

K.G. Nagaraj vs K.G.Nagaraj on 8 February, 2022

KABC010221382014

Form
No.9
(Civil)
Title
Sheet
for
Judgme

PRESENT: SMT. PRASHANTHI.G.

B.A (Law) LL.B.,
XXVII Additional City Civil Judge.

Dated this the 8 th day of February 2022

PLAINTIFF:

K.G. Nagaraj
S/o Giddanayaka,
CL-2, Licensee,
48/42, Sy.No.42,
1st Cross, 60 ft Road,
Kanakanagara,
Pattegarpalya Main Road,
Bangalore.

R/o Rachikoppa village,
Shimoga Taluk,
Shimoga District.
[By Bhat.G.K. Advocate]

/v e r s u s/

DEFENDANTS:

1. K.G.Nagaraj,
S/o Veerappa Gowda,
Kodkani Village,
Soraba Taluk,
Shimoga District.
2. The Deputy Commissioner of
Excise, Bangalore Urban District
(West), Bangalore.

2

O.S.7914/2014

D1 - By Sri KBN, Advocate

D2 - By DGP

Date of institution of the : 18/10/2014
suit

Nature of the suit : For injunction
Date of commencement of : 8/7/2019
recording of the evidence
Date on which the : 8/2/2022
Judgment was
pronounced.

: Year/s Month/s Day/s
Total duration 7 3 18

(Prashanthi. G)
XXVII ACCJ: B'LORE.

Plaintiff filed this suit against the defendants for the relief of permanent injunction restraining the defendant from in any way interfering with the smooth running of the CL-2 licensed retail liquor shop in the name and style of Navarathna Wines at No.48/42, Sy.No. 42, 1st cross, 60 feet Road, Kanakanagara, Pattegarpalya Main Road, Bangalore, on the strength of the license bearing No. EXE-BEM NA /24/13/CL-2/2014-15 issued by the Deputy Commissioner Bangalore Urban District, and for any other reliefs.

3 O.S.7914/2014

2. The brief facts of the plaintiff's case are as under:

Plaintiff is the holder of the license in Form CL-2 and has been carrying on the business of retail sales of Indian and Foreign Liquors at the above address for the last several years. The Deputy Commissioner, Bangalore Urban District is the Licensing Authority and the Deputy Commissioner of Excise the defendant no.2 is the supporting officer and is having the

supervisory jurisdiction and certain other powers conferred upon him under the Karnataka Excise Act and different Rules made thereunder. The license was initially granted in the Excise Year 1993-94. Subsequently said license is renewed every year.

The premises in which the business is being run is a rented building. When the matter stood thus, the first defendant having identical name with that of the plaintiff has having come to know about the licensed business carried on by the plaintiff profitably has started to come and disturb the business of the plaintiff. He also started to file false petitions before
4 O.S.7914/2014
the defendant no.2 and other authorities and to claim right over the license and has been creating disturbance of the lawful business of the plaintiff merely on the basis of identical name and coming from the same place of residence.

In this regard, certain petitions were filed before the defendant no.2 - the Deputy Commissioner of Excise. The plaintiff has furnished all the relevant documents including the documents having his photographs on the license, address proof, name as mentioned in the license and records of the Excise Department apart from income tax return documents. However, the defendant no.1 who is being supported by certain unseen hands with an intention to knock

off the license has been making all efforts to disturb the business of the plaintiff and also to create charge over the same or to enter into an agreement of transfer of license for monetary benefit merely on the ground of the name is identical with that of the plaintiff.

5

O.S.7914/2014

The plaintiff has been lawfully running the business. There are no dues of any sum of money to the State or any other authority concerning the lawful business carried on by him. But still the defendant no.1 is making hectic efforts to unnecessarily disturb the business of the plaintiff and to create third party interest taking advantage of identical name and unless the same is prevented by an appropriate judgment and decree of this Court, it is likely that the defendant no.1 may continue his illegal acts.

As already the plaintiff is continuously running the business on the strength of the license in Form CL-2 in his name and he is actively engaged in the day to day management of the same. The defendant no.1 has no manner of right, title or interest over the same. The plaintiff also submits that the defendant no.2 being the authority under the State having supervisory jurisdiction over the licensed business is arrayed as formal party and no relief is sought against him.

The cause of action for the suit arose in the first week of September 2014 and continuously thereafter when inspite of the enquiry being conducted by the defendant no.2, the defendant no.1 started to disturb the business of the plaintiff in one way or other and the suit is well within the prescribed time of limitation.

Accordingly, prayed to decree the suit.

3. After the service of the summons, the defendants 1 and 2 appeared through their advocate and filed written statement.

4. The main contentions of the defendants 1 in the written statement are as under:

The suit of the plaintiff lacks bonafide and requires to be dismissed in limine. The averments made in plaint averments are false and incorrect.

The averment made in para no. 3 of the plaint is that, plaintiff is the holder of license in Form CL-2 and has been carrying on the business on retail sales of Indian and Foreign Liquors etc., are all false.

Further the averments sated in para no. 5 of the
7 O.S.7914/2014

pliant is that, the defendant having the identical name with that of the plaintiff come to know that, the license business carried on the plaintiff profitably has started to come and disturb the business of the

plaintiff. He also started to file false petition before the defendant no.2 and other authorities to claim the rights over the license etc are all false.

The averments made in para no. 6, 7 and 8 of the plaint are false.

During the period of 1992, the defendant no.1 applied for the Excise license and running the business of wine shop under the CL-2 license vide No. EYE/CL-2/MLLR/67/92-93 dt. 21.07.1992 issued in the name of the defendant no.1 and he kept the name of Santhosh Wines, since his sons name is Santhosh. Defendant no.1 is the original licensee and he has obtained the said license in the form of CL-2 from the Excise Department for the year 1992-93 in respect of the premises bearing No. 112/3, Saneguruvanahalli, Basaveshwaranagar, Bengaluru. The said license was renewed in his name from the year 1992-93 to 2006-07.

8 O.S.7914/2014

One Mr. G. Nagaraj, S/o Sri. Giddanayaka who was working as Assistant, who was the permanent resident of No. 47, Rachikoppa of Shivamogga, who look after the business of defendant no.1. He was looking the agricultural operation since the year 2001-02, though he has authorized the said person to look after the said business. The defendant no.1 was supervising the management of said business.

