

(1964) 01 AHC CK 0019**Allahabad High Court****Case No:** Original Suit No. 1 of 1963

Batti Kunwar and Others

APPELLANT

Vs

Chunni Lal Shukla and Others

RESPONDENT

Date of Decision: Jan. 6, 1964**Acts Referred:**

- Trade and Merchandise Marks Act, 1958 - Section 109, 3, 56, 56(2)

Citation: AIR 1965 All 256**Hon'ble Judges:** V.G. Oak, J**Bench:** Single Bench**Advocate:** G.N. Kunzru, S.K. Dongre and I.C. Tripathi, for the Appellant; V.D. Sant and V.B. Mathur, for the Respondent**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

V.G. Oak, J.

This is an application u/s 56 of Trade and Merchandise Marks Act, 1958 (Act No. XLIII of 1958 hereafter referred to as the Act).

2. Parties are related to one another. Smt. Batti Kunwar, applicant No. 1 is the widow of one Lakshmi Narain. Munna Lal and Kamal Krishna, applicants Nos. 2 and 3 are two sons of Lakshmi Narain deceased. Chunni Lal, opposite party No. 1 is another son of Lakshmi Narain deceased. Rajendra Prasad and Surendra Kumar, opposite parties Nos. 2 and 3 are sons of Chunni Lal opposite party No. 1.

3. The applicants' case is that in the year 1912 Lakshmi Narain established a business of manufacturing and selling Pan ka Masala in the name and style of "Badshah Pasand Pan Ka Masala" The business was carried on at Kanpur, in 1950 Lakshmi Narain got the device of Lord Ganesh with other representation registered under the Trade Marks Act, 1940. That Trade mark was later renewed in the year

1957. In 1051 Lakshmi Narain got the words "Badshah Pasand" with the device of Lord Ganesh registered under another trade mark. Thirdly, in the year 1955, Lakshmi Narain got the label bearing his photograph and the words "Badshah Pasand Karyalaya, Morhatoli, Kanpur" registered. Lakshmi Narain was the absolute owner of all the three trade marks. Chunni Lal, opposite party no. 1, separated himself from his father Lakshmi Narain in the year 1932. Lakshmi Narain lived jointly with his two sons, Munna Lal and Kamal Krishna. Lakshmi Narain remained the owner of the business all along. He died on 22-3-1950. Soon after Lakshmi Narain's death, the opposite parties prevailed upon the applicants to enter into a so-called agreement. That document was fraudulently obtained. On the strength of that document, an application for substitution of names as Lakshmi Narain's heirs was presented to the Registrar of Trade Marks, New Delhi. Names of the opposite parties were recorded in the Register of Trade Marks as legal representatives of Lakshmi Narain deceased. As a matter of fact, opposite parties have no concern with the three trade marks obtained by Lakshmi Narain. The applicants have, therefore, prayed that names of the three opposite parties be expunged from the Register of Trade Marks in respect of the three trade marks in question. There is also a prayer for cancellation of the alleged deed of partnership, dated 23-3-1959.

4. The opposite parties have tiled a written statement. Their preliminary objection is that, this court has no Jurisdiction to try the suit.

5. In order to dispose of the preliminary question of jurisdiction, the relevant provisions of the Act may be examined. According to Clause (h) of Section 2, High Court means the High Court having jurisdiction u/s 3. Section 3 states:

"The High Court having jurisdiction under this Act shall be the High court within the limits of whose appellate jurisdiction the office of the Trade Marks Registry referred to in each of the following cases is situate, namely:

(a) in relation to a trade mark on the Register of Trade Marks at the commencement of this Act, the office of the Trade Marks Registry within whose territorial limits the principal place of business in India of the proprietor of the trade mark as entered in the Register at such commencement is situate....."

6. Section 56 of the Act confers power to cancel or vary registration and to rectify the Register. Section 56 states:

"(1) On application made in the prescribed manner to a High Court or to the Registrar by any person aggrieved, the tribunal may make such order as it may think fit for cancelling or varying the registration of a trade mark on the ground of any contravention, or failure to observe a condition entered on the Register in relation thereto. (2) Any person aggrieved by the absence or omission from the Register of any entry, or by any entry made in the Register without sufficient cause, or by any entry wrongly remaining on the Register, or by any error or defect in any entry in the Register, may apply in the prescribed manner to a High Court or to the

Registrar, and the tribunal may make such order for making, expunging or varying the entry as it may think fit....."

