

ORDER BELOW EXH.-5
IN
Regular Civil Suit (Trademark) NO. 01 of 2019

{(1) Shri Parth Education Trust (2) Parth Academy,
Vs.
Shree Parth Academy }

APPEARANCES:

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Mr. Priyanka Mistry, Ld. Advocate for the Plaintiffs.
Mr. D.D.Devani, Ld. Advocate for the Defendant
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1. Plaintiffs has filed the suit under section 27(2) of Trade Mark Act. for declaration and permanent injunction and filed this application for interim injunction, this order below this application hence i am not repeat the all facts of this application but, brief facts of this application is that the plaintiff number 1 Shri Parth Education Trust is the educational trust registered under the Bombay Public Trust Act-1950 on dated 18/10/1997, and Shri Rudiben Kalubhai Odedra has been executed said trust deed and formed trust under the name and style of "Shri Parth Education Trust", the trust has 3 trustees.

2. Main purpose of the trust is an effort to enhance the education in the state of Gujarat and promote educational activities via running pre-primary schools and secondary and higher secondary schools, colleges etc. plaintiff number 2 is the Parth Academy formed in the 2004 and started Parth Academy in the year 2004, Parth Academy got permission from the State Education committee for

starting English medium school for class 1 to 5th standards and got permission from the Government from time to time extended their standards, academy is now holding classes from Nursery to 10th standards and from 2019 plaintiff has planned to start 11th Commerce stream that too in English medium as well as in Gujarati medium.

3. Plaintiff number 2 also provide Hostel facilities to the students and within very short time plaintiff have became well-known institute of the city, Parth is the name of the son of founder member of the trust Shri Parth Education Trust from that the plaintiff number 1 has started school in the name of Parth Academy, **Parth Academy** mark became famous, plaintiff has filed the Trademark application, said application is pending at the very advance stage of registration, the defendant is also engaged in the business of providing educational activities and thereby planning to start their educational center in the name of **Shree Parth Academy** under the identical, phonetically and ditto to ditto similar Trademark/trade name Parth Academy along with Parth Academy, plaintiff recently came to know that the defendant has started by adopting identical, similar mark **Shree Parth Academy** in respect of their business activities the plaintiff has issued a notice dated 06/03/2019, plaintiff receiving bogus and lame reply dated 10/05/2019, plaintiff has earned handsome goodwill at market, said Trademark became popular into the students and their parents and get admission in the same, defendant has deliberately started

construction of their school building within the distance of an hour from the plaintiff's academy, and put hoardings over there in the names of Shree Parth Academy, deliberately written Shree in the small letters and highlighted the Parth Academy in larger font just to misunderstand public and society.

4. Plaintiff adopted Trademark Parth Academy much prior to the defendant and with a view of pass off their services as the services of the plaintiff, the defendant has tactfully adopted the Trademark/trade name Shree Parth Academy in the said circumstances used of the Trademark Shree Parth Academy by the defendant leads to the confusion or deception, defendant is guilty of passing off by using the Trademark Parth Academy in respect of their services, the plaintiff further submits that the balance of convenience is in the favor of plaintiff and prime-facie case is in favor of plaintiff.

5. Plaintiff Prayed that the defendant, their successors, servants, agents be restrained permanently and perpetually injunction from the marketing, advertising and providing and/or offering their services under the Trademark name Shree Parth Academy and such other Trademark having identical and/or deceptively similar Trademark committing act of passing-off of services by providing their services etc.