The said G.Nagaraj S/o Giddanayaka taking

advantage of absence of the defendant no.1 in
Bengaluru colluded with one Mr.H. Manjappa have
acted fraudulently and defrauded not only the
defendant no.1 but also Excise and other departments
by impersonating the defendant no.1. When the
concerned departments made it compulsorily for
affixing the photograph of licensee, the plaintiff got
affixed his photograph to the license granted to the
defendant representing him that he is K.G. Nagaraj,
although his name is G.Nagaraj. The said G. Nagaraj
not only impersonated defendant no.1, but also
managed the shifting of the license by forging the
9 O.S.7914/2014

signature of defendant no.1 in the year 2006.
Thereafter he managed to get the license shifted from
the premises bearing No. 112/3 of
Saneguruvanahalli,. When this was questioned by the
defendant no.1, the plaintiff has replied that, the said
license was cancelled and concerned authority has
directed to shift the same and he is innocent of the
same. The defendant has believed the said version as
he has given to understand by the said plaintiff that,
said license is managing on behalf of the defendant
no.1 by looking after the day to day business.

The plaintiff managed to get the PAN number in
the defendant no.1 by affixing his photograph in the
column where it is to be required to be affixed.

Recently defendant no.1 came to know about the said act of fraud committed by the plaintiff by impersonating the defendant no.1. Immediately the defendant no.1 made necessary verification and obtained necessary documents under the Right to Information Act and came to know that, the plaintiff has also acted fraud on the departments as well.

10

O.S.7914/2014

Therefore, it is clear that, the plaintiff has got affixed his photograph on the license of the defendant no.1.

On perusal of the entire file of the license, it is clear that, the plaintiff never came before the department even to receive the license nor to collect the same. He authorized some other persons to collect the license. Therefore, it is clear that, the plaintiff has acted illegally and also acted fraud on the departments.

The plaintiff has got inserted his name in the ration card of one Sri. Manjappa as his brother who is none other than the brother of Sri. H. Halappa, Ex-Minister of Food and Civil Supply. All these persons managed to create the ration card and after one year, the name of the plaintiff has been removed from the ration card and said ration card has been created only for the said purpose and many of the times, the said Manjappa received the renewed license and the said business is under the control of said

Manjappa.

11

O.S.7914/2014

The defendant no.1 submits that, the relevant document pertaining to the defendant no.1 is a licensee and plaintiff is not K.G.Nagaraj and he is only G.Nagaraj and he himself posed as K.G. Nagaraj, the school certificates, extract of electoral voter list, ration card and all other documents are evident in this regard.

All the said relevant documents clearly shows that the plaintiff is not K.G. Nagaraj but he is only G.Nagaraj and only for the purpose of undue gain, the plaintiff has colluded with said Manjappa have got created documents in his favour and impersonated as K.G. Nagaraj. The defendant no.1 further submit that after came to know about the said illegal activity, he filed number of the complaints before the concerned authorities and all the said complaints, the proceedings have been initiated by the said authorities. The complaint to the jurisdictional Commissioner of Excise on 21/5/2011 and on the said complaint, enquiry was conducted and thereafter defendant no.1 again lodged a complaint before the

12

O.S.7914/2014

Deputy Commissioner of Excise on 21/3/2014 and further on the said complaint, the enquiry was conducted and notices are issued to the plaintiff and concerned persons and after proper enquiry satisfying

with the prima-facie case, the defendant no.1 has directed to register the criminal case before the jurisdictional police. Accordingly, the defendant no.1 lodged a complaint against the plaintiff and others who have associated with him to fraud, forgery impersonation and other offences against the defendant no.1 and also against the Government. The Vijayanagara Police have registered the complaint against the plaintiff and the investigation is going on.

The plaintiff has fraudulently got the license and he has no way concerned to the said license and the Deputy Commissioner has issued a show cause notice to close the schedule premises to the plaintiff and the same is pending before the Bangalore Urban Deputy Commissioner. The defendant has produced all the relevant documents for his identification, for the identification of the plaintiff such as register extract of 13 O.S.7914/2014 renewal of licenses, voter IDs, election voters' extract, ledger extract, RTC, school certificates, ration card, family tree and all other documents etc.,

The plaintiff has filed the suit only to drag the proceedings and all the competent authorities have been initiated proceedings to cancel the license which has been got on a impersonating and forged documents and the said enquiries and investigations reached finality and in view of the same, the above

suit has been filed by the plaintiff to show that, the civil suit is pending and to produce the same before the competent authority. The plaintiff has not come to the Court with the clean hands and he has no prima-facie case and balance of convenience in his favour. On the other hand, the defendant no.1 has made out the prima-facie case and the balance of convenience lies in his favour.

The plaintiff has got no right, title and interest either to initiate this suit or to maintain this deceptive suit being guilty of the several acts of commission and
14 O.S.7914/2014

omission on their part and explained in the written statement and therefore not entitled for any reliefs.

For the above said reasons, prays to dismiss the suit in the ends of the justice.

4. The defendant no.2 filed written statement and contends that, the aspect that the plaintiff is the holder of the license in Form No. CL- 2 is now under the dispute and he shall be put to strict proof of the same. The plaintiff is carrying on the business is an admitted fact. The Deputy Commissioner of the Bangalore Urban District is the licensing authority and the second defendant is having the supervisory jurisdiction. It is admitted that, license was granted to Sri K.G. Nagaraj and the documents mentioned in the plaint are issued in the name of K.G. Nagaraj .

With regard to para no.1 and 2, 4 and 5 there is no comments from the side of this defendant.

It is admitted that, one K.G. Nagaraj s/o Veerappagowda had filed petition on 21/3/2014. That apart, the first defendant submitted a petition to the Hon'ble Minister of Excise and the same was referred
15 O.S.7914/2014

to the second defendant. On the said petition, the first defendant directed his sub-ordinate to investigate and to submit the report. The Superintendent of Excise of Vijayanagara after verifying the records of the plaintiff and the defendants, and after perusing the documents, submitted that there has been a impersonation by the plaintiff. Prima-facie, the Superintendent of Excise found that the plaintiff has committed an offence by impersonating defendant no.1. The contention of the plaintiff that, the first defendant produced fictitious documents is totally false and incorrect.

