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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 19.11.2025

PRONOUNCED ON:13.03.2026

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

A.S.No.101 of 2018

1. Dr.V.Rajendran,
687/1, Trichy Road,
Alvernia Covent Bus Stop,
Ramanathapuram, Coimbatore – 45,

2. M/s.Kovai Heart Foundation Private Limited,
687/1, Trichy Road,
Alvernia Covent Bus Stop,
Ramanathapuram,
Coimbatore-45.

... Appellants/Defendants

Vs

1. Kovai Heart Foundation,
a Public Charitable Trust,
Represented by its Trustee,
Old No.79, New No.154,
Bharathi Colony,
III Cross Street, Peelamadeu,
Coimbatore 641 004.

1/18



2. Dr.S.Balasundaram

Old No.79, New No.154,
Bharathi Colony, III Cross Street,
Peelamedu,
Coimbatore – 641 004.

3. Ms.Malarkodi Balasundram

Old No.79, New No.154,
Bharathi Colony, III Cross Street,
Peelamedu,
Coimbatore 641 004.

... Respondents

PRAYER:

This Appeal Suit is filed under Order XLI Rule 1 read with Section 96 of C.P.C., 1908, against the judgment and decree dated 04.10.2017 made in O.S.No.763 of 2009 on the file of the Principal District Judge of Coimbatore.

For Appellants :Mr.Arun.C.Mohan

For Respondents : Mr.A.R.L.Sundaresan, Senior Counsel
For Mr.R.Bharath Kumar



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JUDGMENT

This Appeal Suit is directed against the judgment and decree dated 04.10.2017 passed in O.S. No.763 of 2009 by the learned Principal District Judge, Coimbatore, whereby the suit filed by the plaintiffs came to be decreed and the defendants were restrained by permanent injunction from using the name “Kovai Heart Foundation”.

2. For the sake of convenience, the parties are referred to as they were ranked before the trial Court.

3. Brief facts: The case of the plaintiffs is that the first plaintiff is a public charitable trust known as “Kovai Heart Foundation” and that plaintiffs 2 and 3 are its trustees. According to them, charitable activities relating to heart health were commenced in that name in the year 1992 and the trust was thereafter formally constituted and registered on 22.11.1996.



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4. It is their further case that, by reason of continuous charitable medical services, heart camps, awareness programmes and allied activities carried on under the name “Kovai Heart Foundation”, the said name acquired goodwill and reputation among the public in Coimbatore and the neighbouring areas.

5. The grievance of the plaintiffs is that the defendants subsequently started using the name “Kovai Heart Foundation Private Limited” for their medical establishment and corporate entity. According to the plaintiffs, such use has caused confusion and deception among the public by creating the impression that the defendants’ establishment is associated with, or connected to, the plaintiffs’ trust. On that basis, they sought the relief of injunction on the footing of passing off.

6. The defendants resisted the suit contending that the second defendant is a company duly incorporated under the Companies Act, 1956, and is therefore entitled to use its corporate name. They further contended that the plaintiffs do not have any registered trade mark over the name “Kovai Heart Foundation”; that the word “Kovai” is only a geographical expression referring to Coimbatore and cannot be claimed exclusively by anyone; that the plaintiffs, being a charitable



trust, cannot claim exclusive rights over the said name; and that there is no real likelihood of confusion or deception among the public.

7. Before the trial Court, on the side of the plaintiffs, P.W.1 was examined and Exs.A1 to A29 were marked. On the side of the defendants, D.W.1 was examined and Exs.B1 to B27 were marked. On an appreciation of the oral and documentary evidence, the learned trial Judge decreed the suit holding that the plaintiffs had established prior use of the name and that the defendants' use of the same name was likely to cause confusion among the public.

