

(2009) 12 GUJ CK 0050

In the Gujarat High Court

Case No : Appeal from Order No's. 127 and 128 of 2009

Kailashben Gunvantlal Thakker and Others

APPELLANT

Vs

Deepak Oil Mills and Others

RESPONDENT

Date of Decision : 02-12-2009

Acts Referred:

Companies Act, 1956 — Section 22
Partnership Act, 1932 — Section 14, 53

Citation : (2010) 1 GLH 387 : (2010) 43 PTC 293

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : Anip A. Gandhi, s 1 - 4, for the Appellant; Y.J. Trivedi, for Respondent 1, Tejas P. Satta, for Respondents 2 - 4, for the Respondent

Judgement

Jayant Patel, J.

Jayant Patel, J.—The present appeals are directed against the order dated 18.03.2009 passed by the learned District Judge, below application Exh. 5 for temporary injunction, whereby the injunction as prayed by the plaintiffs has been granted restraining the defendants therein from selling or using the name of "Deepak" or Deepak Kapasia Tel and Khol and are further restrained from using the said artwork/label.

2. It appears that Regular Civil Suit No. 6/08 came to be filed one Chirag Kantilal Thakkar in capacity as the partner of Deepak Oil Mills under the Trademark Act and Passing off (parties to the proceedings for the sake of convenience shall be referred as per their status in the Suit before the Trial Court). In the Suit, as per the plaintiffs, they are selling Deepak Kapasiya Khol for three decades. Such product is known as Deepak Khol and plaintiffs have also got registration of the said Trademark with the Registrar of Trademarks. As per plaintiffs, one of the partner was Satishchandra and he was also managing the work of registration and the legal proceedings of the firm and he was knowing that the label Deepak Khol is registered under the Trademark Act, 1999 (hereinafter referred to as "the

Act") and the same is also registered as copyright. It is the case of the plaintiffs that such label is being printed or attached on the gunny bags and the business and reputation has been created on that basis and it is having a huge turnover of about 16 crores and the defendants are doing the business of Kapasiya Tel and Khol by using the word "Deepak", therefore, they deserve to be restrained from manufacturing and selling the product by using the word "Deepak", therefore, the Suit has been filed for the relief that the defendants be restrained permanently from using the word "Deepak" in doing of the business of Khol and they be further restrained from using the artwork/label of Deepak Kapasiya Tel or Khol or the sticker or photograph similar to which is being used by the plaintiffs. It is also prayed in the Suit for restraining the defendants from selling the product of Deepak Kapasiya Khol by passing off the label, photograph, stencil mark, etc. It appears that in the Suit, an application for temporary injunction was submitted being Exh.5. The learned District Judge issued notice upon the said application. The defendants appeared in response thereto and resisted the Suit and contended inter alia that the properties of Deepak Oil Mills, a partnership firm, is practically distributed amongst its partners. It has stopped the manufacturing activities of any Khol or oil and the said aspect has been suppressed by the plaintiffs in the Suit. It was submitted that there are other products in the market sold as Deepak Khol. It was also contended that at the time when there was distribution of the assets of the firm, all partners were permitted to use word "Deepak" and other partners are also using the word "Deepak" and selling the product, therefore, the Suit is instituted by the plaintiffs with malafide purpose and there is no infringement of any Trademark Act or Copyright Act or Passing off and it was submitted that the injunction does not deserve to be granted and the application for injunction deserves to be dismissed.

3. The learned Trial Judge after hearing both the sides, found that there is no suppression of material fact and there is prima facie case with the plaintiffs for satisfying the Court that there is infringement of the Trademark, Copyright and Passing Off and the Trial Court also found that if the defendants are not restrained from using the Trademark, Labels, Stencil, etc., it will certainly affect the business of the plaintiff firm, therefore, granted interim injunction as prayed by the plaintiffs. It is under these circumstances, the defendants have approached to this Court by way of the present appeals.

