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**CASE COMMENTARY OF S. SYED MOHIDEEN V. P. SULOCHANA
BAI (IRUTTU KADAI HALWA CASE)**

- Revathy P¹, Lavanya P² & Balraj B³

COURT: Supreme Court of India

CITATION: (2016) 2 SCC 683

AREA OF LAW: Intellectual Property Law – Trademark Law – Passing Off – Protection of Unregistered Trademarks

INTRODUCTION:

In the domain of intellectual property law, trademarks serve as crucial identifiers of the origin and quality of goods and services. They form an essential part of commercial goodwill, brand recognition, and customer trust. A trademark could be a word, logo, symbol, slogan, shape, color combination, or even a sound that differentiates one trader's products from those of others. Indian trademark law, governed primarily by the Trade Marks Act, 1999, provides comprehensive legal protection to both registered and unregistered trademarks, albeit through different mechanisms.

While registration of a trademark confers statutory rights to the proprietor under the Act, Indian law also recognizes the rights associated with unregistered trademarks through the common law tort of passing off. This legal remedy protects the goodwill of a trader and aims to prevent misrepresentation that is likely to confuse or deceive the public. The doctrine

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of passing off plays a significant role in safeguarding the commercial identity of businesses, especially those traditional or local enterprises that might not have registered their marks but still enjoy substantial public recognition and reputation.

The case of S. Syed Mohideen v. P. Sulochana Bai, famously known as the Iruttu Kadai Halwa case, presents a compelling narrative on the intersection of tradition, commerce, and legal protection. This dispute showcases how a family-run local business, deeply rooted in regional identity and customer loyalty, can assert its rights under the doctrine of passing off even in the absence of formal trademark registration. The judgment of the Supreme Court in this case reaffirmed the principle that goodwill and reputation, even if not statutorily registered, deserve judicial protection from imitation and unfair competition.

IRUTTU KADAI HALWA SHOP: LEGACY AND DISPUTE

The name “Iruttu Kadai Halwa” holds a special place in the culinary and cultural heritage of Tirunelveli, a city in the southern Indian state of Tamil Nadu. “Iruttu Kadai” literally means “dark shop”, referring to the original sweet shop that operated with minimal lighting, creating a unique identity for itself. Established over a century ago, the shop became synonymous with a specific type of halwa—soft, glossy, and rich in ghee—made using a secret recipe passed down through generations. The halwa was not merely a sweetmeat; it was an emotion and a legacy for the people of Tirunelveli and beyond. With no branches or franchises, the shop’s reputation rested solely on its consistent quality, secrecy of preparation, and word-of-mouth popularity. Despite not registering the name as a trademark, the shop had developed considerable goodwill and brand identity over the decades.

The dispute arose when S. Syed Mohideen, the defendant, began using the name “Iruttu Kadai Halwa” for his own sweet shop, potentially misleading customers into believing that his products were from or associated with the original and reputed shop. P. Sulochana Bai, the widow and legal heir of the original founder, initiated legal proceedings alleging that Mohideen was passing off his goods as those of the original shop, thereby infringing upon the family’s reputation and deceiving the public.

BRIEF FACTS OF THE CASE:

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The appellant in the present case is S. Syed Mohideen and the respondent is P. Sulochana Bai. The respondent/plaintiff in the case is the registered owner of trade mark "Iruttukadai Halwa and is the daughter-in-law of Mr. Krishna Singh and the the name of 'Irutukadai Halwa in front of the railway station. The respondent is appellant/defendant in this case is the zealous father, who opened the same shop in the name of 'Irutukadai Halwa in front of the railway station. The respondent is the registered owner of the trademark used by her family since 1900 by the name of Iruttukadai Halwa, an Indian sweet native to Tirunelveli, Tamil Nadu.

