

Sunil Anchalia and anr. Vs. Paramjit Singh Narula and anr.

Sunil Anchalia and anr. Vs. Paramjit Singh Narula and anr.

SooperKanoon Citation : sooperkanoon.com/911703

Court : Kolkata Appellate

Decided On : Jan-28-2011

Judge : Prasenjit Mandal, J.

Appeal No. : C.O. No. 165 of 2010

Appellant : Sunil Anchalia and anr.

Respondent : Paramjit Singh Narula and anr.

Advocate for Def. : Mr. Habibur Rahaman;, Mr. Priyabrata Mukherjee, Advs

Advocate for Pet/Ap. : Md. Hanif Ashrafi, Adv

Judgement :

1. This application is directed against the order dated December 19, 2009 passed by the learned Civil Judge (Senior Division), Fourth Court, Alipore in Misc. Appeal No.554 of 2008 thereby setting aside the order of temporary injunction dated November 6, 2008 passed by the learned Civil Judge (Junior Division), Alipore in Title Suit No.227 of the 2008. The learned lower appellate Court has also dismissed the petition for mandatory injunction filed by the plaintiffs in the said misc. appeal.
2. The short fact is that the plaintiffs instituted a title suit being Title Suit No.227 of 2008 before the learned Civil Judge (Senior Division), Third Court, Alipore praying for a decree of declaration that the defendants have no legal rights and/or authority to continue with the business of transport and commission agency in the

name and style of M/s. Global Trailer Agency, a decree of declaration that the defendants have no legal right and/or authority to use the trade mark and goodwill of M/s. Global Trailer Agency for continuing to run business of transport and commission agency, permanent injunction restraining the defendants from using the trade mark M/s. Global Trailer Agency in their label, letter head, advertising materials, etc. and for other reliefs. In that suit, the defendants/opposite parties herein entered appearance and they are contesting the said suit by filing a joint written statement. At the time of filing of the suit, the plaintiffs prayed for temporary injunction and they got ad interim injunction. Thereafter, upon hearing both the sides, the learned Trial Judge by an order dated November 6, 2008 allowed the petition for temporary injunction restraining the defendants from using the trade mark M/s. Global Trailer Agency in their label, letter head, advertising materials, etc. and also restraining them from infringing the plaintiffs registered trade mark, etc.

3. Being aggrieved, the defendants preferred the said misc. appeal which was allowed by the impugned order. At the same time, the learned lower appellate Court dismissed the application for mandatory injunction filed by the plaintiffs on August 7, 2009 before the learned lower appellate Court. Being aggrieved, the plaintiffs have preferred this revisional application. Now, the question is whether the impugned order should be sustained.

4. Upon hearing the learned counsel for the parties and on going through the materials on record, I find that the plaintiffs filed the suit for the reliefs already stated contending, inter alia, that the plaintiffs entered into a partnership agreement on June 25, 2004 to start a business on transport and commission agency in the name and style of Global Trailer Agency in their label, letter head, advertising materials, etc. having its registered office at 49/5/H/149, 1st Floor, Karl Marx Sarani, Kolkata 700 023 with its branch office at 48, S. N. Roy Road, Sahapur, Kolkata 700 038. They also contended that they obtained a licence in respect of the said partnership business. They have also contended that the some interested persons are misusing the goodwill of the plaintiffs agency and ultimately they found that the defendants are using the said trade name causing misleading to the customers of the plaintiffs.

5. Against such contention of the plaintiffs, the defendants have stated that the plaintiffs did not state the true facts before the Court and they have misled the Court by suppressing the true facts. According to them, one Sanjiv Kumar Singh is the landlord of the premises no.49/5/H/149, Karl Marx Sarani, Kolkata 700 023 and by an agreement dated June 23, 2004, the defendants took tenancy of 434 square feet space on the first floor of the said premises at a rental of Rs.700/- per month payable according to English calendar month. The defendants have also contended that a partnership agreement was entered into between 7 partners including the plaintiffs no.1 and the defendants on July 12, 2004 and that the plaintiff no.1 in collusion with the plaintiff no.2 and other witnesses claimed interest over the business named M/s. Global Trailer Agency. The allegations against them are totally false. The plaintiffs have manufactured the story as laid down in the plaint and so, the plaint should be dismissed. The defendants have filed documents, such as, Deed of Partnership dated July 12, 2004 in their affidavit-in-opposition, rent receipt, licence from the corporation, etc. wherefrom it reveals that the plaintiff no.1 and the defendants are the partners of the said Deed of Partnership dated July 12, 2004 and the firm name is Global Trailer Agency having registered office at 49/5/H/149, Karl Marx Sarani, Kolkata 700 023. From the above facts and circumstances, it is crystal clear that the dispute is as to the possession of the business and both the parties have made rival claims with regard to the said business. Under the circumstances, the learned lower appellate Court by a reasoned order observed that there is no strong prima facie case in favour of the plaintiffs. It is also observed that the partnership firm is not a registered one. During pendency of the misc. appeal, it is contended by the plaintiffs that they have been dispossessed from the premises in suit and that is why they filed an application for mandatory injunction for restoration of possession. But, the suit remains as it is, that is, for declaration and permanent injunction, as stated above and no decree for mandatory injunction was prayed for.

6. In support of the contention of the petitioners, the learned Advocate for the petitioners, has referred to the decisions of AIR 1986 Cal 220, AIR 1956 Cal 428, 2008 (2) ICC 460 and AIR 1929 Allahabad 759 and thus, he has submitted that the interim mandatory injunction could well be granted, while during pendency of the suit, the plaintiffs were dispossessed from the premises in suit. It may be

pointed out here that the plaintiffs have contended that they have been dispossessed from the premises in suit on February 11, 2008 while the order of ad interim injunction was passed on January 28, 2008. But it is noticed by the learned lower appellate Court that the plaintiffs could not show that they had legal possession over the said premises in suit. Moreover, the plaintiff no.1 is a partner of the firm Global Trailer Agency wherein the defendants are also the partners of the firm. Above all, the relief as sought for by the plaintiffs does not appear to be dealt with by the learned Civil Judge (Junior Division) where the suit has been filed. According to Section 105 of the Trade Mark and Merchandise Marks Act, the learned District Judge has the sole authority to deal with the matter in dispute between the parties. Under the circumstances, the learned lower appellate Court has held that, prima facie, the plaintiffs have failed to show the prima facie case to go for trial and that there is no reason to interfere with the impugned order.

7. This being the position, I am of the view that the order passed by the learned lower appellate Court cannot be said to be perverse or without any basis at all. It cannot be said that the learned lower appellate Court has failed to exercise the jurisdiction vested in him. Therefore, I hold that the impugned order should not be interfered with.

8. Accordingly, the revisional application fails to succeed. It is, therefore, dismissed.

9. It is also recorded that the observations made in this application are for the purpose of disposal of this application only.

10. Considering the circumstances, there will be no order as to costs.

11. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com