

**IN THE COURT OF JASWINDER SINGH,  
ADDITIONAL DISTRICT JUDGE, JALANDHAR**

CIS No.CS/01/1998  
CNR No. PBJL01-000004-1998  
Date of Institution: 24.03.1998  
Date of decision: 20.01.2025

Kesho Ram son of Umrao Singh, Proprietor and Trading as Jawali Di Hatti, also as Kesho Ram and Sons, Mohalla No.13, Shop No.39, Sadar Bazar, Jalandhar Cantt., through his class-1 legal heirs:-

- (a) Vipam Kumar (son) Proprietor of M/s Kesho Ram and Sons;
- (b) RakeshKumar (son);
- (c) Raman Kumar (son);
- (d) Rajesh Kumar (son);
- (e) Satish Kumar (son).

.....Plaintiff

Versus

1. Jawaley Di Hatti, near Gurudwara Diwan Asthan, Central Town, Jalandhar through its partner/proprietor.
2. Sh. Harish Kumar son of Nathu Ram, proprietor/partner/Manager of Jawaley Di Hatti, near Gurudwara Diwan Asthan, Central Town, Jalandhar through his legal heirs:-
  - i. Manisha Mittal wife of Arvind Mittal, resident of Chahar Bagh, Milap Chowk, Jalandhar (daughter);
  - ii. Neha Garg wife of Varun Garg, resident of Samana Mandi, Patiala (daughter);
  - iii. Jatin Aggarwal son of Harish Kumar, resident of H.No.41, Street No.14, Jalandhar Cantt. (son).

.....Defendants

Suit for permanent injunction restraining the defendants from using the name Jawaley Di Hatti &/ or any other name deceptively similar and identical to the

trade mark/trading style 'Jawali' Di Hatti' and suit for passing off restraining the defendants from passing off their goods/business under the trade mark/trading style Jawaley Di Hatti &/or any other trade mark/trading style deceptively similar and identical to the trade mark/ trading style Jawali Di Hatti as of the plaintiff and suit for rendition of accounts etc.

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Present: Sh. Manuj Aggarwal, Advocate, counsel for plaintiff.  
Sh. T.K.Badhan, Advocate, counsel for defendants.

### **JUDGMENT**

1. Present suit has been filed by the plaintiff Kesho Ram with the averments that the plaintiff is engaged in the business of 'Namkeen and Sweets' especially "Mungi Ki Daal Ke Pakore" with sweet spicy chatni and he has been carrying on his business under the name and style of 'Jawali Di Hatti' through his predecessor since the year 1852. Raman Kumar son of Kesho Ram is the attorney holder of the plaintiff. He is also familiar with the facts and circumstances of the present case and is competent to file the present suit. It is further averred that grandfather of the plaintiff namely Jawala Parshad originally started the above business from his nick name 'Jawala', which was commonly known as Jawali in the year 1852 in Jalandhar Cantt. By the lapse of the time, plaintiff Kesho Ram became the proprietor of the plaintiff concern, who is now carrying on the business under the same name and style 'Jawali Di Hatti' at Mohalla No.13, shop No.39, Sadar Bazar, Jalandhar Cantt. The plaintiff, through his predecessor, is the original adoptor, continuous user and

lawful proprietor of the trading style/trade mark Jawali Di Hatti. The plaintiff has got a wide spread reputation in the market of Jalandhar and nearby towns. The said trade mark/trading style has acquired distinctiveness in the market and is associated with the name of the plaintiff and is commonly known as 'Jawali Di Hatti, pakore wale'. The said trade mark/trading style of the plaintiff is the subject matter of registration under the provisions of Trade and Merchandise Marks Act, 1958, in class-30. The goods especially 'Daal ke Pakore' served with sweet spicy chutni are prepared under a special recipe and these are very much popular and reputed not only in the Jalandhar but also in nearby towns. Sometime back, a newspaper of Indian Express Newspaper Group published a special edition on the Food Fixation of Jalandhar and therein, it gave special coverage to the plaintiff's business. In the article, the newspaper described the *Pakor*s of plaintiff as Mouth Watering *Pakor*s. The plaintiff by dint of hard labour, excellent quality of goods under special recipe, has made his trade mark/trading style popular and reputed in the market. The sale of the plaintiff has an increasing trend, which can be verified from the following sale figures, taken from the account books kept and maintained by the plaintiff, in the ordinary course of business:-

Year	Sale amount
1989-1990	₹2,26,127-75
1991-1992	₹2,89,897-25/-
1992-1993	₹3,76,216.00/-
1993-1994	₹4,38,847.00/-
1994-1995	₹4,75,343.00/-

1995-1996	₹4,96,299.00/-
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It is further averred that a few days back, plaintiff noticed a banner in the Central Town, near Gurudwara Diwan Asthan, Jalandhar, 'Chhawani Walon Ki Jawaley Di Hatti', special 'Daal Ke Special Pakore'. On enquiry, the plaintiff came to know that the defendants in order to trade upon the goodwill and reputation of the plaintiff, have opened one shop there. The exact constitution of defendants' firm is not known to the plaintiff, however, the shop is being managed by one Harish Kumar and he is very well aware about the goodwill and reputation of the plaintiff as he resides in Jalandhar Cantt very near to the shop of the plaintiff. The malafide intention of the defendants is very much clear as they have not only adopted the trading style/trade mark as that of the plaintiff but to give impression that it is either a sister concern or allied concern of the plaintiff, they are using words 'Jalandhar Chhawani Ki Purani Dukan'. The conduct of the defendants is dishonest, tainted and solely motivated to encash upon the envious reputation and goodwill of the plaintiff attached with the trading style/trade mark. The main intention of the defendants behind adoption of deceptively similar and identical trading style/trade mark is to pass off their goods and to earn easy and illegal profits. The defendants by using the impugned trading style of the plaintiff are confusing the bonafide and valuable customers to make them believe that the defendants' shop is a branch of the plaintiff's business. The illegal trade activities of the defendants are causing tremendous loss, injury to

the business, goodwill and reputation of the plaintiff, which cannot be assessed in the monetary terms and the illegal activities of the defendants may ruin the whole of the business of the plaintiff. Hence, this suit.