The respondent got to know that the appellant was also using the name Irutrukadai Halwa for selling their product and had also registered a trademark Tirunelveli Irruttukadai Halwa on April 9, 2008 under the Trade Marks Act. 1999

The respondent and her family have been using the name "Iruttukadai Halwa, since 1900 at their shop 'Iruttukadai Halwa Shop' and had registered a trademark somewhere in 2007. They only sell this one product from 5:00 p.m. to 10:30 pm each day and their Halwa has acquired a distinct recognition and significance in the customer's mind as the customers called the shop as 'Iruttukadai Halwa Shop and their halwa is considered to be of a higher quality with a long-lasting taste The shop's look itself had become recognizable as, since 1900, they have used only one source of illumination placed at the centre of the shop, earlier it was an of lamp which was later replaced by a 40W bulb making it different from the other shop in question.

The appellant opened a sweet shop with the name "Raja Sweets' near the Tirunelveli Railway station and sold a variety of savouries including halwa. The also opened another shop called 'Nellai Raja Sweets which is 5 kilometres far away from the respondent's shop Iruttukadai Halwa Shop. With time they opened a third shop near the Railway Station called Tirunelveli Iruttukadai Halwa unde the Trade Marks Act, 1999, and advertising about it in Tamil Murasu newspaper.

The public after the advertisement enquired the respondent if they have opened another branch of their shop referring to the appellant's third shop. The respondent/plaintiff issued a legal notice on July 20, 2007 to the appellant to stop using the name Iruttukadai Halwa as it is trademarked by them. The appellant on July 30, 2007 sent a reply refusing to comply with the notice.

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On the grounds that the appellant had unfairly utilised the trademark to deceive the public and make unfair profits through better sales, the respondent filed a lawsuit seeking a declaration, permanent injunction, and other reliefs. Both the parties have submitted multiple documents as evidence and brought witnesses validate their claims.

EVENTS LEADING TO THE DISPUTE:

The dispute began when S. Syed Mohideen, a sweet vendor in the same town, opened a sweet shop and began marketing his products under the same name — “Iruttu Kadai Halwa”. He used signage and packaging that bore striking resemblance to the original shop. This move caused confusion among customers, many of whom assumed that his shop was a branch or extension of the original Iruttu Kadai.

Although Mohideen’s halwa differed in quality and taste, the use of the same name led to substantial misrepresentation. The real concern was not merely competition, but the loss of distinct identity and the dilution of the original brand’s goodwill. The public, unaware of the distinction, began purchasing halwa from Mohideen’s shop, mistakenly attributing it to the trusted family-run business.

P. Sulochana Bai, disturbed by the misuse of the family legacy and the erosion of customer trust, initially approached local forums but later filed a civil suit in the District Court, seeking injunction and damages for passing off. She argued that her business had acquired an unregistered trademark status due to its long-standing reputation and customer recognition, and that the defendant was unfairly exploiting this goodwill for personal gain.

The defendant, in his defense, contended that the term “Iruttu Kadai Halwa” was a generic descriptor and not the exclusive property of any one trader. He argued that since the name had not been registered under the Trade Marks Act, he was free to use it. However, this argument overlooked the well-established principle that passing off actions can be sustained even in the absence of a registered trademark, provided there is sufficient evidence of reputation, deception, and damage.

After several rounds in the lower courts, the matter escalated to the Supreme Court, which examined not only the factual nuances of the case but also the broader implications of

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trademark law, passing off doctrine, and protection of unregistered businesses with distinctive identity.

LEGAL ISSUES INVOLVED:

The dispute surrounding the use of the term “Iruttu Kadai Halwa” by the defendant raised multiple legal questions that fall at the intersection of intellectual property law, particularly trademark rights, and the common law doctrine of passing off. The case presented a unique situation involving a family-run, traditional business with decades of goodwill but no formal trademark registration. Despite the informal nature of the business, the core issue was whether its unregistered trade name deserved protection under Indian law against deceptive commercial practices.

i. Whether an Unregistered Trademark Can Be Protected in Law

The first and foremost legal issue in the case was whether the name “Iruttu Kadai Halwa,” despite not being registered under the Trade Marks Act, 1999, could still be protected under law. It is clear that no action for infringement can be instituted in relation to an unregistered trademark⁴. It provides that nothing in the Act shall affect the rights of an unregistered trademark owner to take action for passing off goods or services.⁵

This clause serves to preserve the common law remedy of passing off, which predates statutory trademark law. The doctrine is based on the principle that no one should be allowed to sell their goods under the pretense that they are someone else's. Therefore, the absence of registration does not leave a party without legal remedy if the mark in question has acquired distinctiveness and public recognition.