On perusal of school records, BPL card, Voter list, and records of the defendant no.2, it is found that there has been impersonation. Therefore, defendant no.2 directed defendant no.1 to file criminal case against the plaintiff. However, the plaintiff coming to know about the action, approached this Court suppressing the material fact

This defendant specifically denies that the

plaintiff has been lawfully running the business. From
16 O.S.7914/2014

the records available, preliminary enquiry held, it is found that there has been an act of impersonation by the plaintiff to make the wrongful gain. The act of the plaintiff amounts to criminal breach of trust and cheating. The entire allegations made against defendant no.2 is totally false contended for the purpose of this case.

In view of Section 80 of the CPC also, the suit is not maintainable against the second defendant. The plaintiff cannot seek relief of injunction against the statutory authority discharging the statutory duties. Therefore, the present suit is to be dismissed with exemplary costs.

5. On the basis of the pleadings of the parties, my predecessor in title framed the following issues for consideration:

- (1) Whether the plaintiff proves that he has been lawfully carrying on business of retail sales of Indian and Foreign liquors by obtaining license from the competent authority?
- (2) Whether defendant no.1 proves that name of the plaintiff is
17 O.S.7914/2014

only G.Nagaraj but not K.G.Nagaraj as contended?

- (3) Whether defendant No.1 further proves that plaintiff taking undue advantage of his absence he got affixed his

photograph on the license granted to him representing himself as K.G.Nagaraj whereas his name is G.Nagaraj son of Gidda Nayaka and obtained license by forging his signature?

- (4) Whether defendant No.1 further proves that plaintiff has impersonated him and by forging his signature as managed to get license in respect of premises bearing No.112/3 Saneguruvanahalli, Basaveswaranagara, Bangalore as contended?
- (5) Whether plaintiff proves the alleged interference by defendant No.1?
- (6) Whether the plaintiff is entitled for the reliefs as sought for?
- (7) What decree or order?

6. In order to prove the case, the General Power of Attorney holder of plaintiff is examined as PW.1 and got marked Ex.P1 to Ex.P34(a) and closed his side of evidence. On behalf of the defendants, the
18 O.S.7914/2014
General Power of Attorney holder of defendant no.1 is examined as DW.1 and another person who is authorised by second defendant is examined as DW.2 and got marked Ex.D1 to Ex.D44 and closed their side of evidence.

7. Heard both sides and perused the entire records of the case.

8. My findings on the above issues are as under:

Issue No. 1)In the affirmative;
Issue No. 2)In the negative;
Issue No. 3)In the negative;
Issue No. 4)In the negative;
Issue No. 5)In the affirmative;
Issue No. 6)In the affirmative;
Issue No. 7)As per final order; for
the following:

9. ISSUE NO.1: In para no.3 of the plaint
averments, the plaintiff has categorically stated that
he is the holder of the license in Form CL-2 and
carrying on the business of retail sales of Indian and
foreign liquors for the several years. As per the
19 O.S.7914/2014
plaintiff, initially the license was granted in the
Excise Year 1993-94. As per the rules of the Excise
Act, every year that license is to be renewed. The same
averment has been stated by the plaintiff in his chief
examination. In support of the contentions of the
plaintiff, the plaintiff has produced the certified copy
of the blue print issued by the Excise Inspector, the
certified copy of the extracts of the register showing
the name of the plaintiff as the authorised CL-2
license holder. This extract contains 10 pages wherein
it is clear that, K.G.Nagaraj is running Navarathna
Wines in Kanaka Nagara, Pattegarapalya of Bangalore.
A rental agreement was also entered in between the
plaintiff and one Siddaramakka with respect to the
said shop. The plaintiff also produced VAT registration

certificate in order to show that, his principal place of business is situated at No.48/42, 1 st cross, 60 feet road, Kanakanagara of Pattegarapalya main road, Bengaluru. Along with this document, form no.4 is also produced which also reflects the name of K.G.Nagaraja s/o Giddanayaka who is none other
20 0.S.7914/2014

than the plaintiff. Ex.P6 which is the endorsement issued by the Excise Department of Bengaluru Urban District dated 29/6/2011. This also shows that, plaintiff has obtained the license (CL-2 license) from 1996-97 onwards and it was continuously renewing from year to year. This document clearly shows that, from past 16 years i.e., from 29/6/2011, K.G.Nagaraj has obtained the license and documents in the Excise Department clearly shows that the name of K.G.Nagaraj is reflected in CL-2 license. Ex.P7 is the document issued by the Excise Inspector in favour of the Commissioner of the Excise dated 26/7/2011. This document also clearly denotes that, as per the register maintained in the office of the Excise for license, the name of K.G.Nagaraj is reflected from the year 1996-97 onwards till 2010-2011.

10. In all the documents produced by the plaintiff, it is clear that, the plaintiff is the CL-2 license holder from 1996-97 onwards. Ex.P19 which is the CL-2 license issued in favour of the plaintiff.

Ex.P20, Ex.P21, Ex.P22, Ex.P23 all these documents
21 0.S.7914/2014

are the licenses renewed in the name of plaintiff i.e.,
K.G.Nagaraj in order to show that his license was
renewing every year.

11. The learned counsel for the plaintiff draws
the attention of this Court to the provisions of the
Karnataka Excise (sale of Indian and foreign liquors)
Rules, 1968.

12. Section 4 of the Rules deals with the
application for the license. Section 4(1) says that "Any
person desiring to obtain -

a) A distributor license or a distributor
license to sell foreign liquor shall make the
application to the Excise Commissioner; and

b) Any license other than the distributor
license, and distributor license to sell the foreign
liquor shall make the application to the Deputy
Commissioner of the concerned District where the
license has to be sanctioned in form CL-1A.

22 0.S.7914/2014

13. Section 4(2) says that "The application
shall contain the following particulars namely -

i) Name and address of the applicant ;

ii) If the applicant is a company or firm,
the names and addresses of all the Directors are
partners of the company or firm;

iii) The location of the premises where the
applicant intends to conduct the business under
a license;

iv) If the sale is more than one district, the
names of the district.

14. Therefore, the above section makes it clear
that in order to grant the license in form CL-2 for
running of a retail shop, then the application should
contain the aforesaid formalities. If at all, it does not
contain those formalities, the license cannot be
granted.

