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BRIJ KUMAR
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court dismissed the suit on the ground that the Civil Court had no jurisdiction. Mr. Dalal, District Judge, on appeal reversed the court of first instance and granted the plaintiff a declaration that the relinquishment was ineffectual against him and also granted an injunction restraining the zamindar from interfering with the plaintiff's possession. In our opinion the decision of the court below was correct. It is fully covered by the decision of this Court in the case of *Jaigopal Narain Singh v. Uman Dat* (1) with which we agree. We dismiss the appeal with costs. The objection is disallowed with costs.

Appeal dismissed.

REVISIONAL CIVIL.

1915
May 7.

Before Mr. Justice Chamier and Mr. Justice Piggott.

KHESHTBA PAL SHARMA (PLAINTIFF) v. PANCHAM SINGH VARMA
(DEFENDANT).*

Trade mark—Infringement—Action for—Advertisement and circular—Cause of action—Jurisdiction of court where advertisement is published.

A trader is not entitled to pass off his goods as goods of another trader by selling them under a name which is likely to deceive purchasers (whether immediately or ultimately) into the belief that they are buying goods of another trader.

The defendant, a resident of Gaya, published advertisements and distributed hand-bills at Muttra in the Agra Judgeship advertising his medicine known as Asli 'Sudha Sindhu.' The plaintiff alleged that 'Sudha Sindhu' was his registered trade mark and he brought this suit for an injunction and for damages in the court of the Subordinate Judge of Muttra. Held that a trade mark could be infringed by means of advertisements and as the cause of action arose partly at Muttra, the courts there had jurisdiction to entertain the suit. *Jay v. Ladler* (2), *Bourne v. Swan and Edgar Limited* (3), *Frank Reddaway v. George Banham* (3), referred to.

THE facts of this case were as follows :—

The plaintiff came into court on the allegation that he had for many years been making and selling in Muttra a medicine which he had named " *Sudha Sindhu* " (" Ocean of Nectar "); that he received large orders from the mufassil for the medicine in answer to advertisements ; that the defendant, a resident of Gaya, had advertised for sale at Gaya a medicine made by him

*Civil Revision No. 148 of 1914.

(1) (1911) 8 A. L. J. R., 695. (3) (1903) L. R., 1 Ch. D., 211.
(2) (1888) L. R., 40 Ch. D., 649. (4) (1896) L. R., A. C., 199.

and named "*Asi Sudha Sindhu*" ("Genuine Ocean of Nector"); that advertisements of the defendant's medicine had appeared in papers published in Muttra, and in circulars and hand-bills distributed in Muttra; and that the plaintiff's trade mark or trade name had thereby been infringed by the defendant with the object of leading the public to believe that they would get the plaintiff's medicine known as "*Sudha Sindhu*" from the defendant. The plaintiff brought the suit in Muttra for damages and for injunction.

The Subordinate Judge of Muttra was of opinion that on the facts alleged by the plaintiff the proper court to take cognizance of the suit was the court at Gaya, and without going into the merits of the case he returned the plaint for presentation to that court. This order being upheld on appeal by the District Judge of Agra, the plaintiff applied in revision to the High Court.

The Hon'ble Dr. *Tej Bahadur Supru* (with him The Hon'ble Pandit *Motilal Nehru*), for the applicant.

The question is whether on the allegations in the plaint the cause of action did or did not arise, either wholly or in part, in Muttra. For the purpose of this case the statements in the plaint must be assumed to be correct. According to the plaint the name "*Sudha Sindhu*" is a registered trade mark which the defendant has infringed. If a person advertises as his own a trade mark belonging to another he thereby infringes it. An use of the trade mark or name in advertisements in such a way that the public is likely to be deceived thereby is an act of infringement. Halsbury's Laws of England, Vol. 27, pp. 767 and 768. It is not necessary, nor is it an essential part of the cause of action, that any one should have been actually deceived into buying the defendant's goods under the belief that he was getting the plaintiff's goods. The distribution of hand-bills and the publication of advertisements in Muttra is the infringement complained of and gives the plaintiff his cause of action. He can, therefore, sue in Muttra.

