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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.11.2026

Delivered on : **20.11.2026**

CORAM :

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE GK.MUTHUKUMAAR

OSA(CAD) No. 84 of 2025

CNR:{HCMA010581502025}

Case QR

AND

OSA(CAD) NO. 90 OF 2025, OSA(CAD) NO. 96 OF 2025,
CMP NO. 21700 OF 2025, CMP NO. 20580 OF 2025
CMP NO. 21739 OF 2025

OSA(CAD) No. 84 of 2025

M/s.N.C. Arya Snuff & Cigar Co.,
A partnership firm, represented by its partner
K.R.Ragurramun,
having office at
D-32, 7th Cross, West Extension,
Thillai Nagar, Trichy -18.

.. Appellant(s)

Vs

1. M/s.Nico Quality Products
   A partnership firm, represented by its partner
   K.C. Vijay,
   1st Floor, No.4/1, Kandaswamy Street,
   Chandrabagh Avenue, Mylapore,
   Chennai – 600 004.

2. M/s.Sakthi Snuff & Co.,
   Proprietorship concern,
   represented by S. Karthikeyan, Proprietor,
   193/2A, Thuraiyur Road, Nochiam,
   Manachanallur Taluk, Trichy – 621 216.

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3. M/s.Adhinayagam Agencies,
   Partnership firm, represented by its partner
   Su.Krishnadhas,
   20/A, Thennur Main Road,
   Thennur, Trichy - 17.

..Respondent(s)

Case QR

OSA(CAD) No. 90 of 2025

CNR:{HCMA010581492025}

M/s. N.C. Arya Snuff & Cigar Co.,
Represented by its Partner K.R.Ragurramun,
19, Davidson Street, Chennai-600 001.

..Appellant(s)

Vs

1. M/s. Nico Quality Products,
   Represented by its Partner K.C.Vijay,
   1st Floor, No.4/1, Kandaswamy Street,
   Chandrabagh Avenue, Mylapore,
   Chennai-600 004.

2. M/s.Sakthi Snuff Co.,
   Manufacturer for M/s N.C.Arya Snuff & Cigar
   Co., Thuraiyur Road, Nochiyam,
   Trichy-621 126.

3. M/s.Adinayagan Agencies
   20-A, Tennur High Road,
   Tennur, Trichy-17.

4. V. Shankar Amarnath

5. V. Sreenivasan

..Respondent(s)

[Cause title accepted vide Court order dated 05.08.2025 made in C.M.P.No.18678 of 2025 in O.S.A.(CAD) SR No.40864 of 2025]

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OSA(CAD) No. 96 of 2025

Case QR

CNR:{HCMA010581512025}

M/s.N.C.Arya Snuff & Cigar Co.,
Represented by its partner KR. Ragurramun,
19, Davidson Street, Chennai - 600 001.
Residing at No. 32, 7th Cross Street,
West Extension, Thillainagar,
Trichy - 620 018.

..Appellant(s)

Vs

1. M/s.Nico Quality Products
   Represented by its partner K.C.Vijay,
   1st Floor, No.4/1, Kandaswamy Street,
   Chandrabagh Avenue, Mylapore,
   Chennai - 600 004.

2. K.C. Vijay

3. Zanakanabady

4. Anuradha

..Respondent(s)

[Cause title accepted vide Court order dated 26.08.2025 made in C.M.P.No.19513 of 2025 in O.S.A.(CAD) SR No.40866 of 2025]

OSA(CAD) No. 84 of 2025

Original Side Appeal filed under Section 13 of the Commercial Courts Act, 2015, to set aside the Judgment and decree passed by the learned Single Judge of this Court in CS No.587 of 2015 dated 24.01.2025 and allow the appeal.

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OSA(CAD) No. 90 of 2025

Original Side Appeal filed under Section 13 of the Commercial Courts Act, 2015 r/w. Order XXXVI Rule 9 of the Original Side Rules and Section 96 of the Code of Civil Procedure to set aside the Judgment and Decree passed by the learned Single Judge of this Court in C.S.No.605 of 2013 dated 24.01.2025 and allow the Appeal.

OSA(CAD) No. 96 of 2025

Original Side Appeal filed under Section 13 of the Commercial Courts Act, 2015 r/w. Order XXXVI Rule 9 of the Original Side Rules to set aside the Judgement and Decree passed by the learned Single Judge of this Court in CS.No.882 of 2013 dated 24.01.2025 and allow the appeal.

For Appellant (s):	Mr.Sathish Parasaran Senior Counsel for Mr.G.Ramesh in all Appeals
For Respondent(s):	Mr.P.S.Raman Senior Counsel for Mr.Gautham S. Raman for R1 in all Appeals

COMMON JUDGMENT

N. SATHISH KUMAR, J.

Challenging the common judgment and decree passed by the learned Single Judge of this Court, dated 24.01.2025, in C.S.(Comm.Div) Nos.605, 882 of 2013 and 587 of 2015, the present three Appeals have been filed.

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2.The suit in C.S.(Comm.Div.) No.605 of 2013 has been filed by M/s.Nico Quality Products for (i) permanent injunction restraining the defendant therein (M/s.N.C.Arya Snuff and Cigar Company), its men, agents, servants and persons acting on its behalf from infringing the plaintiff's registered trade mark bearing Nos.454103, 454106, 454109, 592763, 180448, 180449, 559308, 178484, 179074 and 194656 in Class 34 in any manner either by using the plaintiff's work mark and/or logo or otherwise in relation with the products manufactured marketed by the defendant and (ii) for permanent injunction from passing-off the products manufactured and marketed by them using the plaintiff's trade mark or any other mark deceptively similar or closely resembling the plaintiff's mark.

3.The suit in C.S.(Comm.Div.) No.882 of 2013 has been filed by the 1st defendant in the suit in C.S.(Comm.Div.) No.605 of 2013, namely N.C.Arya Snuff and Cigar Company for (i) a declaration declaring that the Deed of Assignment dated 15.12.2011 as illegal, null and void and non-est in the eye of law; (ii) for permanent injunction restraining the defendant (Nico Quality Products), its men, agents, servants or persons acting on its behalf from infringing the plaintiff's registered trade mark bearing Nos.454103, 454106, 454109, 592763, 180448, 180449, 559308, 178484, 179074 and 194656 in

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Class 34 in any manner or otherwise in relation with the products manufactured and marketed by the defendant and (iii) for permanent injunction restraining from passing-off the products manufactured and marketed by them using the plaintiff's trade mark.

4.N.C.Arya Snuff and Cigar Company has also filed a suit in C.S. (Comm.Div.) No.587 of 2015 for a permanent injunction restraining the defendant (Nico Quality Products) from passing-off the product manufactured and marketed by them using the schedule mentioned trade marks or other marks deceptively similar or closely resembling the plaintiff's mark in any manner, either by using the plaintiff's work mark or logo more fully described in the schedule thereunder or otherwise in relation with the products manufactured and marketed by the defendant.

