Sub-Judge held that the plaintiff established his trade under the name and style of "Ex-Soldiers Store" and that the defendant is not proved to have lawfully used that name and the plaintiff is entitled to the injunction prayed for. He reversed the findings of the trial Court on issue Nos. 1, 2 and 5 and decided these issues in favour of the plaintiff. The suit was held to be maintainable and issue No. 3 was decided in favour of the plaintiff. It was held on issue No. 4 that the plaintiff is entitled to Rs. 75/- as damages and decided issue No. 4 in favour of the plaintiff. As a result, the appeal of the plaintiff was accepted and the decree of the trial Court was set aside and the suit of the plaintiff was decreed as mentioned in the earlier part of the judgment. Feeling aggrieved, Ranjit Singh, defendant filed this regular second appeal.

(4) It is undisputed that the name of the firm of Jaswant Singh plaintiff and Ranjit Singh defendant was 'R. J. Singh and Sons' and the dissolution of this firm took place on 1st July, 1956 and this firm name at the time of the dissolution was allotted to Ranjit Singh. The learned Senior Sub-Judge held that it was proved from the evidence that the words, "Ex-Soldiers Store", were never a part of the name of the firm of the parties and these were never used as a prefix or suffix with the name of R. J. Singh and Sons. He held

that after the dissolution of the firm, Jaswant Singh, plaintiff-respondent, started doing his business under the trade name "Ex-Soldiers Store". After some time of the dissolution of the firm, Ranjit Singh, defendant-appellant, changed the name of his firm from R. J. Singh and Sons to R. J. Singh and Sons (Ex-Soldiers Store). It is also undisputed that both these trade names are not registered under the Trade and Merchandise Marks Act, 1958, (hereinafter called the Act). These findings of fact were not contested by the learned counsel for the appellant.

(5) Mr. K. S. Thapar, the learned counsel for the appellant, contended that the suit does not relate to registered trade mark and, therefore, suit for its infringement does not lie. Admittedly, the trade mark or the trade names of the plaintiff and the defendant are not registered under the Act and, therefore, according to section 27 of the Act, suit for infringement of an unregistered trade mark does not lie. But this is not a suit for infringement of a trade mark and so this argument of the learned counsel is not relevant. The present suit relates to passing off action as the defendant is alleged to have adopted the trade name of the plaintiff as a part of his trade name with a view to pass off his goods as and for his (plaintiff's) goods.

(6) The learned counsel for the appellant did not contest the decision of the lower Court on any of the issues framed in the case. He, however, contended that this is a suit for passing off action arising out of the trade mark and, therefore, according to section 105, clause (c), of the Act, it was exclusively triable by the Court of the District Judge and that the Subordinate Judge and the Senior Sub-Judge, Ludhiana had no jurisdiction to try it and, therefore, their decisions are without jurisdiction and should be set aside. This objection was neither taken in the written statement by the defendant-appellant nor it was taken before the lower Appellate Court. However, it being a pure question of law, it is allowed to be taken for the first time in second appeal.

Section 105(c) of the Act reads as follows:—

"No suit—

- (a) for the infringement of a registered trade mark; or
- (b) relating to any right in a registered trade mark; or

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- (c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered ;

shall be instituted in any Court inferior to a District Court having jurisdiction to try the suit."

(7) Therefore, the first question to be decided in this appeal is whether the suit relates to passing off action arising out of the use by the defendant of the trade mark of the plaintiff, which is identical with or deceptively similar to the trade mark of the plaintiff. The words 'trade mark', 'mark', 'name' and 'goods' are defined in clauses (v), (j), (k) and (g) of sub-section (1) of section 2 respectively of the Act and these definitions read as follows :—

“(v) ‘trade mark’ means

- (i) in relation to Chapter X (other than section 81), a registered trade mark or a mark used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right as proprietor to use the mark; and

- (ii) in relation to the other provisions of this Act, a mark used or proposed to be used in relation to goods for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right, either as proprietor or as registered user, to use the mark whether with or without any indication of the identity of that person, and includes a certification trade mark registered as such under the provisions of Chapter VIII.

- (j) ‘mark’ includes a device, brand, heading, label, ticket, name, signature, word, letter or numeral or any combination thereof .

- (k) ‘name’ includes any abbreviation of a name ;

- (g) ‘goods’ means anything which is the subject of trade or **manufacture.**”

Sub-section (2) clauses (a) and (b) of section 2 of the Act reads as follows :—

“In this Act, unless the context otherwise requires, any reference—

- (a) to the use of a mark shall be construed as a reference to the use of a printed or other visual representation of the mark;
- (b) to the use of a mark in relation to goods shall be construed as a reference to the use of the mark upon, or in any physical or in any other relation whatsoever, to such goods.”