4. It may be recorded that at the admission stage, when the matter was considered by this Court on 31.03.2009 below Civil Application (for stay) No. 3696/09 in Appeal from Order No. 127/09 with Civil Application (for stay) No. 3698/09 in Appeal from Order No. 128/09, the interim relief which was granted in terms of para 10A and 10C by the learned Trial Court is stayed by this Court. However, so far as prayer 10B is concerned, the stay was not granted by this Court, but it was clarified that the applicants-appellants would be entitled to sell their product by making apparent change in the label/sticker which are being affixed on the gunny bags of the goods manufactured in respect of its colour, scheme, place of photograph of Satishbhai referred to in the Suit as well as in

the documents and in the placement of hologram, if they are interested in placing hologram and also the place of serial number of the gunny bag which is reflected in the label/sticker and the applicants-appellants can carry on the business till further orders that may be passed by this Court. It was also observed that the change which is found possible apparently by this Court has been suggested. However, it would be open for the applicants-appellants, more particularly applicant Deepak Protein Pvt. Ltd. to create an art work so that the label/sticker can look substantially different than the label/sticker of the original plaintiff firm. This Court had also observed for change of the colour combination so as to avoid the prejudice, but it was observed that the appellant Deepak Proteins Pvt. Ltd. can use the name of Satishbhai in the label/sticker in the goods as well as the word "Deepak" with the clarification that the material is manufactured by Satishbhai himself. At that stage, the learned Counsel appearing for the original plaintiffs had stated that the applicants Deepak Proteins Pvt. Ltd. can sell cottonseed oil and khol in the name of "Satish Khol" by placing the photograph of Satishbhai, if the applicant Deepak Proteins is so desirous.

5. It may also be recorded that thereafter, pursuant to the aforesaid interim order, the appellants-original defendants have made out a sticker for sale of the product "Deepak" Kapasiya Khol with the different photograph of Satishbhai and also the cow having white colour.

6. As per the appellants-defendants, pursuant to the interim order passed, on such sticker/label, it has been doing business. The said sticker is produced on page 27 at Annexure-D in the compilation of Civil Application for stay No. 3698/09.

7. Heard Mr. Mihir Joshi, learned Counsel appearing with Mr. Tejas Satta in Appeal from Order No. 128/09 and the interim application arising therein and Mr. Mihir Thakor, appearing with Mr. Gandhi in Appeal from Order No. 127/09 and the interim application arising therein and Mr. S.N. Soparkar with Mr. Y.J. Trivedi for the respondent-original plaintiffs in all the matters.

8. The Suit of the plaintiffs appears to be on the basis of the registration of Trademark No. 676810, copy whereof is produced at page No. 46 of the paper book. The Trademark type is shown as device and the artwork mentioned is Deepak Khol (device of cow). The label affixed on the registration certificate is not legible. However, the learned Counsel for the appellants as well as the respondents confirm that the same is shown on page 54 of the paper book when the advertisement was given in the year 1998. The label shows that it is inclusive of the word "Sarva Srestha Kapasiya Khol" upon "Deepak Khol" with the device of "cow taking food" and below the same, it is mentioned gross weight 55 kg., Deepak Oil Mills, Station Road, Harij (North Gujarat). The aforesaid is the English translation of Gujarati words. The second is the registration under the Copyright Act and the xerox is produced on page 49. The same shows that it is mentioned as "Deepak Kapasiya Khol". Manufacturer is shown as "Deepak Oil Mills" and the

logo of "cow taking food".

9. The pertinent aspect is that in the label, Trademark which is registered with the authority as well as in the copyright which is registered with the concerned authority, there is no photograph of Satishbhai. The label which was produced by the plaintiffs in the Suit and are pressed in service for seeking action based on the Trademark and copyright includes the logo which is registered as copyright and it does not include the logo which is registered as Trademark. It was submitted by the learned Counsel for the respondents-plaintiffs that the logo which is registered as Trademark is being embossed or printed on the gunny bags. Taking both the aspects together, under Trademark as well as under Copyright, the right based on the same can be asserted by the plaintiffs to that extent. Therefore, if somebody is to use the logo which is registered as Trademark or a logo under the Copyright Act, the plaintiffs can make legitimate grievance and the Court may in exercise of its discretion prohibit the use thereof by any other party. However, so far the photograph of Satishbhai is concerned and use of the word "Deepak Kapasiya Khol" and "original "Deepak" Kapasiya Khol of Satishbhai" and "the photograph of Satishbhai" are not registered under Trademark or Copyright Act, therefore, the claim of the plaintiffs may not be sustained to that extent under the Trademark Act or Copyright Act.