15. One of the contention taken by the
defendant is that, taking advantage of the same name
23 0.S.7914/2014
and taking advantage of the absence of the defendant
no.1, the plaintiff colluded with one Mr.H.Manjappa,
have acted fraudulently and defrauded defendant
no.1, but also to the Excise and other departments. As
per the contentions of the defendant no.1, only the
defendant no.1 is having the valid license and the
license has been issued in his favour, in the period of
1992 as per the license vide no. EYE/CL-

2/MLLR/67/92-93 dated 21/7/1992 in the name of the defendant no.1 and he kept the name of Santosh Wines since his son's name is Santhosh. According to the defendant, the defendant no.1 is the original licensee and he obtained the license for the year 1992-93 first time in respect of the premises bearing no. 112/3, Saneguruvanahalli, Basaveshwaranagar, Bengaluru. Further, he contends that, when the procedure of affixing the photographs to the license came, the plaintiff got affixed his photograph on the license granted to the defendant, representing himself to be the K.G.Nagaraj, actually his name is G.Nagaraj s/o Giddanayaka. The said G.Nagaraj not only
24 O.S.7914/2014 impersonated the defendant no.1 but also managed the shifting of the license by forging the signature of defendant no.1 in the year 2006. The same is attempted to be elucidated from the mouth of PW.1 in his cross-examination. However, nothing much has been elucidated from the mouth of the PW.1.

16. In the cross-examination dated 2/12/2019, PW.1 deposed that, "It is correct to suggest that, in 1992-93, the liquor business is in Saneguruvanahalli, Basaveshwaranagara, Bengaluru. It is correct to suggest that, at the time of starting the business in 1992-93, there was no rule to display CL-2 license and no rule to

display photo in the ledger extract. The original license was granted to K.G.Nagaraj. It is correct to suggest that in the original license, the 'son of' is not mentioned. It is not correct to suggest that, originally the plaintiff's name was G.Nagaraj and afterwards, subsequent to 2006, he has changed the same by creating documents such as PAN card and others as K.G.Nagaraj.

25

O.S.7914/2014

17. Even if the plaintiff admits that, his Aadhar card and PAN card are created subsequent to 2006, it itself is not sufficient in order to show that, the license of the defendant no.1 is mis-used by the plaintiff or in other words, as contended by the defendant no.1, only on the basis of Aadhar card, PAN card as well as identity proof, CL-2 license cannot be impersonated. Per contra, in order to show that, the defendant no.1 is having the valid license from the year 1992 onwards, the defendant has not produced any documents. In support of the chief examination of the DW.1 who is the son of the defendant no.1, who claims that his father is the original license holder of the CL-2 license in Saneguruvanahalli, he has not produced any documents. In support of the case of the defendant no.1, he has produced the school certificate, the disability certificate issued by the Government, the genealogy, election identity card,

aadhar card, PAN card, driving license etc., wherein
the name of the defendant no.1 is reflected as

K.G.Nagaraj itself. In support of the contention of the
26 O.S.7914/2014

defendant no.1 and to hold that he is the original
owner of CL-2 license, he has not produced any
licenses or any other documents to show that, he has
obtained the license nor his license is renewed from
time to time from the department of the Excise. This
aspect has been elucidated from the mouth of DW.1
from the advocate for the plaintiff. In the cross-
examination dated 13/1/2021, DW.1 clearly admitted
as follows:

"In order to obtain CL-2 license, we have to
give address proof and application form. It is
correct to suggest that, we have to give
particulars with regard to the occupation and the
place where he intends to open the liquor shop,
and if the building is own house, then the
documents with regard to the building is to be
given and if it is rented house, the rent agreement
entered between the owner and the party has to
be submitted before the authority.
27 O.S.7914/2014

18. In further cross-examination, DW.1 clearly
admitted that a declaration is to be given stating
that there are no schools or temples situated

within the 100 meter radius of liquor shop which he intends to open, license fee is to be paid in D.D. with the application, the Excise Inspector has to visit the spot in order to inspect whether the particulars of the application are correct or not, draw the mahazar and the same is to be submitted before the Excise Superintendent. Based on the report of the Excise Inspector, the Excise Superintendent has to visit the spot and to certify that the particulars stated in the application are correct. Only after certifying that all the particulars stated in the application are correct, the license will be issued.

19. In further cross-examination, he also admitted that only after obtaining the license, they can purchase IMY liquor from the wholesale dealers by filing the permit.

28

0.S.7914/2014

20. Though the defendant no.1 admitted all the formalities in order to obtain the license as well as in order to run the business as stated in Karnataka Excise Act, as well as Karnataka Excise License Rules, 1967, he clearly admitted that no such documents are produced by him to show that, he was carrying on the business from 1992 onwards. This aspect is clearly elucidated from the mouth of DW.1 in his cross-

examination. In para no.12, he clearly admitted that, "It is correct to suggest that, agreement, NOC, and other documents filed at the time of obtaining the license are not produced before the Court." In further cross-examination, he clearly deposed that in order to show that we are running the shop premises upto 2006, we have not produced the rental agreement before the Court.

21. DW.1 in his cross-examination clearly admitted that, the Excise year is from 1 st July to 30th July of the next year. There is a procedure of the renewal of the license is also there. Every year the license obtained by the holder is to be renewed. All the
29 0.S.7914/2014
procedures and particulars such as filing of the application, inspection by the inspector, the report of the inspector to the Commissioner, certifying of the same by the Commissioner is to be done before renewal of the license every year. Even the statement is to be given to the Sales Tax Department with respect to the purchase, sale and taxable amount.

22. The above aspect is clearly admitted by DW.1 in his cross-examination. Though the defendants contended that, they were having the license from the year 1992 itself, they have not produced any documents in support of the case.

Though initially DW.1 admitted that, he has produced the documents, on perusal of the entire records, he clearly admitted that "It is correct to suggest that the initial application, the renewal application, other particulars of the rent agreements, rent receipts, NOC, blue print and details with regard to the payment of the license fee are not produced before the Court upto 1999. It is correct to suggest that I have not produced even the 30 O.S.7914/2014 purchased bill, permit, indent before the Court. It is correct to suggest that, I have not produced the details with regard to the monthly statements regarding the purchase, sale, and stock of the excise before the Court. It is correct to suggest that, I have not produced the details with regard to the payment of the tax to the Sales Tax Department before the Court."