6. The defendant has filed written statement at Exh. 11., in brief it is stated that the suit and

injunction application of plaintiff is not in proper form and also barred by mis-joinder of parties and non-joinder of parties, plaintiff has not joined trustees of Parth Education Charitable Trust at Goraj, plaintiff Trademark is not registered Trademark, since plaintiff is not entitled to get any relief and plaintiff also not joined as all trustees and letter of authorization is not for filing the suit, plaintiff has produced permission letter but, it is not got permission through Parth Education Trust, plaintiff has not get permission for secondary school and the administration of plaintiff's Parth Academy conducted by "Saffron Eduworld Private Limited", Hence, He is necessary Party. Plaintiff has filed this suit and application in the name of Rudiben K. Odedra the managing trustees but, defendant has not admit that they are the managing trustees of this Academy, the defendant's Parth Education Charitable trust is far from Mangrol 10 Km. and 15 Km. from Keshod, and 51 Km. from Plaintiff's institution, students of near by taluks and villages got admission due to facilities of Hostel in the defendant Institution, plaintiff's Parth Academy came in Junagadh at Vadala areas, this is true that defendant is running Shree Parth Academy but not started that similar Trademark, relief of plaintiff's suit and this application is same and if Interim Injunction allowed, then this suit automatically also decreed, the plaintiff has no prime-facie case and true facts is that the defendant's Parth Education Charitable Trust Goraj is registered trust and started educational standards 1 to 8 in the year

of 2018 and other standards 9 to 12 has started in June 2019 and also applied for standard 10th presently total 541 students studying and if, Injunction granted then, defendant has to suffer inconvenience, hence prayed to reject Injunction application.

7. To decide this application following issues are arise.

- (1) Whether plaintiff proves that the prime-facie case ?
- (2) Whether plaintiff proves that the balance of convenience and in-convenience in his favor ?
- (3) Whether plaintiff proves that if Injunction is not granted then he has to suffer irreparable loss, which can not be compensated in terms of money ?
- (4) What order

8. my finding of above noted issues are as under.

- (1) In Affirmative
- (2) In Affirmative
- (3) In Affirmative
- (4) As per final order

9. Plaintiff's has filed following documentary evidences i.e.

1.	Mark 4/1- Trust Deed.
2.	Mark4/2- Permission Letter.
3.	Mark 4/3- School Fees Receipt and Inspection Report.
4.	Mark 4/4- Photographs, Broacher and Pamphlet.
5.	Mark 4/5- Online status of Trademark

	Application.
6.	Mark 4/6- Notice
7.	Mark 4/7- Authority Letter.
8.	Mark 4/8- Notice reply.
9.	Mark 4/9- Defendant's pamphlet/broacher.
10.	Mark 4/10- Photographs of defendant's premise.
11.	Mark 18/01- Copy of public trust register.
12.	Mark 18/02- Copy of Photographs of the advertisement, poster of defendant's.

10. **Defendant has produced following documentary evidences i.e.**

1.	Mark 13/1- Copy of Permission certificate of primary standard 1 to 5 dated 15/02/2018.
2.	Mark 13/02- Copy of Permission certificate of standard 6 to 8 dated 15/02/2018.
3.	Mark 13/3- Copy of Permission letter of standard 9 th dated 11/06/2019.
4.	Mark 13/4- Copy of Permission letter of standard 11 th dated 11/06/2019.
5.	Mark 13/5- Copy of School fees receipt dated 24/06/2019.
6.	Mark 13/06- Copy of Electricity Bill.
7.	Mark 13/07- Hello Website screen-shoot of plaintiff's institution address.
8.	Mark 13/8- Saffron Eduworld Pvt. Ltd. Facebook account's information screen-shoot.
9.	Mark 13/09- Saffron Eduworld Pvt. Ltd. Facebook account's uploaded.

11. Plaintiff has also submitted Affidavit in Rejoinder at Exh. 15, plaintiff has submitted written arguments at Exh. 19 and I have also heard arguments of both the Learned Advocates

