HC-KAR

NC: 2026:KHC:56230-DB
COMAP No. 416 of 2026

CNR: KAHC010595692026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF OCTOBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

COMMERCIAL APPEAL NO. 416 OF 2026

BETWEEN:

1. SMT. YASHODA N RAI
W/O LATE. NARAYANA T RAI
AGED ABOUT 73 YEARS,
R/A POUND GARDEN KADRI,
BEHIND CITY HOSPITAL,
MANGALORE-575 003.

2. SRI. ADITYA N RAI
S/O LATE NARAYANA T RAI,
AGED ABOUT 46 YEARS,
R/AT POUND GARDEN
BEHIND CITY HOSPITAL,
KADRI, MANGALORE-575 003.

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Location: HIGH COURT OF KARNATAKA

3. THE CHILDREN'S CORNER
A PARTNERSHIP FIRM
REGISTERED UNDER THE
PROVISIONS OF THE INDIAN
PARTNERSHIP ACT,

REPRESENTED BY ITS PARTNERS
APPELLANT NO.1 AND 2
SMT. YASHODA N RAI
SRI. ADITYA N RAI
POUND GARDEN BEHIND CITY HOSPITAL,
KADRI,
MANGALORE-575 003.

...APPELLANTS

(BY SRI. K CHANDRANATH ARIGA.,ADVOCATE)

CNR: KAHC010595692026

AND:

1. M/S CHILDREN CORNER
A PARTNERSHIP FIRM,
REPT., BY ITS PARTNER,
SMT. NISHALI RAI,
PLAINTIFF NO.2 INFRA,
HAVING ITS OFFICE AT
HOTEL ROOPA BUILDING,
VALMATTA ROAD,
MANGALORE-575 001.

2. SMT. NISHALI RAI,
W/O ASHWIN SHETTY,
D/O SMT. YASHODA N RAI
LATE. NARAYANA T RAI,
AGED ABOUT 48 YEARS,
PARTNER,
M/S CHILDREN'S CORNER,
A PARTNERSHIP FIRM,
R/A PLANET S.K.S KADRI HILLS,
FLAT NO. 904, 9TH FLOOR,
MANGALORE-575 004.

…RESPONDENTS

(BY SRI. AJAY.T, ADVOCATE FOR
SMT. ARUNA BHAT, ADV., FOR R1 & R2 (VK FILED FOR R2)

THIS COMAP FILED UNDER SECTION 13(1-A) OF COMMERCIAL COURT ACT R/W ORDER XLIII RULE 1(R) OF THE CODE OF CIVIL PROCEDURE, PRAYING TO SET ASIDE THE ORDER DATED 21.07.2026 IN COMMERCIAL OS NO.152/2026 PASSED BY THE I ADDITIONAL DISTRICT JUDGE AND COMMERCIAL COURT, MANGALORE.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH
AND
HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

CNR: KAHC010595692026

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN)

This Commercial Appeal is filed by the defendants challenging the Judgment and Decree dated 21.07.2026 passed by the I Additional District Judge & Commercial Court, D.K., Mangaluru (**'Commercial Court'**) in Com.O.S.No.152/2026, whereby I.A.No.2 filed by the plaintiffs came to be allowed making the interim *ex parte* order of injunction dated 30.04.2026 absolute until disposal of the suit or until further orders.

2. For the sake of convenience, the parties shall be referred to by their respective ranks before the Commercial Court.

(i) Facts of the plaintiffs:

3. The case of the plaintiffs is that the business carried on under the name and style of "Children's Corner" was initially started by late Narayana Thimmappa Rai in or about 1981. According to the second plaintiff, her father initially carried on the business as a proprietary concern and thereafter converted

it into a partnership business. The partnership deed dated 10.10.2008 was entered into between late Narayana T. Rai and the first defendant, Smt. Yashoda N. Rai. The firm underwent subsequent reconstitutions. Under the deed dated 12.04.2013, the second plaintiff and her brother, the second defendant, were also inducted as partners. The second defendant retired from the firm with effect from 01.10.2014. After the death of Narayana T. Rai in November 2018, the firm was reconstituted under a deed dated 09.11.2018 between the first defendant and the second plaintiff, with their respective profit-sharing ratios being 40% and 60%.

4. The second plaintiff further contended that, on account of differences between the partners, she issued a notice dated 20.03.2024 dissolving the partnership, which was served on the first defendant on 22.03.2024. According to her, the firm continued to exist for the purpose of winding up its affairs and the rights relating to its goodwill and trade name were yet to be determined. She alleged that the first defendant, along with the second defendant, had started another business under the name *"The Children's Corner",*

using the goodwill and stock of the erstwhile firm and thereby misleading its customers. It was claimed that the old business had earned substantial goodwill over the years and had an average annual turnover of approximately Rs.5.2 crores. On these allegations, the plaintiffs instituted Com.O.S. No.152/2026 seeking a decree of permanent injunction against the defendants.