5.Since the suit in C.S.(Comm.Div.) No.882 of 2013 filed by M/s.N.C.Arya Snuff and Cigar Company is a comprehensive suit seeking declaration in respect of the Assignment Deed dated 15.12.2011 as null and void, we are of the view that the parties shall be referred to as per their ranking in the said suit in C.S.(Comm.Div.) No.882 of 2013 for convenience. In other words, M/s.N.C.Arya Snuff and Cigar Company will hereinafter be referred as “the plaintiff” and M/s.Nico Quality Products and its partners will hereinafter be

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referred to as “the defendant”.

6.The case of the plaintiff in C.S.(Comm.Div.) No.882 of 2013 is as follows :

6.1.The plaintiff firm is involved in the business of manufacturing, selling and dealing with the Snuff and Cigar for several decades. The business includes manufacturing, branding and selling the whole-sale stock of cigars, snuffs, agarbathis, scented sticks and perfumes, etc. The family of the plaintiff comprises of one S.Chandrasekaran and his brother S.Viswanathan and the business was flourishing one and N.C.Arya Snuff and Cigar Company has its business all over India. With the careful stewardship of Chandrasekaran, who is the elder member of the family, the business touched new horizon and the name of N.C.Arya Snuff and Cigar Company became a reputed one and established trade mark for the products like agarbathis, scented sticks and perfumes, etc. There is a specific reputation and value attached to the brand name of M/s.N.C.Arya Snuff and Cigar Company in the trading market.

6.2.While that being so, the members of the family decided to constitute a partnership firm in order to carry out the aforesaid business in the name and style of “N.C.Arya Snuff and Cigar Company” and accordingly, a partnership deed was executed between S.Chandrasekaran and S.Thara, who is the wife of

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his brother Viswanathan. Since the business started to expand and diversify, it was thought and necessary to induct one more partner in the business. Therefore, the 4th defendant, namely Anuradha, who is the daughter of Viswanathan and Thara, was inducted as a partner in the business by virtue of a partnership agreement deed, dated 01.04.1995 and 18.06.1998. As per the said partnership agreement, the profits and losses of the business were agreed to be divided and apportioned among the three partners as follows : S.Chandrasekaran – 40%; Thara – 35%; and 4th defendant Anuradha : 25%.

6.3.After induction of the 4th defendant, the other two partners of the plaintiff firm namely, Chandrasekaran and Thara, were marginalised and the 4th defendant, being the young blood, wanted to lead the business. The said two partners of the plaintiff, namely, Chandrasekaran and Thara, who were all along by their business shrewdness, patience, acumen and experience to build up the business, were marginalised by the 4th defendant. The said two partners of the plaintiff, i.e., Chandrasekaran and Thara, considering the relationship and also considering the fact that a fresh approach would jet pack the business to new horizon, agreed for the 4th defendant to conduct and lead the business. However, the business came to a cropper under the management of the 4th defendant. The reputed partnership name N.C.Arya Snuff and Cigar Company had to undergo heavy financial crisis because of the rash decisions and

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mismanagement of the 4th defendant. After a couple of years, the roaring business and the Company, which is an undisputed leader in India in the field of snuff and cigar, had lost the name due to the reckless mismanagement and the unwanted ventures of the 4th defendant. The Company faced heavy financial crisis and at one point of time, it became almost impossible to retrieve and rescue the business. There were several people who had given huge amount of loan and also supplied raw materials on credit basis.

6.4.On seeing that the traditional family brand of M/s.N.C.Arya Snuff and Cigar Company would collapse under the management of the 4th defendant, the other two partners of the plaintiff Company, i.e., Chandrasekaran and Thara, who had voluntarily kept quiet and have given the space for the 4th defendant to lead, intervened in the business in order to rescue the same. The 4th defendant, by that time, had realised that the business has crashed down only on account of the fault on her part and further, the 4th defendant, being a married lady and also having a family, felt it difficult to face the creditors. Therefore, she wanted to wash her hands off the partnership business. The 4th defendant further apprehended that her husband, the 3rd defendant and son would also be put into trouble by the creditors if she decided to continue in the firm. Therefore, the 4th defendant and her husband (3rd defendant) executed separate affidavits making it amply clear that they are no longer associated with the partnership firm,

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namely N.C.Arya Snuff and Cigar Company. The 4th defendant executed an affidavit to that effect on 10.08.2012 in the presence of Notary Public at Pondicherry stating that she has retired from the partnership, namely, M/s.N.C.Arya Snuff and Cigar Company with effect from 30.06.2012 on the assurance given by the other two partners of the plaintiff, namely S.Chandrasekaran and Thara that they will undertake the liability and absorb the same. Similarly, she has also relinquished all her rights over the trade marks and business from 01.07.2012. The husband of the 4th defendant, namely the 3rd defendant, has also executed similar affidavit to that effect on 10.08.2012. That apart, a fresh partnership agreement was executed on 01.07.2012, in which also, the 4th defendant signed as a retiring partner. Thus, it is crystal clear that the partnership firm, namely, N.C.Arya Snuff and Cigar Company shall comprise of only two partners, namely, S.Chandrasekaran and S.Thara.

6.5.After the 4th defendant retired from the Company, the two partners of the plaintiff firm took all efforts to settle the creditors in order to run the business smoothly and their attempt to settle the creditors, reputation and brand name, had been resolved by the hard work of the two partners, namely, S.Chandrasekaran and Thara. After several rounds of negotiations and efforts, the creditors were settled at the instance of the said partners of the Company. The business of the plaintiff started to gain momentum and the brand name of

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the plaintiff firm had been reactivated. The re-emergence of the plaintiff, namely N.C.Arya Snuff and Cigar Company was only due to the hard work of the two partners of the plaintiff, namely, S.Chandrasekaran and S.Thara. After witnessing that the plaintiff firm, namely N.C.Arya Snuff and Cigar Company, flourishing in the market, the 4th defendant wanted to take a share in the credits and profits. The 4th defendant and her husband 3rd defendant, having relinquished their rights in sharing the credits and participating in the Company by virtue of the above said affidavits and deed, colluded together and attempted to pass off the trade marks of the plaintiff Company with the help of her brother-in-law in the name of one M/s.Nico Quality Products (1st defendant). Therefore, the plaintiff immediately lodged a Police complaint and a search was also conducted by the concerned Police. The 4th defendant issued a legal notice dated 24.07.2013 to hand over the management of the plaintiff firm to the 4th defendant.

6.6.While that being the situation, the 4th defendant and 3rd defendant colluded together and brought out several forged documents to claim ownership in respect of the trade marks registered in the name of the plaintiff firm, including (i) an authorisation letter dated 27.10.2011 as if the partners of the plaintiff, namely S.Chandrasekaran and S.Thara, had authorised the 4th defendant to assign the trade marks; and (ii) an assignment deed dated

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15.12.2011 as if 10 trade marks of the plaintiff firm were assigned to M/s.Nico Quality Products (1st defendant) represented by its partners one K.V.Vijay (2nd defendant) and one Z.Gnanakanabady (3rd defendant). Based on the said documents, the suit in C.S.(Comm.Div.) No.605 of 2013 came to be filed by the 1st defendant.

