

(1995) 03 MAD CK 0045

In the Madras High Court

Case No : Original Applications No's. 961 and 962 of 1992 in C.S. No. 1577 of 1992

J. Zeenath Beevi

APPELLANT

Vs

N.V.K. Mohammed Sultan Rowther and Sons Ltd. and others

RESPONDENT

Date of Decision : 05-03-1995

Acts Referred:

Arbitration Act, 1940 — Section 34

Contract Act, 1872 — Section 23

Trade and Merchandise Marks Act, 1958 — Section 24, 30, 49, 78, 79

Citation : (1995) 03 MAD CK 0045

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Judgement

S.S. Subramani, J.—Original Application No. 961 of 1992 is an application for an interim injunction restraining the first

respondent/defendant, its agents, men, servants, dealers, distributors, stockists and other persons acting for and on behalf of the first respondent

from manufacturing, marketing, dealing, supplying, selling or otherwise dealing with scented betelnuts and tobacco under the trade names of Roja,

Raja and Kera and using the trade marks comprising the words ""Roja, Raja and Kera"" and/or the picture consisting of a red rose with green leaves

and/or any other names, or marks, figures, or pictorial representations having a similarity in visual or phonetic similarity including the name of Roja

Gold or any other similar names, pending disposal of the suit.

2. Original Application No. 962 of 1992 is an application for the appointment of a court receiver to take charge, collect from the market, the first

respondent, its dealers, distributors, men, agents and also from the market the stocks of goods comprising betelnuts and tobacco bearing the trade

name Roja, Raja and Kera and similar names including Roja Gold distributed by the first respondent in the market, and held in stock by various

dealers, distributors, agents and traders, pending disposal of the suit.

3. Both these applications are filed by the petitioner on the following averments :

The late N. V. K. Mohammed Sultan Rowther had two wives, Ishamali Bibi and Safoor Bivi. The children born through Ishamali Bibi were (1)

Abdul Wahib, (2) Khader Ibrahim, and (3) Ameen Bivi. Of the three, only Khader Ibrahim is alive. Through the second wife, there are seven

children out of which three are daughters and four are sons. The petitioner, Jeenath Beevi, is one of the daughters. Defendant No. 2 onwards are

the other children and wife of the deceased, N. V. K. Mohammed Sultan Rowther. The late N. V. K. Mohammed Sultan Rowther was

conducting business in the manufacture and sale of betelnuts and tobacco. Consequent on his death, the assets of his business including the trade

marks devolved on the applicant and other legal representatives of the deceased who constituted themselves into a partnership to carry on the

business of manufacture and marketing of betelnuts and tobacco using the above trade names. The sons of the deceased formed a limited company

and an agreement was entered into between the company and all the children of the deceased authorising the company to use the aforesaid trade

marks for a stipulated period. According to the petitioner, the agreement expired on September 24, 1991, and thereafter, the first respondent, i.e.,

the company, is not entitled to use the trade marks. It is alleged that in spite of the expiry of the period, the company is using the aforesaid trade

marks continuously despite repeated requests and issue of legal notice by the petitioner. According to the petitioner, the conduct of the first

respondent in using the trade marks amounts to an infringement of trade marks belonging to the applicant as well as passing off of the goods

manufactured by it as goods lawfully manufactured under the aforesaid trade marks. It is alleged that the petitioner has suffered loss of profit and

reputation by infringement of trade marks and passing off of goods manufactured by the first respondent as those manufactured under the trade

marks of Roja and Raja. It is on the above allegations that these applications have been filed by the petitioner for an injunction and for the

appointment of a receiver as well.

4. A counter-affidavit has been filed by respondents Nos. 1 and 3. Respondents Nos. 2, 4, 6, 7, 8, 9, 10 and 11 have also filed counter-affidavits

supporting one another, and all of them wanted dismissal of the applications.

5. In the common counter-affidavit filed by respondents Nos. 1 and 3, it is alleged that the suit itself is not maintainable, and even if we go by the

allegations in the plaint, it will amount to a dispute between co-owners for which the remedy is not under the Trade and Merchandise Marks Act.