In the present case, the Supreme Court affirmed that the use of the name “Iruttu Kadai Halwa” by the defendant was likely to cause confusion among consumers, who could associate the products of the defendant with the original shop operated by the plaintiff's family. Hence, even without registration, the name had acquired commercial distinctiveness through long and consistent use.

⁴Under Section 27(1) of the Trade Marks Act, 1999

⁵ See Section 27(2) of Trademark Act

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ii. Whether “Iruttu Kadai Halwa” Was a Descriptive or Distinctive Name

Another core legal issue was whether the term “Iruttu Kadai Halwa” was merely descriptive—referring to a type of halwa sold in a dark shop—or whether it had achieved secondary meaning capable of legal protection. Descriptive names generally cannot be protected as trademarks unless they acquire a distinctive association with a particular source.

The defendant argued that the name was generic and descriptive, referring to a shop selling halwa in a dark room, and thus incapable of exclusive ownership. However, the plaintiff was able to establish that over the years, the name “Iruttu Kadai Halwa” had become uniquely associated with a specific shop in Tirunelveli, which had no branches or outlets. This distinctive secondary meaning, built on customer trust and consistent commercial usage, made the name legally protectable under the doctrine of passing off.

The Court emphasized that distinctiveness can be acquired through prolonged and exclusive use, and that such names deserve protection when they have become indicators of origin, irrespective of whether the name appears “generic” on its face.

iii. Whether There Was Misrepresentation and Likelihood of Confusion

A critical element of a passing off action is the existence of misrepresentation, whether intentional or not, which is likely to confuse or deceive consumers into believing that the goods or services offered by one party are those of another. In this case, the use of the same name by the defendant created a false impression of association with the original Iruttu Kadai Halwa shop.

The Court found that the overall get-up of the defendant’s signage and branding closely resembled that of the original business. Moreover, evidence suggested that customers were genuinely confused, believing that the new shop was an extension or branch of the well-known original shop. This confusion was damaging to the plaintiff’s goodwill, and thus actionable.

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iv Whether the Plaintiff Suffered Actual or Probable Damage

For a successful claim of passing off, it is not always necessary to prove actual loss; probable damage to business reputation and sales is often sufficient. The plaintiff in this case demonstrated that the unauthorized use of the name diluted the uniqueness of her shop and created a risk of customers avoiding the original brand due to confusion or dissatisfaction with inferior products.

The Court held that such misrepresentation could erode the distinct identity painstakingly built by the original business over decades. The loss of exclusivity and customer trust, even if not immediately measurable in monetary terms, constituted legal damage.

ARGUMENTS OF THE PARTIES:***Argument by the Appellant:***

Mr. Mani, an experienced advocate representing the appellant, stated that the appellant has been selling halwa and sweets in Tirunelveli under the name 'Raja Sweets' for the past 40 years at the same site. It was further stated that the question of public deception does not arise because the appellant's business located 5 kilometres away from the respondent's shop.

The appellant claims that she is the only one who has a display board outside her shop with the term "Tirunelveli Iruttukadai Halwa, while the respondent has no such sign in front of her shop or anyplace in Tirunelveli. On the carry bag used by the appellant with the name 'Raja Sweets', the telephone number is displayed in a different colour with a distinct image. Because deception isn't a problem, it can't be said that the public is being deceived. Mr. Mani claims that the lower courts completely ignored the aforementioned essential distinguishing features.

