

(1950) 11 KAR CK 0006
In the Karnataka High Court
Case No : Misc. Appeal No. 42 of 1949-50

Mangalore Ganesh Beedi Works and Others	APPELLANT
Vs	
Free Indian Beedi Works and Others	RESPONDENT

Date of Decision : 13-11-1950

Acts Referred:

Citation : AIR 1951 Kar 29

Hon'ble Judges : Medapa, C.J.; Vasudevamurthy, J

Bench : Division Bench

Advocate : Mirle N. Lakshminarayanappa, for the Appellant;

Final Decision : Allowed

Judgement

Yasudevamurthy, J.—The plaintiffs are a registered firm in Mysore manufacturing and selling beedies under the Dame and style of "Mangalore Ganesh Beedi works." They have filed a suit against the defendants in the Court of the District Judge of Mysore for a permanent injunction restraining the defendants from manufacturing, affixing or otherwise using in connection with their business of beedies any colourable imitation of plaintiffs' registered trade marks and for damages. The defendants have been carrying on similar business in the name of "Free India Beedi Works" in Bangalore.

2. After filing the suit the plaintiffs applied for a temporary injunction which was granted in their favour ex parte. The defendants subsequently applied for the Betting aside of that order and the learned District Judge, after hearing arguments cancelled his previous order. He, however, directed the defendants to furnish the accounts of their business once in six months and "give security to compensate the plaintiffs for any loss they might be found to have incurred if they ultimately succeeded in the suit. Against that order the plaintiffs have preferred this miscellaneous appeal.

3. In the plaints the plaintiff have stated that they are the registered proprietors of two trade marks viz,, the device of Ganesha together with the numeral of 601

on both its sides in an ornamental design and the words "Mangalore Ganesha Beedies", that they have been Manufacturing beedies known as "Mangalore Ganeah Beedies" in Mangalore since 1933, that their firm was registered on 1-4-40 in Mysore in the name and style of "Mangalore Ganeah Beedi works" with their bead office at Sivarampet, Mysore, that their beedies have acquired a valuable reputation and that they are doing very extensive business to the extent of nearly Rs. 25,00,000 per year. They have described in para 4 of their plaint the wrappers and coloured labels which they have been using for wrapping and sealing bundles of beedies. They say that it came to their notice in the beginning of February 1949 that the defendants were selling their beedies in various places under the name of "Bangalore Ganesh Baedies" in wrappers and labels closely resembling in material particulars their own wrappers labels, that the similarity of name and designs enables the defendants to pass off their goods as chat of the plaintiffs and that they are actually doing so. They complain that on the defendants' wrappers also there "was a design of Ganesha and the numerals 901 and they were calling their beedies "Bangalore Gajesh Beedies", a name very similar to the plaintiffs and calculated to mislead the customers.

4. How far the name of the baedies, the design, the wrappers and the labels adopted by the defendants are a colourable imitation of those of the plaintiffs and whether they are calculated to deceive the customers and the other defences raised by the defendants based on the provisions of the Trade Marks Act, are all questions which should be decided after the trial. At this stage we would like to avoid saying anything about the merits of the case which is likely to affect its fair trial by the lower Court. But we are, however, of the opinion that in the circumstances of this case the learned District Judge ought to have continued the order of temporary injunction which he had originally issued and not cancelled it.

5. An order of temporary injunction is granted on a prima facie case made out by the plain tiff either on the pleadings or affidavits and sometimes on whatever evidence that might be offered by the parties for that purpose. It is merely provisional in its nature. Its effect and object is to keep matters in status quo as far as possible until the hearing or until further orders and in order to prevent the commission or continuance of an alleged injury in the meantime. Its issue is often governed by the balance of convenience as between granting or refusing of such an ad interim relief, that is, on a consideration as to the comparative mischief or income lenience which may arise from granting or withholding such an interlocutory injunction. In this case, there is no doubt that the plaintiffs have a prima facie case to place before the Court. It cannot at all be said that the design, the colours and the name of Gajesha, the number 901 on the wrappers, the colour combination on the labels and the name "Bangalore Gajesha Beedies" are not in some ways at least similar to the form, the colours of the design Ganesha, the colour combination of the labels, the number 501 and the name "Mangalore Ganesha Beedies" on the packets of the plaintiffs. It is an admitted circumstance that the plaintiffs have registered their name and designs quite

sometime before suit and have been carrying on business under the name and style of "Ganesh Beedi Manufacturing works" from so far back as 1932. The defendants are newcomers in the field and we think the balance of convenience would be in restraining the defendants from using their design and name on the wrappers till the disposal of the suit.