According to the counter-affidavit, the petitioner is entitled to 5.625 per cent. in the trade marks, and she will not be entitled to any injunction,

being a co-owner. The jurisdiction of this court is also questioned in the counter-affidavit. It is also stated that the petitioner herself was a dealer of

the first respondent in the city of Madras till April, 1992, under the business name ""Crescent Agencies"", and she stopped from the same voluntarily

thereafter. It is alleged that the late N. V. K. Mohammed Sultan Rowther converted his sole proprietary business into a partnership by a deed of

partnership dated April 1, 1966, making all the members of the family as partners who were all majors at that time, and the minors were admitted

to the benefits of the partnership. He died on October 29, 1966, consequent on which a fresh deed of partnership was entered into by the

remaining members of the family. Again, a fresh deed of partnership was entered into on August 8, 1967, by reason of a minor attaining majority.

Similar deeds were executed on December 19, 1971, January 26, 1973, November 25, 1980, and, finally, on January 14, 1981. It is further

averred that by agreement entered into between the parties in April, 1984, a private limited company, i.e., the first respondent, was incorporated

on July 12, 1984, and all the assets and liabilities of the partnership were transferred and vested in the said company excluding the trade marks

which the partners became entitled to after the death of N. V. K. Mohammed Sultan Rowther. On July 12, 1984, an agreement was entered into

between the company on the one hand and the co-owners (including the petitioner) of the trade marks on the other, by which it was agreed that

the use of the said trade mark was given to the first respondent-company on the goods manufactured or caused to be manufactured by the

company. A supplementary agreement was entered into on September 24, 1986, which was necessitated on account of the death of S. Ameen

Bibi on September 23, 1986, so that the first respondent would continue to have the use of trade mark. Except for a small variation regarding the rate of royalty, all the terms of the agreement dated July 12, 1984, were adopted and made terms of the agreement. It is stated that the first respondent has been continuously manufacturing and selling the scented betelnuts and has built up a huge business having a turnover of above Rs. 12 crores. The allegation that the agreement expired on September 24, 1991, and thereafter the first respondent-company became disentitled to use the aforesaid trade marks is incorrect. It is stated that the allegation that the company has been illegally making use of the trade marks is also not correct. They also rely on the observations in the judgment in O. S. A. No. 26 of 1994 to dismiss the injunction application. They further state that the petitioner is not the absolute owner of the trade marks. All co-owners wanted the company to continue to use the trade mark as before, and the petitioner is the owner of only 5.625 per cent. of the trade mark as 1/12th co-owner of the same. It is further stated that the trade mark "Roja Gold" is a property of the first respondent in which the petitioner herself is a shareholder. She has not objected at any time to the company manufacturing and selling its products under the name "Roja Gold". On the other hand, she is benefited by the same and has been receiving dividends every year from the company. It is also stated that there is no similarity either in presentation or phonetically.

6. In paragraph 16 of the counter-affidavit, it is stated that the petitioner has received royalty from the company towards her share of interest in the trade mark from April 1, 1991, to March 31, 1995, as detailed thereunder. For the year ending March 31, 1991, she has received Rs. 38,619.40, for the year ending March 31, 1992, she has received Rs. 28,804.75, for the year ending March 31, 1993, she has received Rs. 27,255.13 and for the year ending March 31, 1994, she has received Rs. 26,761.56. In view of the receipt of these amounts, it is alleged that the allegation of loss cannot be true. At any rate, she is estopped from complaining about the infringement of a trade mark or alleged passing off.

