

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE-II, MANJERI

Present: Sri.A.V.Telles, Addl. District Judge-II

Monday, the 6th day of November, 2023.
the 15th day of Karthika, 1945.

ORIGINAL SUIT No.01/2020.

Between:-

M/s ALBAIK, Rep: by its proprietor M. Moideen Kutty,
69 years, Manakarathodi house, Edayapalayam,
Patterkadavu post, Malappuram dist. } Plaintiff

And:-

1. M/S ALBAIK, Rep: by its Principle Consultant &
Founder, Syed Sahil Ahamad, Head office B4/186
Vishal Khand 4 Gomti Nagar, Luknow, Uttar
Pradesh, 226010.
 2. Ussaid Farooqui, Head of Brand Development, AL-
BAIK, Shop No. DS-812, Sec-D, LDA Colony Nagar,
Nigam Food Safety Zone-18, Luknow (UP) 226012.
 3. AviralShrivastav, Head of Franchise Support Team,
AL-BAIK, Shop No. DS-812, Sec-D, LDA Colony
Nagar, Nigam Food Safety Zone-18, Luknow(UP),
226012.
- } Defendants

This suit coming on the 31st day of October, 2023 for final hearing before me in the presence of Sri. Nineep. K and C. Muhammed Musthafa, Advocates for the plaintiff and the defendants are being called absent set exparte and having stood over to this day for consideration, the court delivered the following:-

J U D G M E N T

The suit is for permanent injunction restraining the defendants, its employees or their agents or anyone else claiming under them from infringing the registered trade mark of the plaintiff namely 'AL-BAIK' and passing of their services by adopting trade name which is deceptively similar to the plaintiff's trade mark "Al-BAIK" that any prefix or suffix and directing the defendants to deliver to the plaintiffs the entire stock of unused bills, notices, pamphlets and banners containing the name "Al-BAIK" which is deceptively similar to the plaintiff's trade mark "Al-BAIK".

2. Plaintiff is the proprietorship concern doing business in the nature of a restaurant and catering services in the name and style since 1997. The plaintiff doing its business at different places Kozhikode, Malappuram, Kottakkal, Manjeri and Kondotty in the name and style "Al-BAIK". Plaintiff is the proprietor of the above restaurant "Al-BAIK". plaintiff's business got trade mark with the name and style "Al-BAIK" with trade mark registration No. 1029413 in Class 29. After getting the trade marked registration, plaintiff has absolute exclusive right and use the trade mark. The "Al-BAIK" restaurant developed a special type of food with a brand name 'Albaik Broast Chicken' and this food item obtained wide popularity and demand in the public at large. The plaintiff's registration is valid all over the India. The plaintiff's trade mark acquired tremendous goodwill and reputation over the general public.

3. Thus the plaintiff going his business with trade mark license. Plaintiff got an information that the plaintiffs have started a restaurant at Lucknow (UP) in the name and style "Al-BAIK" at Lucknow Shop No. DS-812, Sec.-D, LDA Colony Nagar, Nigam Food Safety Zone-18, Lucknow (UP). It is a malafide intention to misuse the goodwill and reputation of the plaintiff. Thus the defendants infringed plaintiffs exclusive right to use the registered trade mark. Moreover the defendants indulged in the act of infringement of passing of its services as that of the plaintiffs by

