

RAJA SOAP FACTORY AND OTHERS

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v.

S. P. SHANTHARAJ AND OTHERS

January 20, 1965

[K.N. WANCHOO, M. HIDAYATULLAH, J.C. SHAH
AND S.M. SIKRI, JJ.]

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High Court of Mysore Act, 1962 (Mysore Act 5 of 1962)—Trade and Merchandise Marks Act, 1958 (Act 43 of 1958), 105—Code of Civil Procedure, 1908 (Act 5 of 1908), ss. 24, 151—High Court—Passing off Action, institution—Entertainability—Exercise of original jurisdiction—Jurisdiction, Meaning of.

The respondents instituted a passing-off action in the High Court of Mysore for a declaration that they were exclusive owners of a certain trade mark and for a permanent injunction restraining the appellants from passing off their goods as that of respondents. By s. 105 of the Trade and Merchandise Mark Act such an action may be instituted in any court not inferior to a District Court having jurisdiction to try the suit. It appears that on the day the suit was instituted the District Court was closed and there was no Judge functioning in the District Court who was on duty and competent to exercise the powers of the District Court. The High Court entertained the plaint and granted temporary injunction. In appeal by special leave :

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HELD : (i) The High Court of Mysore is by its constitution primarily a court exercising appellate jurisdiction; it is competent to exercise original jurisdiction only in those matters in respect of which by special Acts it has been specifically invested with jurisdiction. It would be competent to exercise original jurisdiction under s. 105 of the Act if it was invested with ordinary original jurisdiction of a District Court and not otherwise. [802 D-F]

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As a Court of appeal it undoubtedly stands at the apex within the State, but on that account it does not stand invested with original jurisdiction in matters not expressly declared within its cognizance. [802 H]

(ii) Power under s. 24 of the Code of Civil Procedure to try and dispose of a proceeding after transfer from a court lawfully seized of it does not involve a power to entertain a proceeding which is not otherwise within the cognizance of the High Court. [803 C-D]

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(iii) Section 151 of the Code of Civil Procedure preserves the inherent powers of the Court, but it does not authorise the High Court to invest itself with jurisdiction where the jurisdiction is not conferred by law. [803 D-E]

(iv) By "jurisdiction" is meant the extent of the power which is conferred upon the court by its constitution to try a proceeding; its exercise cannot be enlarged because an extraordinary situation "requires" the court to exercise it. [803 H-804 A]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 771 of 1964.

Appeal by special leave from the judgment and order dated May 29, 1964, of the Mysore High Court in Civil Petition No. 90 of 1964.

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A *S. S. Khanduja and Ganpat Rai*, for the appellants.

B. R. L. Iyengar, S. K. Mehta and K. L. Mehta, for respondents Nos. 1 to 7.

The Judgment of the Court was delivered by

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Shah J. On May 5, 1964 the respondents—hereinafter called ‘the plaintiffs’—instituted in the High Court of Mysore an action in the nature of a passing off action against the appellants—hereinafter called ‘the defendants’—for a declaration that they “are exclusive owners of the trade mark consisting of the letters R.S.F. and No. 806”, for a permanent injunction restraining the defendants from passing off their washing soap as the goods of the plaintiffs and for incidental reliefs.

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By s. 105 of the Trade and Merchandise Marks Act 43 of 1958 a passing off action whether the trade mark is registered or unregistered may be instituted in any court not inferior to a District Court having jurisdiction to try the suit. It appears that on May 5, 1964 the District Court of Mysore, within the territorial limits of which the cause of action was alleged to have arisen, was closed for the summer vacation, and it is common ground that on that day there was no Judge functioning in the District Court who was on duty and competent to exercise the powers of the District Court. At the request of the plaintiffs the High Court entertained the plaint and also an application for interim injunction restraining “the defendants their agents or servants from using the trade mark R.S.F. on washing soap manufactured by them and from selling washing soap bearing the said offending mark pending disposal of the case.” By order dated May 29, 1964 the High Court granted the temporary injunction in terms of the prayer in the application.

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In this appeal with special leave, counsel for the defendants argues that the High Court had no jurisdiction to entertain the action instituted by the plaintiffs and had no power to make an order issuing a temporary injunction. The action, as framed, could properly be instituted in the District Court. The expression “District Court” has by virtue of s. 2(e) of Act 43 of 1958 the meaning assigned to that expression in the Code of Civil Procedure, 1908. Section 2(4) of the Code defines a “district” as meaning the local limits of the jurisdiction of a principal civil court—called the District Court—and includes the local limits of the ordinary original civil jurisdiction of a High Court. If therefore a High Court is

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possessed of ordinary original civil jurisdiction, it would, when exercising that jurisdiction be included, for the purpose of Act 43 of 1958, in the expression "District Court". A

