



2025:DHC:1587



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Reserved on: 24.02.2025
Judgment pronounced on: 11.03.2025

+ CS(COMM) 598/2022 & I.A. 13953/2022, I.A. 121/2023

JANGEER SINGH TRADING AS JANGEER
SINGH KABULSHAH AGRICULTURE WORKSPlaintiff
Through: Mr. Vikas Khera, Mr. Rohit and
Mr. Yash Sharma, Advocates

versus

YOGESH JANGID TRADING AS JANGID
AGRO ENGINEERING & ANR.Defendants
Through: Mr. J. Sai Deepak, Senior Advocate
with Mr. Raghav Nagar, Mr. Rishab
Nagar and Mr. Avinash Sharma,
Advocates

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

I.A. 13953/2022 (Order XXXIX Rules 1 & 2, CPC)

1. By way of the present judgment, I shall decide the application filed on behalf of the plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC) seeking grant of interim injunction against the defendant.
2. The present suit has been filed seeking permanent injunction restraining the defendant from infringement and passing off the plaintiff's trademark, rendition of accounts, damages and other ancillary reliefs.



Proceedings in the suit

3. Summons in the suit and notice in the application was issued on 31st August, 2022. However, no *ad interim* injunction order was passed in favour of the plaintiff.

4. In the Order dated 27th September, 2022, the statement of the defendant's counsel was recorded to the effect that the defendant is neither using nor intending to use the mark 'JANGEER/JANGIR'.

5. Thereafter, the matter was listed on various dates and pleadings were completed in the suit as well as in the present application. The application was heard on 9th January, 2025, 20th January 2025, 18th February, 2025 and 24th February, 2025, when the judgment was reserved.

Case set up in the plaint

6. The plaintiff is a sole proprietorship firm of Mr. Jangeer Singh. The plaintiff is engaged *inter alia* in the business of marketing, manufacturing and selling agricultural implements.

7. The plaintiff honestly conceived and adopted the trademark 'JANGEER' on 1st January, 1984 and since then, the plaintiff has been using the said trademark continuously.

8. The plaintiff also maintains a website with the domain name 'www.jangeer.com' which gives details about the plaintiff's products. The plaintiff's products sold under the aforesaid trade mark are also available on leading third party e-commerce portals such as 'www.tradeindia.com', 'www.indiamart.com', 'www.exportersindia.com', and the like.

9. The plaintiff has obtained a registration for the device mark 'JANGEER' in class 7. The aforesaid registration is w.e.f. 13th September, 2013 with a user claim of 1st January, 1984. The plaintiff's application for



registration for the mark 'JANGEER' in class 35 is pending.

10. The plaintiff has given his sales turnover as well as promotional expenses from the financial year 2004-2005 till the financial year 2021-22 in paragraph 4 of the plaint. The sales turnover for the financial year 2021-22 was to the tune of ₹ 32,73,42,328 and the promotional expenses were to the tune of ₹ 13,02,909.

11. It is stated that the defendant also deals in the business of manufacturing and trading of identical goods as the plaintiff, i.e. agricultural implements under the trademark 'JANGID' and 'JANGIR'.

12. The defendant has obtained registrations of device marks bearing the name 'JANGID' in classes 7 and 35. The defendant has also applied for various other registrations in classes 7 and 35 for the word/device mark 'JANGID' and 'JANGIR' which are pending or have been refused.

13. Accordingly, the present suit was filed by the plaintiff.

Case set up by the defendant in the Written Statement

14. The defendant's family adopted their surname, 'JANGID' as a mark in 1980 and since then they have been using the aforesaid mark honestly and in a continuous manner. The defendant's father, Sh. Bhomaram Jangid started using the Hindi and English versions of his surname 'JANGID' with respect to his business concern '*Jangid Krishi Engineering Works*', dealing in agricultural implements.

15. In support of its user of the aforesaid mark, the defendant has placed on record documents such as Small-Scale Industrial (SSI) Unit certificates, Bureau of Indian Standards (BIS) certification, Declaration Form under Central Sales Tax, demand notes and electricity bills issued in the name of '*Jangid Krishi Engineering Works*'.



16. In the year 2011, the defendant set up his business in the name of 'Jangid Agro Engineering'. Documents in support thereof have been filed along with the written statement.

17. The defendant has given his sales turnover as well as promotional expenses from the financial year 2011-2012 till the financial year 2021-22 in paragraph 20 of the written statement. The sales turnover of the defendant for the financial year 2021-22 was to the tune of ₹ 5,84,82,947 and the promotional expenses were to the tune of ₹ 2,02,710.