6. The learned District Judge has compared both the parties wrappers and labels and thought that they do not bear any resemblance to each other, in view of the fact that there is a faint mark of two elephants on either side of Ganesha. He also appears to think that there must always be an element of fraud exercised or likely to be exercised by one party against another to justify the issue of an injunction in cases of this kind. He has overlooked the fact that admittedly the defendants changed the form and design of Ganesha on their labels apparently to make it look less similar to the plaintiffs" after the filing of the suit. It is for the learned Judge to consider the effect of such change and whether even the design which the defendants are now using can be said to be so dissimilar from that of the plaintiffs after taking evidence. At this stage it is enough to point out that both the grounds on which the learned District Judge has proceeded are not correct. In such actions it is not at all necessary that there should be an intention to deceive.

7. As pointed out in 14 Mys. L. J. 1 : 41 Mys. H. C. R. 110, a man has a right of property in the goodwill of his business which he has either built up or acquired, and if another person interferes with it by "passing off " his own goods among the public as the former's then he has a remedy. He can go to Court and obtain an injunction restraining the defendant from such acts even if the latter's action is entirely innocent and done in ignorance that he has interfered with the plaintiff's rights. It is not also the proper test to apply in such cases whether a person after careful and intelligent examination or study of the marks on the goods and after seeing them together is not likely to be misled but whether by the general impression produced, or what may be called "the main idea left on the mind," by looking at the article there is a probability of the similarity causing deception. Each case must depend upon the degree or amount of resemblance; and the decided cases while affording guidance on the way in which the question should be approached would not afford a rigid rule by which such cases should be decided.

8. In *Ebrahim Currim & Sons v. Abdulla Sahib* AIR1934 Mad. 226 : (148 I. C. 110), the trial Judge had compared two umbrellas in respect of which an infringement of trade mark was complained of, and having come to the conclusion that from the mere appearance of the marks he was not satisfied that even an ignorant purchaser would be deceived, refused to pass an order of temporary injunction; on an appeal against that order *Coutts-Trotter C. J.* and *Bamesam J.* reversed his decision and directed the issue of an interlocutory injunction subject to terms. In their judgment they point out that;

"One has got to see whether an ignorant purchaser is going to be in the position

of the Court having the two things side by side and examining them critically. The purchaser probably trusts to his recollection of one or a description of it that has been given him, or, seeing it in the shop window, goes to the person selling the infringement, who ex hypothesi does not give him the two, the genuine one and the infringement, to choose from."

They further point out:

"To allow the defendant with so new an article as that to disturb the state of things by putting on the market a whole supply which may turn out to be an infringement of the plaintiff's rights would, to our mind, be much greater inconvenience than to restrain the defendant for the few weeks adjournment during which the trial will be expedited and the slight difficulty of ascertaining by way of inquiry hereafter what the amount of measurable money loss he would incur by that sort adjournment "

9. The plaintiffs in this case have come to Court with a prima facie case based on earlier registered trade marks in respect of goods manufactured in their own name. The defendants, on the other hand, though they have a name of their own. firm as "Free India Beedi Works" have recently put on the market beedies under a new name which is not the name of their firm. We think, therefore, that in the circumstances of this case the balance of convenience clearly requires that there should be an interlocutory injunction in favour of the plaintiffs, the same, however, being subject to the condition that the plaintiffs will file a bond into Court that they will be liable to pay to the defendants in this suit alone such damages as shall be found due upon enquiry in this behalf in the event of their being unsuccessful in their suit and it being held that the defendants' action was not contrary to the plaintiffs' rights. In this view it is unnecessary and not desirable to consider in detail at this stage the numerous decisions referred by the counsel on both sides on the merits of the suit.

10. In the result this appeal is allowed. The order of the District Judge on I. A. No. II, vacating his previous order of temporary injunction is set aside. A temporary injunction will be issued in the terms of his earlier order on the plaintiffs filing a bond into his Court as mentioned in the previous paragraph. The respondents will pay the costs of the appellants in this Court (advocate's fee Rs. 25).