(ii) <u>Defence of the defendants:</u>

5. The defendants resisted the suit contending that the business under the name "*Children's Corner*" was established by late Narayana T. Rai and his wife, the first defendant, Smt. Yashoda N. Rai. It was specifically contended that the first defendant was the original proprietor of the business and had been associated with its establishment and conduct from the beginning. The business was a family concern. The subsequent partnership deeds and reconstitutions were only arrangements made amongst the family members to facilitate its continued conduct. The first defendant had never relinquished her association with the business or her right to use its name. Therefore, according to the defendants, the

second plaintiff could not claim exclusive ownership of the goodwill or trade name of the erstwhile concern.

6. It was further contended that, following the dissolution notice dated 20.03.2024, disputes concerning the dissolution, accounts, assets and goodwill of the firm were referred to arbitration in A.C.No.644/2024. The defendants asserted that the first defendant and the second defendant thereafter constituted a new registered partnership under a deed dated 15.04.2024, carrying on business under the name The Children’s Corner. They also relied upon the earlier proceedings in A.A. No.6/2024, wherein the plaintiffs' request for injunction had been rejected on 10.09.2024, and the proceedings in Com.O.S. No.284/2024. It was their specific case that the present suit was another attempt to secure substantially the same relief, without disclosing the earlier proceedings and without establishing any exclusive right in favour of the plaintiffs.

(iii) <u>Application under Order XXXIX Rules 1 and 2 CPC and objections:</u>

7. Along with the suit, the plaintiffs filed an application under Order XXXIX Rules 1 and 2 of CPC seeking temporary injunction restraining the defendants, their men and agents from selling readymade garments or carrying on any business in the plaint 'A' schedule premises, at Inland Galore, Kankanady, Mangaluru, or at any other place within the territorial jurisdiction of the Court, either under the name "*The Children's Corner*" or under any other name phonetically, pictorially or otherwise similar to Children's Corner. The application was supported by the affidavit of the second plaintiff reiterating the allegations of appropriation of stock, use of the trade name and exploitation of the alleged goodwill of the erstwhile firm.

8. The defendants filed detailed objections denying these allegations. They contended that the goodwill and the ownership of the trade name were themselves matters pending adjudication before the sole Arbitrator in A.C. No.644/2024; that the original firm had been dissolved on 20.03.2024; that

the earlier injunction application in A.A.No.6/2024 had already been rejected on 10.09.2024; and that the plaintiffs had suppressed these material facts. They also pointed out that the present suit was filed without seeking damages, despite the alleged injury being capable of monetary assessment, and that the plaintiffs had not established any exclusive right over the trade name or goodwill.

(iv) <u>Order on the application under Order XXXIX Rules 1 and 2 CPC</u>:

9. The Commercial Court, by order dated 30.04.2026, had initially granted an ad interim *ex parte* order of temporary injunction restraining the defendants from using the name "The Children’s Corner", which was considered similar to the name "Children’s Corner". The defendants challenged the said order before this Court in W.P.No.16621/2026 (GM-CPC). By order dated 08.06.2026, this Court directed the Commercial Court to dispose of the injunction application within thirty days. Thereafter, upon appearance, the defendants sought vacation of the interim order and contested the application on merits.

10. The Commercial Court, by the impugned order dated 21.07.2026, allowed the plaintiffs' application under Order XXXIX Rules 1 and 2 CPC and made the *ex parte* injunction dated 30.04.2026 absolute until disposal of the suit or until further orders. The Court proceeded on the footing that the original business had acquired goodwill under the name "*Children's Corner*", that the defendants had subsequently adopted a deceptively similar name and that continued use of such name would cause irreparable injury to the plaintiffs. It also observed that the issue relating to ownership of the goodwill and trade name was pending before the Arbitrator, but proceeded on the assumption that the plaintiffs would ultimately succeed in establishing their right.

(v) <u>Grounds of appeal:</u>

11. Aggrieved by the order dated 21.07.2026, the defendants have preferred the present appeal, principally contending that the Commercial Court failed to examine the actual ownership of the business name and goodwill before granting an equitable relief of injunction. It is urged that the first defendant was the original proprietor of the business and

had continued as a partner through the subsequent reconstitutions, whereas the second plaintiff cannot claim exclusive ownership of the trade name merely because she was also inducted as a partner. The Commercial Court, according to the defendants, wrongly treated the plaintiffs as prior users without examining the partnership deeds and the circumstances in which the business was established. It is further contended that the dissolution of the old firm, the constitution of the new partnership on 15.04.2024, the pending arbitration in A.C.No.644/2024 and the rejection of the earlier injunction application in A.A.No.6/2024 on 10.09.2024 were material circumstances which ought to have been considered. The defendants also contend that the plaintiffs have not established the essential ingredients of passing off, namely, goodwill belonging to them, misrepresentation by the defendants and resulting or likely damage. The finding that the balance of convenience and irreparable injury were in favour of the plaintiffs is, therefore, questioned.

(vi) <u>Reasons and analysis:</u>

12. We have heard Sri.K.Chandranath Ariga, learned counsel appearing for the defendants and Sri.Ajay T., learned

counsel on behalf of plaintiffs. We have considered the rival contentions and perused the material placed before the Commercial Court. The controversy cannot be decided merely by comparing the two names, namely, "*Children's Corner*" and "*The Children's Corner*".