10. It was contended on behalf of the plaintiffs by the learned Counsel that any other material used in label viz. as that of "the photograph of Satishbhai" or the use of the word "original Deepak Kapasiya Khol of Satishbhai" can be treated as the claim under passing off since as per the plaintiffs, they are doing the business since so many years based on such label, therefore, the defendants would not be entitled to do the business of "Deepak Kapasiya Khol by mentioning as originally of Satishbhai" or by printing "the photograph of Satishbhai". It was therefore submitted that the injunction has been rightly granted, as prayed, by learned Trial Judge.

11. In the case of Kaviraj Pandit Durga Dutt Sharma Vs. Navaratna Pharmaceutical Laboratories, the Apex Court has made the distinction between the action for passing off and the action for infringement of the Trademark, the Apex Court at para 28 has observed thus-

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 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 right 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 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

12. Therefore, while testing the action of passing off, the aforesaid distinction is required to be borne in mind.

13. It is not the case of the plaintiffs that Satishbhai had permitted printing of his photograph in the label by any lawful authority to the firm of the plaintiff. On the contrary, the contention of the plaintiffs is that Satishbhai on the date of the Suit is third party to the partnership firm though he may be the father of any of the partners of the firm. Therefore, if the matter is to be examined on the basis of the averments made in the plaint and the documents produced in Suit, it may be that Satishbhai might have acted or managed the business at any point of time earlier of the firm, but on the date when the Suit was filed, Satishbhai was no more in picture so far as the functioning of the firm or doing of the business thereof. Even if the son of Satishbhai was partner in the firm of the plaintiffs, it can be said that Satishbhai is having no lawful interest in the firm either as partner or in any other capacity in the assets and properties of the firm. Treating Satishbhai as third party to the business or composition of the plaintiff firm, it may be required to be examined as to whether, the claim of passing off can be maintained by the plaintiffs against Satishbhai himself so as to prohibit the printing or publication of his own photograph in the sticker/label on the basis of which he is doing the business of Kapasiya Khol. If the photograph is being used in the sticker for doing the business under the lawful authority given by the person whose photograph is being printed or published, possibly the right may be claimed to that effect. But, such is not the case of the plaintiffs nor contended before the Trial Court or before this Court. On the contrary, it has been contended that Satishbhai is third party to the affairs of the firm and is having no interest whatsoever. If the plaintiffs have prepared a sticker/label with the photograph of Satishbhai without their being any authority of Satishbhai for such purpose, it appears to the Court that such a passing off action cannot be maintained against Satishbhai himself restraining him from printing or publishing his photograph for a product which is being manufactured and sold by him. Therefore, to that extent, it can be said that there is no prima facie case of the plaintiffs on the said aspects.

14. The learned Counsel for the plaintiffs further contended that the claim of passing off is not only against Satishbhai, but is also against Deepak Proteins Pvt. Ltd and Dhaval G. Thakkar. He contended that the product of Kapasiya Khol is being sold by Deepak Proteins Pvt. Ltd. and Satishchandra P. Thakkar. Therefore, the action of passing off can be maintained against the defendant No. 1 which is selling the product.

15. It is true that the defendant No. 1 is a Private Limited Company, but as stated in the plaint at para 2 by the plaintiff itself, the defendants Nos. 2 and 3 are Promoter Directors of defendant No. 1 Company. Therefore, under these circumstances, if the defendant No. 2 is to use his own photograph and is to use the word "originally belonging to Satishbhai" prior the name of the product Kapasiya Khol in the product which is being sold by his own Company, that is defendant No. 1 Company, such a claim of the plaintiffs cannot be maintained even on the aspects of passing off, more particularly when such use of the word by the plaintiff firm is without any lawful authority given to it by defendant No. 2 for use of his name or for use of his photograph. Therefore, the said contention cannot be accepted.

16. In the same manner, using of the word "originally belonging to Satishbhai" while selling Deepak Kapasiya Khol cannot be validly claimed in passing off action by the plaintiffs. It is not the case of the plaintiffs that Deepak Kapasiya Khol which is being marketed and sold by plaintiff firm is originally belonging to Satishbhai or is manufactured by Satishbhai. On the contrary, as per the plaintiffs, Satishbhai is third party to the affairs of the firm and he has no interest whatsoever in the assets or business of the firm. Under these circumstances, the plaintiffs who are not selling Deepak Kapasiya Khol belonging to or manufactured by Satishbhai, cannot validly maintain the action against passing off on the basis of the word "originally belonging to Satishbhai" against Satishbhai himself when Satishbhai himself is selling Kapasiya Khol as belonging to Satishbhai himself.