Furthermore, his other contention, on which he relied heavily, is that the appellant's trademark with the specific name Tirunelveli Iruttukadai Halwa was duly registered under section 25(2) of the Act, and that there was no reason to injunct the appellant from using such

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a trademark once the Registrar had accepted the appellant's application for trademark registration and issued the trademark certificate dated April 9, 2008 in this regard.⁶

Argument by the Respondent:

On behalf of the respondent/plaintiff, counsel appearing on their behalf contended that sought to justify the ruling in her client's favour by citing reasons given by lower courts, pointing out that a finding of fact was made stating not only that Respondent used the aforesaid trade name prior to her, but that Respondent had used it for over 100 years since her father's family began using it in the year 1900. She also cited the High Court's ruling in the disputed case, which said that a prior user of the mark had exclusive rights to use it.

LEGAL ASPECTS INVOLVED IN THE CASE:

The pivotal legal aspects that are involved are the sections 25, 27, 28, 29 and 34 of the Trade Marks Act, 1999. They are as follows:

Section 25 - Duration, renewal, removal, and restoration of registration.

The Registrar shall renew a trademark's registration for a period of ten years from its expiration date or its last renewal date (whichever is later), on an application made by its registered proprietor in accordance with prescribed procedures and within prescribed time limits and subject to payment of prescribed fees

Section 27-No action for infringement of the unregistered trademark

No person shall be entitled to institute any proceeding to prevent or to recover damages for, the infringement of an unregistered trademark.

Section 28-Rights conferred by the registration.

This Act provides that if a trademark is registered and is valid, the owner of that trademark has exclusive rights over that mark in relation to goods or services for which in is registered, as well as rights to seek redress for trademark infringement in accordance with this Act.

Section 29-Infringement of registered trademarks.

⁶See section 25(2) Trademark Act, 1999

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A registered trademark is infringed by a person who, not being a registered proprietor or a person using by way of permitted use, uses in the course of trade, a mark which identical with, or deceptively similar to, the trademark in relation to goods or services in respect of which the trademark is registered and, in such manner, to render the use of the mark likely to be taken as being used as a trademark

Section 34 - Saving for vested rights.

Not even a registered trademark holder can stop someone else from using an identical or nearly identical mark in relation to goods and services for which they, or their predecessor in title has continuously used the mark since a certain date. This is a very important point to remember when it comes to trademarks and trademark law prior. If the first trademark is registered, the Registrar may not refuse to register the second trademark-based solely on the prior registration of the first trademark

JUDGMENT IN BRIEF:

Initially, the lawsuit was filed at the Trial Court. The plaintiff filed a declaration suit, a permanent injunction, and a rendition of accounts against the defendants. The third rendition of accounts prayer was declined by the Trial Court, while the rest were granted and decided in 2011. The Trial Court reasoned that, having been in business since 1900, the plaintiff's family was a 'Irrutukudai Halwa' and so entitled to its protection and injunction. prior user of the trademark

The Court held in this case that trademark registration is simply a recognition of pre-existing common law rights, and that in the case of a dispute between two registered proprietors, the evaluation of better common law rights is required because it creates common law rights that allow the court to determine which proprietors' rights are better and superior. The court concluded that the respondent's family had been conducting business and using trademarks for 100 years after hearing lots of evidence in their favour. The plaintiff's use of a similar trademark is tantamount to deceiving customers by using a similar brand name. It will tarnish the respondent's good name and reputation even more. The Supreme Court dismissed the appeal as a result of its decision in favour of the respondent.

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The decision was maintained by the High Court, which noted that the respondent was a former user of the mark who had already registered it. Their Halwa has become a household name with a special reputation and goodwill as a result of its previous use. The court further pointed out that the respondent had registered the trademark, giving her rights under section 34 of the Trade Marks Act of 1999.