6.7.However, according to the plaintiff, the alleged authorisation letter issued to the 4th defendant, dated 27.10.2011, is a rank forgery and it is their case that the signature in the said authorisation letter is found at the bottom of the page, whereas, the contents in the document is only of four lines, which is typed on the top of the page. There is a large gap between the contents of the letter and the signatures of the other two partners. It is the contention of the plaintiff that, while the 4th defendant was in-charge of the Company, the two partners namely S.Chandrasekaran and S.Thara used to give blank signed papers to the creditors and therefore, there is a possibility for the 4th defendant to misuse those signed blank papers for fabricating the alleged authorisation letter. Therefore, according to the plaintiff, the so-called authorisation letter said to have been issued by the remaining partners namely S.Chandrasekaran and S.Thara on 27.10.2011 is a fabricated one.

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6.8.Further, the 3rd defendant, who is one of the partners of the 1st defendant firm namely M/s.Nico Quality Products, is none other than the husband of the 4th defendant. The deed of assignment dated 15.12.2011 recites as if a huge sum of Rs.75 Lakhs is alleged to have been paid by the 1st defendant firm in favour of the 4th defendant in cash and the receipt of which is stated to have been acknowledged by the 4th defendant. According to the plaintiff, the cash transfer exceeding Rs.20,000/- ought to have made only through cheque/demand draft or bills under the Income Tax Rules at the relevant point of time. Hence, according to the plaintiff, the deed of assignment, dated 15.12.2011, is a manufactured one subsequent to the raid at Pondicherry.

6.9.Further, it is the contention of the plaintiff that the so-called assignment deed has not been properly stamped. Further, as per Section 42 of the Trade Marks Act, any assignment without goodwill of the business should be presented for advertisement and registration within a period of six months from the date of assignment, failing which, the assignment shall not have any effect. In the present case, even according to the defendants, the assignment was presented for registration only on 19.08.2013, nearly 18 months after the date of assignment. Hence, according to the plaintiff, the authorisation letter dated 27.10.2011 is a rank forgery and the assignment deed is also not valid in

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the eye of law. Hence, the plaintiff firm, namely M/s.N.C.Arya Snuff and Cigar Company, filed the suit in C.S.(Comm.Div.) No.882 of 2013 seeking declaration of the assignment deed, dated 15.12.2011, as illegal, null and void and non-est in the eye of law.

7.1.A written statement has been filed by the defendants 1 and 2 in the said suit in C.S.(Comm.Div.) No.882 of 2013. According to the defendants 1 and 2 (M/s.Nico Quality Products), the 1st defendant Company originally started as a partnership firm consisting of one Vijay (2nd defendant) and Gnanakanabady (3rd defendant) as partners of the 1st defendant firm in the year 2010, which is engaged in the business of manufacturing, marketing and supply of snuff and allied products in India and abroad, registered on 17.10.2013 under the Societies Registration Act. On 06.11.2014, one of the partners, namely Gnanakanabady (3rd defendant) resigned from the 1st defendant firm by deed of dissolution and thereby, he relinquished all his rights in the suit trade marks including the copyrights in the artistic works upon receipt of his settlement amount. Thus, the 2nd defendant Vijay became the sole proprietor of the 1st defendant firm and also the present owner of the trade mark exclusively.

7.2.According to the defendants, the proprietor of the 1st defendant firm, Vijay, was introduced to the plaintiff's partners by his close friend one

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Srinivasan, who is the son of Thara. Since Vijay (2nd defendant) was normally of very helpful character, he was approached by S.Chandrasekaran and S.Thara and Anuradha to help them to clear their various debts. The 2nd defendant also agreed to help, owing to his close association with the plaintiff's family. Since the plaintiff's partners had authorised the 2nd defendant to deal with the Banks in December, 2011 to clear their loans, the 2nd defendant had approached various Banks on behalf of the plaintiff firm as their representative to clear their debts. The defendant received e-mail communications from various Banks acknowledging/recognizing him (Vijay) as the representative of the plaintiff for clearing their debts. In spite of his best efforts to help the plaintiff firm, the large scale losses and debts made saving the plaintiff's business impossible. Various factories of the plaintiff had been closed down and their sales tax registration was cancelled. It was during that time, the partners of the plaintiff firm offered the defendant to take on assignment of their 10 trade marks and that the consideration amount for those 10 trade marks could be used for clearing the plaintiff's debts and also suggested that the defendant could start a new business venture using their 10 trade marks. Since the 2nd defendant had no experience in the Snuff industry, the plaintiff had recommended the 3rd defendant namely, Z.Gnanakanabady, to Vijay (2nd defendant) to take him as partner to start a new business venture. The said Gnanakanabady, who is the husband of Anuradha, has experience in running a snuff business as he already had a firm which manufactures and sells tobacco and snuff products called 'Nico

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allied Products' at Puducherry. Hence, the partners of the plaintiff firm convinced Vijay to jointly start a business with the said Gnanakanabady after buying the trade marks namely 454103, 454106, 454109, 592763, 180448, 180449, 559308, 178484, 179074 and 194656.

7.3.Accordingly, the plaintiff firm had executed an assignment deed on 15.12.2011 in favour of the 1st defendant firm transferring the above mentioned 10 trade marks. As per the said deed of assignment, the defendants have acquired all benefits of the 10 trade marks including good will associated with the trade marks. The 2nd defendant, after obtaining the assignment from the plaintiff vide the assignment deed dated 15.12.2011, had invested huge money in promoting the brand and in fact, gave new life to the brand in the market. According to the defendants, the assignment deed made in favour of the 1st defendant is valid and appropriate stamp duty has also been paid. Subsequently, by virtue of another assignment deed from the 3rd defendant, who was the partner of the 1st defendant, the 2nd defendant has become the sole owner of the mark. The 2nd defendant has also filed appropriate request before the trademark office in FORM TM-24 to record the assignments. The 2nd defendant has also filed renewals of the trade marks and renewed it accordingly.

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7.4.At that point of time, the plaintiff's Bank accounts maintained at M/s.Axis Bank, Barclays Bank and other accounts had all been frozen. Hence, the plaintiff's partners requested that if the defendants were to issue cheque payments to them, the amount would be appropriated by their Banks for long overdue loan accounts and requested the defendant to pay a sum of Rs.75 Lakhs to the plaintiff firm in cash as consideration for making the assignment deed dated 15.12.2011. Due to the cordial relationship the defendant had with the plaintiff firm and believing the plaintiff's partners, the defendant made arrangements and agreed to pay the said amount. Accordingly, the said deed of assignment was duly executed by the plaintiff's firm and Anuradha (4th defendant) as a partner acted as the authorised representative of the plaintiff firm. When the defendant asked the plaintiff about the proof of authorisation, he was furnished with the authorisation letter, dated 27.10.2011, wherein all the partners of the plaintiff firm namely S.Chandrasekaran and S.Thara had given an authority in favour of the said Anuradha to execute the assignment deed. After being satisfied with the letter of authorisation, the defendant paid the consideration in cash to the partner of the plaintiff's firm V.Anuradha. Vijay, the proprietor of the 1st defendant, was personally aware that the sum handed over in person to the said Anuradha was received with the knowledge and consent of the other partners of the plaintiff firm and the said amount went

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towards settling several creditors of the plaintiff firm who were paid in cash. The defendant is having sufficient proof for payment of consideration to the plaintiff.

