

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
UDUPI DISTRICT, UDUPI**

Dated this the 17th day of June, 2021

Present

Sri J.N.Subramanya, B.A.,L.L.M.

Prl. District & Sessions Judge,
Udupi.

O.S. No.1/2020

Plaintiff:

M/s. Sumukha Surgicals India Pvt. Ltd.,
Kanchikan Road,
Uppunda, Kundapura Taluk,
Udupi District - 576 232.

Represented by its Managing Director,
Mr. Suresh Shetty,

(By Sri. H.K.S.H. Adv.)

Versus

Defendant:

M/s. Dhrithi Surgical Solutions Pvt. Ltd.,
Door No.5-10-1-42/8, Alke,
Kambla Cross Road,
Mangalore - 575003.

Represented by its Director,
Mr. Sharath Kumar Shetty.

(By Sri.G.K.J. Adv.)

ORDER ON I.A.NO.II

On 02.06.2021 when the case is fixed for argument on
behalf of the defendant on I.A.No.I the defendant got filed

application under Order VII Rule 10 r/w Section 151 of C.P.C. requesting to return the plaint in view of reason that there is no territorial jurisdiction to the Court, therefore suit is not maintainable.

2. In support of I.A.No.II learned Advocate appearing for the defendant filed memorandum of facts asserting following points:

- a) The plaintiff sought for relief of permanent injunction restraining the defendant from infringing / passing off the plaintiff's trademark for surgical disposable gowns etc..
- b) This Court has no territorial jurisdiction to try the suit. The plaintiff is a registered company having its office at Kanchikan Road, Uppunda, Kundapura Taluk under the name and style of M/s. Sumukha Surgicals India Pvt. Ltd., which is within the jurisdiction of Kundapura, since there is a separate Addl. District court functioning at Kundapura, this Court is not having jurisdiction to entertain the suit, since separate notification was not issued to providing the jurisdiction to entertain the suit

concerned to the IPR matter. When there is a jurisdictional Court (is available) i.e. Addl. District and Sessions, Court sitting at Kundapura this Court have no jurisdiction to entertain the suit.

c) As per Section 134 of the Trademarks act the jurisdictional District Court is having the jurisdiction to adjudicate the case.

d) The defendant is also a company carrying on business at No.355/8, D.No.198, Belke Village and Post, Bhatkal Taluk, Uttara Kannada District by obtaining permission from Gram Panchayath, Belke, Bhatkal Taluk dated 31.01.2018 and having no office within the jurisdiction of this Court i.e. Udupi. The address of the defendant company given by the plaintiff does not exist as on 02.06.2021 and has been furnished only for the purpose of filing suit. The defendant by filing necessary application before the Ministry of Corporate Affairs for change of address of the registered office at Sy.No.355/8, D. NO.198, Belke Village and post, Bhatkal Taluk U.K. District, pursuant to Section 12(2) & (4) of

the Companies Act, 2013 and Rule 25 & 27 of the Companies (Incorporation) Rules, 2014 amended the registered office address.

- e) The evidence shows that the registered office of the plaintiff or defendant companies are not within the jurisdiction of this Court, therefore this Court has no territorial jurisdiction. The address furnished by the plaintiff is without verification.
- f) No prejudice will be caused to the plaintiff if the return of the plaint to file in jurisdictional Court is ordered, on the contrary the defendant will be put to great loss and irreparable injury.

3. Learned Advocate appearing for the plaintiff filed objection to I.A.No.II by asserting the following grounds:

- (a) The application is frivolous, vexatious and unsustainable in law. The application has been filed with a view to protract the suit.
- (b) The defendant filed similar application before District Court, Mangalore, at his instance the suit

has been transferred to this Court. The suit filed by the plaintiff is for infringement of their registered trademark, therefore by virtue of Section 134(2) of Trademarks Act, the suit can be filed within the jurisdiction of this Court where the plaintiff have their registered office.