2. Upon notice, defendants appeared and filed written statement by taking preliminary objections that the suit as framed is not maintainable. Raman Kumar or Kesho Ram have no locus-standi to file the present suit. The plaintiff has not come to the court with clean hands. Neither the use of the name by the answering defendants similar nor is it deceptive nor the name or trademark is similar to that of the plaintiff. It is further averred that the defendant No.2 and his forefathers were the residents of Jalandhar Cantt for the last more than 200 years. Jawala Parshad was the great grandfather of defendant No.2 and he was also running the shop of Halwai where the same material as prepared by the defendants was prepared. Thereafter, Hazarimal, grandfather and Nathu Ram, father of defendant No.2 also continued the same business, wherein Pakoras as produced by defendants were prepared. Thereafter, defendants shifted out of Jalandhar Cantt as the shop of his father was got vacated and the other shop, which he took on rent under the name and style of "Jawaley Di Hatti", as they were already known to be, had to be vacated because the landlord, at the instigation of the plaintiff, started harassing the answering defendants. 'Jawaley Di Hatti' is in continuation and consonance with the earlier business carried on by the father and forefathers of the defendants and it is not to encash on any popularity of

the plaintiff. It is further averred that the plaintiff does not have the registered trademark as per his own averments and the defendants have never sold their own *Pakor*s as that of the plaintiff nor they have ever claimed that they are the sister concern of the plaintiff, as such, no action under “Passing off” can be initiated. The very ingredients of the passing off are missing as neither the name of the plaintiff nor any mark or design of *Pakor*s or any packing of the *Pakor*s have become distinctive of the plaintiff. The user of the name ‘Jawaley Di Hatti’ is much prior in time by the defendants. The word *Pakor*s, Cantt and *Moongi Di Daal* as well as *Mixed Daal* are trading names in common use and no one can claim monopoly on the same. There is no proximity of trade between the plaintiff and defendants. The business of the plaintiff is in Jalandhar Cantt., which is beyond the Corporation Limits of Jalandhar, whereas the premises of the defendants is in Jalandhar City and there is great distance between the two premises. This fact assumes more significance as the objects produced by both are ‘*Pakor*s’ and it is beyond comprehension that the customers would travel several miles for 250 grams *Pakor*s. The article is not of relative importance to the consumer.

On merits, it is submitted that the grandfather of the plaintiff was never Jawala Parshad nor Jawala has any resemblance with Jawali. The trademark/trading style of the plaintiff is not as popular and reputed. Even otherwise, his reputation has no connection with the business of the defendants as the business of the defendants is independent and distinct.

There is no patent of the plaintiff, as such, any person can prepare Pakoras of any *Daal*. The defendants have never given the impression that they are sister or allied concern of the plaintiff. 'Chhawani Walon Ki Purani Dukan' is mere descriptive of the past of the defendants. Rest of the averments contained in the plaint were denied and by reiterating the averments contained in the preliminary objections of the written statement, a prayer for dismissal of the suit was made.

3. Replication was filed by plaintiff while controverting the averments of written statement of defendants and reiterating the averments containing in the plaint.

4. From the pleadings of the parties, the issues were framed vide order dated 11.08.1998. Thereafter, on the basis of application of the plaintiff, vide order dated 03.01.2024, two additional issues were framed.

The issues are as under:-

1. Whether plaintiff Kesho Ram has been running his business under the name and style of Jawali Di Hatti?OPP

1-A: Whether the plaintiff is entitled for permanent injunction as prayed for?OPP

1-B: Whether the plaintiff is entitled for rendition of accounts?OPD

2. Whether the plaintiff is sole proprietor of Trade name Jawali Di Hatti?OPP

3. Whether the suit as framed is not maintainable?OPD

4. Whether Raman Kumar is duly appointed attorney of Kesho Ram

plaintiff?OPP

5. Whether Harish Kumar defendant has inherited his business from his forefathers, who were running it under the name and style of Jawaley Di Hatti prior in point of time to the plaintiff and it does not infringe the trade name of the plaintiff?OPD

6. Relief.

5. In order to prove his case, plaintiff has examined total 13 witnesses. PW-1 Seema, Tax Assistant, office of ITO Ward No.4(3), Jalandhar has proved on record authority letter issued in her favour to give evidence as Ex.PW1/A and income tax returns of Kesho Ram & Sons for the assessment year 2003-2004 to 2011-2012 as Ex.PW1/B to Ex.PW1/I.

PW-2 Raman Kumar, attorney of Kesho Ram tendered into evidence his duly sworn affidavit as Ex.PW2/A and reiterated the version contained in the plaint. He also produced on record copy of power of attorney executed in his favour by Kesho Ram as Mark-A, photographs as Ex.PW2/B & Ex.PW2/C, visiting card as Ex.PW2/D, photocopy of wedding card as Mark-X, photocopy of wedding card as Mark-Y and photocopy of letter addressed to Kesho Ram as Mark-Z.