7. The applicants" grievance is that, names of opposite parties have been wrongly recorded in the Register. The applicants have prayed that their names should be expunged from the Register. Their case, therefore, falls under Sub-section (2) of Section 56 of the Act. u/s 56(2), the aggrieved party may approach a High court. The question arises as to which is the appropriate High Court. That matter has been discussed in Section 3 of the Act. Section 3 determines the High Court having jurisdiction in a certain matter under this Act. Clause (a) of Section 3 deals with a case in relation to a trade mark existing at the commencement of this Act. In the present case Lakshmi Narain obtained the three trade marks much before the commencement of the 1958 Act. It, therefore, appears that the present case fails under Clause (a) of Section 3 of the Act. Mr. Gopi Nath Kunzru, appearing for the applicants, contended that, Clause (a) of Section 3 may govern cases failing under Sub-section (1) of Section 56, but will not govern cases falling under Sub-section (2) of Section 50. I am unable to agree. The expression used in Clause (a) is "in relation to a trade mark". Even if the applicants" grievance is under Sub-section (2) of Section 50, that would be a case in relation to a trade mark. That case will, therefore, fall under Clause (a) of Section 3 of the Act.

8. We find the expression "appellate jurisdiction" in Section 3 of the Act. Mr. Kunzru suggested that, that expression has reference to Section 109 of the Act, which provides for appeals. It is true that Section 3 does contain the expression "appellate jurisdiction". But the opening words of Section 3 are much wider. Section 3 is meant for determining the High Court having jurisdiction in cases falling under the Act. Section 8 will govern, not only appeals u/s 109 of the Act, but also applications u/s 56 of the Act.

9. Clause (a) of Section 3 mentions the office of the Trade Marks Registry within whose territorial limits the principal place of business in India of the proprietor of the trade mark is situate. Lakshmi Narain was the original owner of the trade mark. The applicants claim the present ownership of the trade mark. Lakshmi Narain and the applicants lived at Kanpur. Section 5 of the Act deals with Trade Marks Registry and its offices. The head office of the Trade Marks Registry is located at Bombay. There is a branch office at New Delhi under Chapter XXXV, Rule 3 of Rules of Court, notice was sent to the Registrar of Trade Marks. That notice was issued at the applicants" instance to the Registrar Trade Marks, New Delhi. It, therefore, appears that district Kanpur lies within the territorial limits of the Assistant Registrar, Trade Marks, New Delhi. We have to find out whether the office of the Trade Marks Registry, New Delhi lies within the appellate Jurisdiction of this Court or some other High Court.

10. When this case was taken up on 26-11-1903, Mr. Kunzru suggested that the office in question is actually situate within Uttar Pradesh. This position was disputed

on behalf of the opposite parties. I, therefore, gave the parties an opportunity to file affidavit on this point. No affidavit was filed by the applicants. Chunni Lal filed one affidavit today. He has annexed to this affidavit a letter from the Assistant Registrar of Trade Marks, Okhla Industrial Estate, New Delhi 20, in that letter the Assistant Registrar reports: "The office of the Assistant Registrar of Trade Marks, Trade Marks Registry, Okhla industrial Estate, New Delhi-20 is situated within the territorial Jurisdiction of the Punjab High Court".

11. It is well known that the jurisdiction of Punjab High Court has been extended to the Union Territory of Delhi. We find the expression "New Delhi-20" in the address of the Assistant Registrar of Trade Marks. That address and the letter sent by the Assistant Registrar indicate that, the office in question is located at New Delhi, and does not lie within Uttar Pradesh.

12. In Sri Chamundeeswari Weaving and Trading Co. (Pie) Ltd. Vs. The Mysore Spinning and Manufacturing Co., Ltd., and Another, it was held that an application for rectification of Trade Mark Register can be filed in the High Court within whose jurisdiction the Trade Marks Register is situated or in the High Court within whose jurisdiction the owner of the Marks resides or carries on business. That was a decision under the Trade Marks Act, 1940. That decision is of little assistance in disposing of the question of jurisdiction under Act no. XLIII of 1958.

13. Mr. Kunzru contended that, Section 3 of the Act is invalid, in so far as it purports to confer on the Punjab High Court jurisdiction to dispose of cases from district Kanpur. The point would have had much force, if the cause of action was confined to Uttar Pradesh. It is, however, to be noted that, the principal relief claimed by the applicants is amendment of the Register of Trade Marks maintained at New Delhi. It, therefore, appears that the cause of action partly arose at New Delhi. Since the cause of action partly arose at New Delhi, there can be no objection if jurisdiction in the matter is conferred on the Punjab High Court, which has original and appellate Jurisdiction at Delhi, section a of the Act appears to be valid.

14. We have seen that, although the parties reside at Kanpur, the place of business is within the territorial limits of the Trade Marks Registry at New Delhi. That office is within the appellate Jurisdiction of the Punjab High Court. So, u/s 3 of the Act, it is the Punjab High Court, which has jurisdiction to deal with the present application u/s 66 of the Act. This Court has no jurisdiction to dispose of the present application.

15. This application u/s 50 of Act No. XLIII of 1958 is dismissed with costs.