COMMENTARY:

Both the defendant and the plaintiff have registered their trademarks in this case, which is critical. This registration was carried out in accordance with Chapter III of the Trade Marks Act of 1999, which governs 'Registration Procedure and Duration'. According to this chapter, the two most important needs in this scenario are:

1. When the Trade Marks Registry receives and accepts a trademark registration application, it is required to issue a public notice in the form of an advertisement, allowing anyone else to object to the application.
2. When assessing any such objection to the application, the Registry must determine whether the new trademark will cause public confusion. If the answer is yes, the Registrar has the power to deny the registration.

When the appellant's application for registration of the trademark Tirunelveli Iruttukadai Halwa was preferred, the respondent did not file an objection, and the Registrar authorised the registration after following the procedure outlined therein. It's also worth noting that this registration is reported to be under section 25(2) of the Act, meaning that it was a renewal in 2008 and that the original registration was much earlier. However, those facts aren't in the record, and the Appellant didn't bring them up. As a result, we'll proceed on the presumption that the Appellant's trademark was first registered in 2008, especially as the exact year has no bearing on the outcome.

However, talking in terms of section 34 Trade Marks Act, 1999, section 34, prohibits the registered proprietor or registered user from interfering with a prior user's trademark rights. On a concordant reading of sections 34 and 27 and 28, it is clear that the registration rights are subject to section 34. As a result, the Act's framework recognises that prior user rights are superior to registration rights, and that even the registered proprietor cannot

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interfere with the prior user's rights. The overall result of a collective reading of the Act's provisions is that any registration granted under the Act will have no bearing on any action for passing off based on

In the case of **N.R. Dongre and Ors. v. Whirlpool⁷** Corporation and Anr., the rights of the prior user producing goodwill. division of the Delhi High Court recognized that registration is not an indefeasible right and that it can be challenged by a previous user. It's also worth mentioning that, in this circumstance, passing off rights are considered preferable than registration rights for a variety of reasons. Traditional common law passing off is considered as a right to protect a company's goodwill from misrepresentation made in the course of business and to prevent any damage caused by the misrepresentation in the course of business. Goodwill, deception, and reputational harm are the three elements of false advertising.

These ingredients are regarded the classical trinity under the law of passing off, according to Lord Oliver's speech in the case of **Reckitt & Colman Products Ltd. v. Borden Inc⁸**., widely known as the 'Jif Lemon' case. Lord Oliver boiled down Lord Diplock's five guidelines in *Erven Warnink v. Townend & Sons Ltd. (HL)* to three points: (1) A trader's goodwill, (2) Misrepresentation, and (3) Damage to goodwill. As a result, a passing off lawsuit is essentially a fraud action, because the common law rule is that no one is authorised to conduct business in the name of another.

In the case of **Laxmikant V. Patel v. Chetanbhat Shah and Anr⁹**., this Court endorsed the preceding principle. The rule's applicability is established by whose owner has created goodwill in the firm via the use of the mark name. A person's use of a trademark or business name confers rights and establishes a good brand image in the marketplace. A person who later adopts a mark or a business name cannot misrepresent his company as being owned by the original right holder.

In essence, this is why the rights of the previous user are regarded as paramount to all others. As a result, common law rights based on goodwill, misrepresentation, and injury are assessed separately from rights based on goodwill and damage that are registered. It makes

⁷N.R. Dongre and Ors. v. Whirlpool (1996) 5 S.C.C. 714 (India).

⁸Reckitt & Colman Products Ltd. v. Borden Inc (1990) 1 All E.R. 873 (H.L.) (U.K.).

⁹Laxmikant V. Patel v. Chetanbhat Shah and Anr (2002) 3 S.C.C. 65 (India).

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no difference whether both parties are registered proprietors for the purposes of determining who created the market's goodwill first, and whether the latter user is misrepresenting himself in the course of business and causing harm to the prior right holder/former user's goodwill and reputation.

It is safe to conclude that the defendant has committed passing off as a result of his clear breach of all three requirements. To put it another way, trade mark registration does not protect you from being sued. When situations like this develop, courts have a duty and obligation to defend not only the reputation and goodwill of previous users, but also the interests of consumers. The court arrived at the correct conclusion in this manner. As a result, the prior user and registered owner has superior rights and is entitled to exclusive use of his registered trademark.