PW-3 Chander Goel, attorney of Vipin Kumar, Proprietor of Firm M/s Kesho Ram & Sons tendered into evidence his duly sworn affidavit as Ex.PW3/A and reiterated the version contained in the plaint. He proved on record the attorney executed by Vipin Kumar in his favour as Ex.P1, death certificate of late Kesho Ram as Ex.P2, certificate of



registration issued by the Trade Mark Registry as Ex.P3, certificate issued by the Bank in favour of Vipin Kumar as proprietor of Kesho Ram & Sons as Ex.P4, E copy of GST registration of Kesho Ram & Sons as Ex.P5, E copy of MSME registration as Ex.P6, original Form F issued by the Punjab Shops and Commercial Establishment as Ex.P7, Registration certificate of Trade Mark as Ex.P8, certificate under Section 65-B of Indian Evidence Act as Ex.P9, certificates of Trade Mark as Ex.P10 and Ex.P11, letters of legal proceedings pertaining to document of Trade Mark as Ex.P12 and Ex.P13, letters of legal proceedings pertaining to document of Trade Mark "Jawali Di Hatti" as Ex.P14 and Ex.P15, trading account and balance sheet of M/s Kesho Ram & Sons as Ex.P16 to Ex.P19, CDCC statement of Indian Overseas Bank as Ex.P20, income tax returns as Ex.P21 to Ex.P40, receipts/counter foils of payment of income tax as Ex.P41 to Ex.P46, application form dated 01.04.1993 for applying PAN card as Ex.P47, photocopy of aadhar card of Vipin Kumar as Ex.P48, photocopy of his own aadhar card as Ex.P49, photocopy of power of attorney as Mark-A, photocopy of shop assessment list as Mark-C, photocopies of newspapers as Mark-D to Mark-F, photographs of banner and sign board as Mark-G and Mark-H, pendrive as Mark-I, photograph of Rakesh Kumar in pendrive as Mark-J, Form B is Mark-K, copy of Form F as Mark-L, Form G as Mark-M, Form B and F as Mark-O, medical certificate of vaccination as Mark-P, photocopies of electricity bills as Mark-K to Mark-R, copy of PAN Card of Kesho Ram as Mark-J,

copies of letters about recommendation of installation of Gas connection as Mark-S to Mark-U, the recommendation given by member of Parliament Sh. R.S.Sparrow as Mark-T, screen shot of the video clip running in the pendrive as Mark-J and pendrive as Ex.P50/Mark-I.

PW-4 Kulbir Singh, Manager, Indian Overseas Bank, Jalandhar Cantt brought the record pertaining to account No. 041102000000056 in the name of Kesho Ram & Sons. Above witness proved on record the account opening form relating to the above account number as Ex.PW4/A, account statements as Ex.PW4/B and Ex.PW4/C, certificate under Section 65-B of Indian Evidence Act as Ex.PW4/D, copy of letter dated 12.01.2024 by the Chief Manager as Ex.PW4/E and specimen signatures of Kesho Ram & Sons as Ex.PW4/F.

PW-5 Sham Lal Gupta tendered into evidence his duly sworn affidavit Ex.PW5/A, wherein he supported the case of the plaintiff. He also produced on record copy of his aadhar card as Ex.PW5/B.

PW-6 Amarjit Kaur, Clerk, Tax Department, Cantonment Board, Jalandhar Cantt., brought the summoned record pertaining to the property tax. She stated that as per record, the property No.39, Mohalla No.13 is in the name of Jawala Prashad. She produced on record assessment list for the year 1965-1966 to 1967-1968 as Ex.PW6/A, assessment list for the year 1971-1972 to 1973-1974 as Ex.PW6/B, assessment list since 1965-1966 to 1967-1968 upto 2016-2017 to 2018 for the property bearing No. 39, Mohalla No.13, Jalandhar Cantt. as

Ex.PW6/C1 to Ex.PW6/C18 and assessment list since 1965-1966 to 1967-1968 upto 2016-2017 to 2018-2019 for the property bearing No.38/1, 38/2 as Ex.PW6D1 to Ex.PWD22.

PW-7 Gurjit Singh, Record Keeper, Daily Ajit Newspaper, Nehru Garden Road, Jalandhar brought the record pertaining to the newspaper published in the Newspaper "Ajit Samachar Hindi". He produced on record authority letter issued in his favour as Ex.PW7/A, newspaper Ajit Samachar as Mark-E and the newspaper published on 07.03.2000 as Ex.PW7/B.

PW-8 Balraj, Manager, Hardev Gas Agency, Jalandhar Cantt., brought the record pertaining to connection having consumer No.09466 in the name of M/s Keshav Ram, Mohalla No.13, Shop No.39, Jalandhar Cantt. He further stated that as per record, abovesaid connection was allotted on 21.05.1983 and the same is commercial. Above witness produced on record subscription voucher as Ex.PW8/A, certificate under Section 65-B of Indian Evidence Act as Ex.PW8/B and copy of blue book as Ex.PW8/C.

PW-9 Puneet Bharti Shukla, Councilor corroborated the case of the plaintiff in his examination-in-chief. He also produced on record copy of his aadhar card as Ex.PW9/A .