12. Learned Advocates of the plaintiff's Priyanka

Mistry argued that the mostly she has argued as per his injunction application and submit that the plaintiff has earned goodwill, plaintiff is prior user of Trademark and defendant also using similar Trademark which is deceptively similar Trademark of plaintiff, plaintiff have started school in the year 2004 and plaintiff has also given notice to the defendant and he has given bogus reply, Further submitted that as per say of defendant that the he is using Parth Academy word and broacher and photographs of plaintiff's Mark 04/09 and 04/10 is not defendant's documents but as per this documents defendant is using word "Shree" in small letter, using Parth Academy as a Mark of defendant's Academy is similar to the plaintiff's mark and in support of his arguments Ld. Advocates of Plaintiff's also relied various Judgments of Hon'ble Supreme Court and High Courts which are (1) *Laws (SC) 2015 3 162 of Supreme Court of India S.Syed Mohideen Vs. P. Pulochana Bai* (2) *Laws (SC) 2009 9 35 of Supreme Court of India Bajaj Auto Limited Vs. TVS Motor Company Limited* (3) *Laws (SC) 2005 11 34 of Supreme Court of India Bhavnesh Mohanlal Amin Vs. Nirma Chemicals Works Ltd.* (4) *Laws (SC) 2001 12 10 of Supreme Court of India Laxmikant V. Patel Vs. Chetanbhai Shah* (5) *Laws (SC) 2004 5 39 of Supreme Court of India Satyam Infoway Ltd Vs. Sifynet Solutions Pvt. Ltd.* (6) *Laws (SC) 1969 9 46 of Supreme Court of India Ruston and Hornsby India Ltd. Vs. Zamindara Engineering Company* (7) *Laws (SC) 1996 8 199 of Supreme Court of India N.R. Dongre Vs. Whirlpool Corporation* (8) *Laws (GJH) 1994 4 25 High Court of Gujarat Duncans Agro Industries Ltd. Vs. Somabhai Tea*

Processors Pvt. Ltd. (9) In the High Court of Gujarat at Ahmedabad Special Civil Application No. 14290 of 2015 Nishant Contruction Pvt. Ltd. Vs. Ratnaakar Estate Developer Pvt. Ltd. (10) Laws (Bom) 2012 8 54 High COurt of Bombay Sopariwala Exports Vs. Kuber Khaini Pvt. Ltd. (11) Laws (DLH) 1995 4 1 High Court of Delhi N.R. Dongre Vs. Whirlpool Corporation (12) Laws (DLH) 1977 4 14 High Court of Delhi Century Traders Vs. Roshan Lal Duggar,Co. (13) Laws (DLH) 1995 8 99 High Court of Delhi Chhattar Extractions Ltd. Vs. Kochar oil Milks Ltd. (14) Laws (DLH) 2014 2 372 High Court of Delhi Sanjay Kapur Vs. Dev Agri Farms Pvt. Ltd. (15) Laws (DLH) 2014 3 268 High Court of Delhi Ireo Pvt. Ltd. Vs. Genesis Infratech Pct. Ltd. and Submitted to grant Interim Injunction as prayed for:

13. Learned Advocate on behalf of defendant's Mr. Devani has submitted and argued that plaintiff has not joined trust as parties and documents of Broacher produced by plaintiff is not admitted by defendant and plaintiff has not got any information under Right to Information Act. Further, argued that the suit filed by trustees, he has to pass resolution for filing the suit and Mark 13/07 Screen-shot, **plaintiff's activities where Parth Kalubhai mentioned but, suit is filed by Rudiben K. Odedra**, plaintiff has got permission under name of trust and not in the name of the Parth Academy, plaintiff Trademark is not registered Trademark and plaintiff has also filed application for registration before this application of registration , plaintiff has which is withdrawn by him and as registration

application is not allowed because other Parth Classes is also registered and Parth Academy is not person, therefore, Injunction application is not tenable without examination of evidence, hence, without taking evidence Injunction can not be granted and prayed to reject the Injunction application.