7. In the supporting affidavits filed by other respondents, they also put forward a case that even if the period of the agreement is over, all the co-owners have authorised the company to use the trade mark and in consideration therefor, all the co-owners have been receiving payments. It is

further alleged that the petitioner is a director of the company and she herself is a recipient of the benefit. All the respondents pray for the dismissal

of both the applications. The respondents filed O. A. No. 19 of 1993 to stay the suit u/s 34 of the Arbitration Act. The same was allowed against

which there is an appeal in O. S. A. No. 26 of 1994. The order of the learned judge was set aside in appeal as per judgment dated January 19,

1995. The main reason for setting aside the order of the learned judge was that there was a dispute as to the very existence of an agreement

alleged in the plaint. The suit is filed on the basis of an agreement dated March 22, 1986, the existence of which is disputed by the defendants. One

of the contentions raised by the respondents is that so long as the petitioner approved the existence of the agreement dated March 22, 1986, the

reliefs prayed for in the plaint cannot be granted much less the reliefs prayed for in the interlocutory applications. After the dismissal of the appeal,

the above interlocutory applications were again posted, and the matter was heard on June 28, 1995. After the arguments were heard, the case was

posted for orders, and the petitioner has filed a reply affidavit on June 29, 1995.

8. In the reply affidavit, it is alleged that the petitioner is a joint owner and not a co-owner u/s 24 of the Trade and Merchandise Marks Act, 1958.

It is stated that the rights cannot be divided by metes and bounds. Registration is granted on the condition that all the joint owners use it jointly for

the common good. It is further stated that a registered trade mark can be used only by registered proprietors, or by one who has become a

registered user through the process set out in Chapter VI of the Trade Marks Act. It is further stated that in law it is not permissible to lease a

registered trade mark for royalties, and the agreement referred to is hit by section 23 of the Contract Act. It is further stated that if the agreements

are accepted, it will defeat the very purpose of the Trade and Merchandise Marks Act, 1958. For the said purpose, they rely on a judgment of the

Supreme Court in Morgan Stanley Mutual Fund v. Kartick Das [1994] 81 Comp Cas 318. It is further stated that the counter-affidavit is filed on

the assumption that all of them are co-owners, whereas in fact they are joint owners under the Act. It is further stated that after March 14, 1992,

the first respondent has no justification to use the mark any more, and the observations in the above judgment in O. S. A. No. 26 of 1994

according to the petitioner, have no relevance in so far as the applications for injunction are concerned. The statement that the petitioner is entitled

only to 5.625 per cent. is also disputed. In paragraph 7 of the rejoinder, it is stated that the payments made cannot be looked into since the

agreement is unsustainable. It is also stated in the reply affidavit that ""factually their statement, that they have paid certain amounts on March 31,

1992, and March 31, 1994, are incorrect"". The petitioner has also alleged that the conduct of the first respondent in infringing the trade mark has

made it liable for an offence under the Trade and Merchandise Marks Act and also under the provisions of the Prevention of Food Adulteration

Act.

9. While considering an interlocutory application on the Trade and Merchandise Marks Act read with Order 39, rule 1 of the Civil Procedure

Code, 1908, the court is guided by certain legal principles.

10. In *Wander Ltd. and Another Vs. Antox India P. Ltd.*, , it was held thus (headnote) :

Usually, the prayer for grant of an interlocutory injunction is at a stage, when the existence of the legal right asserted by the plaintiff and its alleged

violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. The court, at this stage, acts on

certain well settled principles of administration of this form of interlocutory remedy which is both temporary and discretionary. The interlocutory

remedy is intended to preserve in status quo, the rights of parties which may appear on a prima facie case. The court also, in restraining a

defendant from exercising what he considers his legal right but what the plaintiff would like to be prevented, puts into the scales, as a relevant

consideration whether the defendant has yet to commence his enterprise or whether he has already been doing so in which latter case

considerations somewhat different from those that apply to a case where the defendant is yet to commence his enterprise, are attracted.

11. In *Power Control Appliances and Others Vs. Sumeet Machines Pvt. Ltd.*, , the Supreme Court held that ""acquiescence is one of the defences

available u/s 30(1)(b) of the 1958 Act (Trade and Merchandise Marks Act, 1958).

12. On the basis of the above principles, let us see whether the plaintiff/petitioner is entitled to the interim order sought for.