7.5.Upon payment of the entire consideration, the partners of the plaintiff firm, viz, S.Chandrasekaran and S.Thara issued the letters dated 20.12.2011 individually addressed to the defendant and thereby, confirming the receipt of Rs.75 Lakhs as consideration for assigning the trade marks in favour of the 1st defendant. It is the case of the defendants that a total sum of Rs.75 Lakhs was paid by the defendant. A sum of Rs.45 Lakhs was generated by Vijay, whereas, his partner Gnanaganabady had contributed Rs.30 Lakhs. This sum has been declared in the Books of Accounts of the defendant firm and further, it is their case that, both of the partners of the defendant firm can individually show the sources of the funds.

7.6.It is the contention of the defendants that, even after the execution of the assignment deed, the plaintiff firm was taking time to furnish the original certificates pertaining to the said trade marks due to the reason that the plaintiff was facing problems with their creditors. The plaintiff, by letter dated 21.06.2012, represented by their partner S.Chandrasekaran sent to the defendant, explained their difficulty in furnishing the original trade mark

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certificates to the defendant, stating that, since the plaintiff's creditors had locked the factory, their partners were unable to enter into the premises and retrieve the original trade mark certificates. In the said letter, the partner of the plaintiff had further requested the defendant to lend a further sum of Rs.20 Lakhs to them to clear their debts and also gave blank cheque signed by the partner of the plaintiff towards security for arranging the said loan amount of Rs.20 Lakhs. Even after the execution of the assignment deed, the plaintiff's firm had various stocks in trade with regard to the assigned marks, and hence, they had orally requested the defendant to wait for 12 to 18 months to clear their stocks. They then agreed to hand over the original certificates for the assigned marks in order to facilitate the defendant to run the new business without any hindrance. According to the defendant, they had to wait till the plaintiff cleared their stocks.

7.7.Thereafter, the defendant submitted the assigned marks to the Registrar of Trade Marks on 14th August 2013. Since the trademarks were assigned along with the goodwill associated with the marks, the defendant filed Form TM-24 under Section 45 of the Trade Marks Act for the change of the registered owner to the name of the defendant firm. Meanwhile, the defendant started its business by contacting dealers and distributors across India and also started manufacturing products under the assigned marks from August 2013.

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Accordingly, the 1st defendant consignment was dispatched on 21st May 2013 from the defendant's factory at Puducherry to one T. Balaji, a distributor in Andhra Pradesh. When the defendant started distributing its products in the market, they were shocked to find that the plaintiff's firm was still continuing to manufacture and distribute the products already assigned to the defendant, even after the time undertaken by the plaintiff to clear their stocks had expired. Therefore, the 1st defendant firm (assignee) filed a suit in C.S.(Comm.Div.) No.605 of 2013 against the plaintiff herein for infringement based on the deed of assignment given by the plaintiff on 15.12.2011 in respect of the 10 trade marks.

8.The plaintiff filed C.S. (Comm.Div.) No.882 of 2013 challenging the very assignment deed and the letter of authorisation on the ground that the same has been fabricated and forged and also for permanent injunction from infringement. The plaintiff in C.S.(Comm.Div.)No.882 of 2013 also filed another suit in C.S.(Comm.Div.) No.587 of 2015 for passing-off.

9.Since the pleadings in the comprehensive suit in C.S. (Comm.Div.)No.882 of 2013 are sufficient for the disposal of the Appeals, we are of the view that the pleadings made in the other two suits need not be elaborated once again in order to avoid repetition since same allegations are

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pressed into service in the other two suits also.

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10.Based on the pleadings of the parties, the learned Single Judge has framed the following issues in C.S.(Comm.Div.)Nos.605 and 882 of 2013 :

i. *Whether the letter of authorization dated 09.12.2011 executed in favour of Anuradha is genuine or forged?*

ii. *Whether the deed of assignment dated 15.12.2011 is genuine, forged or concocted?*

iii. *Whether the 1st defendant in C.S.No.882 of 2013 use of the assigned trademarks, amounts to infringement and passing off?*

iv. *Whether the trademarks mentioned in the deed of assignment are assigned with or without the goodwill associated with the mark ?*

v. *Whether the plaintiff is entitled for the relief claimed in the suits ? and*

vi. *To what other reliefs?*

11.The learned Single Judge has framed the following issues in C.S. (Comm.Div.) No.587 of 2015 :

i. *Whether the plaintiffs are entitled to maintain a joint suit for passing off?*

ii. *Whether the defendant attempted to pass off its products as that of the plaintiffs' by adopting a deceptively similar trademark?*

iii. *Whether the pendency of the suits in C.S.Nos.605 of 2013 and 882*

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of 2013, in which the assignment alleged to have been executed by the plaintiffs in favour of the defendant is being questioned, would operate as a bar for the plaintiffs prosecuting this suit?

iv. Whether the plaintiffs are entitled to the injunction as prayed for ? and

v. To what other reliefs are the parties entitled to ?

12.In all the three suits, a joint trial was conducted, and evidence was recorded in C.S.(Comm.Div.)No.605 of 2013. On the side of the plaintiffs, P.W.1 to P.W.3 were examined, and Exs.P1 to P31 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined, and Exs.D1 to D13 were marked.

13.On the basis of the pleadings and the oral and documentary evidence on record, the learned Single Judge, by the common judgment and decree dated 24.01.2025, dismissed the suits filed by the plaintiff firm (M/s.N.C.Arya Snuff and Cigar Company) viz., C.S.(Comm.Div.)Nos.882 of 2013 and 587 of 2015 for declaration of the deed of assignment dated 15.12.2011 as null and void and also for infringement and passing off, however, decreed the suit filed by the assignee (1st defendant) viz., C.S.(Comm.Div.)No.605 of 2013 in favour of the assignee for infringement of the trademarks and passing off of the goods.

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14.Aggrieved by the common judgment and decree of the learned Single Judge, the present appeals have been filed by M/s.N.C.Arya Snuff and Cigar Company.

15.1.Mr.Sathish Parasaran, learned Senior Counsel appearing for the appellant, would submit that the learned Single Judge has not properly appreciated the evidence. The deed of assignment dated 15.12.2011 was brought about by collusion between the daughter of D.W.2 (Thara) namely Anuradha, her husband Gnanakanabady and Vijay. According to him, Vijay, in whose favour the trademarks are said to have been assigned, is a stranger to the family. According to him, the so-called authorisation letter dated 27.10.2011 (Ex.P2) itself clearly shows that the document has been created by ante-dating it using the blank signatures of the partners. Further, it is his contention that the assignment deed dated 15.12.2011 (Ex.P3) shows as if a sum of Rs.75 lakhs had been paid as consideration for the 10 trademarks of the appellant. Absolutely, there is no evidence, whatsoever, to show that the sum of Rs.75 lakhs had been paid. In the absence of any evidence to show payment of such a huge consideration, the very deed of assignment ought not to have been relied upon by the learned Single Judge. According to him, the original trademark registration certificates are still with the appellant. Therefore, the very deed of

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assignment (Ex.P3) cannot be relied upon.