carrying on a restaurant business which is similar to the plaintiffs business in the name and style "AI-BAIK" which is phonetically and deceptively similar to the plaintiffs trade mark "AI-BAIK". Defendants have no registered trade mark in the name and style "AI-BAIK". Defendants are not a registered proprietor or registered user of the registered trade mark "AI-BAIK". The intention of the defendants are to capture the goodwill and the reputation of the plaintiff who is having registration under the registered Trade Mark Act. The defendants started the same business with full knowledge that the plaintiff is doing restaurant business after getting registered trade mark "AI-BAIK". The defendants have no right to adopt the identical trade mark of plaintiff. The adoption of identical trade mark of the plaintiff leads misrepresentation to the general public and thereby pass of the defendants services with the plaintiff in some manner. The defendants are attempting to capture the plaintiffs registered trade mark "AI-BAIK" and the plaintiff is entitled to protection under the Trade Mark Act. The defendants intentionally using the plaintiffs name "AI-BAIK" in its menu cards, packing materials, visiting cards to capture the goodwill and reputation of the plaintiffs trade mark. Defendants infringed trade mark by way of advertisement and promotions and is taking unfair advantage of the plaintiff's business. Now the defendants are initiating steps to start franchisee all over India by accepting royalty. If the defendant is allowed to continue the use of registered trade mark "AI-BAIK" of the plaintiff, it will cause injury to the goodwill, reputation and which cannot be compensated with in terms of money. Moreover, if the defendant is permitted to continue the business in the name and style of "AI-BAIK", it will cause huge losses to the plaintiff. Therefore, the plaintiffs submitted that the plaintiff is entitled to get an Order of permanent prohibitory injunction restraining the defendants, its employees or agent from doing infringement and passing of the registered trade mark of the plaintiff namely "AI-BAIK" or any manner as passing of plaintiffs services in the

name and style "AL-BAIK" or any other name which is deceptively similar to the plaintiffs trade mark. Hence, the suit.

4. Notice was served to the defendants. They filed vakalath. No written statement is filed by the defendants. Defendants were absent in court for last occasions and nobody was represented and at last on 29-09-2023 defendants were declared exparte.

5. Heard the plaintiffs.

6. The issues that arise for consideration are :

- 1) Whether the plaintiff is entitled to get an Order of permanent injunction as prayed for?
- 2) Relief and costs?

7. Plaintiff was examined as PW1. Exts. A1 to A6, A7 series (14 in numbers), A8 series (10 in numbers) and A9 series (7 in numbers) were marked.

8. **Issue No. 1:-** Plaintiff was examined as PW1. He filed proof affidavit in lieu of chief examination. Ext. A1 is the copy of certificate of Registration in trade mark. On scrutiny of Ext. A1, it can be seen that the plaintiffs firm is registered as per the Trade Mark Act, 1999 by Trade Mark Registration No.1029413 in Class 29 as "AL-BAIK". PW1 give evidence that he is the proprietor of plaintiff M/s. Al-Baik restaurant. This restaurant is doing business in the nature of restaurant and catering services in the name and style "AL-BAIK" since 1997. Ext. A2 is the copy of additional representation submitted before the Registrar of Trade Marks. Ext. A3 is the copy of Annual Return for No. 10B for the period from 01-04-2014 to 31-03-2015. Ext. A4 is the copy of the Certificate of Registration under Kerala Shops and Establishment Act. Ext. A5 is the copy of the license issued by the Food Safety and Standard Authority of India in Form C. Ext. A6 is the copy of the license issued by the Commercial Tax Department to the name of 'M/s. PALACE FOODS'. Ext. A6 shows that "AL-BAIK" is a branch of PALACE FOODS. Ext. A7 series are the copy of leaflets of plaintiff restaurant "AL-BAIK". It shows that the

plaintiff is doing restaurant business at bypass junction, Thondayad, Calicut-16, Calicut Road, Manjeri, behind bus stand at Kottakkal etc. Ext. A7 series shows the different types of dishes developed by the plaintiffs restaurant. Plaintiffs restaurant is serving amazing Arabian delicacy, lip matching soup, Indian breads, Chinese rice and noodles, chicken gravy type, variety sea foods, garden fresh vegetables, mutton, kababs (chicken), thandur etc. Ext. A8 series are the menu card of plaintiffs restaurant. Ext. A9 series are the copy of printout of Website showing the trade name "ALBAIK". PW1 gave evidence that defendant adopted trade mark "AL-BAIK" with logo which is phonetically and deceptively similar to the plaintiffs trade mark "ALBAIK" with an intention to mislead the public. The defendant has also an intention to make a believe to a general public that "AL-BAIK" is associated with the plaintiff's business. Ext. A9 series show that defendant is running a restaurant in the name and style "AL-BAIK.COM" at Shop No. DS-812, Sec.-D, LDA Colony, Nagar Nigam Food Safety Zone 18, Lucknow (UP) -221260.