PW-10 Vipin, Senior Examiner of Trade Mark at Geographical Indication, Bodhik Sabhayata Bhawan, Dwarka, Sector 14, Delhi deposed that Mark 'Jawali Di Hatti' is registered under Class-30

and Class-42 through application dated 06.09.2004 bearing No. 1307243 and 1307244. The abovesaid registration was valid till 06.09.2014. The certificate of registration qua application No.1307243 is Ex.P3 and the certificate of registration qua application No.1307244 is Ex.P10. Similarly, application dated 06.09.2004 bearing No.1307245 was filed for registration of Mark 'Jawali Family Caftria' under Class-42. The abovesaid registration was also valid till 06.09.2014. The certificate of registration qua above application is Ex.P8. Application dated 06.10.2004 bearing No.1313527 was filed for registration of Mark Jawalis under Class-30. The aforesaid registration was also valid till 06.09.2014. The certificate of registration qua above application is Ex.P11. Application dated 07.03.2013 bearing No. 2491665 was filed for registration of Mark Jawalis under Class-43. The aforesaid registration is also valid till 07.03.2033. The certificate of registration qua above application is Ex.PW10/A. He further stated that above marks were registered without any objection from any person.

PW-11 Gurcharanjit Kumar, Junior Assistant of Tax Branch, Cantonment Board, Jalandhar Cantt brought the record pertaining to water and sewerage connection of property bearing No.39, 38, 38/1, 38/2, Mohalla No.13, Jalandhar Cantt and produced on record the water bills for the year 2017-2018 to 2023-2024 as Ex.PW11/A1 to Ex.PW11/A7, PW11/C1 to Ex.PW11/C7, sewerage bills pertaining to the property No.38, 38/2, Mohalla No.13, Jalandhar Cantt., for the year 2017-2018 to

2023-2024 as Ex.PW11/B1 to Ex.PW11/B6, sewerage bills from 2017-2018 to 2023-2024 pertaining to property bearing No. 39, Mohalla No.13, Jalandhar Cantt., as Ex.PW11/D1 to Ex.PW11/D6 and copy of C.B.R. No.6 dated 15.09.2002 as Ex.PW11/E.

PW-12 Rajeshwar Dayal Aggarwal tendered into evidence his duly sworn affidavit Ex.PW12/A, wherein he corroborated the case of the plaintiff.

PW-13 Balwinder Singh, LDC, SDO Commercial Unit 5 PSPCL, Biring, Jalandhar Cantt., brought the record pertaining to account bearing No. 3001324149 in the name of Kesho Ram, Mohalla No.13, H.No. 39, Jalandhar Cantt. Above witness deposed that the abovesaid connection was installed on 30.03.1988 and the category of above connection is NRS (Non residential services means commercial). He produced on record the electricity bill of above connection as Ex.PW13/A. He further stated that the record prior to the year 1991 is not traceable and a letter of the SDO, Commercial in this regard is Ex.PW13/B. He further stated that the record of account bearing No. CA13/4656 is also not traceable and the letter dated 09.02.2024 issued by SDO Shamsheer Chander in this regard is Ex.PW13/C.

Thereafter, learned counsel for plaintiff closed the evidence on behalf of plaintiff in-affirmative.

6. In order to rebut the evidence led by the plaintiff, the defendants have examined Santosh Kumar, Tax Assistant, C/o Income Tax

Department, Jalandhar as DW-1. Above witness brought the record pertaining to income tax returns of Harish Kumar and he produced on record copies of income tax returns for the period 2001 to 2014-2015 as Ex.D1 to Ex.D10. He also produced certificate under Section 65-B of Indian Evidence Act as Ex.D11.

DW-2 Seema, Tax Assistant, Office of ITO-4 (3), Civil Lines, Jalandhar brought the record pertaining to income tax returns of Rakesh Gupta, Proprietor Jawaley Di Hatti and she produced on record copies of income tax returns for the year 2015-2016 to 2023-2024 as Ex.D12 to Ex.D20. She also produced certificate under Section 65-B of Indian Evidence Act as Ex.D21, copy of complaint made by the department to CPC, Bangalore as Ex.D22 and letter issued by the Income Tax Officer dated 14.02.2024 as Ex.D23.

DW-3 Jatin Aggarwal, son of defendant No.2 Harish Kumar, tendered into evidence his duly sworn affidavit Ex.DW3/A and reiterated the version contained in the written statement of defendants. He produced on record the pedigree table as Ex.DW1/A, death certificate of Harish Kumar as Ex.DW2/A and copy of his own aadhar card as Ex.DW3/A.

DW-4 Harish Kumar, son of Mohinder Pal, tendered into evidence his duly sworn affidavit Ex.DW4/A, wherein he reiterated the version contained in the written statement of defendants. He also produced on record copy of his aadhar card as Ex.DW4/B. During his cross-examination, the counsel for the plaintiff produced photographs

Ex.PZ1 & Ex.PZ2 pertaining to the shop of plaintiff namely 'Jawali Di Hatti'.

DW-5 Rakesh Gupta, proprietor of Jawale Di Hatti, was examined in chief on 20.02.2024 but thereafter, learned counsel for defendants gave up the said witness vide separate statement on 29.02.2024 and closed the evidence on behalf of defendants.

7. No rebuttal evidence was produced by the plaintiff and learned counsel for plaintiff closed the same.

8. I have heard the arguments of learned counsel for plaintiff as well as learned counsel for defendants and have also gone through the court file very carefully.