17. Even if the claim of the plaintiffs is to be examined based on the passing off action for the use of photograph and for the use of the word originally belonging to Satishbhai, it is not possible to accept the contention of the learned Counsel for the plaintiffs that utilising of the label/sticker, copy whereof is produced at page 27 of Civil Application No. 3698/09, would be similar, lacking material difference or would create any confusion amongst the buyer. In view of the aforesaid, it can be said that there was no prima facie case of the plaintiffs for pressing in service, the claim against passing off by the defendants for "the photograph of Satishbhai" printed on the label and the use of the word "originally belonging to Satishbhai" against Satishbhai himself so as to prohibit him from publishing or printing his own photograph on the sticker/label and using the word originally belonging to Satishbhai himself.

18. The next aspect deserves to be considered is the use of word "Deepak" while selling Kapasiya Khol. It appears that in the Trademark as well as under the

Copyright registration, it includes "Deepak Kapasiya Khol". It is true that the same is with the device of cow. However, is coupled with the brand or trademark as "Deepak Khol" or "Deepak Kapasiya Khol". The learned Counsel for the defendants contended that what is registered is the label and not the word, therefore, there cannot be any prohibition in using the word "Deepak" while selling "Kapasiya Khol" by the defendants. It was therefore, submitted that the claim of the plaintiffs is illfounded.

19. In the case of The Registrar of Trade Marks Vs. Ashok Chandra Rakhit Ltd., it has been observed by the Apex Court that if the label is registered as a whole, such registration cannot give any conclusive statutory right to the proprietor of the Trademark to use of any particular word or the name contained therein apart from the mark as a whole. Therefore, the prohibition of the word Deepak in absolute cannot be pressed in service by the plaintiff qua the name of any other manufacturer, but if the product is to be sold and marketed as "Deepak Khol", even if the statutory right for exclusive use may not be available, the question may further be required to be examined as to whether it would create any confusion amongst the minds of the buyer at the time of purchasing the product or would create a situation of deceptive similarity in the trade of the product of Kapasiya Khol, therefore, the matter deserves to be examined accordingly.

20. If the product of "Khol" is being marketed as "Deepak Khol", the use of the word "Deepak" prior to the word "Khol" would create confusion amongst the buyers since it would be similar or could be said as deceptively similar, if the product is traded and marketed as "Deepak Khol".

21. Whether the word "Deepak" is put into inverted coma prior to "Kapasiya Khol" or is used with continuous word "Deepak Kapasiya Khol" would not make much difference if confusion is to be traced or deceptive similarity is to be traced. Therefore, if the defendants is to sell the product of Khol as Kapasiya Khol or branding as Kapasiya Khol, the same would be permissible since the product which is being sold or to be sold is Kapasiya Khol. But, if the word "Deepak" is to be added by branding or treating as "Deepak Kapasiya Khol" or "Deepak Khol", it would create a confusion amongst the buyers who are generally agriculturists or persons dealing with the cattle. Therefore, it appears that taking into consideration the Trademark Register and the registration under the Copyright Act, it can be said that there is a prima facie case with the plaintiffs against the defendants if the defendants is to sell the product of Kapasiya Khol as "Deepak Khol" or "Deepak Kapasiya Khol".

22. It was contended on behalf of the plaintiffs by the learned Counsel, that in furtherance to the rights of the plaintiffs under the Trademark Act and Copyright Act, since the defendants cannot sell the product as "Deepak Khol" or "Deepak Kapasiya Khol", the plaintiffs would be justified in seeking the interim injunction against the defendants also for selling such product by using the name of the manufacturer as "Deepak Proteins Pvt. Ltd." The learned Counsel for the plaintiffs in support of his submission, relied upon the provisions of Section 22 of

the Companies Act, enabling the Central Government to direct the rectification of the name of the Company, therefore, it was submitted that the defendant No. 1 cannot sell the product with the name and style, as by "Deepak Proteins Pvt. Ltd."

23. The Trial Court has expressly not granted injunction against use of the name as "Deepak Proteins Pvt. Ltd." but as the contention is raised by the plaintiff on the basis as if such injunction granted, the examination of such contention would be necessary.