- (c) The defendant is using trademark DHRITHI which is identical or deceptively similar to the plaintiff's registered trademark DHATRI, both trademarks are phonetically, structurally and visually similar, therefore by virtue of section 29(3) of the Trademarks Act, 1999 the use of trademark DHRITHI by the defendant amounts to infringement of registered trademark of plaintiff. Hence, the application is devoid of merits.
- (d) The application has been filed with support of affidavit of the Advocate who is on record, having identified with his client his vakalathnama has to be terminated.

- (e) The matter is pending since a long time. The adoption of trademark DHRITHI by the defendant is fraudulent as he was earlier working as Director of plaintiff company and after resignation he has adopted deceptively similar trademark.

4. I heard the argument submitted on behalf of both the parties and perused the records. On 07.06.2021 and 09-06-2021 learned Advocate appearing for the plaintiff and defendant filed common notes of argument on I.A.No.1 and 2. On the basis of the materials on record the following points would arise for my consideration:

1. Whether the defendant made out sufficient ground to return the plaint as sought in I.A.No.II?
2. What order?

5. On the basis of the material available on record, my finding on the above points are as under:

Point No.1: In the negative

Point No.2: As per final order,
for the following reasons:

REASONS

6. **Point No.1**:- In the lengthy argument learned Advocate appearing for the defendant requested to allow the application (return plaint) by relying the following judgments:

1. Civil Appeal No.10643-10644/2019 (DD -01.07.2015)

Indian Performing Rights Society Ltd., Vs. Sanjay Dalia And Another.

2. 1996(36) DRJ 662 (Hon'ble High Court of Delhi)

P.M. Diesels Ltd., Vs. Patel Field Marshal Industries

3. Appeal (civil) 6248 of 1997 (D.D.-15.12.2005)

M/s. Dhodha House Vs. S.K. Maingi

4. CS (COMM) 819/2018 & Ias 5616/2018, 14586/2018 (D.D.31.01.2019)(Hon'ble High Court of Delhi)

M/s. Allied Blenders and Distillers Pvt. Ltd., Vs. Govind Yadav & Anr.

5. FAO (OS) No.352/2010 (01.11.2020) (Hon'ble High Court of Delhi)

Marico Limited Vs. Agro Tech Foods Limited.

7. Along with objection learned advocate appearing for the plaintiff requested to terminate the vakalathnama of learned advocate who filed memorandum of facts along I.A.No.II relying a judgment of Hon'ble High Court of Gauhati reported in (2006) 2 GLR 597 Raj Kumar Prasad Vs. State of Arunachal Pradesh

8. In the light of the above cited judgments and submissions made on behalf of both the parties, I have appreciated the evidence available in the file.

9. Regarding jurisdiction, in paragraph No.14 of the plaint the plaintiff has asserted that the cause of action arose to the suit on 01.03.2019 when the defendant adopted DHRITHI and subsequently within the jurisdiction of this Court where the plaintiff is carrying on business within the jurisdiction of this Court.

10. In the trademark application No.2369861 dated 27.01.2014 the address of the Proprietor is noted as Sumukha Surgicals India Private Limited, Kanchikan Road, Uppunda, Kundapura Taluk, Udupi District.

11. In the income tax return acknowledgment the address of the plaintiff is noted as Sumukha Surgical India Pvt. Ltd., Kanchikan Road, Uppunda Post, Kundapura Taluk, Udupi District.

12. In the plaint the plaintiff has noted the address of the defendant as M/s. Dhrithi Surgical Solutions Pvt. Ltd., Door No.5-10-1042/8, Alke, Kambla Cross Road, Mangalore-575003.

13. In the written statement the defendant noted his address as Sy.No.355/8, D.No.198, Belke Village and Post, Bhatkal Taluk, Uttara Kannada District.