OBSERVATIONS:

The Supreme Court's ruling in *S. Syed Mohideen v. P. Sulochana Bai*¹⁰, marks a significant development in Indian trademark jurisprudence, especially in the realm of passing off, unregistered marks, and common law rights. The Court's primary observations revolve around the nuances of the Trade Marks Act, 1999, the essence of goodwill, and the balancing of competing commercial rights.

1. Recognition of Common Law Rights

The Court reaffirmed that the rights of an unregistered trademark user are not extinguished merely because another person has obtained registration for a deceptively similar or identical mark. This principle strengthens the doctrine of "first user prevails" and is rooted in Section 27(2) and Section 34 of the Trade Marks Act, 1999. The Court held "Statutory rights do not override the common law rights of a prior user."

2. Importance of Prior Use Over Registration

The judgment stresses the significance of prior and continuous usage in the context of passing off actions. The Court recognized that even if the plaintiff did not register the trademark, they may be protected from misrepresentation if they can prove continuous

¹⁰*S. Syed Mohideen v. P. Sulochana Bai*, (2016) 2 SCC 683

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use and goodwill in the market. This ensures that businesses relying on their established reputation are not rendered vulnerable due to lack of registration.

3. **Role of Goodwill and Reputation**

The decision also emphasized the importance of goodwill, especially in cases of traditional and geographically rooted businesses like Iruttukadai Halwa. The brand was known for its exclusivity and association with a specific region and family lineage, which was central to establishing the plaintiff's rights.

4. **Limitations of Trademark Registration**

The Court acknowledged that trademark registration is not a license to misappropriate another's goodwill. The registered owner must act in good faith and must not deceive the public by exploiting another's reputation.

5. **Public Interest and Consumer Confusion**

Another key aspect the Court dealt with was the likelihood of consumer confusion, which lies at the heart of both trademark infringement and passing off actions. Given that both parties used the identical mark "Iruttukadai Halwa," the possibility of deception was high. In such cases, the judiciary prioritizes public interest and honest commercial practices.

CONCLUSION:

The *Iruttukadai Halwa* case is not merely a legal dispute over trademark use—it reflects the tension between traditional commerce and modern intellectual property rights regimes. It is also a classic example of how heritage businesses, rooted in culture and geography, face challenges when formal legal mechanisms such as registration are not pursued in time.

This case reaffirmed several critical principles:

- Passing off is a tort rooted in equity; the law protects honest traders and prevents exploitation of goodwill through misrepresentation.

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- Registration is not conclusive—even a registered trademark owner can be restrained if the mark was previously used by another party with established goodwill.
- Prior user rights override statutory rights, upholding the sanctity of long-standing businesses that may not be legally registered but are publicly recognized.

The Court, while reversing the Madras High Court's ruling, essentially restored justice by protecting the true inheritor of the brand's legacy. It has broader implications for India's IP landscape, especially for geographical indicators, family-owned businesses, and cultural artisans, who often function outside formal legal frameworks.

REFERENCE:

Books

- ❖ R.G. Chaturvedi & R.P. Narayan, *Law of Trade Marks and Passing Off*, Bharat Law House, 6th ed. 2020.
(Comprehensive commentary on trademark law and case discussions.)
- ❖ Dr. B.L. Wadehra, *Law Relating to Intellectual Property*, Universal Law Publishing, 5th ed. 2021.
(Useful for understanding theoretical and doctrinal insights into IP law.)
- ❖ **P. Narayanan**, *Law of Trade Marks and Passing Off*, Eastern Law House, 7th ed. 2017.

Journal Articles

- ❖ R. Mehta, *Doctrine of Passing Off and Trademark Disputes in India*, 12 J. Intell. Prop. Rts. 243 (2007).
- ❖ A. Sharma, *Prior User Rights vs. Registered Proprietor: A Comparative Analysis*, 5 NUALS L. Rev. 97 (2016).

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