13. The questions which required examination, even at the interlocutory stage, were *whether the plaintiffs had established a prima facie right to protect the goodwill attached to the business name* and *whether the defendants were attempting to pass off their business as that of the plaintiffs?*

14. A passing off action is intended to protect the goodwill of a business against misrepresentation in the course of trade and the damage resulting, or likely to result, from such misrepresentation. The essential considerations are goodwill, misrepresentation and damage. The fact that a trade name is not registered does not, by itself, defeat a passing off action. But the person seeking protection must first establish a *prima facie* entitlement to the goodwill and business reputation which he or she claims to protect. In the present case, that very entitlement is seriously in dispute. The business was started by

late Narayana T. Rai and the first defendant was its original proprietor.

15. Thereafter, the business was converted into a partnership under the deed dated 01.04.1992 and was subsequently reconstituted on several occasions. The first defendant continued to be associated with the business. These circumstances could not have been brushed aside while determining who had the right to claim the goodwill of the erstwhile concern. The Commercial Court, however, proceeded on the assumption that the plaintiffs' firm was the first user and that the goodwill exclusively belonged to it. Such a conclusion, at this stage, was not warranted by the material on record.

16. There is another important aspect. The partnership deed dated 09.11.2018 shows that the first defendant and the second plaintiff were the partners of the erstwhile firm, with profit-sharing ratios of 40% and 60% respectively. The firm was dissolved pursuant to the notice dated 20.03.2024, served on 22.03.2024. What happened to its assets, liabilities and goodwill thereafter is a matter which has already been placed before the learned Arbitrator in A.C.No.644/2024.

17. The first defendant's claim that she was the original proprietor and continued to be a partner cannot be treated as an insignificant defence. Equally, the second plaintiff's claim to the goodwill cannot be accepted merely because she was a partner of the firm. The respective rights of the parties have to be examined in the light of the partnership deeds and the consequences of dissolution. The Commercial Court itself noticed that the ownership and valuation of goodwill, along with the right to use the trade name "*Children's Corner*", were matters pending before the Arbitrator.

18. Having noticed this, it was not appropriate to proceed on the assumption that the plaintiffs would ultimately become the lawful owners of the goodwill. Further, the earlier application for injunction in A.A. No.6/2024 had been rejected by order dated 10.09.2024. Though the subsequent suit in Com.O.S.No.284/2024 was rejected on the ground of non-compliance with Section 12A of the Commercial Courts Act and not on merits, the earlier proceedings and the conduct of the parties were relevant circumstances. The Commercial Court

ought to have examined their effect before granting substantially similar relief once again.

19. More importantly, the plaintiffs have not placed sufficient material to establish, even *prima facie*, that the goodwill of the erstwhile business exclusively vested in them or that the defendants have made any specific misrepresentation to the customers so as to make them believe that the business conducted by the defendants is that of the plaintiffs. The allegation that the defendants are using the goodwill of the old firm and misleading its customers remains, at this stage, an assertion.

20. The claim of an annual turnover of approximately Rs.5.2 crores, by itself, does not establish the second plaintiff's exclusive entitlement to the goodwill nor does the mere similarity in the names conclude the question of passing off when the parties themselves belong to the same family and have been associated with the business for several decades. The first defendant's association with the business from its inception and her subsequent participation as a partner assume considerable significance. The plaintiffs have also not set out

any specific particulars of customers who were misled or the manner in which the defendants' use of the name has caused injury to the plaintiffs' business.

21. The relief of injunction is discretionary, and it cannot be granted merely on the basis of apprehension when the very right asserted by the applicant is yet to be established. The balance of convenience also requires consideration of the fact that the defendants are carrying on the business under the new partnership constituted on 15.04.2024. An injunction in the terms granted would virtually bring the business to a standstill, even before the rights of the parties concerning the old firm and its goodwill are adjudicated. In these circumstances, the plaintiffs have not made out the necessary *prima facie* case, balance of convenience or irreparable injury. The order dated 21.07.2026 passed on I.A.No.2, therefore, cannot be sustained. Accordingly, we pass the following;

ORDER

(i) The Commercial Appeal is ***allowed;***

(ii) The order dated 21.07.2026 passed by the I Additional District Judge and Commercial Court, Dakshina

Kannada, Mangaluru, in Com.O.S. No.152/2026, allowing the application filed under Order XXXIX Rules 1 and 2 CPC, is hereby ***set aside***.

(iii) The application filed by the plaintiffs under Order XXXIX Rules 1 and 2 CPC stands ***dismissed***.

(iv) It is made clear that the observations made herein are confined to consideration of the interlocutory application and shall not influence the adjudication of the suit or the pending arbitration proceedings on their respective merits.

Sd/-
(D K SINGH)
JUDGE

Sd/-
(H.SHANTHI BHUSHAN)
JUDGE

KNM
List No.: 1 Sl No.: 24