13. In the affidavit filed in support of the injunction application, in paragraph 3, it is stated thus :

The aforesaid trade marks were designed and registered by the late N. V. K. Mohammed Sultan Rowther, in respect of the business carried on

by him in scented betelnuts and tobacco. Consequent on his death, the assets of his business including the trade marks devolved on the applicant

and the other legal representatives of the late N. V. K. Mohammed Sultan Rowther, who constituted themselves into a partnership to carry on the

business of manufacture and marketing of scented betelnuts and tobacco using the aforesaid trade names. Subsequently, a limited company was

formed by the sons of the late N. V. K. Mohammed Sultan Rowther and an agreement was entered into between the company and the co-owners

of the trade marks, including the applicant authorising the company the use of the aforesaid trade marks for a stipulated period...

14. From the above statement, it is clear that originally the trade marks belonged to the deceased, and, as part of the estate of the deceased, they

devolved on his legal heirs. Thereafter, as legal heirs the same were registered under the Trade and Merchandise Marks Act, 1958. The petitioner

produced the certificates evidencing the same. The certificates are of the years 1975 and 1977, long after the death of the original owner of the

mark. From the admission, it is clear that the petitioner is also a co-owner along with respondents Nos. 2 to 11 in this case.

15. The petitioner is also not disputing the agreement of 1984 entered into between the company, i.e., the first respondent and all the legal heirs of

the deceased. By virtue of that agreement, all the owners agreed to receive a royalty from the first respondent. According to the petitioner, the

period has expired in 1991, whereas, according to the respondents, it is stated that in spite of the expiry of the term, all the shareholders continue

to receive royalty and even after suit, the same was being received. In this connection, it is also worthwhile to note that the petitioner is also a

shareholder in the first respondent-company, and according to the counter-affidavit of respondents Nos. 2, 4, 6, 7, 8, 9, 10 and 11, she is one of

the directors of the company. It is also not disputed that only the members of the family are shareholders in the company and the petitioner has also

received the benefits. The sum and substance of the contention is that the petitioner is estopped from questioning the arrangement that is going on

for years, and even if she is competent, the remedy is not by filing a suit under the Trade and Merchandise Marks Act, 1958, since it is a dispute between co-owners.

16. The suit was filed in 1992, long after the expiry of the term fixed under the agreement as stated in the plaint. Why there was delay in filing the suit is not explained in the plaint. It is stated that the period expired on July 12, 1991. It is not a case where the plaintiff was not aware of the expiry of the term. As stated earlier, the Supreme Court has held that the interlocutory remedy is intended to preserve in status quo the rights of the parties which may appear on a prima facie case. What was the status quo on the date of suit is a relevant factor to be considered here. It is for this purpose, I have stated that the shareholders of the company are only members of the family and the petitioner herself is one of the directors. It is true that the company and individual are two different legal entities, but when we consider the granting of a prayer in an interlocutory application, the relationship has also some relevance.

17. The main contention urged before me was that the agreement of 1984 has no legal validity since it is against the statutory provisions under the Trade and Merchandise Marks Act, 1958. According to learned counsel, there cannot be a user of a trade mark otherwise than under the provisions of the Act. Since the first respondent is not a registered user, even if the petitioner has agreed for the first respondent using the same, the same cannot be a ground for refusing an order of injunction. According to learned counsel, the agreement violates the principles of section 23 of the Indian Contract Act, i.e., against public policy. Prima facie I am not inclined to accept the said argument. The provisions of the Trade and Merchandise Marks Act make it clear that the benefits under the Act are given to the persons who are registered as per the provisions of the Act.

It is a benefit given to individuals. No public benefit is derived therefrom. It is to protect the individual right, statutory provisions have been made.

The Act does not say that the benefit derived cannot be waived, nor can it be said that with the consent of the registered proprietor, another person cannot make use of the same. Learned counsel cannot mix the provisions enabling a registered user under the Act with that of a person making use of the same with the consent of the registered owner. It is not

against any provision of law. A person making use of the same at the most cannot be treated as a registered user and he may not be having the benefit or privileges that are given under the Act.