15.2.The learned Senior Counsel would further submit that, admittedly, Anuradha was in charge of the appellant firm's business. During the period when she was in charge, the appellant firm had witnessed a downfall and she had also retired from the firm with effect from 01.07.2012 as per Ex.D7 (Partnership Agreement). Though she had signed the partnership agreement as a retiring partner, she has never whispered anything about the alleged authorisation letter or the deed of assignment in favour of Vijay. This fact creates serious doubt about the very authorisation letter and the assignment deed.

15.3.Further, it is his contention that the deed of assignment (Ex.P3) shows as if a sum of Rs.75 lakhs had been paid in cash, which is totally improbable. According to him, any cash payment exceeding Rs.2 Lakhs ought to have been made only by way of a bank transaction. Absolutely, there is no evidence on the part of the assignee to show the source of the sum of Rs.75 lakhs. The cross-examination of P.W.1 clearly shows that he was not even in a position to name the persons from whom he had allegedly mobilised the funds. This fact has not been considered by the learned Single Judge. Therefore, he would submit that Ex.P3 ought not to have been believed by the learned Single

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Judge. Hence, according to him, after a police complaint was lodged against Anuradha and her husband, the documents, namely, Exs.P3 and P4 should have been created subsequently. It is his contention that the possibility of the said Anuradha creating these documents in collusion with her husband and the said Vijay cannot be ruled out. However, these aspects have not been considered by the learned Single Judge.

15.4.Further, the learned Senior Counsel would submit that, even assuming without admitting, that there was a deed of assignment in favour of Vijay on 15.12.2011, the assignment had not been registered within a period of six months, as mandated under Section 42 of the Trade Marks Act. This itself clearly shows that the entire deed of assignment relied upon by the respondent herein was created only for the purpose of knocking out the business. Admittedly, the respondent has also been carrying on the manufacture of snuff and cigarette products in the course of its business. Hence, he would submit that the learned Single Judge has not appreciated the entire evidence.

15.5.The learned Senior Counsel would further submit that the appellant firm was originally run by two partners, namely, Chandrasekaran and Tara. The goods were marketed and the business acquired a wide reputation in the field. After the said Anuradha, the 4th defendant, was inducted, she was fully entrusted

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with the responsibility of managing the business. Hence, she has taken advantage of the blank signatures of the other partners, who were none other than her mother and uncle, and along with her husband, she had ante-dated and created those documents. Therefore, for all these reasons, the learned Senior Counsel would submit that the judgment of the learned Single Judge has to be set aside and the appellant is entitled not only to a declaration but also to an injunction against infringement of their 10 trade marks.

16.1.Whereas, Mr.P.S.Raman, learned Senior Counsel appearing for the respondents, would submit that Vijay was known to Anuradha's husband and was a successful businessman. According to the learned Senior Counsel, the firm of the appellant had become defunct. No business was being carried on and their bank accounts had been frozen. In fact, from 2012 to 2014, no sales had taken place. Even in the suit filed in C.S.(Comm.Div.)No. 587 of 2015, there was no pleading with regard to the turnover of the business. The TIN and GST registrations of the appellant had become defunct and no business activities had been carried out by them.

16.2.It is his contention that the entire issue revolves only around the disputed documents, namely, Exs.P2, P3 and P4. However, absolutely, there is no denial with regard to Exs.P20, P22 to P27. Ex.P20, which is a letter dated

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21.06.2012 addressed by the partner of the appellant firm to Vijay, not only confirms the assignment in favour of Vijay, but also shows that he had further requested another sum of Rs.20 lakhs and authorised Vijay to clear the loans. In fact, the payments have been made by Vijay to the Banks which is evident from the documents Exs.P23 to P25. These facts have not been denied.

16.3.The learned Senior Counsel would further submit that the evidence of D.W.2 (Thara) clearly shows that the entire firm was under the control of Anuradha. She was actively dealing with the firm's business and had executed various assignments with proper authorisation from the other partners. When the authorisation is also accepted and the subsequent correspondence is taken into consideration, it is improbable to contend that the assignment had not been acted upon. Hence, he would submit that, if any of the partners is in charge of or actively dealing with the partnership business, any act done by such partner as an agent of the firm, law presumes implied authority for such acts, which binds the firm. In any event, the correspondence from the other partner, who was an elder member of the family, clearly shows that the deed of assignment was known to the other partners and that they had accepted the same. Therefore, it is unbelievable that the assignment deed is being challenged at this stage, particularly when it has already been acted upon.

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16.4.The learned Senior Counsel would submit that based on the trademarks assigned, the business has been developed by the respondents. Further, it is his contention that, merely because the assignor/Anuradha retired from the partnership at a later point of time, that would not take away the rights of the assignee, as the assignment had been made with proper authorisation.

16.5.Further, it is his contention that the evidence of D.W.2 also clearly shows that she had admitted her signature in Ex.P4. Therefore, once the signature is admitted, the question of forgery does not arise at all. Forgery and fabrication cannot go together. In the absence of any evidence to the contrary and considering the entire circumstances, including the admission by D.W.2, who was the other original partner, with regard to her signature in the documents, and the fact that the other documents under Exs.P20 to P25, which have not been denied or challenged in any manner, acknowledge not only the assignment but also the receipt of cash, the learned Single Judge was right in dismissing the suit filed by the appellant firm for declaration of the deed of assignment as null and void and in decreeing the suit filed by the respondent firm for infringement and passing off in favour of the assignee. The learned Single Judge was also right in dismissing the suit filed by the appellant for infringement and passing off.

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16.6.Further, it is his contention that the very deed of assignment indicates that the assignment was not confined merely to the trademarks but also included all the benefits associated with them. According to him, such benefits include goodwill. Therefore, once all the marks had been assigned along with all the benefits and the good will, registration under Section 42 was not required.

16.7.It is his further contention that the Income Tax amendment relating to cash transactions came into effect only from 01.04.2017 and that, prior to that date, there was no specific ban or prohibition on cash transactions. Further, when the parties themselves had spoken about the cash transaction and acknowledged receipt of the amount, it cannot be said that the assignment deed was invalid in the eye of law merely because the consideration was paid in cash. Further, the deed of assignment (Ex.P3) is admittedly in writing. It is unconditional and is also supported by consideration and the assignment relates to specific trademarks. Therefore, the assignment is valid in the eye of law.

16.8.Therefore, the learned Senior Counsel prayed for dismissal of these Appeals. In support of his arguments, he relied upon the following two judgments :

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i. *The Commissioners of Inland Revenue v. Muller & Co.'s Margarine Limited* ***[House of Lords H.L.(E) 1901 May 20***

ii. *T.I.Muhammad Zumoon Sahib v. Fathimunnisssa alias Bibijan and others* ***[1959 72 L.W. 620]***

17.In the light of the above submissions, the points that now arise for consideration in these appeals are as follows:

i. *Whether the authorisation letter dated 27.10.2011 (Ex.P2) and the deed of assignment dated 15.12.2011 (Ex.P3) are a result of fabrication or forgery?*

ii. *Whether the deed of assignment in favour of the respondent/1st defendant in C.S.(Comm.Div.)No.882 of 2013 is valid in the eye of law?*

iii. *Whether there is any infringement of trademarks by the respondent herein?*

iv. *Whether the appellant is entitled to a permanent injunction from passing off?*

v. *To what other reliefs are the parties entitled?*

18.We have perused the entire materials available on record.