Plaintiff's Submissions

18. The defendant is using the trademarks 'JANGID' and 'JANGIR', which are deceptively similar to the plaintiff's trademark 'JANGEER' in relation to identical goods and products, i.e. agricultural implements.

19. Even though, in its trademark applications, the defendant has claimed user from 2011, no invoices in support thereof have been filed. Further, no invoices have been filed in respect of the defendant's father's business.

20. The defendant has failed to prove use of the impugned mark prior to the plaintiff's registration on 13th September, 2013.

21. The defendants have filed multiple applications seeking registration of the word/device mark 'JANGIR', none of which have been granted.

22. Even if the mark 'JANGID' is a part of defendant's name, the defendant cannot use the same as it is causing confusion in the market. Reliance in this regard is placed on *Mahendra & Mahendra Paper Mills Ltd. v. Mahindra & Mahindra Ltd*, (2002) 2 SCC 147 and *Montari Overseas Ltd. v. Montari Industries Ltd*. 1995 SCC OnLine Del 685.

23. The use by the defendant of the 'JANGIR' mark is not *bona fide* as the defendant knew about the plaintiff's mark 'JANGEER', as the plaintiff's



mark was cited in the trademark application filed by the defendant on 16th December, 2019.

Defendants Submissions

24. In view of the fact that both plaintiff and the defendant are proprietors of registered trademarks, no case of infringement can be made out.

25. In terms of Section 35 of the Trade Marks Act, 1999 (hereinafter ‘Trade Marks Act’) defendants are using their name in a *bona fide* manner and therefore, plaintiff cannot interfere with the same. The user of the defendant is prior to that of the plaintiff. Reliance in this regard is placed on the judgments in *Precious jewels v. Varun Gems* (2015) 1 SCC 160 and *Jindal Industries Private Limited Vs. Suncity Sheets Private Limited and Anr*, 2024 SCC OnLine Del 1634.

26. A comparison of the marks used by the plaintiff and the defendant would show that they are quite different. The added material on the defendant’s mark distinguishes the same from the plaintiff’s mark so no case of passing off can be made out.

Rejoinder submissions on behalf of the plaintiff

27. The defendant cannot take advantage of his father’s business as the entity of the defendant is separate and independent from his father’s entity.

28. Even though the defendant has obtained registration of the device mark



“”, it has been using it as a word mark ‘JANGID’.



29. The various documents filed on behalf of the defendant are not enough to establish the prior use.



Analysis and findings

30. I have heard the rival submissions and perused the material on record.
31. It is an undisputed position obtaining in the present case that both the plaintiff and the defendant have 'JANGEER'/'JANGID' as a part of their respective names and both are using the same as a mark for their respective businesses. The name of the plaintiff is *Jangeer Singh*, trading as '*Jangeer Singh Kabulshah Agriculture Works*' whereas the name of the defendant is *Yogesh Jangid* trading as '*Jangid Agro Engineering*'.
32. Both the plaintiff as well as the defendant have obtained registrations in respect of device marks, details of which are given below:-

Plaintiff's Trademark			
Trademark	Application date	User date	Class
JANGEER (device mark)	13.09.2013	01.01.1984	7

Defendant's trademarks			
Trademark	Application date	User date	Class
	20.10.2016	10.01.2011	7
	20.10.2016	10.01.2011	35



33. Since both the plaintiff and the defendant are registered proprietors of similar marks, in view of Section 28(3) read with Section 30(2)(e) of the Trade Marks Act, in my *prima facie* view, an action for infringement would not be maintainable. However, since the plaintiff has filed the present case for infringement as well as passing off, the case of the plaintiff, at the stage of grant of interim injunction, can be considered in the context of the relief of passing off.

34. In *S. Syed Mohideen v. P. Sulochana Bai* (2016) 2 SCC 683, it was also held that the three elements which are necessary to make out a case of passing off are goodwill and reputation attained by the plaintiff, misrepresentation by the defendant and the damage caused to the plaintiff's goodwill and reputation by the acts of the defendant.

35. Therefore, the present case has to be examined in light of the aforesaid principles to determine if the defendant has passed off its goods as those of the plaintiff.

36. At this stage, reference may be made to Section 35 of the Trade Marks Act which is set out below:-

“35. Saving for use of name, address or description of goods or services.—

Nothing in this Act shall entitle the proprietor or a registered user of a registered trade mark to interfere with any bona fide use by a person of his own name or that of his place of business, or of the name, or of the name of the place of business, of any of his predecessors in business, or the use by any person of any bona fide description of the character or quality of his goods or services.”

[emphasis supplied]



37. Section 35 starts with a *non obstante* clause, which implies that its provisions would prevail over any other provisions of the Trade Marks Act. There is nothing to suggest in the language of Section 35, that it would be applicable only in cases of infringement and not passing off. In my view, the benefit of Section 35 of the Trade Marks Act would be available to a defendant, both in cases involving infringement and passing off.