14. So, Considering the arguments and documentary evidences and Judgments relied by the plaintiff, I have gone through the Authorities looking to the documentary evidences produced by the plaintiff Trust Deed which is in the name of Parth Education Trust dated 12th October 1997 and permission certificate of District Primary Educational Officer, Junagadh dated 07/06/2004 for standards 1 to 5 English Medium and looking to the Broacher and Pamphlet of defendant wherein it is written word "Shree" in small letters and Parth Academy is in Big letters which is similar to the mark of plaintiff's Parth Academy and plaintiff also produced receipt of school fees which is from the date of 2010 and on wards and plaintiff is also issued Notice in the name of Parth Academy, So, plaintiff has got Permission of Parth Academy School in the year 2004 whereas defendant has started his school in the year 2018 so, plaintiff is prior user of the Parth Academy than defendant. so, looking to the judgment Laws (SC) 15 of Supreme Court of India S.Syed Mohideen Vs. P. Pulochana Bai If, Trademark is not registered even though prior user has better right in suit of passing off. hence arguments of Ld. Advocate of defendant is not believable that plaintiff trademark is not registered.

15. Further, In the order of the **Hon'ble Gujarat High Court In Special Civil Application Number 14290/2015** once case of passing off is made out practice has generally to granted prompt Ex-parte Injunction.

16. Further, Learned Advocate for the Defendant argued that his academy is far from plaintiff's academy, looking to the judgments relied by plaintiff side, this arguments of defendant is not believable, further, learned advocate Mr. Devani argued that the suit is not maintainable because plaintiff has not joined all the trustees as parties but at this stage this arguments is not believable because plaintiff may amend suit if, required. Plaintiff also produced latter of Authorization of filling the suit and I have gone through all the judgments relied by plaintiff side and whatever the principles and observation made in the above authority I have not discussed in detailed in this order but what ever principles and observation held by Higher Court I respect with great honour and looking to the submissions of both the parties and documentary evidences defendant using Mark Parth Academy is deceptively similar to the Mark of plaintiff and plaintiff is prior user of his Mark Parth Academy, hence, plaintiff has prime-facie case, and in the judgment of **Satyam Infoway Ltd.** case it was held that to establish an action of passing-off 3 elements are needed to be established and if two trade rivals claim to have individually invented the same mark then the trader who is able to establish prior user will succeed Further in the judgment of **LAW(S)**

1969 9 46 Hon'ble Supreme Court held that in passing-off action the issue is that is the defendant selling goods so marked as to be designed or calculated to lead purchasers to believe that they are the plaintiffs goods Further in the judgment of Hon'ble Gujarat High Court reported in LAWS(GJH) 1994 4 25 Duncans Agro Industries Ltd. It is observed that trader first goes to the market with his products under a particular trademark or trade name as a distinctive mark gets the proprietary rights to use that mark, to the exclusion of others irrespective of the length of the user or extant of his business, even if the plaintiff's user was only few months prior to that of defendant, the plaintiff would be entitled to an injunction restraining the defendant from using that mark or a similar mark so, my answer to the issue number -1 in affirmative.

17. As Discussed in issue number -1 plaintiff has prime-facie case and if Injunction granted in favour of plaintiff then defendant have not any inconvenience. Defendant may use other word instead of word Parth, Further, defendant has started his educational institution in the year of 2018 and only One Fee Receipt produced which is year of 2019, hence Defendant has not any inconvenience and balance of convenience is in favor of plaintiff and if Injunction is not granted then plaintiff has to suffer irreparable loss, if injunction is not granted then confusion in the mind students and his parents because parents and student do not ask name of the trustees or it's administrators they only see the name of school

and believe that defendant's school is of plaintiff's school so, my answer to the issues numbers 2 and 3 is in affirmative, hence in the result of Point No.4,I pass the following order.

:: O R D E R ::

- 1.The Plaintiff's this Interim Injunction Application is hereby allowed.
- 2.It is hereby ordered that Defendant their successors, servants, agents are restrained by this Interim Injunction order from using Marketing, Advertising and providing their services under the Trademark/Trade name word "**Parth**" of his Academy or deceptively similar to that of the Trademark of plaintiff's "**Parth Academy**" till the pendency of the Suit.

Signed and pronounced in open Court on this 17th of DECEMBER, 2019.

Keshod

Date: 17/12/2019

(K. S. HIRPARA)

(Judge Code-GJ00504)

6th (Ad-Hoc) Addl. District Judge,

Keshod,

Dist.:Junagadh