18. After having executed an agreement in 1984 and allowed the respondent to make use of the same, it is too much on the part of the petitioner

now to contend that it is not binding on her. In this connection, it is also to be noted that all along she was receiving the royalty and the benefits as per the agreement.

19. Even assuming that the term expired after 1991, the petitioner will not be entitled to the discretionary remedy. As stated earlier, the suit itself is filed only in 1992. There is no explanation for the delay.

20. In paragraph 16 of the common counter-affidavit, the first respondent has given the details of the amount received by the petitioner towards

royalty from April 1, 1991, to March 31, 1995. The petitioner did not care to file a reply affidavit till the entire matter was heard. After the case

was taken up for disposal, a reply affidavit was filed. Even therein, there is no specific denial of the said allegation contained in paragraph 16 of the

counter-affidavit. Paragraph 7 of the reply affidavit reads as follows :

The averments in para. 16 that they have paid royalty to me are incorrect. In the light of the position of the law, payments said to have been made

in pursuance of legally unsustainable agreement cannot be looked into by the court. Factually their statement, that they have paid certain amounts

on March 31, 1992, March 31, 1994, are incorrect.

21. In fact, there is no denial at all in so far as the payments for 1991 and 1993 are concerned. Only the quantum for March 31, 1992, and March

31, 1993, are disputed and not the receipt of any amount. So, the contention of the respondents that there was a subsequent agreement or that the

earlier agreement was being continued gains force. If that be so, the petitioner will be guilty of acquiescence, and that will be a proper defence u/s

30(1)(b) of the Act. The delay taken along with the acquiescence together will disentitle her to get the interim relief. In *Power Control Appliances*

and *Others Vs. Sumeet Machines Pvt. Ltd.*, it is explained as to what is meant by "acquiescence". The relevant portion of the judgment reads thus

(page 457) :

Acquiescence is sitting by, when another is invading the rights and spending money on it. It is a course of conduct inconsistent with the claim for

exclusive rights in a trade mark, trade name, etc. It implies positive acts; not merely silence or inaction such as is involved in laches. In *Harcourt v.*

White [1860] 28 Beav 303; 54 ER 382, Sr. John Romilly said : "It is important to distinguish mere negligence and acquiescence. Therefore,

acquiescence is one facet of delay. If the plaintiff stood by knowingly and let the defendants build up an important trade until it had become

necessary to crush it, then the plaintiff would be stopped by their acquiescence. If the acquiescence in the infringement amounts to consent, it will

be a complete defence as was laid down in *Mouson and Co. v. Boehm* [1884] 26 Ch 398. The acquiescence must be such as to lead to the

inference of a licence sufficient to create a new right in the defendant as was laid down in *Rodgers v. Nowill* [1847] 2 De G M & G 614; 22 LJ

KCH 404.

22. The law of acquiescence is stated by Cotton L. J. in *Proctor v. Bennis* [1887] 36 Ch 740, 760 as under :

"It is necessary that the person who alleges this lying by should have been acting in ignorance of the title of the other man, and that the other man

should have known that ignorance and not mentioned his own title."

23. In the same case, Bowen L. J. said (at pages 761-62) :

"In order to make out such acquiescence it is necessary to establish that the plaintiff stood by and knowingly allowed the defendants to proceed

and to expend money in ignorance of the fact that he had rights and meant to assert such rights".

24. In *Devidoss and Co., a Firm of cloth merchants Vs. Alathur Abboyee Chetty and Co., a Firm of piecegoods merchants*, at pages 33 and 34,

the law is stated thus :

"To support a plea of acquiescence in a trade mark case it must be shown that the plaintiff has stood by for a substantial period and thus

encouraged the defendant to expend money in building up a business associated with the mark. In *Rowland v. Mitchell* [1897] 14 RPC 37, Romer

J. observed :

If the plaintiff really does stand by and allow a man to carry on business in the manner complained of to acquire a reputation and to expend money

he cannot then after a long lapse of time, turn round and say that the business ought to be stopped""."