38. The language of Section 35 also makes it clear that a person is free to use his own name or the name of any of his predecessors in business as a trademark, so long as such use is a *bona fide* use.

39. In *Precious jewels v. Varun Gems* (2015) 1 SCC 160, the Supreme Court relying upon the provisions of Section 35 of the Trade Marks Act vacated the injunction order restraining the defendant from using the surname 'RAKYAN' in respect of their jewellery shop. The Supreme Court noted that 'RAKYAN' was the surname of the partners of the plaintiff and the defendant firm and therefore, the defendant cannot be restrained from using their common surname in a *bona fide* manner for the purposes of their business. The observations of the Supreme Court in paragraph 9 of the judgment are set out below:

"9. As stated hereinabove, Section 35 of the Act permits anyone to do his business in his own name in a bona fide manner. In the instant case, it is not in dispute that the defendants are doing their business in their own name and their bona fides have not been disputed. It is also not in dispute that the plaintiff and defendants are related to each other and practically all the family members are in the business of jewellery. We have perused the hoardings of the shops where they are doing the business and upon perusal of the hoardings we do not find any similarity between them."



40. The aforesaid judgment was followed by me in ***Vasundhra Jewellers Pvt. Ltd v. Vasundhara Fashion Jewellery LLP and Anr.*** 2023 SCC OnLine Del 4185. In the said case, the plaintiff was engaged in the jewellery business in the name of ‘*Vasundhra Jewellers*’. The defendant, whose name was ‘*Vasundhara Mantri*’, was also engaged in the jewellery business in the name of ‘*Vasundhara*’. It was held that the defendant was using her name as a trademark in a *bona fide* manner and was therefore entitled to protection under Section 35 of the Trade Marks Act. An appeal has been filed against the aforesaid judgment which is pending before the Division Bench. However, no stay has been granted.

41. In ***Jindal Industries v. Suncity Sheets***, (supra) the defendant no.2 therein, R.N. Jindal, was using her name as a mark for the purposes of her business. The Coordinate Bench of this Court denied interim injunction, holding that the defendant no.2 therein would be entitled to the defence under Section 35 of the Trade Marks Act. The Coordinate Bench also went on to hold that a party cannot monopolize common names or surnames, as a trademark. The relevant observations contained in paragraph 34 of the said judgment are set out below:

“34. Indeed, one who obtains registration of a common name, or surname, like JINDAL, as a trade mark in his favour, does so with all the risks that such registration entails. It is open to anyone, and everyone, to use his name on his goods, and, therefore, the possibility of there being several JINDAL's looms large. The plaintiff cannot, by obtaining registration for JINDAL as a word mark, monopolize the use of JINDAL even as a part - and not a very significant one at that - of any and every mark, even in the context of steel, or SS pipes and tubes. The Trade Marks Act, and the privileges it confers, cannot be extended to the point where one can monopolize the use of a



common name for goods, and, by registering it, foreclose the rest of humanity from using it.”

42. The facts of the present case have to be examined in light of the aforesaid legal position.

43. The defendant has placed on record the following documents to demonstrate that his father has been carrying out business in the name of ‘*Jangid Krishi Engineering Works*’ since 1980:-

- i. Registration certificate as a Small Scale Industrial Unit on 23rd June, 1984. (page 95 of the defendant’s documents) which provides that the date of commencement of business of the entity was 18th March, 1980.
- ii. License in respect of power threshers issued by the Bureau of Indian Standards dated 16th February, 1991 (page 99-100 of the defendant’s documents)
- iii. Purchase invoice issued in the name of ‘*Jangid Krishi Engineering Works*’ dated 26th June, 1991 (page 115 of defendant’s documents)
- iv. Declaration Form under Central Sales Tax dated 14th September, 1998.

44. For the purposes of forming a *prima facie* view, all the aforesaid documents show that defendant’s father was running a business in the name of ‘*Jangid Krishi Engineering Works*’ at least since 1984.

45. The defendant has also placed on record an Udyam Registration Certificate dated 21st September, 2020 (page 163 of defendant’s documents) evidencing the fact that the defendant commenced its business in the name of



'*Jangid Agro Engineering*' w.e.f., 14th April, 2011, operating from the premises of '*Jangid Krishi Engineering Works*', the enterprise run by his father.