24. In the matter of Trademark, the brand with which the product is being sold is to assume importance because the buyers are to buy the product from the market on the basis of product known in the market and not on the basis of the manufacturer of the product. It is true that the Trademark is registered as "Deepak Kapasiya Khol" and the trader is "Deepak Oil Mills", but if anybody sells the Kapasiya Khol as "Deepak Khol" or "Deepak Kapasiya Khol", the name of the manufacturer or the seller would not assume much importance. The claim of the plaintiffs based on the logo registered as Trademark even if considered, it is "Deepak Oil Mill" with the title as "Deepak Khol". Therefore, such right cannot be extended prohibiting any other Company having the name of Deepak from selling Kapasiya Khol on its own name as Kapasiya Khol. Hence, the rights cannot be extended to the extent of prohibiting the registration of the Company as "Deepak Proteins Pvt. Ltd." or sale by "Deepak Proteins Pvt. Ltd.". It is neither the case of the plaintiffs that they have approached to the competent authority under the Companies Act for alteration of the name based on such Trademark nor any order is passed by the competent authority of the Central Government. Therefore, merely because there are enabling powers u/s 22 of the Companies Act, such would not invest any right with the to prohibit the use of the word Deepak in its own name as "Deepak Proteins Pvt. Ltd.". In any case, the name of the manufacturer is "Deepak Oil Mills" and "Deepak Proteins Pvt. Ltd." can neither be said to be said to be similar nor even deceptively similar. They are altogether different even by excluding "Deepak". Therefore, mere use of the word "Deepak" in "Deepak Proteins Pvt. Ltd." as against "Deepak Oil Mill" which is the plaintiff firm, would not create any confusion amongst the buyer on the ground as sought to be canvassed by the learned Counsel for the plaintiff. Therefore, there is no prima facie case of the to prohibit the defendants from using the word "Deepak" in its registration as Deepak Proteins Pvt. Ltd. using the name as "Deepak Proteins Pvt. Ltd." while selling the product of Kapasiya Khol.

25. The learned Counsel for the respondent-plaintiffs by relying upon the decision of this Court in the case of Simatul Chemical Industries Pvt. Ltd. v. Cibatul Ltd. reported at 1978 GLR 315, contended that if the name has created the confusion amongst the consumer, the citizen is entitled to protection of his right in respect of his goodwill. He submitted that in that case, the Court found that Simatul and Cibatul are so similar, that confusion is likely to be created amongst the person dealing with them.

26. Even if the contention of the learned Counsel for the respondents-plaintiffs is

considered, the same at the most can be accepted for use of the word "Deepak" prior to "Kapasiya Khol" or "Khol" which is likely to create confusion amongst the mind of the consumer. However, the foundation of such passing off action would be lost to the extent of use of "the photograph of Satishbhai" and use of the name of Satishbhai without their being any lawful authority given by Satishbhai. In view of the earlier observation such claim cannot be accepted of the plaintiffs for prohibiting the use of the word "Deepak" in the name of the registration of the Company as "Deepak Proteins Pvt. Ltd." or sale of Kapasiya Khol by such Company.

27. On the same line, in the facts of the present case, for maintaining the claim of passing off against Satishbhai himself by the plaintiffs for the use of his name and for the use of his own photograph on the label nor for objecting to the use of the word "Deepak" in the registration as "Deepak Proteins Pvt. Ltd." or sale of Kapasiya Khol by such Company, by placing reliance upon by the learned Counsel for the defendants in the case of Laxmikant V. Patel Vs. Chetanbhat Shah and Another, as well as the decision in the case of Mahendra and Mahendra Paper Mills Ltd. Vs. Mahindra and Mahindra Ltd., would be of no help to the learned Counsel for the defendants.

28. The learned Counsel for the defendants had contended that the plaintiff firm is practically dissolved inasmuch as the properties are distributed amongst the partners by settling of the accounts, except that, there is no formal dissolution. It was therefore submitted that the firm could not be said to be in existence nor such firm could claim the rights under the Trademark of a firm. He also contended that the Suit was filed by Chiragbhai Thakkar who is not shown as partner on the date when the registration was made under the Trademark Act. He also submitted that the Suit is not supported by all the partners of the firm, therefore, the learned Judge ought to have dismissed the application for temporary injunction. He also contended that the distribution of the properties, the reduction of the electricity power, etc. was not disclosed by the in the Suit, therefore, it was a case of suppression of material facts and the interim injunction ought not to have been granted by the learned Trial Judge pending the Suit.