8. Challenging the said judgment and decree, the defendants have preferred the present appeal. The principal grounds urged are that the plaintiffs failed to establish continuous and prior use of the name "Kovai Heart Foundation"; that the trial Court did not properly appreciate the evidence relating to goodwill and confusion; that the first defendant is a well-known cardiologist with an established professional reputation and, therefore, there could be no real confusion among patients or the public; that the second defendant had been validly incorporated under the impugned name (Ex.B1); and that the trial Court erred in relying upon Exs.A13 and A14, which, according to the defendants, are only



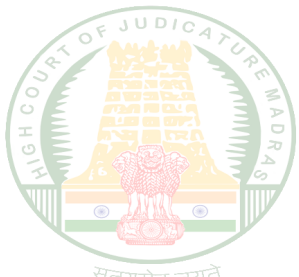
Government communications relating to registration under the Foreign Contribution (Regulation) Act, 1976, and do not establish that the plaintiffs were

running a hospital.

Points for determination

9. In the light of the rival submissions, the following points arise for determination in this appeal:

1. Whether the incorporation of the second defendant company, or the absence of trade mark registration in favour of the plaintiffs, operates as a bar to the present suit?
2. Whether the suit instituted by the first plaintiff trust, represented by its trustees, is maintainable?
3. Whether the plaintiffs have established prior user and goodwill in the name “Kovai Heart Foundation”?
4. Whether the defendants’ adoption of the name “Kovai Heart Foundation Private Limited” is likely to cause confusion and amount to passing off?
5. Whether the geographical or descriptive nature of the expression “Kovai Heart Foundation” defeats the plaintiffs’ claim?
6. Whether the judgment and decree of the trial Court are liable to be



interfered with?

Point No.1:

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10. The contention of the defendants is that, since the second defendant is a company incorporated under the Companies Act, the plaintiffs ought to have worked out their remedy only before the authority concerned with company names and that the present suit is therefore not maintainable. This contention cannot be accepted.

11. The suit, properly understood, is not one for rectification of the register of companies, nor is it founded upon statutory trade mark rights. It is, in substance, a common law action in passing off. The absence of trade mark registration is, therefore, not decisive. It is well settled that goodwill generated by prior user is protectable and that an action in passing off is maintainable even in the absence of registration. In **N.R. Dongre v. Whirlpool Corporation, (1996) 5 SCC 714**, the Supreme Court recognised that the law protects goodwill and reputation founded upon prior use. Likewise, in **Cadila Health Care Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73**, the Court explained that the enquiry in such cases is directed to deceptive similarity and the likelihood of confusion. In re **Pernod Ricard India Private Limited and another v.**



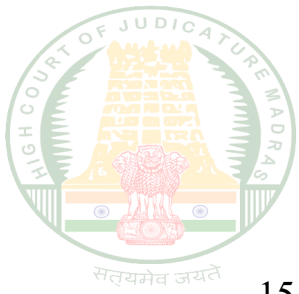
Karanveer Singh Chhabra, 2025 INSC 981, the Supreme Court reiterated that the basic purpose of a passing off action is to protect the goodwill earned by prior use and to prevent any misrepresentation that is likely to mislead the public.

12. The contention founded on the incorporation of the second defendant company cannot, therefore, be accepted. Incorporation under the Companies Act does not, by itself, confer immunity against an action in passing off if the corporate name adopted is otherwise likely to invade the goodwill of a prior user. The civil court is not, in such a suit, sitting in appeal over the act of incorporation; it is examining whether the subsequent use of the corporate name constitutes actionable misrepresentation in the law of passing off.

13. Accordingly, Point No.1 is answered against the appellants.

Point No.2:

14. The next contention is that the first plaintiff, being only a trust, cannot claim any right in the name and, therefore, the suit is not maintainable. This contention also deserves rejection.



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15. The claim of the plaintiffs is not that the trust enjoys any statutory monopoly over the word or expression in question. Their case is that charitable and related activities were carried on under a particular name and that goodwill became attached to that name. Such a claim can certainly be enforced through those competent to represent the trust, namely its trustees.

