
(2012) 01 DEL CK 0163

In the Delhi High Court

Case No : Regular First Appeal No. 95 of 2010

Sant Ram Mangat Ram Jewellers

APPELLANT

Vs

Pawan Kumar Jain

RESPONDENT

Date of Decision : 17-01-2012

Acts Referred:

Citation : (2012) 49 PTC 289

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Sumita Kapil, for the Appellant; M.K. Miglani and Mr. Kapil Kumar Giri, for the Respondent

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular First Appeal (RFA) filed u/s 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 3.11.2009 decreeing the suit of the respondent / plaintiff against the appellant / defendant, a sole proprietorship concern of Sh. Girish Kumar Jain by restraining the appellant / defendant from using the trademark "Sant Ram Mangat Ram Jain Jewellers" or any other mark similar thereto.

2. This appeal in my opinion, can be disposed of on a limited issue of res judicata / estoppel by judgment. This is because the present respondent / plaintiff had filed a suit in the competent civil court at Chandigarh seeking to restrain the defendants in that suit, one such defendant being the present appellant, from using the trademark "Sant Ram Mangat Ram Jain Jewellers". This suit was disposed of on the statement being made by the counsel for the defendants in that suit that the defendants will not run their business in the name of M/s. Sant Ram Mangat Ram Jain or in any other name similar thereto. The trial court has dealt with this aspect in para 31 of the impugned judgment as under:

31. Ex.P-71 is the certified copy of order dated 30.09.1991 passed by the Court of Shri M. S. Lobana, Additional District Judge, Chandigarh on injunction

application u/o 39 rules 1 & 2 CPC filed by the present plaintiff Pawan Kumar Jain and his firm SANT RAM MANGAT RAM JAIN JEWELLERS through its sole proprietor Pawan Kumar Jain against M/s Dev Brothers, Dev Kumar, Partner of M/s Mangat Ram Jain & Sons Jewellers, Girish Kumar, Partner of M/s Mangat Ram Jain & Sons Jewellers, Raj Rani and Mrs. Prabha Rani, both partners of M/s Mangat Ram Jain & sons Jewellers and M/s Mangat Ram Jain & Sons Jewellers, Chandigarh and injunction application of the plaintiff was allowed and the defendants were restrained from passing off the plaintiff's goods in the name and style of M/s Mangat Ram Jain & Sons Jewellers or in any other name similar to the plaintiff's trade name and mark M/s Sant Ram Mangat Ram Jain Jewellers and the defendants were also restrained to use, publish, advertise any such material bearing mark of M/s Sant Ram Mangat Ram Jain Jewellers or any other mark similar to the plaintiff's trade name or mark M/s Sant Ram Mangat Ram Jain Jewellers till the final disposal of the suit. Girish Kumar, defendant no.3 in the said civil suit filed by the plaintiff is admittedly the surviving proprietor of the defendant firm herein. Ex.P-72 is the certified copy of the statement of Shri R.S. Walia, advocate for the respondent, that of the Pawan Kumar Jain, plaintiff and final order passed by the Court of Additional District Judge, Chandigarh dated 25.03.1995 in that civil suit reflected on one sheet of paper reads as under :-

Statement of Shri R.S. Walia, counsel for the respondent.

The respondent shall not run their business in the name and style of M/s Sant Ram Mangat Ram Jain or in any other name similar thereto.

RO&AC

Sd/-

Sd/-

ADJ/25.3.1995

Statement of Shri Pawan Kumar Jain, plaintiff, on S.A.

In view of the statement of counsel for the respondent Mr. Walia and the assurance given by him, I withdraw this suit.

RO&AC

Sd/- 25/3/95

Sd/-

ADJ/25.3.1995

Present : Plaintiff with Sh. M. Mittal Adv.

Sh. RS Walia for the respondent.

In view of the statement of counsel for the respondent Mr. Walia and the plaintiff which shall form a part of this order, this suit is hereby dismissed as withdrawn

with no order as to costs. Announced : 25.3.1995 Sd/- Additional District Judge, Chandigarh

It is worthwhile to note that when above said statements were made and order was passed on 25.3.1995 by Court of Additional District Judge, Chandigarh in above said case, the plaintiff had already instituted the present suit on 28.08.1992 against the defendant having Girish Kumar as one of the partners who ultimately became the sole proprietor of the defendant firm during the pendency of this suit (31.12.2003 Ex. DW1/2) and he (Girish Kumar) has been defendant no.3 in the said suit filed at Chandigarh by the plaintiff.

3. Admittedly, this order dated 25.3.1995, and the statement made on behalf of the appellant who was one of the defendants in the suit before the court of ADJ at Chandigarh, has never till date been challenged and has therefore become final. Once the order dated 25.3.1995 has become final, the same binds the parties.

4. Learned counsel for the appellant argues that the statement was made by the lawyer without any instructions and during the pendency of the present suit, and therefore, the statement and the order dated 25.3.1995 cannot be binding upon the appellant. I am afraid that the submission as made by the learned counsel for the appellant is misplaced inasmuch as the only way to have corrected the order and the statement dated 25.3.1995 recorded by the court of ADJ at Chandigarh was to move the same court to have the statement / order corrected, and which was not done. That having not been done, the matter must necessarily rest there. Benefit can be taken in this regard of Explanation 1 to Section 11 CPC which provides that if there are two suits which are pending between the parties in which there are common issues, even if a later suit is decided prior to the earlier suit, then the decision in the later suit will operate as res judicata for the earlier suit. Therefore, even if the present suit was pending, it cannot mean that the pendency of the suit in any manner will prevent finality of the statement and the order dated 25.3.1995 recorded by the court of ADJ at Chandigarh.

5. So far as the contention of the appellant that there is a fraud upon the appellant, even if that be so, the challenge to an action of fraud, has necessarily to be brought in a court of law, and if not brought within the necessary period of limitation, the decision alleged to be vitiated by fraud achieves finality. Of course, I am making this observation assuming that the appellant has been defrauded as alleged by the counsel for the appellant. I am not however holding that there was in fact a fraud played upon the appellant, and as alleged by the learned counsel for the appellant.

6. Accordingly, the present appeal is without any merit and is accordingly dismissed, leaving the parties to bear their own costs.