
(2001) 09 JH CK 0065
In the Jharkhand High Court
Case No : CR No. 289 of 2001

Rajendra Anand Chaurasia

APPELLANT

Vs

Bijay Chaurasia and Others

RESPONDENT

Date of Decision : 20-09-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2
Trade and Merchandise Marks Act, 1958 — Section 105, 38(2)

Citation : (2001) 09 JH CK 0065

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Advocate : Prakash Kishore Prasad, for the Appellant; Lalit Kumar Lal, for the Respondent

Final Decision : Dismissed

Judgement

Gurusharan Sharma, J.—Heard. Admittedly, the trade mark in question stood registered in the name of Harilal Chaurasia under the Trade and Merchandise Marks Act, 1958, (hereinafter referred to as "the Act").

2. Plaintiffs claimed that said Harilal Chaurasia sold and assigned all his rights and interest under the said trade mark and design for valuable consideration to them on 22.2.1990 by a deed of assignment and both the parties made application before the Registrar for registration of the said trade mark in the names of the plaintiffs, which is pending. Meanwhile, defendants started manufacturing and selling sub-standard Bidis under the same trade, name and style and under the same artistic label, causing immense loss and injury to the plaintiffs. Hence, they filed Title Suit No. 26 of 2000 for a decree for permanent and perpetual injunction against the defendants from getting printed Annexure A/ I Label and from using and marketing Bidis with the said label as well as for a decree for damages.

3. Defendant No. 1 petitioner appeared in the suit, filed written statement and inter alia, pleaded that the suit was not maintainable and thereafter on

26.5.2000 filed a petition under Order XIV. Rule 2 of the CPC (Annexure 2) for deciding the question of maintainability of the suit as preliminary issue.

4. By impugned order dated 4.7.2001, the trial court rejected the said petition.

5. Mr. Prakash Kishore Prasad, counsel for the petitioner submitted that the suit was barred under the provisions of Section 105 of the said Act, as the trade mark in question was not registered in the name of the plaintiffs and, therefore, they had no right to institute the suit. An assignee can acquire right in respect of trade mark only after registration of the said trade mark in his name. Mere assignment did not give any right to the plaintiffs to institute the suit, particularly when the said assignment itself was disputed.

6. Defendants' contention that the plaintiffs have no locus standi to file the suit as their application for getting the registered trade mark transferred in their names was still pending, was not tenable for the reason that since the plaintiffs prima facie have become proprietor of the trade mark in question on account of its assignment in their names, and defendants are said to have infringed the said registered trade mark, it cannot be said that till the plaintiffs were able to get the registration of the trade mark transferred in their names, they could not have brought the suit for injunction restraining the breach of the trade mark by any other person.

7. Title to the plaintiffs accrued, prima facie, on the execution of the assignment deed and all other follow up actions, which are required to be taken under the Act cannot change the title already acquired in this respect.

In the aforesaid circumstance, I find no reason to interfere with the impugned order, whereby the suit was held to be maintainable at the instance of the plaintiffs.

There is no merit in this Revision application. It is, accordingly, dismissed.

8. Revision dismissed.