Point Nos.(i) and (ii) :

19.On a perusal of the records, it is not in dispute that the original family partnership of the appellant firm consisted of Chandrasekaran, Thara and

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Anuradha in the year 1995 for carrying on the business of manufacturing, selling and dealing in snuff and cigarettes for several decades. It is also the admitted case of the plaintiff who challenged the assignment that Thara (D.W.2)'s daughter, namely, Anuradha, was inducted as a partner in the business by virtue of the partnership deeds dated 01.04.1995 and 18.06.1998. They had agreed that the profits and losses would be shared in the ratio of 40% by Chandrasekaran, 35% by Thara and 25% by Anuradha. It is relevant to note that Chandrasekaran is the elder member of the family, and Thara is the wife of Viswanathan, the brother of the said Chandrasekaran. Anuradha is the daughter of Thara. These facts are not in dispute.

20.It is also an undisputed fact that, after the induction of Anuradha, the entire partnership business was carried on by her and she was in charge of the firm. In this regard, the evidence of D.W.2 (Thara), one of the original partners who was alive and had given evidence, is also relevant. In the cross-examination, in answer to Question No.7, she categorically admitted that, due to her advanced age, they had voluntarily entrusted the business responsibilities to Anuradha. She had also admitted in answer to Question No.6 that Anuradha took over the management of the business and ran it by taking her own decisions. Her evidence also clearly shows that, since D.W.2 (Thara) and Chandrasekaran were growing old and had become marginalised, they had

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entrusted the responsibility of managing the business to Anuradha. She had also admitted that Anuradha was put in charge of the snuff business. Further, it is her case that, only after Anuradha took charge of the business, the business had seen a downfall. Further, the evidence of D.W.2 also shows that all the other businesses had already been closed and that the other trademarks had no value. They had not renewed the other trademarks. Therefore, from her evidence and the pleadings, it is clearly established that, though Chandrasekaran and Thara were partners, Anuradha was in charge of the affairs of the firm. Therefore, as per Section 19 of the Indian Partnership Act, 1932, she had the implied authority as agent of the firm, whereby, any act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm.

21.It is the contention of the appellant/plaintiff in the lead suit, namely, C.S.(Comm.Div.) No.882 of 2013, that Anuradha had retired from the firm only to escape liability towards the creditors. Her husband was also excluded and an affidavit was executed expressing that he was not connected with the firm. However, though much reliance has been placed on Ex.D7 (partnership agreement) in which the said Anuradha had signed as a retiring partner, the entire issue revolves around the deed of assignment (Ex.P3) executed by Anuradha while she was in charge of the firm.

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22.It is the case of the appellant that the deed of assignment (Ex.P3) is the result of forgery and fabrication. According to them, the authorisation letter (Ex.P2), said to have been issued by the other partners, was antedated and created by using their signatures. It is their contention that there is a large gap between the contents and the signature in Ex.P2 and hence, there is a possibility of the said Anuradha creating the document by using the blank signatures of other partners, while she was in charge of the firm. Though the said contention appears probable at the first blush, considering all the other documents, particularly Exs.P4, P20, P22 to P27, we are of the view that the contention cannot be countenanced for the following reasons.

23.The suits have proceeded mainly on the ground that Exs.P2 and P3 were forged and fabricated. Much emphasis has been made on Ex.P2 (authorisation letter). It is relevant to note that forgery and fabrication cannot travel together. Having pleaded two mutually destructive pleas, the plaintiff has not chosen to elect either one. Be that as it may.

24.On a careful perusal of Ex.P2 (authorisation letter), the signatures of both the partners, Chandrasekaran and Thara, are very much available. D.W.2 (Thara) has admitted her signature in Ex.P2 in the cross-examination. The

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dispute is with regard to the signature of Chandrasekaran alone. Once the plea of forgery is taken by the plaintiff, it is for them to establish the forgery in the manner known to law. The burden lies on the party who sets up the plea of forgery. Having taken a mutually inconsistent plea of fabrication, the plaintiff in C.S.(Comm.Div) No.882 of 2013 would contend that, since the gap between the contents of the letter and the signatures in Ex.P2 is large, with the signatures appearing at the bottom and the contents appearing only at the top, there is a possibility that the document was created by antedating it. It is relevant to note that, even assuming that such a contention appears reasonable, the fact remains that Ex.P4, the letter dated 20.12.2011 addressed by the original partners Chandrasekaran and Thara to the 1st defendant firm, contains absolutely no gap, whatsoever, between the signatures and the contents. In fact, both the partners addressed a letter to M/s.Nico Quality Products, wherein they have clearly admitted the assignment in respect of the trademarks and also acknowledged the receipt of consideration of Rs.75 Lakhs on behalf of the firm, namely, M/s.N.C.Arya Snuff and Cigar Company.

25.Further, though the entire attack was made only with regard to Exs.P2 and P3, absolutely no denial, whatsoever, was made in respect of Ex.P20, the letter addressed to K.C.Vijay, which clearly shows that it was signed by one of the partners, Chandrasekaran, on behalf of the plaintiff company. It is relevant

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to extract the said letter dated 21.06.2012 as under :

"Our office at No.19, Davidson St., Chennai-600 001 was lastly occupied by the Company during Nov. 2011. There after unfortunately, one of the creditors have put their lock over the lock of the Company. As a result, now the premises is inaccessible to us. Therefore, we are unable to retrieve the original trademark Certificate which were assigned to you. We assure you that we will hand it over to you at the earliest. After we have resolved this issue with the creditors we would also like you to conduct business from the said premises to which we are sentimentally attached and have been conducting business for the past so many decades.

Incidentally it is a fact that the commercial tax department of West Bengal has issued a huge tax due and which you all aware off. If we do not clear the tax dues, it would not be possible for us to conduct business in Bengal as most of our business is done here. We were able to meet some very pressing demands from the payments received from you, but we were unable to clear the tax demand.

Therefore I kindly request you one last time to lend us a sum of rupees 20,00,000 (Rupees Twenty Lakhs only) to clear pressing debts. I have also enclosed blank cheque a Security. Lending us this amount will help us conduct Business and clear the stock. So that we can hand over the business as agreed between us.

Thanking you"

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The above letter (Ex.P20) addressed by one of the partners of the plaintiff firm not only confirms the assignment in favour of Vijay, but also records the agreement to hand over the original trademark certificates after retrieving them from the premises that had been locked down by the creditors. That apart, by the said letter, the company also sought further financial assistance of Rs.20 lakhs from the said Vijay. Along with the letter, a blank cheque bearing the signature of Chandrasekaran was also handed over to Vijay.

26.These documents were never denied during the entire proceedings and not even a suggestion disputing the documents was made. Therefore, once the original partners have sent Ex.P4 acknowledging the assignment and receipt of Rs.75 Lakhs and also Ex.P20 agreeing to hand over the original trademark certificates and also requesting for further financial assistance of Rs.20 Lakhs and such documents having not been challenged in any manner, the contention of the appellant with regard to the alleged fabrication and forgery of Exs.P2 and P3 has to fall to the ground.