9. It is submitted by the learned counsel for the plaintiff that plaintiff Kesho Ram and his forefathers have been carrying on the business in the name and style of 'Jawali Di Hatti' since the year 1852 in Jalandhar Cantt. Their "*Mungi Ki Daal Ke Pakore*" are famous not only in Jalandhar but in the other towns of Punjab and nearby States. The said trade mark/trading style of the plaintiff has acquired distinctiveness in the market and is associated with the name of the plaintiff. The plaintiff has also got registered trademark 'Jawali Di Hatti' in the year 2004 in class-30 under the provisions of the Trade Marks Act, 1999. The defendants, in order to trade upon the goodwill and reputation of the plaintiff, have opened a shop in Central Town, Jalandhar with the name 'Jawaley Di Hatti'. The defendants are not only passing off their goods as goods of

plaintiff at their shop but they are also selling the same at “Swiggy” and “Zomato”. The defendants have no concern or connection with the trade name of the plaintiff. On the sign board of their shop, the defendants have used the words ‘Chhawani Ki Purani Dukan’ and they are also selling “*Mungi Ki Daal Ke Pakore*”. The intention of the defendants is to pass off their goods as goods of the plaintiff and to earn easy and illegal profits. By their act and conduct, the defendants are confusing bonafide customers of the plaintiff and making them believe that the defendants’ shop is a branch of the plaintiff’s business.

10. It is further submitted that the plaintiff has duly proved the prior use of trade name ‘Jawali Di Hatti’ whereas the defendants have failed to prove the prior use of their trade name ‘Jawaley Di Hatti’. The defendants failed to establish that the name of forefather of defendant No.2 was Jawala Prashad. The pedigree table Ex.DW1/A remained unproved. The defendants have also failed to establish that they were running their shop in Jalandhar Cantt in the name of ‘Jawaley Di Hatti’. No proof of any rent agreement of the shop in question is produced by the defendants. The plaintiff has duly proved that earlier Harish Aggarwal was doing the business of selling ‘*Puri Channa*’ at a cart and now, Jatin Aggarwal son of Harish Aggarwal is running ‘Gandhi Di Hatti’ for the sale of ‘*Puri Channa*’.

11. It is further submitted that the defendants opened their shop in the name of ‘Jawaley Di Hatti’ in the year 1997 and since then, they have



been earning illegal profits by passing off their goods as the goods of plaintiff, as such, the defendants are also liable to render accounts for the illegally earned profits by them by using the trademark of the plaintiff.

At the end, it is prayed that the plaintiff has duly proved his case on the preponderance of probability, as such, the suit of the plaintiff may be decreed in toto.

In support of above arguments, leaned counsel for plaintiff has placed reliance upon the cases titled as Sri Sai Agencies Pvt. Ltd. Vs Chintala Ram Rao, 1998 AIR (Andhra Pradesh), Ashwini Chemical Works through its Proper. T. Bala Mahesh, Hyderabad Vs. Aswini Homeo Pharmacy and anr. (Andhra Pradesh), Law Finder Doc Id # 344835, T.V. Venugopal Vs Ushodaya Enterprises Ltd. (Supreme Court), Law Finder Doc Id # 251082, Seven Towns Ltd., and anr. Vs M/s Kiddiland and anr. (Delhi High Court), Law Finder Doc Id # 809023, Parle Products (P) Ltd. Vs J.P. and Co., Mysore (Supreme Court), Law Finder Doc Id # 107885, M/s Hindustan Radiators Co. Vs M/s Hindustran Radiators Ltd. (Delhi High Court), Law Finder Doc Id # 148412.

12. On the other hand, learned counsel for defendants submitted that defendant No.2 and his forefathers were the residents of Jalandhar Cantt. for the last more than 200 years. Jawala Parshad was the great grandfather of defendant No.2 and he was also running the shop of Halwai, where he used to prepare same material as is being prepared by the defendants at their shop. Thereafter, Hazarimal, grandfather and Nathu

Ram, father of defendant No.2, also continued the same business. The defendants had to shift their business from Jalandhar Cantt., as their shop was got vacated by the landlord. Thereafter, they opened the shop in question at Central Town, Jalandhar. The trade name 'Jawaley Di Hatti' was derived by the defendants from the name of their forefather Jawala Prashad and the same has no concern or connection with the trade name of the plaintiff. The recipe being used by the defendants in preparation of *Pakor*s is their own recipe.

13. It is further submitted that there is a clearly no visual or phonetic similarity between the marks/words 'Jawali' and 'Jawaley' and there is no possibility of confusion or deception of customers of the plaintiff. Hence, the suit of the plaintiff is liable to be dismissed on this ground alone. Reliance in this regard can be placed upon the case titled as **Shree Balaji Chemicals Safidon and others Vs Baldev Raj Giridhar and others, 2016(3) PLR 261.**

14. It is further submitted that from the very beginning, the defendants were not aware that the plaintiff is using the trade name 'Jawali Di Hatti' and use of trademark 'Jawaley Di Hatti' by the defendants is bonafide. The defendants are doing their business in their own name. The defendants have never claimed themselves to be sister or allied concern of the plaintiff. The bonafide use of their trade name by the defendants is covered by Section 35 and 135(3)(b)(i) of the Trade Marks Act, 1999, as such, no relief can be granted to the plaintiff in the present

suit. Reliance in this regard can be placed upon the case titled as **Precious Jewels and another Vs Varun Gems, 2014(3) Law Herald (SC) 2357.**

15. It is further submitted that the area of business of plaintiff as well as of the defendants is totally different. The shop of the plaintiff is situated in Jalandhar Cantt., whereas the shop of the defendant is situated in Central Town, Jalandhar. The shop of the plaintiff is out of Municipal Limits of Jalandhar. There is no similarity between the hoarding of the shop of the plaintiff and of defendants. The packing material used by the plaintiff as well as defendants is also different. The plaintiff had allegedly got registered the trademark in the year 2004, which has already expired. The documents produced by the plaintiff have been procured/prepared by him during the pendency of the suit.