46. Along with its trademark application, the defendant had also filed certain invoices starting from 30th May, 2012 to show that it has been doing business in the name of '*Jangid Agro Engineering*' at least from the year 2012. The aforesaid invoices, which were filed along with the trademark application by the defendant before the Trade Marks Registry, have been placed on record by the plaintiff. (page 129-138 of the plaintiff's documents)

47. Counsel for the plaintiff has relied upon the judgment of the Supreme Court in *Mahendra & Mahendra Paper Mills v. Mahindra & Mahindra*, (supra) where the Supreme Court confirmed the order of the High Court granting interim injunction in favour of the plaintiff therein, Mahindra and Mahindra. The Supreme Court observed that the plaintiff had been doing business in the name '*Mahindra and Mahindra*', for over five decades, and the defendant had yet to commence its business in the name of '*Mahendra and Mahendra*'. This judgment would not be applicable in the present case since the defendant and his predecessor (father) have been doing business in the name of 'JANGID' for a long period of time.

48. The plaintiff has also placed reliance on the judgment of a Division Bench of this Court in *Montari Overseas Ltd. v. Montari Industries Ltd.*, where an interim injunction was passed in favour of the plaintiff as both the plaintiff and the defendant were using the name '*Montari*' as a part of their corporate names. In the said case, the Court came to the view that the defendant had not given any satisfactory explanation for adopting the name '*Montari*', therefore, the adoption was not innocent. This does not apply to




the facts of the present case as the defendant and before him his father have been using their surnames as a trademark for a long period of time.

49. Based on the material on record, at a *prima facie* stage, the defendant has established *bona fide* use of the name 'JANGID' based on his own use as well as the use of his father. Therefore, in my *prima facie* view, the defendant would be entitled to the benefit of defence under Section 35 of the Trade Marks Act.

50. The plaintiff has claimed user of the mark 'JANGEER' since 1st January, 1984, but the earliest invoices of the plaintiff are from 14th April, 2005. The case set up by the plaintiff that the plaintiff is a prior user having goodwill and reputation in the mark 'JANGEER' and that the use of the mark 'JANGIR/JANGID' by the defendant is not *bona fide*, would have to be established by the plaintiff in trial.

51. At this juncture, a comparison may be made of the registered marks of the plaintiff and the defendant under class 7.

Class	Plaintiff's Mark	Defendant's Mark
7	JANGEER	

52. The aforesaid comparison would show that visually the two marks are quite dissimilar. There is a difference in spelling of the marks of the plaintiff and the defendant. The plaintiff uses the mark 'JANGEER', whereas the mark of the defendant includes an 'I' in place of 'EE' and 'D' in place of 'R' i.e., 'JANGID'. Apart from the difference in the spellings of the marks of the plaintiff and the defendant, the manner and style of writing is also completely



different.. The added features in the defendant's mark make it quite distinct from the plaintiff's mark. In my *prima facie* view, the marks when compared as a whole bear no deceptive similarity to each other and hence, would not create any confusion in the minds of consumers.

53. After hearing submissions of the counsel on 18th February, 2025, the following order was passed by this Court:-

“1. Submissions on behalf of the counsel for the parties have been heard.

2. Mr. J. Sai Deepak, senior counsel, appearing on behalf of the defendant no.1 submits that the defendant is willing to give an undertaking that the defendant no.1 shall not use the marks “Jangir” or “Jangeer”. He further submits that the defendant no.1 is also willing to give an undertaking that defendant no.1 shall use the mark exactly in the manner that the defendant has been granted registration for in class 7, i.e.



3. Mr. Vikas Khara seeks some time to take instructions.

4. List on 24th February, 2025.”

[emphasis supplied]

54. On the next date of hearing, Mr. Khara returned with instructions that plaintiff was not agreeable to the same. In my view, binding the defendant to the aforesaid statement would be a just and fair interim arrangement till the final adjudication of the suit.

55. In light of the discussion above, the following directions are passed as an interim arrangement in the present case so that both the plaintiff and the defendant smoothly continue to conduct their respective businesses:-



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i. The defendant, during the pendency of the suit, shall not use the mark 'JANGIR' or 'JANGEER'.

ii. The defendant shall not use the mark 'JANGID' on a stand-alone basis. The defendant shall only use the device mark



exactly in the same manner for which he has been granted registration in classes 7 and 35.

56. I.A. 13953/2022 filed on behalf of the plaintiff under Order XXXIX Rules 1 and 2 of the CPC stands disposed of in the aforesaid terms.

57. Needless to state, any observations made herein are only for the purpose of adjudication of the present application and would have no bearing on the final outcome of the suit.

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58. As recorded in the order dated 9th October, 2023 passed by the Joint Registrar, admission/denial of documents in the present suit is complete.

59. List for framing of issues on 28th July, 2025.

**AMIT BANSAL
(JUDGE)**

**MARCH 11, 2025
ds**