

(1948) 02 CAL CK 0017
In the Calcutta High Court

Ram Krishna Bhakat and Others

APPELLANT

Vs

Firm Haji Jonabally and Abdul Jalil

RESPONDENT

Date of Decision : 25-02-1948

Acts Referred:

Trade Marks Act, 1940 — Section 73

Citation : (1948) 02 CAL CK 0017

Hon'ble Judges : G.N. Das, J;B.K. Mukherjea, J

Bench : Full Bench

Judgement

B.K. Mukherjea, J.—The plaintiff opposite party which is a firm carrying on the business of manufacturing and selling biris instituted a suit against the petitioners in the Court of the Special Subordinate Judge of Assam Yalley Districts claiming compensation from the latter on the allegation that they were passing off the biris manufactured by them as the biris of the plaintiff.

2. One of the contentions raised on behalf of the defendant petitioners was that in view of the provisions of Section 73, Trade Marks Act, 1940 (5 [v] of 1940), such a suit could be entertained only by the District Court, meaning thereby the Court of the District Judge. This contention found favour with the trial Judge who directed that the plaint should be returned for presentation to the proper Court. On appeal, this order was reversed, and the lower appellate Court has held that the suit was cognisable and triable by the Special Subordinate Judge, Assam Valley districts.

3. The whole controversy centres round the interpretation to be put upon the language of Section 73, Trade Marks Act, 1940. The section runs as follows:

No suit for the infringement of a trade mark or otherwise relating to any right in a trade mark shall be instituted in any Court inferior to a District Court having jurisdiction to try the suit.

4. It is not disputed on behalf of the petitioners that the present action is not one for infringement of a trade mark. There is no allegation in the plaint of the trade

mark being registered, or an application for its registration having been refused. It is also not alleged anywhere that the trade mark had been in use from before 25-2-1937. In our opinion, it is also not a suit where any right to a trade mark will be the subject matter of investigation. The plaintiff's action is a common law action of "passing off" which existed and does exist independently of the provisions of the Trade Marks Act, 1940, and the right of action in regard to it has been expressly safeguarded by Section 20 (2) of the Act. We have gone through the plaint carefully. It nowhere states that the plaintiff has got any trade mark of a particular variety, and wants any declaration of title, or relief in regard to that particular trade mark. Their case definitely is that they were selling biros manufactured by them under a particular trade name and under a distinctive label. The defendants, it is said, are counterfeiting the name and the label and are passing off their goods as the goods of "the plaintiff. In these circumstances, it seems to us that the present case does not come within the purview of Section 73, Trade Marks Act, 1940, and consequently, the Subordinate Judge had ample jurisdiction to entertain and dispose of the suit.

5. This rule is discharged with costs. Hearing fee two gold mohurs. Let the records be sent down without delay.

G.N. Das, J.

6. I agree.