23. In further cross-examination, the DW.1 clearly admitted that, it is not correct to suggest that "In order to show my father has CL-2 license from the year 1992-93 onwards, till 2005-06, he had no copies of the licenses, the renewal applications, the statement of D.D., the extract of loss and profit account, the rent agreement, the rent payment receipt. Further these documents are not produced before the Court."

24. It is pertinent to note here that, only if the defendant no.1 satisfies the Court that, he has got the valid license in the year 1992-93 itself from the Excise
31 O.S.7914/2014
Department in order to run the retail shop, then only the defendant no.1 can allege the plaintiff that he has impersonated the signature of the defendant in the license. Here, on perusal of all the documents produced by the defendant, it is very clear that the defendant has not produced any documents to show that he has obtained the license in the year 1992-93 itself. No documents are produced by the plaintiff to show that from 1992-93 till 2006, the defendant no.1 is having the license over the alleged questioned license. Without production of those documents, the plaintiff cannot contend that, eventhough he is the original owner of the CL-2 license, it is the plaintiff who impersonated his signature in the year 2006 by creating the documents such as aadhar card, PAN card etc., for the purpose of forging the license of the defendant.

25. On the other hand, the documents produced by the plaintiff such as the blue sketch, the copies of the register extract, rental agreement, the copy of the affidavit, the copy of the VAT certificate,
32 O.S.7914/2014

computerized copy of the GST certificate, copy of the endorsement dated 29/6/2011, certified copy of the letter dated 26/7/2011, Ex.P19 to Ex.P23 documents which are the renewed licenses standing in the name of K.G.Nagaraj clearly shows that at the time of filing of the suit, plaintiff is the legalised, lawful holder of CL-2 license. Thereby, I answer Issue No.1 in the affirmative.

26. ISSUE NO.2 TO 4: In the written statement averments, the defendant no.1 contended that, the name of the plaintiff is only G.Nagaraj and not K.G.Nagaraj. Further, he contended that taking the undue advantage of the absence of defendant no.1, plaintiff got affixed his photograph on the license granted to him representing himself as K.G.Nagaraj, whereas his name G.Nagaraj s/o Giddanayaka and obtained the license by forging the signature. It is also the contention of the defendant no.1 that, the plaintiff has impersonated him and by forging his signature, managed to get the license in respect of the premises bearing no. 112/3 of 33 0.S.7914/2014 Saneguruvanahalli, Basaveshwaranagara. The same contentions are re-uttered in the chief examination of the DW.1.

27. In support of the contentions of the

defendant, the defendant has produced the documents with regard to the defendant no.1. The school certificate produced by the defendant no.1 shows that, the name of defendant no.1 is Nagaraja.K.G s/o Veerappa Gowda which is marked as Ex.D21. Ex.D22 which is the disability certificate and identity card issued by the Government of Karnataka in favour of the defendant no.1 which also shows the name of the defendant no.1 as K.G.Nagaraj. The Indian Arms License issued by the department also standing in the name of K.G.Nagaraj. The genealogy, the election ID card, aadhar card, PAN card to show that the original license holder is K.G.Nagaraj is none other the defendant no.1 himself. Further, since the defendant no.1 is K.G.Nagaraj, he contended that the plaintiff being only G.Nagaraj impersonated his signature in the license and in the registers and
34 O.S.7914/2014
misused the absence of the defendant no.1 and managed to obtain the license in the Saneguruvanahalli.

28. In the cross-examination of the PW.1, PW.1 clearly admitted that, the original license was granted in favour of K.G.Nagaraj. He also clearly admitted that the name of the father was not mentioned in the license. In further cross-examination, the defendant has confronted Ex.D2 in favour of the plaintiff. Ex.D2

is the extract of the CL-2 license of the year 2006. It contains the photograph of Halappa. PW.1 clearly admitted that, in that Ex.D2, the name of Halappa is removed and the name of K.G.Nagaraj was inserted. Ex.D4 is the endorsement issued by the Tahsildar dated 13/12/2014. Ex.D5 is the specimen of the ration card of Giddanayaka. The PW.1 clearly admitted these two documents does not contain the initial 'K.G'. Further, in admission details of the plaintiff, the name of the plaintiff is mentioned as G.Nagaraj s/o Yelada Giddanayaka. Even in the extract of voters' list issued by the Tahsildar, the
35 O.S.7914/2014
name of the plaintiff is shown as Nagaraja s/o Giddanayaka. Even in the voters list produced by the defendant from the year 2007 to 2012, the name of the plaintiff is reflected as Nagaraj only and not K.G.Nagaraj. In all the Ex.D4 to Ex.D12 documents confronted by the defendant in favour of the PW.1, the name of the plaintiff is reflected as Nagaraj only and K.G.Nagaraj. So, the contention of the defendant is that, taking the influence of the Minister of Food and Civil Supplies, the plaintiff managed to change the CL-2 licenses by creating the new PAN cards, ration cards etc., Even the defendant has confronted Ex.D16, Ex.D17 documents wherein the name of the plaintiff is mentioned as Nagaraja only.

29. It is the contention of the defendant that, by using the political power, the plaintiff managed to affix his photograph in the CL-2 license granted in favour of the defendant no.1. On perusal of the documents and from the admissions of PW.1, it appears that, the name of the plaintiff is Nagaraj and not K.G.Nagaraj. However, this itself is not sufficient
36 0.S.7914/2014

in order to show that the plaintiff has impersonated the name of the defendant no.1 in the CL-2 license and further affixed the photograph of the plaintiff in the continuous absence of the defendant no.1.

30. Whenever a party alleges the impersonation, forgery or affixation of the photographs in the documents belongs to the other, the burden is upon those party to prove that aspect. Merely by admitting some of the aadhar cards or voters list or ration card extracts, the Court cannot come into conclusion that the plaintiff has impersonated the signature of defendant no.1. When the defendant no.1 failed to prove that he has got the valid license of the CL-2 from the year 1992-93 by non-production of those documents which is already discussed in Issue No.1, he cannot contend that the plaintiff has impersonated his signature. Though a criminal complaint has been filed by the defendant

against the plaintiff, it itself is not sufficient in order to come into conclusion that forgery has been committed by the plaintiff. If at all, such a 37 O.S.7914/2014 impersonation has been committed by the plaintiff, then the burden is upon the defendant no.1 to prove the same. No expert opinion is sought by the defendant no.1 in order to contend that, plaintiff has impersonated the signature of defendant no.1 and affixed his photographs in CL-2 license of the defendant no.1. Even the defendant no.1 did not produce the documents to show that he has obtained the CL-2 license in the year 1992-93 onwards.