27.Coupled with Ex.P20, we have also perused other documents. Ex.P23, the letter dated 09.12.2011 addressed by one of the partners, Chandrasekaran, to the Manager, Barclays Bank, Chennai, dated 09.12.2011, authorising Vijay on behalf of their firm, reads that they were not in Chennai and that they had

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entered into a settlement with the Bank to repay the outstanding loan amount availed by their company. They had further stated that the monthly commitments would be transferred to Mr.K.C.Vijay, whose signature is also attested therein, and requested the Bank to collect the same from him on their behalf.

28.Ex.P25 is the receipt dated 15.05.2012 for the payment made by Vijay to the Bank on behalf of the plaintiff/appellant company, wherein, he had paid a sum of Rs.16 Lakhs towards the dues of the plaintiff company, namely, M/s.N.C.Arya Snuff and Cigar Company. In fact, the Bank receipt also contains the signature of K.C. Vijay.

29.These documents clearly establish the contention of the respondents that they had paid the consideration and had also discharged various debts of the plaintiff firm.

30.Ex.P24, which is a letter from Axis Bank, dated 14.12.2011, addressed to the plaintiff, also clearly indicates that only Vijay was representing the plaintiff company, namely, M/s.N.C.Arya Snuff and Cigar Company, in connection with the proposed sale and repayment of the outstanding amount. It is further stated that the said Vijay had also requested the Bank to consider

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granting a concession in the repayment amount. Further, the letter states that, till then, no one from the appellant's side had approached the Bank for any discussion regarding the closure of the account or grant of any concession. Therefore, the Bank had sought to recover the interest. This fact clearly shows that a substantial amount had also been paid by Vijay to the Bank.

31.Ex.P26, the Form-A dated 23.09.2013 issued by the Registrar of Firms, confirms that the plaintiff firm, namely, M/s.N.C.Arya Snuff and Cigar Company, had not renewed its registration from 2009 till 23.09.2013. Ex.P27 dated 28.09.2013 shows that the sales tax registration of the firm had been cancelled. These documents clearly establish that the plaintiff firm had not been renewed and probabilises the case of the respondents that the Company was not carrying on any business in the name of the firm after the assignment of the trademarks.

32.Ex.P.31 dated 20.09.2021, which is the registration of trademarks in the name of the respondent issued by the Registrar of Trademarks, Chennai, shows that the respondent/K.C.Vijay has also obtained registration for the other trademarks for snuff, tobacco and smoker articles, etc. Even when the respondent obtained registration for the other marks in respect of the same products, no objections, whatsoever, were raised by the appellant. Such marks

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were registered in respect of similar snuff products with a similar logo as that obtained by the plaintiff herein. The appellant has not raised any objections as required under Section 21 of the Act.

33.Ex.P.20 and Ex.P.25 prove the acknowledgement of receipt of consideration and also the payment of a substantial sum by Vijay to the Bank towards the liability of the appellant firm. Ex.P.20 and Ex.P.25 have not even been denied during the entire cross-examination or at any stage during the entire proceedings. Therefore, now, it is too late for the appellant to contend that the assignment deed, dated 15.12.2011, is a result of forgery or fabrication.

34.In view of the above discussion, we hold that the contention of the appellant that the authorisation letter dated 27.10.2011 (Ex.P2) and the deed of assignment dated 15.12.2011 (Ex.P3) are a result of forgery or fabrication, has to fail. ***Point No.(i) is answered as against the appellant.***

35.On a careful perusal of Ex.P3 (assignment deed), it is seen that the 10 trademarks belonging to the appellant firm M/s.N.C.Arya Snuff and Cigar Company, viz., Nos.454103, 454106, 454109, 592763, 180448, 180449, 559308, 178484, 179074 and 194656 in Class 34 duly registered with the Registrar of Trademarks have been assigned to the respondent firm, namely

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M/s.Nico Quality Products. The assignment deed also clearly shows that the assignor granted the following:

> *"The assignor does hereby grant, transfer and assign upon the terms hereunder mentioned for the exclusive use and all benefits of the aforesaid trademark in relation to the manufacturing and marketing of all products in Class 34 in India and abroad."*

The very recitals in the assignment deed make it clear that all benefits of the aforesaid trademarks, including those relating to the manufacture and marketing of all products in Class 34 in India and abroad, have been assigned. Therefore, once the contention of the appellant that the assignment deed is a result of forgery has been negatived and fabrication has not been established, particularly in view of the acknowledgment of consideration under Ex.P4, concrete admission on the part of the firm under Ex.P20, followed by the payment evidenced by Ex.P25, we are of the view that the assignment deed has been acted upon.

36.It is further to be noted that, under Exs.P18 and P19, several other marks have also been registered under Class 34 for snuff and tobacco articles in favour of K.C.Vijay. These registrations have also not been opposed by the appellant. All these facts clearly show that the contention of the appellant that the assignment was a result of forgery and fabrication cannot be countenanced.

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37.Another contention raised by the learned Senior Counsel is that, even assuming without admitting that the assignment was executed on 15.12.2011, the assignment was not registered within a period of six months as required under Section 42 of the Trademarks Act. Whereas, admittedly, it was presented for registration only on 19.08.2013, i.e., after 18 months, as evident under Ex.P5. Therefore, according to him, unless the assignment is registered within the period stipulated under Section 42, the assignment shall not take effect.

38.In this regard, it is relevant to extract Section 42 of the Trademarks Act as under :

> ***"42. Conditions for assignment otherwise than in connection with the goodwill of a business.—***
>
> *Where an assignment of a trade mark, whether registered or unregistered is made otherwise than in connection with the goodwill of the business in which the mark has been or is used, the assignment shall not take effect unless the assignee, not later than the expiration of six months from the date on which the assignment is made or within such extended period, if any, not exceeding three months in the aggregate, as the Registrar may allow, applies to the Registrar for directions with respect to the advertisement of the assignment, and advertises it in such form and manner and within such period as the Registrar may direct.*

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Explanation.—

For the purposes of this section, an assignment of a trade mark of the following description shall not be deemed to be an assignment made otherwise than in connection with the goodwill of the business in which the mark is used, namely:—

(a) an assignment of a trade mark in respect only of some of the goods or services for which the trade mark is registered accompanied by the transfer of the goodwill of the business concerned in those goods or services only; or

(b) an assignment of a trade mark which is used in relation to goods exported from India or in relation to services for use outside India if the assignment is accompanied by the transfer of the goodwill of the export business only."

39.On a perusal of the above section, it is clear that any mark which is assigned otherwise than in connection with the goodwill of the business is required to be registered within a period of not less than six months from the date on which the assignment is made or within such extended period, failing which such assignment will not take effect.

40.In the present case, when the deed of assignment Ex.P3 is carefully perused, it shows that what was assigned was not only the trademarks but also the exclusive use of all benefits of the aforesaid trademarks in relation to the

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manufacture and marketing of all products in Class 34 in India and abroad. Therefore, we are of the view that when the assignment includes the transfer of the exclusive use of all the benefits of the aforesaid trademarks in relation to the manufacture and marketing of all products in Class 34, it is not a mere assignment of trademarks alone but also includes the goodwill of the trademarks.