16. Therefore, the suit instituted by the first plaintiff trust represented by plaintiffs 2 and 3, its trustees, is maintainable in law.

17. Point No.2 is answered accordingly against the appellants.

Point Nos.3 and 4:

18. These two points are closely interconnected and are therefore taken up together.

19. The central question is whether the plaintiffs have established prior user of the name “Kovai Heart Foundation” and the goodwill attached thereto, and whether the defendants’ use of the name “Kovai Heart Foundation Private

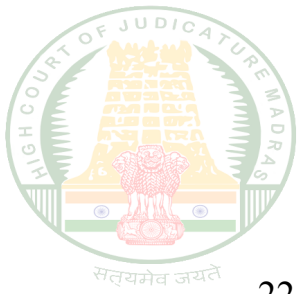


Limited” is likely to cause confusion or deception among the public.

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20. The materials placed by the plaintiffs show that charitable activities relating to cardiac care were being carried on under the name “Kovai Heart Foundation” from the early 1990s and that the trust was formally registered in the year 1996. The documents relied upon by the plaintiffs, including trust records, communications, pamphlets and other materials, have been accepted by the trial Court as evidencing use of the name for a considerable period before the defendants entered the field.

21. The criticism of the defendants that Exs.A13 and A14 do not establish that the plaintiffs owned or operated a hospital does not, in this Court considered view, carry the matter much further. In an action for passing off, the decisive question is not whether the plaintiffs had infrastructure or facilities identical to those of the defendants. The real question is whether the name in question had, by use in relation to the plaintiffs’ activities, acquired goodwill and public association. Goodwill may attach to charitable and medical activities carried on under a particular name even though the institutional structure or scale may differ from that of the defendants.

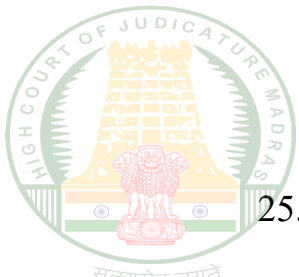


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22. It is not in dispute that the defendants commenced their activities only around the year 2009. In that view of the matter, and on the materials available on record, the finding of the trial Court that the plaintiffs were the prior users of the name “Kovai Heart Foundation” cannot be said to be erroneous.

23. Coming to the question of confusion, the settled principle in a passing off action is that the Court must look to the overall impression created by the rival names, the nature of the activities or services, the class of persons likely to be affected, and the surrounding circumstances. The test is not one of meticulous comparison, but of the impression left on a person of average intelligence and imperfect recollection.

24. Applying that test, the conclusion is not difficult. The dominant and essential part of the defendants’ name is identical to that of the plaintiffs, namely “Kovai Heart Foundation”. The addition of the corporate suffix “Private Limited” does not materially distinguish the defendants’ name from that of the plaintiffs. In ordinary use and recollection, the public is likely to identify the defendants by the same principal expression.



25. The likelihood of confusion is accentuated by two circumstances.

First, both parties operate in the field of heart care and allied medical services.

Secondly, they operate in the same city. In such a setting, an ordinary member of the public may reasonably assume a connection, association, sponsorship or continuity between the defendants' establishment and the plaintiffs' organisation.

That is sufficient in law. It is not necessary for the plaintiffs to establish actual deception in every case; a real and probable likelihood of confusion is enough.

26. Considerable emphasis was placed on the personal reputation of the first defendant as a cardiologist. That circumstance may explain why patients approach the second defendant hospital. But it does not answer the legal objection arising from adoption of a name already associated, according to the plaintiffs, with their prior activities. The question is not whether the defendants are professionally competent or reputed; it is whether the name adopted by them is likely to mislead as to source, connection or association. On that question, the answer must be returned against the defendants.