9. The counsel for the plaintiff argued that by Ext. A9 series, it can be seen that defendant is doing business with phonetically and deceptively similar trade mark of plaintiff's trade mark "ALBAIK". Defendants have no authority or right to use the plaintiffs trade mark "ALBAIK" it is phonetically and deceptive similarly to that of plaintiff trade mark "ALBAIK". Ext. A1 reveals that plaintiff got trade mark registration and doing business as per the trade mark registration, license under Shops and Commercial Establishment Act, and license from Food Safety and Standard Authority of India. Ext. A1 shows that plaintiff is doing business in the name and style "ALBAIK" in the year 2004 onwards. The plaintiff give evidence that he is doing business from the year 1997 onwards in the name and style as "ALBAIK". Plaintiff got information on 03-11-2020 that the defendants are running restaurant at Lucknow (UP) in the name and style "AL-BAIK" which is deceptively similar to the trade

mark of plaintiff "ALBAIK". Evidence of PW1 along with Ext. A1 to A6 , A7 series and A8 series proves that plaintiff is doing res truant business in the name and style "ALBAIK" and Ext. A9 series shows that defendant is doing restaurant business in the name and style "AL-BAIK.COM" which is phonetically and deceptively similar to that of plaintiff's restaurant "ALBAIK" . The evidence adduced by PW1 along with Exts. marked prove that the defendants is doing restaurant business in the name and style "AL-BAIK" and plaintiff proved his case. As the defendant remained exparte, no contra evidence was adduced to discredit the plaintiff's case. The evidence given by the plaintiff is enough to grant the reliefs sought by the plaintiff. Considering the evidence of PW1 and the documents produced, I am of the view that plaintiff proved his case.

10. **Issue No. 2:-** In the result the suit is decreed as follows:- The defendants, his employees, their agents or anyone else claiming under them are restrained by a decree of permanent injunction from infringing the registered trade mark of the plaintiff namely "ALBAIK" and passing of their services by adopting trade name similar to the plaintiff's trade mark "ALBAIK" with any prefix or suffix. No cost is ordered.

(Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in open Court on this the 6th day of November, 2023.)

Addl. District Judge -II

APPENDIX

Witnesses examined for the Plaintiff:-

Pw1 : 11-10-2023 : Moideen Musliar

Witnesses examined for the Defendant:- Nil

Exhibits marked for the Plaintiff:-

Ext.A1:23-07-2001 : Copy of Certificate of registration in trade mark.

Ext. A2: 23-07-2001 : Copy of additional representation submitted
before the registrar of Trade marks

Ext.A3: 29-07-2015 : Copy of Annual Return form No. 10 D for the
period of 01- 04-2014 to 31-03-2015.

Ext.A4:28-02-2015 : Copy of the certificate of registration under Kerala
Shops and Establishment Act.

Ext.A5: 16-12-2014 : Copy of the license issued by the Food and Safety
and Standard Authority of India in Form C.

Ext.A6: 26-02-2014 : The Copy of the license issued by the commercial
Tax Department to name of 'M/s PALACE FOODS'

Ext.A7 :Series : Copy of leaflets of plaintiff restaurant" AL-BAIK"

Ext. A8:Series : Menu card of plaintiff s restaurant

Ext. A9: Series : Copy of print out of Website showing the trade
mark name "AL-BAIK"

Exhibits marked for the Defendant:- Nil

Addl. District Judge -II

Typed by : Pankajam
Compared by:



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Fair/Copy Judgment in O.S.No. 01/2020.
Dated: 06-11-2023

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