31. Per contra, it is the plaintiff who produced the documents as per Ex.P8 to Ex.P12 documents. These documents are the documents issued by the Excise Department of Vijayanagara zone of the Bengaluru wherein it is clear that upon the information sought by the plaintiff with respect to the documents of the CL-2 license of K.G.Nagaraj s/o Veerappanagowdana Kodakani of Soraba taluk, Shivamoga, it is clear that, they did not have any such license under such name. Ex.P8, Ex.P9, Ex.P10, Ex.P12 documents shows that the license was 38 O.S.7914/2014 standing in the name of K.G.Nagaraj s/o Giddanayaka.

32. The learned counsel for the plaintiff also draws the attention of the Court to the Ex.P14 and Ex.P15 documents. These are the documents issued by the Deputy Superintendent of Excise Department dated 20/12/2011 as well as 20/3/2011. These are the explanations given by the K.G.Nagaraj s/o Veerappanagowdana with respect to the complaint filed by him against this plaintiff. In that explanations, he has categorically admitted that, due to wrong information as well as mistake, he has given that complaint by contending that, the license MEX/01/24/13/CL-2/2011-12 has no connection with the defendant no.1 and the plaintiff himself is the authorized license holder of that license. This was further confirmed in Ex.P15 document. However, even in the cross-examination of the PW.1, this matter was not contradicted by the defendant. When the defendant no.1 himself clearly admitted that there are no documents produced by him in order to show that

39 0.S.7914/2014

he is the valid license holder from the 1992 to 2006, he cannot contend that by using some documents such as aadhar card, ration card etc., the plaintiff has changed his name as K.G.Nagaraj after 2006. Further, since the defendant has not produced the documents but only produced the complaint filed by him against

the plaintiff, the Court cannot come into conclusion the absence of the defendant is misused by the plaintiff and the license of the plaintiff was changed to K.G.Nagaraj.

33. As required by the Excise Act, the defendant no.1 did not produce any documents to show that, he is the valid license holder of the disputed license. Without production of the documents before the Court, the Court cannot come into conclusion whether the defendant no.1 was the license holder from 1992 to 2006. The identifications produced by the plaintiff or defendants such as voter IDs, election voter extracts, RTC, school certificates, ration card, family trees can only show that the name of the plaintiff is different from K.G.Nagaraj but it
40 O.S.7914/2014
itself does not establishes the fact the plaintiff has impersonated the signatures of the defendant no.1 and he misused the absence of the defendant no.1 and affixed his photographs on the license, and forged his signature and managed to get license. Since DW.1 in his cross-examination clearly admitted that, he has not produced documents in order to show that he has obtained the license in the year 1992-93, filed the application for the renewal till 2006, paid the taxes, produced the documents for the payment of the taxes, statements with regard to the furnishing of the loss

and profit accounts, the rent agreements, the rent payment receipts, copies of the licenses, renewed licenses, purchase bills, purchase extracts, sale bills, sale extracts, sales tax deduction amount, payment made to the authorities, statements forwarded to the authorities which are mandatory for the purpose of obtaining the trade licenses as well as the CL-2 licenses from the concerned authorities. The witness himself clearly admitted that he had no personal knowledge with regard to the entire transactions of 41 O.S.7914/2014 the year 1992-93 and he had no particulars with regard to the payment of the sales tax, the copies of the trade licenses, the copies of the rental agreements, certificates issued by the competent authorities in order to show that the defendant no.1 has obtained the valid license from the authority.

34. It is important to note here that, 4(b) of Karnataka Excise (sale of Indian and foreign liquors) Rules, 1968 deals with the disqualification of the license holder. It says -

"A person shall be disqualified from submitting an application for obtaining or renewal of the license under these rules, if he -

- i) Has not paid the arrears of any excise

dues in respect of the liquor sold by him;

ii) Has not produced a valid income tax clearance certificate; or has not produced any documents in proof of filing the latest income tax returns before the Income Tax Department in respect of his income;

iii) Is holding an office of the profit under the State Government or Central Government;

iv) Is a minor or an undischarged insolvent or is of unsound mind;

v) Has been convicted of an cognizable and non-bailable offence under any Act or any offence under the NDPS Act, 1985, Medicinal and Toilets preparation Act, 1955 or an offence under Section 481, 482, 483, 484, 485, 486, 487 or 489 of the Indian Penal Code."

35. This rule clearly says that, if a party did not paid the arrears of the excise dues or not produced the valid income tax clearance, his license will be automatically cancels. This matter was also admitted by the DW.1 in his cross-examination. Eventhough DW.1 contends that, his father has obtained the CL-2 license and same was renewing from the year to year,

he has not verified personally by going through the office of the department to ascertain whether the CL-2 license was renewed from time to time. This matter was also admitted by the DW.1 in his cross-examination as follows:

"It is true to suggest that, my father has not enquired the aforesaid facts in the Excise Department every year. Either myself or my father has not verified personally in the Excise Department whether CL-2 license granted to them was renewed or if renewed, in whose name, it was renewed, or whether the same was incorporated in the register maintained in the department."

36. Even DW.1 clearly admitted that they have appointed some persons in order to look after their Wine Shop. However, he clearly admitted that, he do not know the name of the employees and nor he has produced the documents to show that, they have appointed the persons on their behalf to look after the shop.

44

O.S.7914/2014

37. It is important to note here that, although defendant no.1 is contending that, his father was running the Wine shop under the name of 'Santosh Wines' they are not personally visiting to the shop. DW.1 was not aware of the last visit of his father to

the liquor shop. In the year 2003-04, DW.1 visited lastly to the liquor shop.

