IN THE HIGH COURT OF MADRAS

DATED: 01.12.1964

CORAM

THE HONOURABLE MR. JUSTICE RAMAMURTI

A.A.O. Nos. 339 and 340 of 1964

V. Manioka Thevar ... Appellant

Vs.

Star Plough Works, Melur ... Respondent

JUDGMENT

(1) The brief facts of the case are as follows. The appellant filed the suit, O. 8 No. 3 of 1964 on the file of the District Judge, Madurai, under S. 29 of the Patents and Designs Act, against the respondent for a permanent injunction restraining the respondent form manufacturing and selling certain patterns of ploughs on he ground that he respondent's conduct was an infringement of the plaintiff's patent. The plaintiff obtained an interim injunction in 1. A. 181 of 1964, but, on an application filed by the defendant-respondent in I. A. 182 of 1964, the interim injunction was vacated. The plaintiff has preferred the above appeals complaining that the learned District Judge should have granted the interim injunction pending disposal of the suit.

(2) The plaintiff is a manufacturer and dealer engaged in the sale of ploughs and plough shares know as "Bose ploughs" or "plough shares" and the plaintiff's case is that in the course of the business he has been experimenting and inventing new patterns of ploughs as a result of his inventive genius and prolonged research and that he obtained a patent on 12-10-1960 in respect of a particular pattern of plough, having a special twist distinguishing his pattern from the other ploughs in the market. The plaintiff's case was that he commenced production

and sale of this particular type of plough from October 1962, that about March 1964, the defendant slavishly imitated the plaintiff's pattern by manufacturing ploughs and selling the same in the market.

(3) The defendant resisted the claim on the ground that the plaintiff cannot claim any inventive genius or special research in the particular pattern of plough which he was manufacturing having regard to the prior public knowledge and obviousness arising from the manufacture and sale of ploughs long before the manufacture and sale of ploughs long before the controversy arose. The defendant claimed that he has been manufacturing ploughs of various patterns form the year 1958, and that the particular pattern, "No. 99 Star master" which is complained of as an infringement is not any imitation of the plaintiff's pattern, but it is as a result of the defendant's invention and improvement upon the patterns of ploughs which he had been manufacturing and selling.

(4) In connection with the interim injunction application a Commissioner was appointed to inspect the premises of the defendant and submit a report. The defendant appears to have stocked his ploughs in door No. 373/2. as well as door No. 371 to 375. Some point was made by the learned counsel for the appellant before me that the 99 star Master ploughs were not shown to the Commissioner at the time of his first report and inspection. On scrutiny of the records, I find nothing turns upon this as the complication inspected only No. 373/2 and not the other door numbers. Even ass early as 5-5-1963, the defendant has brought to the notice of the Commissioner that by the end of 30-4-1964, he had manufactured a total number of 1406 ploughs of "99 Star Master" brand, has sold 660 and had a balance of 746. In view of this it is clear that the defendant has been manufacturing and selling in large number of Star Master ploughs 99.

(5) Principles regulating the grant of an interim injunction in a suit complaining of infringement of a patent are fairly well settled. The plaintiff must make out a strong prima facie case for the issue of a temporary injunction. An interim injunction will not be granted if the patent which has been obtained by the

plaintiff is a recent one and there is a serious controversy about the validity of the grant of the patent itself. In other words, if from the objections raised by the defendant it is clear that that a serious controversy exists as to whether or not the invention claimed by the plaintiff is a new one or a new manufacture of whether or not the invention involves any new inventive skill having regard to what was known or used prior to the date of the patent, courts will not grant an interim injunction restraining the defendant from pursuing his normal business activity. An interim injunction will not be granted if the defendant disputes the validity of the grant. The facts of the instant case disclose a bona fide tribal issue as regards the inventive genius claimed by the plaintiff. If the patent is new and its validity has not been established in a judicial proceeding till then, and if it is endeavoured to be shown that he patent ought not to have been granted under the provisions of S. 26 of the Patents and Designs Act, 1911, the court will not interfere by issuing a temporary injunction. Vide Kerr on Injunction 6th Edn. page 320.

In the instant case every circumstance that has been made out is definitely against the grant of a temporary injunction. The plaintiff has not made out the important condition of a strong prima facie though the defendant raised this particular objection, the plaintiff has not placed any prima facie material or any evidence by production of account books, bill books etc. to show the date of his commencement of the production and the nature of the sales extensive or otherwise. On his own showing he commenced production only in October 1962, and the suit is filed in 1964 April. Yet no materials have been placed.

(6) Secondly, the patent is very recent one, and I find that the decisions have uniformly taken the view that any patent which is less that six years old is regarded as a recent one. The statement of the law in Terrel on Patent, 9th Edn pages 318-320 shows that a patentee should show undistributed possession of the enjoyment of the patent at least for a period of six years before the controversy arose. In Boots Pure Drug and Co., (India) Ltd. v. May and Baker Ltd., 52 Cal WN 253, this rule hat there should be proof of actual user of the

patent for more than six years was applied in India. Thirdly there is also a serious controversy about the validity of the grant of the patent touching the originality or the inventive genius of the plaintiff or as to how far the prior knowledge holding the field would disentitle the plaintiff to the grant of the patent. The defendant is certainly not a new entrant in the field but he has himself been a dealer, manufacturer and seller of ploughs of various patterns. For all these reasons I entirely agree with the order of the learned District Judge holding that the plaintiff has not made out any case for the grant of an interim injunction.

(7) The appeals are therefore dismissed with costs. The direction passed by the learned District Judge directing the defendant to maintain separate accounts of their sales with liability to pay damages tot he plaintiff in case the plaintiff succeeds would stand.

(8) It is needless to observe that where the main issue to be decided in the stage of the interim injunction application is the same as the one to be tried in the suit the best course will be to expedite the trial of the suit, so that neither party would be put to any irreparable damage or loss of prejudice. I therefore direct the District Judge to dispose of the suit as expeditiously as possible preferably before the end of (January) 1965, of course, after giving preference to the Sessions cases.

(9) Appeals dismissed.