

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

RFA.No. 759 of 2012 (I)

OS 1/2011 of DISTRICT COURT, THODUPUZHA

APPELLANTS (PLAINTIFFS IN THE COURT BELOW):

1. SOUTH INDIAN PLANTATION WORKERS UNION
HAVING ITS REGISTERED OFFICE AT NALLATHANNI ROAD
MUNNAR TOWN, K.D.H. VILLAGE IN DEVIKULAM TALUK
REPRESENTED BY ITS PRESIDENT- KUPPUSWAMY
S/O RAMASWAMY, NALLATHANNY ROAD, MUNNAR 685612
2. M. BALASUBRAMANYAN,
S/O. MADASWAMY, GENERAL SECRETARY
SOUTH INDIAN PALANTATION
WORKERS UNION HAVING ITS REGISTERED OFFICE AT NALLATHANNI
ROAD, MUNNAR TOWN, MUNNAR 685612

** ... THE REPRESENTEE OF 1ST APPELLANT UNION IS SUBSTITUTED AS
SRI.K.MOHAN RAJ, S/O.LATE KUPPUSWAMY, NEAR TEA
MUSEUM NALLATHANNY ROAD, MUNNAR AS PER ORDER IN
I.A.345 OF 2015 DT.16.2.2015.

BY ADVS.SRI.S.VINOD BHAT
SRI.LEGITH T.KOTTAKKAL

RESPONDENT/(DEFENDANT IN THE COURT BELOW):

A.K.MANI, S/O KADAKKARA,
RESIDING AT HOUSE NO 2157, NADAYAR ROAD
K.D.H. VILLAGE, DEVIKULAM TALUK, MUNNAR 685612

BY ADV. SRI.M.NARENDRA KUMAR
BY ADV. SRI.JOICE GEORGE
BY ADV. SMT.LAYA SIMON

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON
17-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

R.F.A.No.759 of 2012

Dated this the 17th day of March, 2015.

J U D G M E N T

The decision of the District Court, Thodupuzha in O.S.No.1 of 2011 is under challenge in this appeal. The plaintiffs in the suit are the appellants.

2. O.S.No.1 of 2011 is a suit under Sections 134 and 135 of the Trade Marks Act, 1999. The first plaintiff is a trade union by name South Indian Plantation Workers Union, represented by its President Kuppuswamy and the second plaintiff is one M.Balasubramanian, claiming to be the General Secretary of the first plaintiff union. The case set up in the plaint is that the first plaintiff is a registered trade union of the workers of Kannan Devan Hill Produce Company Private Ltd; that the first plaintiff is an independent trade union; that the first plaintiff has gained goodwill and reputation due to its special identity associated with its unique name; that Kannan Devan Hill Produce Company Private Ltd. has recognised the

first plaintiff as a trade union of its workers; that the name South Indian Plantation Workers Union is the property of the first plaintiff trade union and that the defendant who was an associate of the first plaintiff trade union and who was expelled from the post of the General Secretary of the first plaintiff trade union has formed a trade union by name South Indian Plantation Workers Union (INTUC) and is attempting to induct members in the said trade union, pretending that he represents the first plaintiff union. According to the plaintiffs, the defendant who has nothing to do with the first plaintiff trade union is not entitled to use the name of the first plaintiff for his trade union activities. The plaintiffs have therefore, sought a decree of permanent prohibitory injunction restraining the defendant and his men from passing off his trade union activities as that of the first plaintiff with or without any suffix or prefix like INTUC.

3. The defendant filed written statement contending *inter alia* that Kuppuswamy and M.Balasubramanian are not the President and Secretary of the first plaintiff trade union as claimed by them; that the first plaintiff is not an independent trade union as claimed by them; that the first plaintiff is a trade union affiliated to INTUC; that the

first plaintiff union has achieved its present stature by the efforts of the trade union to which it is affiliated; that on 20.1.2006, the defendant was elected as the President of the first plaintiff union and that though the election was held to be illegal in O.S.No.12 of 2006 instituted by Kuppuswamy before the Munsiff's Court, Devikulam, a compromise was arrived at on 22.5.2008 at the instance of INTUC and as per the terms of the said compromise, he was continuing as the President of the first plaintiff union. According to the defendant, Kuppuswamy resiled from the compromise and instituted proceedings against him claiming that he is entitled to represent the first plaintiff trade union. Thereupon, the defendant has filed O.S.No.117 of 2009 before the Sub Court, Thodupuzha for a declaration that he is entitled to represent the first plaintiff trade union as its President and the said suit is pending. According to the defendant, even if the plaint averments are admitted in full, services rendered by trade unions do not come within the ambit of Trade Marks Act, 1999 and therefore, the plaintiffs are not entitled to the injunction sought for in the suit.

4. The court below, after settling the issues for trial, heard the issue namely, whether the suit is maintainable under the provisions of the Trade Marks Act, 1999 as a preliminary

issue and dismissed the suit holding that the rights claimed by the plaintiffs do not come under the purview of Trade Marks Act, 1999. The plaintiffs are aggrieved by the said decision of the court below and hence this appeal.

5. Heard the learned counsel for the appellants and the learned counsel for the respondent.

6. The essence of the case of the plaintiffs is that the defendant who was expelled from the first plaintiff trade union, is carrying on trade union activities in the name of the first plaintiff trade union and that he is not entitled to do so. The essence of the contention of the defendant is that he is entitled to represent the first plaintiff trade union as its President and he is therefore entitled to carry on the trade union activities in the name of the first plaintiff trade union. The fundamental dispute between the parties to the suit is therefore, as to who is entitled to represent the first plaintiff trade union. It is relevant to point out that during the pendency of this appeal, Kuppuswamy who represented the first plaintiff trade union as its President died and an application has been filed as I.A.No.345 of 2015 seeking orders to substitute one K.Mohanraj as the President of the first plaintiff union. Though the said application was opposed on the ground that the said

person has nothing to do with the first plaintiff trade union, the application was allowed without prejudice to the right of the defendant to raise objections as to the competency of the said person to represent the first plaintiff trade union. If it is found that the defendant is entitled to represent the first plaintiff trade union and K.Mohanraj and the second plaintiff have nothing to do with the first plaintiff trade union, the suit has to be dismissed on that ground. On the other hand, if it is found that K.Mohanraj and the second plaintiff are competent to represent the first plaintiff trade union and the defendant has nothing to do with the first plaintiff trade union, the defendant is liable to be restrained from carrying on with his trade union activities in the name of the first plaintiff trade union, de hors the provisions of the Trade Marks Act, 1999. In both the situations, the applicability of the provisions of the Trade Marks Act, 1999 does not arise. The suit is one for passing off. Passing off arises only when there is a dispute between two entities as to their right to use a particular trade mark or trade name for their goods and services. In this case, there is only one entity and the dispute is as to who is entitled to represent that entity. Such a dispute does not come under Sections 134 and 135 of the Trade Marks Act. The decision of the court

below that the suit is not maintainable is, therefore, in order, though on different grounds. There is, therefore, no merit in this appeal and the same is accordingly, dismissed.

Sd/-P.B.SURESH KUMAR, JUDGE.

Kvs/-

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PA TO JUDGE.