27. Point Nos.3 and 4 are answered against the appellants.



Point No.5:

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28. The submission that “Kovai” is merely a geographical expression also does not avail the appellants. No doubt, a geographical word cannot ordinarily be appropriated in the abstract. But the dispute here is not with respect to the word “Kovai” alone. The relevant expression is the composite name “Kovai Heart Foundation”. Distinctiveness in passing off law may reside in the totality of the expression and in the goodwill which that expression has come to denote in the minds of the public. The plaintiffs do not seek an abstract monopoly over a geographical word; they seek protection against adoption of the same composite name in circumstances likely to cause deception.

29. The authorities relied upon by the defendants do not compel a different conclusion. **R.S.K.V. Raghavan v. G.R. Gopal & Co., reported in 94 L.W.**, turned on its own facts, particularly the nature of the objection there taken and the context in which the geographical expression was used. In that case, the dispute concerned the use of a similar label resembling that of the plaintiff. The plaintiff had not objected to the use of the geographical name “ Thenmarakudi” which was the name of a village. Even in the pre-suit notice issued therein, the objection was confined to the design and get-up of the label, and not to use of the

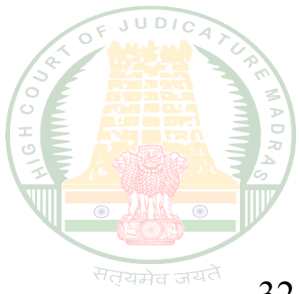


name “Thenamarakudi” as such. **The Imperial Tobacco Co. of India Ltd. v. The Registrar of Trade Marks and another, 1977 SCC OnLine Cal 133**, concerned refusal of registration where the word “Simla” in question, being geographical, lacked inherent distinctiveness. That principle cannot be applied here by isolating the word “Kovai” and ignoring the composite expression as a whole. Likewise, **M/s.Nakoda Dairy (P) Ltd. v. M/s. Kewal Chand Vinod Kumar and another, 2011 SCC OnLine Mad 2053**, merely reiterates that the burden of proving prior user lies on the party asserting it. In the present case, that burden has, on the evidence, been discharged by the plaintiffs.

30. Therefore, Point No.5 is answered against the appellants.

Point No.6:

31. On an overall consideration of the pleadings, evidence and the governing legal principles, this court is satisfied that the plaintiffs established prior user and goodwill in the name “Kovai Heart Foundation” and that the defendants’ adoption of “Kovai Heart Foundation Private Limited” in the same field and in the same city is likely to mislead the public into believing that the defendants are connected with the plaintiffs. The same constitutes passing off.



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32. The plea of delay and acquiescence is insubstantial. Mere delay in approaching the Court does not by itself defeat a claim for injunction where the complained-of use is continuing and the likelihood of deception persists. Acquiescence, in law, requires something more than delay; it requires conduct amounting to encouragement or assent. No such case has been established.

33. It is true that the trial Court made an incidental reference to copyright principles. Even if such reference was unnecessary, the decree does not rest upon copyright law. It rests upon prior user, goodwill, deceptive similarity and likelihood of confusion. The incidental reference, therefore, does not vitiate the ultimate conclusion.

34. The judgment and decree of the trial Court do not suffer from any error warranting interference.

35. Point No.6 is answered accordingly against the appellants.



In the result, the Appeal Suit is dismissed and the judgment and decree dated 04.10.2017 passed in O.S. No.763 of 2009 by the learned Principal District Judge, Coimbatore, are confirmed. The appellants shall pay the costs of the appeal to the respondents. Consequently, connected civil miscellaneous petitions, if any, shall stand closed.

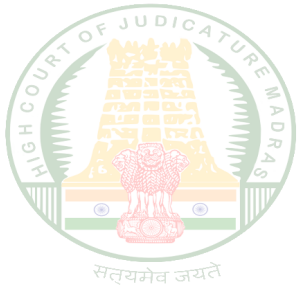
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Speaking Order / Non-speaking Order

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To
Principal District Judge of Coimbatore.



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DR. A.D. MARIA CLETE, J

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