At the end, it is submitted that the plaintiff has failed to establish his case, as such, the suit of the plaintiff may be dismissed with costs.

16. I have considered the rival submissions of learned counsel for the parties in the light of evidence produced on record. My issue-wise findings are as under:-

**ISSUES No.1, 1-A, 1-B, 2 & 5:**

17. All these issues are taken up together being interconnected and to avoid repetition in discussion. Onus to prove issues No.1, 1-A, 1-B and 2 was on the plaintiff whereas onus to prove issue No.5 was on the defendants.

18. Admittedly, at the time of filing of present suit, trademark of the plaintiff was not registered and it was subsequently got registered on 06.09.2004 during the pendency of present suit. Above fact is evident from the perusal of trademark certificate (Ex.P12 and Ex.P13). So, it is a suit pertaining to the action of 'passing off' only and not regarding the infringement of trademark of the plaintiff. The distinction between an infringement action and passing off action has been discussed by the Hon'ble Apex Court in case titled as **Ruston & Hornby Ltd. vs. Z. Engineering Co., AIR 1970 SC 1649**, wherein the Hon'ble Apex Court has held as under:-

*"4. The distinction between an infringement action and a passing off action is important. Apart from the question as to the nature of trade mark the issue in an infringement action is quite different from the issue in a passing off action. In a passing off action the issue is as follows:*

*"Is the defendant selling goods so marked as to be designed or calculated to lead purchasers to believe that they are the plaintiff's goods?"*

*5. But in an infringement action the issue is as follows:*

*Is the defendant using a mark which is the same as or which is a colourable imitation of the plaintiff's registered trade mark?"*

19. In order to understand the meaning of term 'passing of' and why same has been made actionable under law, it is appropriate to refer to the landmark judgment of the Hon'ble Apex Court titled as **'Lamxikant V. Patel Vs. Chetanbhai Shah and Anr.'**, wherein the Hon'ble Apex Court has observed as under:-

*10. A person may sell his goods or deliver his services such as in case of a profession under a trading name or style. With the lapse of time such business or services*

*associated with a person acquire a reputation or goodwill which becomes a property which is protected by courts. A competitor initiating sale of goods or services in the same name or by imitating that name results in injury to the business of one who has the property in that name. The law does not permit any one to carry on his business in such a way as would persuade the customers or clients in believing that the goods or services belonging to someone else are his or are associated therewith. It does not matter whether the latter person does so fraudulently or otherwise. The reasons are two. Firstly, honesty and fair play are, and ought to be, the basic policies in the world of business. Secondly, when a person adopts or intends to adopt a name in connection with his business or services which already belongs to someone else it results in confusion and has propensity of diverting the customers and clients of someone else to himself and thereby resulting in injury.*

11. *Salmond & Heuston in Law of Torts (Twentieth Edition, at p.395) call this form of injury as injurious falsehood and observe the same having been awkwardly termed as passing off and state:-*

*“The legal and economic basis of this tort is to provide protection for the right of property which exists not in a particular name, mark or style but in an established business, commercial or professional reputation or goodwill. So to sell merchandise or carry on business under such a name, mark, description, or otherwise in such a manner as to mislead the public into believing that the merchandise or business is that of another person is a wrong actionable at the suit of that other person. This form of injury is commonly, though awkwardly, termed that of passing off ones goods or business as the goods or business of another and is the most important example of the wrong of injurious falsehood. The gist of the conception of passing off is that the goods are in effect telling a falsehood about themselves, are saying something about themselves which is calculated to mislead. The law on this matter is designed to protect traders against that form of unfair competition which consists in acquiring for*

*oneself, by means of false or misleading devices, the benefit of the reputation already achieved by rival traders.*

12. *In Oertli Vs. Bowman (1957) RPC 388, (at page 397) the gist of passing off action was defined by stating that it was essential to the success of any claim to passing off based on the use of given mark or get-up that the plaintiff should be able to show that the disputed mark or get-up has become by user in the country distinctive of the plaintiff's goods so that the use in relation to any goods of the kind dealt in by the plaintiff of that mark or get up will be understood by the trade and the public in that country as meaning that the goods are the plaintiff's goods. It is in the nature of acquisition of a quasi-proprietary right to the exclusive use of the mark or get-up in relation to goods of that kind because of the plaintiff having used or made it known that the mark or get-up has relation to his goods. Such right is invaded by anyone using the same or some deceptively similar mark, get-up or name in relation to goods not of plaintiff. The three elements of passing off action are the reputation of goods, possibility of deception and likelihood of damages to the plaintiff. In our opinion, the same principle, which applies to trade mark, is applicable to trade name.*

13. *In an action for passing off it is usual, rather essential, to seek an injunction temporary or ad-interim. The principles for the grant of such injunction are the same as in the case of any other action against injury complained of. The plaintiff must prove a prima facie case, availability of balance of convenience in his favour and his suffering an irreparable injury in the absence of grant of injunction. According to Kerly (ibid, para 16.16) passing off cases are often cases of deliberate and intentional misrepresentation, but it is well-settled that fraud is not a necessary element of the right of action, and the absence of an intention to deceive is not a defence though proof of fraudulent intention may materially assist a plaintiff in establishing probability of deception. Christopher Wadlow in Law of Passing Off (1995 Edition, at p.3.06) states that the plaintiff does not have to prove actual damage in order to succeed in*