The Hon'ble Dr. *Sundar Lal*, for the respondent :—

Infringement of a trade mark consists in passing off or selling goods by a deception caused by the defendant's use of the plaintiff's trade mark. There must be an actual sale and actual

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deception of some one to give the plaintiff a cause of action for damages or injunction. Advertisement alone, so long as no sale has taken place in pursuance of it, does not amount to an infringement. The reported cases on this subject, namely, infringement of trade mark, are cases in which the defendant was selling goods within the jurisdiction of the court in which the suit was brought. In this case it is not alleged that the defendant sold or even offered for sale any goods within the jurisdiction of the court at Muttra.

The Hon'ble Dr. *Tej Bahadur Sapru*, in reply :—

Neither actual sale nor exposure for sale is necessary to establish infringement. The essential foundation of the action is a representation to the public that the plaintiff's goods are the defendant's goods; the representation may or may not achieve its purpose, and it is not necessary to prove that any person has actually been deceived. *Bourne v. Swan and Edgar, Limited* (1), *Frank Reddaway v. George Banham* (2), *John Smidt v. F. Reddaway and Co.* (3) *Munna Lal Serowjee v. Jawala Prasad* (4).

CHAMIER and PIGGOTT, JJ.—This is an application for revision of an order of the District Judge of Agra, confirming an order of the Subordinate Judge of Muttra, directing that the plaint be returned to the plaintiff for presentation to the proper court. The suit was one by the applicant for damages on account of alleged infringement by the defendant of the applicant's trade mark. The applicant has for a considerable time been selling a medicine under the name of *Sudha Sindhu* which, we understand, means 'Ocean of Nectar' in the course of his business at Muttra. He sells chiefly on V. P.P. orders received in response to advertisements which he puts in the papers. The respondent, who is a resident of Gaya, sells a medicine which he calls *Asli Sudha Sindhu* in the same way. The applicant's case is that his trade mark which has been duly registered has been infringed by the respondent. The alleged infringement is an advertisement of the respondent's medicine in papers published in Muttra and in circulars and hand-bills distributed in the same place. The courts

(1) (1908) L. R., 1 Ch. D., 211 at p. 223. (3) (1905) I. L. R., 32 Cal., 401.

(2) (1896) L. R., A. C., 199 at p. 206. (4) (1908) I. L. R., 85 Cal., 311.

below have held that the suit should have been brought in Gaya. They have treated it as a question of convenience rather than as a question of law. But if the applicant can show that the cause of action arose wholly or in part within the limits of the jurisdiction of the Subordinate Judge of Muttra, he is entitled to maintain his suit in Muttra. The question is whether the publication of the advertisement, by the respondent, of his medicine, *Asli Sudha Sindhu*, in papers, hand-bills and circulars published in Muttra is an infringement of the applicant's trade mark. For the purpose of this application we must of course assume that the applicant is entitled to the trade mark which he claims, and that the respondent's advertisement is calculated to induce people to believe that they will get from him the applicant's medicine. No authority has been produced in support of the argument that such an advertisement cannot be an infringement of the trade mark. On the other hand several English cases have been cited which show that it has been held for some years past that a trade mark may be infringed by means of an advertisement. We think it is sufficient to refer to the decisions in *Jay v. Ladler* (1), *Bourne v. Swan and Edgar, Limited* (2), and to the injunction which was issued by the House of Lords in the case of *Frank Reddaway v. George Bankham* (3). On the authorities we must hold that if the facts are as alleged by the applicant his trade mark has been infringed within the jurisdiction of the Subordinate Judge of Muttra. We therefore allow this application, set aside the orders of the courts below and direct that the record be returned to the court of first instance and the suit restored to the pending file to be disposed of according to law. Costs here and hereto will be costs in the cause.

Application allowed.

(1) (1888) L. R., 40 Ch. D., 649. (2) (1903) L. R., 1 Ch. p. 211.

(3) (1896) L. R., A. C., 199.

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