25. In the same case, but on appeal, Lord Russel C. J. said at page 43 :

Is the plaintiff disentitled to relief under that head by injunction because of acquiescence? Of course it is involved in the consideration of that that

the plaintiff has a right against the defendant and that the defendant has done him a wrong and the question is whether the plaintiff has so acted as

to disentitle him from asserting his right and from seeking redress from the wrong which has been done to him. Cases may occasionally lay down

principles and so forth which are a guide to the court, but each case depends upon its own circumstances.

Dealing with the question of standing by in *Codes v. Addis and Son* [1923] 40 RPC 130 Eve J., said :

"For the purpose of determining this issue I must assume that the plaintiffs are traders who have started in this more or less small way in this

country, and have been continuously carrying on this business. But I must assume also that they have not, during that period, been adopting a sort

of Rip Van Winkle policy of going to sleep and not watching what their rivals and competitors in the same line of business were doing. I accept the

evidence of any gentleman who comes into the box and gives his evidence in a way which satisfies me that he is speaking the truth when he says

that he individually did not know of the existence of a particular element or a particular factor in the goods marketed by his opponents. But the

question is a wider question than that : ought not he to have known; is he entitled to shut his eyes to everything that is going on around him, and

then when his rivals have perhaps built a very important trade by the user of indicia which he might have prevented their using had he moved in

time, come to the court and say : "Now stop them from doing it further, because a moment of time has arrived when I have awakened to the fact

that this is calculated to infringe my rights." Certainly not. He is bound, like everybody else who wishes to stop that which he says is an invasion of

his rights, to adopt a position of aggression at once, and insist, as soon as the matter is brought to court, it ought to have come to his attention, to

take steps to prevent its continuance; it would be an insufferable injustice were the court to allow a man to lie by while his competitors are building

up an important industry and then to come forward, so soon as the importance of the industry has been brought home to his mind, and endeavour

to take from them that of which they had legitimately made use; every day when they used it satisfying them more and more that there was no one

who either could or would complain of their so doing. The position might be altogether altered had the user of the factor or the element in question

been of a secretive or surreptitious nature; but when a man is openly using, as part of his business, names and phrases, or other elements, which

persons in the same trade would be entitled, if they took steps, to stop him from using, he gets in time a right to sue them which prevents those who

could have stopped him at one time from asserting at a later stage their right to an injunction."

In *McCaw Stevenson and Orr Ltd. v. Lee Bros.* [1960] 23 RPC 1, acquiescence for four years was held to be sufficient to preclude the plaintiff

from succeeding. In 1897, the plaintiffs in that case registered the word "glacier" as a trade mark in respect of transparent paper as a substitute for

stained glass. As the result of user the word had become identified with the plaintiffs' goods. In 1900, the defendants commenced to sell similar

goods under the name "glazine". In 1905, the plaintiffs commenced an action for infringement. The defendants denied that the use of the word

"glazine" was calculated to deceive and also pleaded acquiescence. A director of the plaintiff-company admitted that he had known of the use of

the word "glazine" by the defendants for four years. He would not say it was not five years. It was held that the plaintiffs failed on the merits and by

reason of their delay in bringing the action.

Delay simpliciter may be no defence to a suit for infringement of a trade mark, but the decisions to which I have referred clearly indicate that where

a trader allows a rival trader to expend money over a considerable period in the building up of a business with the aid of a mark similar to his own

he will not be allowed to stop his rival's business. If he were permitted to do so great loss would be caused not only to the rival trader but to those

who depend on his business for their livelihood. A village may develop into a large town as a result of the building up of a business and most of the

inhabitants may be dependent on the business. No hard and fast rule can be laid down for deciding when a person has, as the result inaction, lost

the right of stopping another using his mark. As pointed out in *Rowland v. Mitchell* [1897] 1 Ch 71; [1897] 14 RPC 37, each case must depend

on its own circumstances, but obviously a person cannot be allowed to stand by indefinitely without suffering the consequence."