Therefore, the essential requirements of a ‘trade mark’ as defined in section 2(1)(v) of the Act are as follows :—

- (a) it must be mark, that is, a device, brand, heading, label, ticket, name or an abbreviation of a name, signature, word, letter or numeral or any combination thereof ;
- (b) it must be used or proposed to be used in relation to goods which are the subject of trade or manufacture ;
- (c) the use must be a printed or the other visual representation of the mark;
- (d) such use must be upon, or in any physical or in any other relation whatsoever to the goods ;
- (e) the use must be for the purpose of indicating or so as to indicate a connection in the course of trade between the goods and some person having the right to use the mark either as proprietor or as registered user. It is not necessary that the person using the mark should reveal his identity.

(8) The general principle of the law of passing off is that no man is entitled to represent his goods as being the goods of another man; and no man is permitted to use any mark, sign or symbol, device or other means, whereby, without making a direct false representation himself to a purchaser who purchases from him, he enables such purchaser to tell a lie or to make a false representation to somebody else who is the ultimate customer. It is, therefore, an actionable wrong for any person to pass off his goods as and for the goods of another person. Further, no man is entitled to represent

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his business as being the business of another by whatever means that result may be achieved. The object of passing off action is to restrain a trader from passing off his goods as and for the goods of another trader. The basis of such an action is deception and false representation by the defendant in regard to the trade origin of the goods. Generally, the following methods are adopted by the persons for representing their goods or business as the goods or business of another person :—

- (1) Direct false representation.
- (2) Adoption of a trade mark which is the same or a colourable imitation of the trade mark of a rival trader ;
- (3) Adoption of an essential part of the rival trader's name;
- (4) Copying the get-up or colour scheme of the label used by a trader;
- (5) Imitating the design or shape of the goods; and
- (6) Adopting the word or name by which the rival trader's goods or business is known in the market."

(9) The distinction between an action for passing off and an action for infringement of trade mark was pointed out by the Supreme Court in *Kaviraj Pandit Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories* (1) as follows :—

"An action for passing off is a common law remedy being in substance an action for deceit, that is, a passing off by a person of his own goods as those of another. But that is not the gist of an action for infringement. The action for infringement is a statutory remedy conferred on the registered proprietor of a registered trade mark for the vindication of 'the exclusive right to the use of the trade mark in relation to those goods.' The use by the defendant of the trade mark of the plaintiff is not essential in an action for passing off, but is the *sine qua non* in the case of an action for infringement. No doubt, where the evidence in respect of passing off consists merely of the colourable use of a registered trade mark, the essential features of both the actions might coincide in the sense that what would be a colourable imitation of a trade mark in a passing off action would also be such in an action for infringement of the same trade mark. But

(1) A.I.R. 1965 S.C. 980.

there the correspondence between the two ceases. In an action for infringement, the plaintiff must, no doubt, make out that the use of the defendant's mark is likely to deceive, but where the similarity between the plaintiff's and the defendant's mark is so close either visually, phonetically or otherwise and the Court reaches the conclusion that there is an imitation, no further evidence is required to establish that the plaintiff's rights are violated. Expressed in another way, if the essential features of the trade mark of the plaintiff have been adopted by the defendant, the fact that the get up, packing and other writing or marks on the goods or on the packets in which he offers his goods for sale show marked differences, or indicate clearly a trade origin different from that of the registered proprietor of the mark would be immaterial; whereas in the case of passing off, the defendant may escape liability if he can show that the added matter is sufficient to distinguish his goods from those of the plaintiff."

(10) Section 27, sub-section (2) of the Act says that nothing in this Act shall be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof. However, section 105, clause (c) of the Act reproduced above is an exception to section 27(2) of the Act. This clause (c) of section 105 of the Act says that the passing off suits, which arise out of the use of trade mark, shall have to be instituted in the Court of the District Judge only. However, this clause does not deal with other passing off suits, such as those relating to trade names, i.e., mis-use of trade names of the individuals, firms and companies, the misuser of the trade name of the goods and passing off goods by means of get up. The passing off suits relating to these, i.e., the misuse of the trade name of the plaintiff or trade name of his goods, etc. are not covered by section 105(c) and such suits will have to be instituted in the ordinary civil Courts having jurisdiction to try the same. In the instant case, there is no allegation in the plaint about the infringement of any trade mark or passing off action arising out of the use of the trade mark of the plaintiff by the defendant. As a matter of fact, neither the plaintiff nor the defendant has any trade marks of his own. During the arguments, it was conceded by the counsel for the parties that both the plaintiff and the defendant purchase similar types of goods from the bazar and sell at their respective shops and the only dispute

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between them is pertaining to the use of the trade name of the plaintiff by the defendant. The dissolution of the firm of the parties took place on 1st July, 1956. The trade name of the firm, namely, R. J. Singh and Sons was allotted to the defendant-appellant Ranjit Singh. Thereafter, Jaswant Singh, plaintiff, started his separate work under the name "Ex-Soldiers Store". However, sometime prior to the filing of this suit, the defendant added to the name of his firm the name of the plaintiff's firm, i.e., 'Ex-Soldiers Store' and put up a board to that effect on his shop and also started writing these words on his bills. The shop of the plaintiff adjoins the shop of the defendant. As a matter of fact, both the shops are two parts of the same shop. Both the parties are dealing in same and similar kind of goods and, therefore, there is a strong probability of the general public being deceived, and they may take the shop of the defendant to be that of the plaintiff. This suit relates to a passing off action arising out of the use of the trade name of the plaintiff by the defendant and it has nothing to do with the trade mark and consequently clause (c) of section 105 of the Act has no application to this suit. This suit, therefore, could be filed in the Court of the Subordinate Judge. There is no force in the contention of the learned counsel for the appellant and the same is rejected.

