

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

RFA.No. 507 of 2013 ()

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OS 5/2010 of DISTRICT COURT, THRISSUR

APPELLANT/PLAINTIFF:

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JAISON FRANCIS, AGED 45 YEARS,  
S/O.M.L.FRANCIS, RESIDING AT MUTHIPEEDIKA HOUSE  
ST.THOMAS STREET, KURIACHIRA, THRISSUR DISTRICT  
PROPRIETOR, MUMMY DADDY, MUMMY DADDY BUILDING  
ST.THOMAS STREET, KURIACHIRA, THRISSUR DISTRICT

BY ADVS.SRIJOHN MATHEW  
SMT.M.BINDUDAS

RESPONDENT/DEFENDANT:

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PAULSON.K.,  
KUNDUKULAM HOUSE, CHITILAPPILLY, THRISSUR DISTRICT  
DOING BUSINESS AT MUMMY DADDY COLLECTIONS  
SAKTAN BUS STAND, THRISSUR - 680 001.

BY ADV. SRI.P.V.CHANDRA MOHAN

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON 09-01-2015, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.B.SURESH KUMAR, J.**

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**R.F.A. No.507 of 2013**  
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**Dated 9<sup>th</sup> January, 2015.**

**J U D G M E N T**

The plaintiff in O.S.No.5 of 2010 on the file of the Court of the District Judge, Thrissur, is the appellant. The respondent is the defendant in the suit.

2. The suit O.S.No.5 of 2010 was one filed under Sections 134 and 142 of the Trade Marks Act, 1999, seeking among others, a decree of permanent prohibitory injunction restraining the defendant from carrying on business by using the name "Mummy Daddy" as a trade mark or trade name. The case of the plaintiff is that he is running a business of retail services in ready made garments under the name and style "Mummy Daddy" since 17.5.1989; that the name "Mummy Daddy" symbolises the good will and reputation earned by the plaintiff in the business of ready made garments; that of late, it was noticed that the defendant is passing off the services in the name "Mummy Daddy Collections" and that therefore, the plaintiff, being the prior user of the trade name "Mummy Daddy", is entitled to the injunction sought for by him.

3. The defendant filed written statement contending mainly that he is the proprietor of the registered trade mark "Mummy Daddy Collections" and in view of the registration obtained by him, the plaintiff is not entitled to use the trade name "Mummy Daddy" for his business.

4. The court below, on an appraisal of the materials on record, found that the plaintiff had been using the name "Mummy Daddy" for his business even before the defendant started his business. Nevertheless, the court below declined the relief sought for by the plaintiff on the ground that the defendant is the registered proprietor of the trade mark "Mummy Daddy Collections". However, since the defendant conceded at the time of giving evidence that he has no objection in the plaintiff continuing his business in the name and style "Mummy Daddy", the court below passed a decree, permitting the plaintiff to use the trade name "Mummy Daddy" for his business. It is aggrieved by the said decision of the court below, the plaintiff has come up in this appeal.

5. Heard the learned counsel for the appellant as also the learned counsel for the respondent.

6. The limited submission made by the learned counsel for the appellant at the time of hearing was that the expression used by the court below in paragraph 14 of the judgment, i.e., "he can be allowed to passing off goods in the name of 'Mummy Daddy'" to permit the plaintiff to carry on the business using the trade name "Mummy Daddy" is inappropriate, for, the same would appear that the plaintiff is permitted to do something illegitimate. He, therefore, prayed for appropriate clarification for the expression used in paragraph 14 of the judgment.

7. I am in full agreement with the submission made by the learned counsel for the appellant. Passing off goods or services of one in the name of the trade mark or trade name of another is not recognized as a legitimate activity. As such, the expression "passing off" should not have been used by the court below while permitting the plaintiff to use the trade name "Mummy Daddy". The learned counsel for the respondent has no objection in correcting the wrong expression used in paragraph 14 of the judgment appropriately.

8. In the result, paragraph 14 of the impugned judgment

is clarified to the effect that the plaintiff can use the trade name "Mummy Daddy" for his business, despite the registration obtained by the defendant for the trade name "Mummy Daddy Collections". With the aforesaid clarification, the Appeal is disposed of.

Sd/-

**P.B.SURESH KUMAR, JUDGE.**

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(true copy)