This is the legal position. Again, in Halsbury's Laws of England, fourth edition, volume 24, at paragraph 943, it is stated thus :

"943. Acquiescence. - An injunction may be refused on the ground of the plaintiff's acquiescence in the defendant's infringement of his right. The

principles on which the court will refuse interlocutory or final relief on this ground are the same, but a stronger case is required to support a refusal

to grant final relief at the hearing (*Patching v. Dubbins* [1853] Kay 1; 69 ER 1, *Child v. Douglas* [1854] 5 De G M & G 739; 43 ER 1057,

Johnson v. Wyatt [1863] 2 De G J & Sm 18; 46 ER 281, *Turner v. Mirfield* [1865] 34 Beav 390; 55 ER 685, *Hogg v. Scott* [1874] LR 18 Eq

444, *Price v. Bala and Festiniog Rly. Co.* [1884] 50 Lt 787.) The reason is that at the hearing of the cause it is the court's duty to decide upon the

rights of the parties, and the dismissal of the action on the ground of acquiescence amounts to a decision that a right which once existed is

absolutely and for ever lost. *Johnson v. Wyatt* [1863] 2 De G J & Sm 18, 25; 46 ER 281 and see *Gordon v. Cheltenham and Great Western*

Union Rail Co. [1842] 5 Beav 229, 233; 49 ER 565, per Lord Langdale MR."

26. It may also be noted that the plaintiff has stood by for a substantial period and her conduct has encouraged the first respondent to spend

money in building up his business. After building up the business, the petitioner also received the benefits therefrom for years together. It is nothing

but a conduct inconsistent with the claim now put forward.

27. Even the plaintiff does not say that she is the absolute owner of the property even though the plaint is drafted in such a way. Either by

inheritance or by getting registration, she is now one of the owners. What is the share due to her is a matter for evidence. At any rate, all other

owners, who are either joint owners or co-owners, have allowed the first respondent to make use of the trade mark. I am not saying that the other

co-owners are entitled to efface the right of the plaintiff by their conduct, but that is also a circumstance to be taken note of while exercising the

discretionary relief. Nearly 95 per cent. of the owners have agreed with the first

respondent in making use of the label. The petitioner has only a very small right. In that view also, it will not be proper on the part of this court to grant an order of injunction.

28. Learned counsel for the petitioner put forward an argument that the petitioner being a joint owner of the trade mark, the same can be used only for the common benefit, and for the said purpose, relied on the provisions of section 24 of the Act. I do not think the said section has any relevance in so far as this case is concerned. Section 24 included in Chapter 3 of the Act, i.e., the procedure and duration of the registration. It has nothing to do with the separate rights of the joint owners, after registration. The inter se right is not dealt with u/s 24. I have already stated that the registration is after the death of the original owner, when the label formed part of his estate. Naturally, the registration can only represent that estate which the legal heirs inherited on his death. That is why the plaintiff has also said in her affidavit that she is a co-owner (and not a joint owner).

Learned counsel for the petitioner also relied on section 49 of the Act. I have already dealt with this matter. That is a provision which applies to a person who wants to get registered as a registered user. That has no applications to the facts of this case. Learned counsel has also relied on sections 78 and 79 of the Act, which, according to me, are not applicable to the case on hand. Both the parties admit that the first respondent is manufacturing his own goods and the case that is put forward is that a consent is obtained from the owners for making use of the label. The first defendant is not making use of any false trade mark or false trade description as contended. The only question that has to be considered is, what is the effect of the consent given by most of the owners. It is an inter se dispute between the owners of the trade mark. If we consider this case in that view, there cannot be a question of infringement of the trade mark.

29. The only relief that could be granted for the plaintiff is to direct the first respondent to maintain proper accounts till the disposal of the suit. She is not entitled to the relief of injunction or for the appointment of a receiver. I find that the plaintiff has no prima facie case and the balance of convenience is also in favour of the first defendant in refusing the injunction.

30. In the result, both the applications are dismissed, with a direction to the first respondent that he shall maintain proper accounts till the disposal

of the suit. The first respondent is entitled to costs from the petitioner, which are quantified at Rs. 2,000 (rupees two thousand only).