29. It is an admitted fact that none of the defendants are partners in the firm though the relative of some of the defendants may be partner. Therefore, legally it can be said that the defendants are third party to the affairs of the plaintiff firm. Under these circumstances, if further internal affairs of the firm are not disclosed, may be of distribution of some of the properties of the firm, etc., considering the nature of the Suit, it is not possible to accept the contention of the learned Counsel for the appellant that there was suppression of material facts. Further, even if the contention of the learned Counsel for the appellant is considered for the sake of examination that some of the properties of the firm are distributed and the accounts are settled, then also the fact remains that the firm is not dissolved and intellectual property of Trademark or Copyright of the

firm is yet to be distributed and/or the value thereof is yet to be realised and distributed amongst the partners. Therefore, even if the accounts are settled to some extent, but if the properties including the intellectual property of the firm are not realised and divided inter se, and the firm continues as partnership firm and even if dissolved, the rights of the partners would continue in the property of the firm, as per the provisions of Section 14 read with Section 53 of the Indian Partnership Act. Once the Trademark is treated as intellectual property of the firm, whether the name of certain partners was shown at the time of registration or not including the fact that Chirag Thakkar's name was not shown as partner at the relevant point of time would not frustrate the suit or the prayer for interim injunction, more particularly when Chirag Thakkar, as on the date of the suit, is the partner of the plaintiff firm. Hence, the aforesaid contention raised by the learned Counsel for the appellants lacks merit.

30. The reliance upon the decision of the Apex Court in the case of Sohan Lal and Others Vs. Amin Chand and Sons and Others, by the learned Counsel for the appellant-defendants for contending that if the partnership is dissolved, the Court would not be justified in granting the injunction restraining the partner from using the Trademark, is ill-founded inasmuch as in the present case, the plaintiff firm is not dissolved, therefore, the matter cannot be considered on the basis that the firm is dissolved and all partners are entitle to use the Trademark. Hence, the said decision is of no help to the appellants-defendants.

31. The learned Counsel for the appellant-defendants relied upon the decision of the Apex Court in the case of Kollipara Sriramulu Vs. T. Aswathanarayana and Others, for contending that there can be oral agreement amongst the partners for use of the Trademark. Even if such aspect is considered and accepted, the fact that Satishbhai or any of the defendats are not the partners of the plaintiff firm, would not carry the case of the defendants further. Hence, the said decision is of no help to the defendants.

32. If the impugned order is examined in light of the aforesaid observations and discussions, it appears that the learned Trial Jude was right in finding the prima facie case of the plaintiffs for the use of the word "Deepak" prior to the word "Khol" or "Kapasiya Khol" while doing the business of Kapasiya Khol. However, the learned Trial Judge has committed apparent error for finding the prima facie case even on the aspects of use of the word "belonging to Satishbhai" or "originally belonging to Satishbhai" prior to or with the word "Deepak Kapasiya Khol" and also for use of "the photograph of Satishbhai".

33. Hence, the impugned order passed by the Trial Court deserves to be modified accordingly. Therefore, it is directed that the defendants-appellants are restrained from using the word "Deepak" prior to the product "Khol" or "Kapasiya Khol", but are not restrained from using the word "originally belonging to Satishbhai" or "belonging to Satishbhai" as per the label produced on page 27 of Civil Application No. 3698/09. Consequently, the defendants-appellant are restrained from selling the product of "Kapasiya Khol" as "Deepak Khol" or

"Deepak Kapasiya Khol", but shall be at the liberty to sell "Kapasiya Khol" by stating as "belonging to Satishbhai" or "Satishbhai"s original Kapasiya Khol" with "the photograph of Satishbhai" as mentioned on page 27 of Civil Application No. 3698/09 or any other photograph different than the photograph published by the plaintiffs on their label. The injunction against the name of manufacturer "Deepak Proteins Pvt. Ltd." if any shall not survive.

34. The appeals are partly allowed to the aforesaid extent. The interim injunction also shall stand modified in terms of the aforesaid final directions. The remaining interim injunction shall stand vacated.