(11) As mentioned above, the findings on questions of fact by the Senior Sub-Judge on all the issues were not contested at all by the counsel for the appellant. All these findings are based on evidence and, therefore, cannot be contested in second appeal. It is well settled law that where the name of one particular individual or firm has gained universal reputation in connection with a particular class of goods and a second person enters the trade under a name which is the same or similar and which is likely to cause confusion in the minds of the intending purchasers and the harm thus caused is *prima facie* such as no compensation would be enough to counter-balance it, Court can restrain that person from trading under a name which is similar by granting injunction vide *Ishar Das v. Bhaion Ki Doka* (2).

(12) In *Hormus Ardeshar Kandawala v. Ardeshar Cowashji Dustoor* (3), the facts were that one H, for over 25 years carried on a business of dyers and cleaners under the name of 'Bombay

(2) A.I.R. 1940 Lahore 39.

(3) A.I.R. 1935 Calcutta 109.

Dyeing and Cleaning Co.' at 1, Lindsay Street in Calcutta before shifting to another shop in the locality. 'A', then started a similar business at H's old place of business under the name of 'Bombay Art Dyers and Cleaners'. H sued A for injunction and damages. On these facts, it was held :—

- “(1) that as, apart from any motive of the defendant, the name itself, the distribution and contents of the sign-boards in which the word 'Bombay' occurred prominently as in H's case and the locality chosen by A, make it likely that the public would be deceived. H was entitled to an injunction and damages :
- (2) that injunction should be in the usual form restraining A, his servants and agents from using the name 'Bombay Art Dyers and Cleaners' or any other name calculated to induce the belief that A's business was that of H.”

It was further held in this case :—

“The right of a person to a distinct name in respect of his business arises immediately on the user of that name. Unlike the case relating to trade marks, the rule as to anything being common to the trade, does not apply in such a case and a person first using a business name entirely consisting of words common to the trade can restrain the use of a colourable similar name by a rival business. In awarding damages the Court should assess it and allow the plaintiff's usual percentage of profit on the difference between the plaintiff's usual gross trade earnings before the unfair competition began and his actual earning thereafter with a lump sum for any expected increase of business”

Similar was the law laid down in *Ram Krishna Bhakat and others v. Firm Haji Jonabally and Abdul Jalil* (4), *Oriental Government Security Life Assurance Co., Ltd. v. Oriental Assurance Co. Ltd.* (5) *The General Electric Co. of India (P) Ltd. vs. Pyara Singh and others* (6) and *S. M. Syed Haji Abdul Rahiman and Co. Madras v. C. H. Kazar Mohammed and Co.* (7). In view of the law laid down

- (4) A.I.R. 1948 Calcutta 321.
 (5) I.L.R. 1913 Calcutta 570.
 (6) A.I.R. 1974 Pb. & Haryana 14.
 (7) A.I.R. 1959 Madras 357.

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in these cases, the plaintiff was entitled to decree for injunction and for damages.

(13) For all these reasons, it is held that the decision of the lower appellate Court is correct and the same is affirmed. There is no force in this appeal and the same is dismissed. There will be no order as to costs.

B.S.G.

Before B. R. Tuli and S. S. Sandhawalia, JJ.

HARI SINGH,—*Petitioner.*

versus

DIRECTOR OF PANCHAYATS, PUNJAB AND OTHERS,—
Respondents.

C.W. 162 of 1972.

September 13, 1974.

The Punjab Gram Panchayat Act (IV of 1953)—Section 102(2)—Enquiry under—Director Panchayats exercising delegated power of the Government—Whether can delegate that power further to any other Enquiry Officer.

Held. that it is not necessary that the Government or its delegate, the Director Panchayats, should himself nominate the enquiry Officer under section 102(2) of the Punjab Gram Panchayat Act, 1952. The Director can further delegate the power of enquiry to another Enquiry Officer. The Enquiry Officer has only to hold the enquiry and forward the result thereof to the Government or its delegate, who has thereafter to pass the necessary orders under section 102(2) of the Act. The Enquiry Officer has not to pass any quasi-judicial order. Under the section, the nature and manner of the enquiry has to be determined by the Government or its delegate and there is nothing in the section to warrant that the enquiry must be held by the Government or its delegate. The Government or its delegate can get the matter inquired from any agency that the Government or the delegate considers necessary.

Case referred by Hon'ble Mr. Justice S. S. Sandhawalia to a Division Bench on 26th May, 1972, for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Bal Raj Tuli and Hon'ble Mr. Justice S. S. Sandhawalia finally decided the case on 13th September, 1974.