14. MSME (Ministry of Micro, Small & Medium Enterprises) Certificate shows that the defendant has maintained his company at Sy.No.355/8, Belke Village and Post, Bhatkal Taluk, Uttara Kannada District, Karnataka.

15. In this case there is no dispute about the address and place where the defendant is maintained /conducting business activities. The grievance of the defendant is that the Addl. District and Sessions Court, Kundapura is only having territorial jurisdiction to decide the dispute on the

ground that the registered office of the plaintiff is situated within the territorial jurisdiction of Kundapura Taluk.

16. Section 134 of Trade Marks Act, 1999 with respect to territorial jurisdiction of a Court which had jurisdiction to decide the suit filed alleging infringement of Trade Mark reads as under:

“134. Suit for infringement, etc., to be instituted before District Court.—

(1) No suit—

*(a) for the infringement of a registered trade mark;
or*

(b) relating to any right in a registered trade mark; or

(c) for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the plaintiff's trade mark, whether registered or unregistered,

shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.

(2) For the purpose of clauses (a) and (b) of sub-section (1), a “District Court having jurisdiction” shall, notwithstanding anything contained in the Code of

Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or proceeding, or, where there are more than one such persons any of them, actually and voluntarily resides or carries on business or personally works for gain.”

17. There is no dispute about existence of Addl. District and Sessions Court at Kundapura. However as on today neither circular nor notification issued by the Competent Authority conferring jurisdiction to deal with the matters concerned to either IPR or Commercial Court Act or any other special law on the Addl. District and Sessions Court, Kundapura are furnished by either parties.

18. Office also not furnished documents i.e. circular or notification issued by competent authority excluding jurisdiction of this Court to deal with the matter concerned to Trade Marks Act or Copy Right Act pertaining to Kundapura Taluk.

19. In the lengthy argument learned Advocate appearing for the plaintiff asserted that the plaintiff is carrying on

business within the jurisdiction of this Court i.e. at Udupi. In this case at this stage there are no evidence to show lack of territorial jurisdiction of this Court to deal with matter concerned to Trade Marks Act or Copy Right Act over Kundapura Taluk.

20. The learned Advocate appearing for the plaintiff requested to terminate Vakalath of the learned advocate appearing for the defendant asserting that learned advocate appearing for the defendant has filed affidavit in support of I.A.No.II. Record shows that in support of I.A.No.II learned advocate appearing for the defendant has not filed any affidavit on behalf of the defendant, however advocate for the defendant filed memorandum of facts on the basis of information provided by the defendant. Hence, the question of terminating of Vakalath of learned Advocate appearing for the defendant who filed memorandum of facts does not arise.

21. In view of non-availability of the documents about exclusion of territorial jurisdiction of this Court to deal with the matter concerned to intellectual property right (Trade

Mark Act, Copy Right Act etc.,) of Kundapura Taluk. I have inferred that judgments cited on behalf of the defendant with respect to territorial jurisdiction point are not applicable.

22. Hence, I came to the conclusion that submissions made on behalf of the defendant and documents available in the file as on today are not sufficient to conclude that this Court is lacking territorial jurisdiction to decide the suit.

23. Hence, I came to the conclusion that the defendant has failed to make out sufficient ground to return the plaint as sought in the application.

24. At this stage, it is clarified that if the defendant is having either circular or notification or any other document issued by Competent Authority excluding territorial jurisdiction of this Court with respect to the matters concerned to Trade Marks Act or Copy Right Act of Kundapura Taluk, he is at liberty to produce those documents and seek the suitable orders. Hence, I answer point No.1 in the negative and pass the following:

ORDER

I.A.No.II filed under Order VII Rules 10 r/w

Section 151 of C.P.C. is hereby rejected.

There is no order as to costs.

(Dictated to the Stenographer, who transcribed & computerized, then corrected by me, print taken, pronounced in the open court on 17th day of June, 2021)

(J.N.Subramanya)

Prl. District & Sessions Judge, Udupi.