*an action for passing off. Likelihood of damage is sufficient. The same learned author states that the defendants state of mind is wholly irrelevant to the existence of the cause of action for passing off (ibid, paras 4.20 and 7.15). As to how the injunction granted by the Court would shape depends on the facts and circumstances of each case. Where a defendant has imitated or adopted the plaintiffs distinctive trade mark or business name, the order may be an absolute injunction that he would not use or carry on business under that name. (Kerly, ibid, para 16.97).*

20. It is settled principle of law that in a passing off action what is to be considered is who is the prior user of the trade mark, since the prior use is a decisive factor. The prior use is relevant because during such a period consumers or purchasers must have found that quality of a particular product associated with a particular brand name is either good or bad and using a similar trade name or mark by two different persons would definitely cause confusion in the minds of the consumers and in such circumstances, the sale of goods by the person using the trade mark later may tantamount to passing off.

21. Law with regard to the action of passing of is well settled. In a landmark judgment titled as Amritdhara Pharmacy Vs Satya Deo, AIR 1963 Supreme Court, 449, the Hon'ble Apex Court has held as under:-

"8 ....

*the question has to be approached from the point of view of a man of average intelligence and imperfect recollection. To such a man the overall structural and phonetic similarity of the two names 'Amritdhara' and 'Lakshmandhara' is, in our opinion, likely to deceive or cause confusion. We must consider the overall similarity of the two composite words 'Amritdhara' and 'Lakshmandhara'. We do not think that the learned Judges of the High Court were right in saying that no Indian would mistake one for the other. An unwary purchaser of average intelligence and imperfect recollection*

*would not, as the High Court supposed, split the name into its component parts and consider the etymological meaning thereof or even consider the meaning of the composite words as 'current of nectar' or 'current of Lakshman'. He would go more by the overall structural and phonetic similarity and the nature of the medicine he has previously purchased, or has been told about, or about which has otherwise learnt and which he wants to purchase. Where the trade relates to goods largely sold to illiterate or badly educated persons, it is no answer to say that a person educated in the Hindi language would go by the etymological or ideological meaning and see the difference between 'current of nectar' and 'current of Lakshman'. 'Current of Lakshman' in a literal sense has no meaning; to give it meaning one must further make the inference that the 'current or stream' is as pure and strong as Lakshman of the Ramayana. An ordinary Indian villager or townsman will perhaps know Lakshman, the story of the Ramayana being familiar to him; but we doubt if he would etymologise to the extent of seeing the so-called ideological difference between 'Amritdhara' and 'Lakshmandhara'. He would go more by the similarity of the two names in the context of the widely known medicinal preparation which he wants for his ailments.*

*9. We agree that the use of the word 'dhara' which literally means 'current or stream' is not by itself decisive of the matter. What we have to consider here is the overall similarity of the composite words, having regard to the circumstance that the goods bearing the two names are medicinal preparations of the same description. We are aware that the admission of a mark is not to be refused, because unusually stupid people, "fools or idiots", may be deceived. A critical comparison of the two names may disclose some points of difference but an unwary purchaser of average intelligence and imperfect recollection would be deceived by the overall similarity of the two names having regard to the nature of the medicine he is looking for with a somewhat vague recollection that he had purchased a similar medicine on a previous occasion with a similar name. The trade mark is the whole thing the whole word has to be considered."*

22. In case titled as T.V. Venugopal Vs Ushodaya Enterprises Ltd. (Supreme Court), Law Finder Doc Id # 251082, the Hon'ble Apex Court



has held as under:-

*“63. Mr. Sundaram also placed reliance on **Reckitt & Colman Products Ltd. v. Borden Inc. and others - 1990 (1) ALL ER 873** where the court has dealt with general law applicable to passing off of action. In that case the court observed thus:-*

*"The basic underlying principle of such an action was stated in 1842 by Lord Langdale **M.R. in Perry v. True fitt (1842) 6 Beav. 66 , 49 Er 749 to be:** "A man is not to sell his own goods under the pretence that they are the goods of another man.....". Accordingly, a misrepresentation achieving such a result is actionable because it constitutes an invasion of proprietary rights vested in the plaintiff. However, it is a prerequisite of any successful passing off action that the plaintiff's goods have acquired a reputation in the market and are known by some distinguishing feature. It is also a prerequisite that the misrepresentation has deceived or is likely to deceive and that the plaintiff is likely to suffer damage by such deception. Mere confusion which does not lead to a sale is not sufficient. Thus, if a customer asks for a tin of black shoe polish without specifying any brand and is offered the product of A which he mistakenly believes to be that of B, he may be confused as to what he has got but he has not been deceived into getting it. Misrepresentation has played no part in his purchase".*

23. In case titled as **Seven Towns Ltd., and anr. Vs M/s Kiddiland and anr. (Delhi High Court), Law Finder Doc Id # 809023**, the Hon'ble

Delhi High Court has held as under:-

*“33. In the light of above referred law and facts and circumstances of the present case, it is to be decided as to whether the defendants are passing off their goods as that of the plaintiffs or not.*

*The test of confusion and deception in order to prove the case of passing off has been very well discussed in the case of **Laxmikant V. Patel v. Chetanbhat Shah and Another, reported in (2002) 3 SCC 65**, wherein the*