41.In this regard, it is relevant to extract the classic exposition as to what constitutes goodwill, as found in the decision of the House of Lords in ***Inland Revenue Commissioners*** **v.** ***Muller & Co.'s Margarin, Ltd*** reported in ***(1901) AC 217 (HL)***, wherein, it was held as follows:

> *"What is goodwill? It is a thing very easy to describe, very difficult to define.* ***It is the benefit and advantage of the good-name, reputation, and connection of a business****. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start .... If there is one attribute common to all cases of goodwill it is the attribute of locality. For goodwill has no independent existence. It cannot subsist by itself. It must be attached to a business. Destroy the business, and the goodwill perishes with it, though elements remain which may perhaps be gathered up and be revived again."*

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42.In Earl Jowitt's Dictionary of English Law, "goodwill" is defined thus:

> **"***The goodwill of a business is the benefit which arises from its having been carried on for some time in a particular house, or by a particular person or firm, or from the use of a particular trade mark or trade name.***"**

43.The aforesaid observations were approved by the Hon'ble Supreme Court in ***S.C.Cambatta & Co. (P) Ltd. v. CEPT*** reported in ***(1961) 41 ITR 500.*** Similarly, in ***CIT v. B.C. Srinivasa Setty*** reported in ***(1981) 2 SCC 460,*** the Hon'ble Supreme Court termed goodwill as *"the benefit arising from connection and reputation"*. Thus, there is little doubt that "goodwill" constitutes a "benefit" in the context of the business to which it attaches.

44.Another important consideration is the fact that goodwill cannot have an independent existence apart from the business. Thus, where the business is sold, a natural presumption arises that goodwill is sold along with it. In ***K.A.Subramaniam v. CED*** reported in ***AIR 1962 Mad 315,*** a Division Bench of this Court had observed as under:

> **"***The goodwill of a business is the intangible value independent of its visible assets by reason of the business being a well established one having a good reputation. Generally where the owner of a business sells it as such, the goodwill enables the purchaser to trade as a recognised successor to the business. It*

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has been recognised that the business reputation or goodwill owned by a partnership or by a company is a valuable asset which can be disposed of at the time of the winding up of the concern. But at the same time it is obvious that goodwill is inseparable from the business to which it adds value."

45.A similar observation was made by a Division Bench of the Calcutta High Court in ***CIT v Chunilal Prabhudas and Co*** reported in ***AIR 1971 Cal 70***, wherein, it was held as follows:

> "*There can be no sale of a goodwill without the business associated with that goodwill or the name. From that point of view goodwill has no separate existence apart from business. One cannot sell the goodwill and retain the business that the goodwill represented, nor can one sell the business and retain the goodwill.*"

Thus, unless there exists evidence to the contra, a presumption of transfer of goodwill arises where there is a sale or transfer of the entire business to a third party.

46.While interpreting a commercial contract, it has to be borne in mind that the words and expressions used therein have to be interpreted having regard to the joint intention of both parties and not just one party. This principle can be garnered from the decision of the Supreme Court in ***Great Eastern Shipping***

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Co. Ltd. v. State of Karnataka reported in ***(2020) 3 SCC 354***, wherein it was held:

> ***"****Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint intent of the parties at the time the contract so formed. It is not the intent of a single party; it is the joint intent of both the parties and the joint intent of the parties is to be discovered from the entirety of the contract and the circumstances surrounding its formation.****"*

47.Thus, the objective is to ascertain the true scope and purpose of the assignment from the standpoint of the assignor and the assignee. It must be remembered that a contract is a commercial document between the parties and it must be interpreted in such a manner as to give efficacy to the contract. Equally well settled is the principle that the meaning of words in a document is what the parties using those words against the relevant background would reasonably have been understood to mean. The decision in ***BESCOM v ES Solar Power Private Limited*** reported in ***(2021) 6 SCC 718*** holds as follows ***:***

> ***"****Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.****"*

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48.Thus, while judging the import of the expression "benefit" used in the assignment, the Court must have regard to the intention of both parties, the surrounding circumstances including the dominant purpose for which the contract was entered into.

49.In the above background, while analysing the present case on hand, it is seen that, when the appellant company was in a debt trap and wanted to pay off its liabilities, it assigned its 10 trade marks to the respondent Company for the exclusive use and all benefits of the aforesaid trade marks in relation to the manufacture and marketing of all products in Class 34 in India and abroad. This assignment was for a consideration and the receipt of the said consideration has also been acknowledged and proved. Pursuant to the assignment, certain liabilities of the assignor firm were also paid by the assignee. The business was also run by the assignee. The appellant company also did not run its business up to 2013 and its trademarks, including the other marks, were also not renewed. The cancellation of the sales tax registration also clearly indicates that the appellant was running its business and the intention of the appellant company was to fully assign and transfer the benefits, including the goodwill of the business to the assignee. Further, the very conduct of the appellant in not opposing registration of further marks of the same class of

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goods in favour of the respondent, also clearly shows that the assignment was intended not only for the marks but also for the entire business and its goodwill. Therefore, we hold that the trademarks have been assigned to the assignee vide assignment deed (Ex.P3) along with goodwill.

50.Once it is held that the assignment (Ex.P3) is along with goodwill, the contention of the appellant that the assignment is not valid for non-registration within six months as required under Section 42 of the Trademarks Act, has to fail. Further, the assignment deed is unconditional, supported by consideration and it relates to specific trade marks. Hence, we hold that the assignment deed (Ex.P3) is valid in the eye of law. ***Point No.(ii) is answered against the appellant.***

<u>Point Nos.(iii) to (v)</u> :

51.As we have held that the entire trademarks and business have been assigned along with the goodwill and the respondents are now carrying on the business, the appellant cannot contend that the respondents have infringed their trademarks. Hence, we hold that the appellant is not entitled to the relief of permanent injunction against infringement as well as passing off. ***Point Nos. (iii) and (iv) are answered against the appellant.***

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52.However, on the contrary, having assigned the entire trademarks to the respondents, the appellant cannot carry on their business or infringe the marks already assigned to the respondents. Therefore, the respondents are entitled to the relief of permanent injunction against infringement as sought for by them as well as passing off. ***Point No.(v) is answered accordingly.***

53.In view of the above discussion, the suits filed by M/s.N.C.Arya Snuff and Cigar Company, have to fail and the suit filed by M/s.Nico Quality Products has to succeed, as has been rightly done by the learned Single Judge. Therefore, we do not find any infirmity in the judgment and decree of the learned Single Judge.

54.As a result, these Original Side Appeals are dismissed, confirming the impugned judgment and decree of the learned Single Judge. No costs. Consequently, connected miscellaneous petitions are closed.

(N.S.K.,J.) (G.K.M.,J.)
20.11.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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N.SATHISH KUMAR J.
AND
GK.MUTHUKUMAAR J.

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Common Judgment in
OSA(CAD) No. 84 of 2025
and
OSA(CAD) NO. 90 OF 2025,
OSA(CAD) NO. 96 OF 2025

20.11.2026

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