Exercise of jurisdiction by the High Court of Mysore is governed by Mysore Act 5 of 1962. The Act is purely a regulatory Act enacted for regulating the business and exercise of the powers of the High Court in relation to the administration of justice : it does not purport to confer upon the High Court any jurisdiction original or appellate. It is true that by s. 12 of the Mysore High Court Act 1 of 1884 enacted by the Maharaja of Mysore to amend the constitution of the High Court of Mysore, and to provide for the administration of justice by that Court, the Government of Mysore was authorised by notification to invest the High Court with ordinary original civil jurisdiction of a District Court in all suits of a civil nature exercisable within such local limits as the Government may from time to time declare and appoint in that behalf. But s. 12 of the Mysore Act 1 of 1884 has been repealed by s. 14 of Mysore Act 5 of 1962. B
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The High Court of Mysore is by its constitution primarily a court exercising appellate jurisdiction : it is competent to exercise original jurisdiction only in those matters in respect of which by special Acts it has been specifically invested with jurisdiction. The High Court is competent to exercise original jurisdiction under s. 105 of the Trade and Merchandise Marks Act 43 of 1958 if it is invested with the ordinary original civil jurisdiction of a District Court, and not otherwise, and the High Court of Mysore not being invested by any statute or under its constitution with that jurisdiction was incompetent to entertain a passing off action. E

But it was urged that in a State the High Court is at the apex of the hierarchy of civil courts and has all the powers which the subordinate courts may exercise, and it is competent to entertain all actions as a court of original jurisdiction which may lie in any court in the State. For this exalted claim, there is no warrant in our jurisprudence. Jurisdiction of a Court means the extent of the authority of a Court to administer justice prescribed with reference to the subject-matter, pecuniary value and local limits. Barring cases in which jurisdiction is expressly conferred upon it by special statutes, *e.g.* the Companies Act; the Banking Companies Act, the High Court of Mysore exercises appellate jurisdiction alone. As a Court of Appeal it undoubtedly stands at the apex within the State, but on that account it does not stand invested with original jurisdiction in matters not expressly declared within its cognizance. F
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- A** Section 24 of the Code of Civil Procedure on which counsel for the plaintiffs relied lends no assistance to his argument. Among the powers conferred upon a High Court by s. 24 Code of Civil Procedure, there is enumerated the power to withdraw any suit, appeal or other proceeding in any Court subordinate to it, and to try or dispose of the same : [s. 24(1) (b) (i)].
- B** But jurisdiction to try a suit, appeal or proceeding by a High Court under the power reserved by s. 24(1) (b) (i) arises only if the suit, appeal or proceeding is properly instituted in a court subordinate to the High Court, and the suit, appeal or proceeding is in exercise of the power of the High Court transferred to it. Exercise of this jurisdiction is conditioned by the lawful institution of the proceeding in a subordinate court of competent jurisdiction, and transfer thereof to the High Court. Power to try and dispose of a proceeding after transfer from a court lawfully seized of it does not involve a power to entertain a proceeding which is not otherwise within the cognizance of the High Court.
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- D** Section 151 of the Code of Civil Procedure preserves the inherent power of the Court as may be necessary for the ends of justice or to prevent abuse of the process of the Court. That power may be exercised where there is a proceeding lawfully before the High Court : it does not however authorise the High Court to invest itself with jurisdiction where it is not conferred by law.
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- F** Reliance was sought to be placed upon the summary of a judgment dated June 6, 1962 in a case decided by Narayana Pai, J : *Kaverappa v. Narayanaswamy*, which is found printed under the heading "Short Notes of Recent Decision" in the Mysore Law Journal (1962) at p. 1. The learned Judge is reported to have observed that s. 24 of the Code of Civil Procedure "read along with s. 151 which preserves to the High Court all inherent powers to make such orders as may be necessary for ends of justice necessarily implies that whenever an extraordinary situation so requires, a High Court may confer original jurisdiction upon itself to do or protect ends of justice". It does not appear that the judgment is reported in any series of reports—authorised or unauthorised—, and we have not been supplied with a copy of the original judgment. But if the learned Judge, as reported in the summary of the judgment, was of the opinion that the High Court is competent to assume to itself jurisdiction which it does not otherwise possess, merely because an "extraordinary situation" has arisen, with respect to the learned Judge, we are unable to approve of that view. By "jurisdiction" is meant the extent of the power which is conferred upon the Court by its constitution to try a proceeding; its exercise
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cannot be enlarged because what the learned Judge calls an extra-ordinary situation "requires" the Court to exercise it. **A**

The appeal must therefore be allowed. Temporary injunction granted by the High Court is vacated and the plaint is ordered to be returned for presentation to the proper Court. As before the High Court, no objection was raised about the maintainability of the suit or the application for injunction, we direct the parties to bear their own costs. **B**

Appeal allowed.