38. Even the terms and conditions for obtaining the CL-2 license and renewal of the same, payment of the taxes, obtaining of the trade licenses, maintenance of the books of accounts, certificate from the side of the Excise Department as well as the District Commissioner in order to run the business is admitted by DW.2 also. Even the Department of DW.2 themselves clearly stated that, the name of K.G.Nagaraj was only mentioned in CL-2 license registers maintained by them. Though the DW.2 suspect the forgery in the CL-2 license from the side of the plaintiff, the same is not proved before the Court. Unless and until, the defendant no.1 shows that, he is the license holder of the questioned CL-2 license, he
45 0.S.7914/2014
cannot tell that, the mischief has been committed by the plaintiff by using the same name.

39. On perusal of the entire evidence of DW.1, it is clear that, DW.1 is not aware of the complete transactions of his father, rather he has mechanically produced the documents such as identity proof and criminal complaints to show that forgery has been committed by the plaintiff and a criminal case is still pending. From the evidence on record and from the

documents produced by both the parties, from the oral submissions of the counsels, the court is of the opinion that the defendant has failed to prove Issue No.2 to 4 in their favour. Accordingly, I answer Issue No.2 to 4 in the negative.

40. ISSUE NO.5: In the plaint averments in para no. 5 to 7, the plaintiff specifically contended that, the defendant no.1 is making hectic efforts to unnecessarily disturb the business of the plaintiff and to create third party interest taking advantage of the identical name. As per the plaintiff, the cause of
46 0.S.7914/2014
action for the suit arose in the first week of the September 2014 continuously when inspite of the enquiry being conducted by the defendant no.2, the defendant no.1 started to disturb the business of the plaintiff. This matter was also re-uttered in the chief examination of the plaintiff. In the cross-examination of the PW.1, PW.1 clearly deposed that, the defendant no.1 came to their shop and threatened that the shop belongs to them and told to vacate the same. However, he deposed that, no complaint has been filed by them against the defendant no.1 even though he interfered and came to the spot for 2 to 3 times.

41. It is important to note here that, in the cross-examination dated 29/1/2020, the counsel for

the defendant asked a specific question with regard to the interference. The answer given by the witness shows indirectly defendant no.1 also admitted the interference. The answer given by the witness is as follows:

47

O.S.7914/2014

"At the time of threatening by the defendant no.1 by entering into the shop, the matter was told to the plaintiff and not to me. At that time, the plaintiff was residing in his native place."

42. This deposition clearly shows that the defendant no.1 has entered the shop and attempted to interfere into the working of the plaintiff. The defendant no.1 did not contend that he has not interfered into the shop of the plaintiff. Though DW.1 in the cross-examination stated that, he has not attempted to take the possession of the liquor shop in the year 2008-09 and further also interfered in the year 2014 by the above depositions of the PW.1, it is the defendant who interfered into the possession of the plaintiff's liquor shop. Therefore, I answer Issue No.5 in the affirmative.

43. ISSUE NO.6: The present suit has been filed by the plaintiff for the permanent injunction restraining the defendants from interfering into the smooth running of CL-2 licensed retail shop in the

48

O.S.7914/2014

name and style of 'Navarathna Wines'. The documents produced by the plaintiff, the depositions of PW.1 as well as the DW.1 clearly shows that, the plaintiff has obtained the valid license from the year 1992 onwards till this date. The blue prints, the extracts of the register, the licenses, the rental agreements, the VAT registration certificates, endorsement issued by the Excise Inspectors, endorsement issued by the Department of Excise pertaining to the non-availability of the documents in the name of the defendants, the renewal licenses from the side of the plaintiff, the information issued by the Public Information Officer as per Excise Department as per Ex.P24, license renewals, the admissions of the defendant no.1 by stating that he has no connection with the disputed license, non-production of the documents to show that the defendant no.1 is the valid license holder from 1992 to 2006 shows that the plaintiff is the lawful owner of the alleged CL-2 license. Even the defendant no.1 specifically contended that, the signature of the defendant no.1 is 49 0.S.7914/2014 forged by the plaintiff, he has failed to prove that aspect. Though the names of the plaintiff in the aadhar card as well as other documents are changed from the year 2006, that itself is not sufficient in order to prove the offence like forgery and impersonation

from the side of the plaintiff. A criminal case is also pending with respect to the same in order to decide that aspect. The documents produced by the plaintiff, the pleadings, the arguments addressed by both the counsels clearly establishes the fact the plaintiff is entitled to the order of injunction from the hands of this Court. If at all, defendant no.1 is not prevented, then there is every chance of interference from his side to the smooth running of liquor shop of the plaintiff. Therefore, apprehending the cause of action, the court is of the opinion that no harm will be caused to the defendant if the suit is decreed as sought for. Accordingly, I answer Issue No.6 in the affirmative.

44. ISSUE NO.7: From my above discussions and reasoning, the suit of the plaintiff deserves to be decreed. In the result, I pass the following:
50 O.S.7914/2014

The suit of plaintiff is hereby decreed.
The defendant is hereby restrained by way of permanent injunction in any way interfering with the smooth running of CL-2 licensed retail liquor shop in the name and style of Navarathna Wines at 48/42, Sy.No. 42, 1st cross, 60 feet road, Kanakanagara, Pattegarapalya main road, on the strength of the license bearing No. EXE/BEM/NA/24/13/CL2/2014-15 issued by the Deputy Commissioner of Bangalore Urban District.
Under the facts and circumstances of the case, there is no order as to costs.

Draw decree accordingly.

[Dictated to the Judgment Writer directly on computer, Script corrected, signed and then pronounced by me, in the Open Court on this the 8 th day of February 2022.] [PRASHANTHI.G] XXVII Additional City Civil Judge. BANGALORE.

1. List of witnesses examined on behalf of the Plaintiff/s:

PW.1 Manjappa.H.

2. List of witnesses examined on behalf of the Defendant/s:

DW. 1	G.N.Santhosh
DW. 2	Muralidhara.H.O.

