

Manmohan Garg

Vs

Radha Krishna Narayan Das through its partners.

(Dr. A. S. Anand, B. N. Kirpal, S. Rajendra Babu JJ)

19.02.1998

ORDER

1. The respondent filed a Civil Suit in the Court of the District Judge, Bhopal seeking relief of permanent injunction and damages on the allegations that the appellant/defendant was using a deceptively similar label and passing off the Bidis manufactured by him as the Bidis manufactured by the plaintiff. The plaintiff claimed damages besides permanent injunction and an order to restrain the defendant/appellant to sell the Bidis with the label Khargosh Chhap. A decree for accounts was also prayed for. The trial court dismissed the suit on 16th March, 1981. The first appeal filed by the respondent against the judgment and decree dated 16th March, 1981 succeeded before the learned Single Judge of the High Court on 19th February, 1991. The Learned Single Judge held that the plaintiff had established infringement of his registered trade mark No. 112689 by the defendant by reason of deceptive similarity between the mark used by the defendant and the plaintiff's registered trade mark. Against the order of the learned Single Judge, the appellant herein filed a Letters Patent Appeal. A Division Bench of the High Court dismissed the Letters Patent Appeal on 20th December, 1985. Hence this appeal by special leave.

2. Briefly stated, the facts are:-

Trade Mark of Bidis, Khargosh Chhap, was first registered with the Sub-Registrar of Bombay on 26th January, 1928 and thereafter it was registered under the Trade Mark Act, 1940 on 14th August, 1945 in favour of the plaintiff/respondent in respect of the Bidis to be sold under that Trade Mark throughout the territories of India except Madras and Mysore. The Trade of India except Madras and Mysore. The Trade Mark was registered under Registration No. 112689. It appears that the plaintiff/respondent subsequently also got registered the Jhilli (tissue paper wrapper) on 2nd July, 1954 under registration No. 164797. According to the plaintiff/respondent, looking to the popularity, reputation and sale of the plaintiff's Khargosh Chhap Bidis, the defendant/appellant started selling Bidis using a label which was deceptively similar to and was a colourable imitation of the plaintiff's Khargosh Chhap Bidies, both in respect of the design, layout, get up and the colour scheme. It was on these allegations that the plaintiff/respondent had filed the suit seeking relief of permanent injunction and damages etc.

3. The learned Single Judge as well as the Division Bench of the High Court, on the basis of the evidence on the record, have recorded categorical findings that the appellant's labels used on the Bidis manufactured and sold by him were deceptively similar and identical to the plaintiff/respondent's label on the Bidis bearing trade mark Khargosh Chhap. It has also been found by the

High Court that the trade mark Khargosh Chhap had been registered prior in point of time than the trade mark Goat Cub of the appellant.

4. From the material on the record, we find that the appellant had filed an affidavit on 30th January, 1964 (Ext.P/6) wherein he had deposed that the trade mark "Goat Cub" was conceived by his firm in 1952 and that he started selling his Bidies under that trade names. The appellant's documents Ext.P/16 and P/17 also unmistakably show that the trade mark Goat Cub was conceived and put into use by him since 1952 only. This documentary evidence of the appellant gives a complete lie to the stand of the appellant that he was using the trade mark Goat Cub since 136. That being the position, no fault can be found with the findings recorded by the learned Single Judge and the Division Bench of the High Court to the effect that the plaintiff/respondent's trade mark was registered in 1945 and the defendant's claim of prior user of the label with Goat Cub was incorrect. In the light of this factual aspect of the case, we find that both the learned Single Judge and the Division Bench committed no error and their judgments suffer from no flaw whatsoever. This appeal, thus, has no merits. It is consequently dismissed with costs.