3. List of documents marked on behalf of the Plaintiff/s:

Ex.P1 General Power of Attorney dated 3/6/2019 Ex.P2 Certified copy of the blue print issued by the Excise Inspector Ex.P3 Certified copy of register extracts (10 in numbers) Ex.P4 Affidavit sworn by K.G.Nagaraj dated 7/4/2014 Ex.P5 Form Vat -7 Tax registration certificate Ex.P6 Certified copy of endorsement issued by the defendant no.2 dated 29/6/2011 Ex.P7 Letter dated 26/7/2011 Ex.P8 Application dated 11/12/2014 Ex.P9 Reply issued by Excise Department dated 23/3/2015 Ex.P10 Reply issued by Excise Department dated 7/3/2015 Ex.P11 Reply issued by Excise Department dated 23/2/2015 Ex.P12 Reply issued by Excise Department dated 23/2/2015 Ex.P13 Acknowledgement issued by public information officer Excise Department dated 13/1/2016 Ex.P14 Letter dated 20/12/2011 Ex.P15 Certified copy of letter issued dated 20/3/2012 Ex.P16 Income tax returns Ex.P17 Income tax returns 2018-19 Ex.P18 Statement of accounts Ex.P19 to Certified copies of sannadu Ex.P23 Ex.P24 Copy of covering letter dated 13/8/2019 Ex.P25 Certified copies of Sannadu (28 in numbers) Ex.P26 Certified copy of license (14 in numbers) Ex.P27 Letter dated 23/7/2019 Ex.P28 Copy of the letter dated 22/12/2011 Ex.P29 Letter dated 15/3/2012 Ex.P30 Copy of the voters list of the year 1993 Ex.P30(a) S.No.318 Ex.P31 Voters list of the year 1995 Ex.P31(a) Sl.No.79 Ex.P32 Voters list of the year 2012 Ex.P32(a) Sl.No.1010 Ex.P33 Election Identity Card Ex.P34 Complaint filed by RTI Agent Ex.P34(a) Signature

4. List of the documents marked for the defendants:

Ex.D1 Certified copy of the order in Writ Petition No. 8295-96-16 Ex.D2 Extract of CL-2 license of the year 2006 Ex.D3 Copy of the notice issued by the office of the Deputy Commissioner dated 3/3/2016 Ex.D4 Endorsement issued by the and Tahasildar dated 13/2/2014 and Ex.D5 Specimen of ration card and ration card

issued by the Tahasildar Ex.D6 Details of school admission issued by the Head Master of Government Primary School, Rachikoppa, Shivamoga taluk.

Ex.D7 Voters list of the year 2007 issued by the Tahasildar Ex.D8 The voters list of the year 2008, to 2009, 2010, 2011, 2012 wherein Ex.D11 the name of the plaintiff is shown as Nagaraj .G. S/o T.Gidda Nayaka Ex.D12 Photograph of the plaintiff identified in the copy of the ration card Ex.D13 The representation forwarded by and Gram Panchayat Balekoppa to the Ex.D14 Police Sub Inspector of Vijayanagar and in the report of the food inspector annexed to the information Ex.D15 Application of the plaintiff filed before the Excise Inspector for renewal of license wherein PAN number reflects.

Ex.D16 Acknowledgement issued by the and Department for PAN application Ex.D17 and challan of E-tax payment. Ex.D16(a) In Ex.D16, the name of plaintiff is mentioned as Nagaraj Kariya Naik Gidda Naik.

Ex.D18 Complaint filed against the plaintiff with regard to holding of two cards at a time.

Ex.D19 Endorsement dated 30/06/2015 the CL-2 license pertaining to the year 2015-16.

Ex.D20 The GPA executed by 1 st defendant in favour his son dated 10/7/2015 Ex.D21 School Certificate of defendant no.1 Ex.D22 The disability Identity Card issued in favour of defendant no.1 Ex.D23 Indian Arms License issued in favour of defendant no.1 Ex.D24 Genealogy of defendant no.1 Ex.D25 Notarised copy of Election Identity Card of Nagaraja.K.G. (after verifying the same with the original) Ex.D26 Notarised copy of Aadhar Card of Nagaraja K.G. (after verifying the same with the original) Ex.D27 Notarised copy of PAN card of Nagaraja.K.G. (after verifying the same with the original) Ex.D28 Notarised copy of Driving License of Nagaraja K.G. (after verifying the same with the original) Ex.D29 Notarised copy of Aadhar Card of Santosh G.N. (after verifying the same with the original) Ex.D30 Endorsement dated 30/6/2015 issued by Deputy Commissioner, Bangalore Urban District. Ex.D31 The Report of Excise Inspector dated 29/6/2015, 27/6/2015 and 30/6/2015 issued under RTI Act. Ex.D32 Certified copy of complaint dated 25/11/2014 Ex.D33 Certified copy of the FIR Ex.D34 Certified copy of the Charge Sheet Ex.D35 Certified copy of total 5 numbers PF Report Ex.D36 Certified copy of the Information issued by the Excise Inspector dated 23/9/2015 Ex.D37 Certified copy of the request letter of Police Sub Inspector of Vijayanagar Police Station to 24 th ACCMM Court dated 23/9/2015 Ex.D38 Certified copy of the request letter of Excise Inspector dated 17/10/2015 and the report of the Excise Inspector.

Ex.D40 Certified copy of the request letter from the Police Sub Inspector, Vijayanagar Police Station to the Food Inspector of Shivamogga District dated

5/10/2015 Ex.D41 Certified copies of statements of 20 witness with respect to the offence committed by the plaintiff u/s 419 and 420 IPC Ex.D42 Authorisation issued by the department in favour of the witness Ex.D43 Certified copy of notice dated 2/4/2014 Ex.D44 Certified copy of the report of Superintendent of Excise dated 18/6/2014 [PRASHANTHI.G] XXVII Additional City Civil Judge.

BANGALORE.

8/2/2022 P-BGK D1- KBN D2- DGP For Judgment...

.....Judgement pronounced in the Open Court....

(Vide separate detailed judgment) The suit of plaintiff is hereby decreed. The defendant is hereby restrained by way of permanent injunction in any way interfering with the smooth running of CL-2 licensed retail liquor shop in the name and style of Navarathna Wines at 48/42, Sy.No. 42, 1 st cross, 60 feet road, Kanakanagara, Pattegarapalya main road, on the strength of the license bearing No. EXE/BEM/NA/24/13/CL2/ 2014-15 issued by the Deputy Commissioner of Bangalore Urban District.

Under the facts and circumstances of the case, there is no order as to costs. Draw decree accordingly.

[PRASHANTHI.G] XXVII Additional City Civil Judge.

BANGALORE.

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