*Supreme Court while considering a plea of passing off and grant of ad interim injunction held in no uncertain terms that a person may sell his goods or deliver his services under a trading name or style which, with the passage of time, may acquire a reputation or goodwill and may become a property to be protected by the Courts. It was held that a competitor initiating sale of goods or services in the same name or by imitating that name causes injury to the business of one who has the property in that name. It was held that honesty and fair play are and ought to be the basic policy in the world of business and when a person adopts or intends to adopt a name which already belongs to someone else, it results in confusion and has the propensity of diverting the customers and clients of someone else to himself and thereby resulting in injury.*

24. In case titled as **Cadila Health Care Ltd. Vs Cadila Pharmaceuticals Ltd., 2001(2) R.C.R. (Civil) 583**, the Hon'ble Apex

Court has held as under:-

*10. Under Section 28 of the Trade and Merchandise Marks Act on the registration of a trade mark in Part-A or B of the register, a registered proprietor gets an exclusive right to use the trade mark in relation to the goods in respect of which trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by the Act. In the case of un-registered trade mark, Section 27(1) provides that no person shall be entitled to institute any proceeding to prevent, or to recover damages for, the infringement of an unregistered trade mark. Sub-section (2) of Section 27 provides that the Act shall not be deemed to affect rights of action against any person for passing off goods as the goods of another person or the remedies in respect thereof. In other words in the case of un-registered trade marks, a passing off action is maintainable. The passing off action depends upon the principle that nobody has a right to represent his goods as the goods of some body. In other words a man is not to sell his goods or services under the pretence that they are those of another person . As per Lord Diplock in **Erwen Warnink BV Vs. J Townend & Sons, 1979(2) AER 927**, the modern tort of passing off has five elements i.e. (1) a misrepresentation (2) made by*

*a trader in the course of trade, (3) to prospective customers of his or ultimate consumers of goods or services supplied by him, (4) which is calculated to injure the business or goodwill of another trader (in the sense that this is a reasonably foreseeable consequence) and (5) which causes actual damage to a business or goodwill of the trader by whom the action is brought or (in a quia timet action) will probably do so”.*

In para No.35 of the above judgment, the Hon’ble Apex Court has laid down the following principles, which are to be taken into consideration in an action for passing off for deciding the question of deceptive similarity:-

*35. Broadly stated in an action for passing off on the basis of unregistered trade mark generally for deciding the question of deceptive similarity the following factors to be considered:*

- a) The nature of the marks i.e. whether the marks are word marks or label marks or composite marks, i.e. both words and label works.*
- b) The degree of resemblance between the marks, phonetically similar and hence similar in idea.*
- c) The nature of the goods in respect of which they are used as trade marks.*
- d) The similarity in the nature, character and performance of the goods of the rival traders.*
- e) The class of purchasers who are likely to buy the goods bearing the marks they require, on their education and intelligence and a degree of care they are likely to exercise in purchasing and/or using the goods.*
- f) The mode of purchasing the goods or placing orders for the goods and*
- g) Any other surrounding circumstances which may be relevant in the extent of dissimilarity between the competing marks”.*

25. In the present case, the plaintiff is user of trademark ‘Jawali Di Hatti’ at Jalandhar Cantt and as per the case of the plaintiff, his shop is

famous for '*Mungi Ki Daal Ke Pakore*'. As per the claim of the plaintiff, he and his forefathers have been using the abovesaid trade name since the year 1852. On the other hand, the defendants also claim that their trade name 'Jawaley Di Hatti' is being used by them since long and same was derived by them from the name of forefather of defendant No.2 namely Jawala Prashad. Though, there is difference of spellings in the abovesaid trade names but the phonetic sound and appearance of both these words is almost similar. The confusion due to the use of above similar trademark by the parties is inevitable because the customers of both the parties include all types of persons including aged and illiterate persons. Hence, this court is required to approach this case from the point of view of a man of average intelligence and imperfect recollection. To such a man, the overall structural and phonetic similarity of two names 'Jawali Di Hatti' and 'Jawaley Di Hatti' is, in the opinion of this court, likely to deceive or cause confusion. Hence, in view of the law laid down in the above referred judgments, the first question for determination before this court is as to which party is the prior user of abovesaid trade name. The plaintiff has placed on record various documents to establish that he has been running the business 'Jawali Di Hatti' at shop No.39, Mohalla No.13, Jalandhar Cantt since long. PW-6 Amarjit Kaur, Clerk, Tax Department, Cantonment Board, Jalandhar Cantt., has produced the assessment list of shop No.39 with effect from 1965-1966 to the year 2018-2019 and a perusal of the same shows that abovesaid property No.39 was earlier in

the name of Jawala Prashad, who was grandfather of plaintiff Kesho Ram. Document Ex.PW6/A is the assessment list for the year 1965-1966 to 1967-1968 of the abovesaid property No.39. The remaining documents pertain to subsequent years. Through the above documents, the plaintiff has proved following things:-

- i. The place of business of plaintiff is property No.39, Mohala No.13, Jalandhar Cantt.
- ii. The plaintiff and his forefathers have been running the business at the abovesaid property prior to 1965-1966.
- iii. The name of grandfather of plaintiff is Jawala Prashad. Above name is relevant because as per the case of the plaintiff, the trade name 'Jawali Di Hatti' was derived from the name of his grandfather Jawala Prashad.

26. Further, PW-8 Balraj, Manager, Hardev Gas Agency, Jalandhar Cantt., has proved that gas connection in the name of M/s Kesho Ram was allotted for shop No.39, Mohalla No.13, Jalandhar Cantt., on 21.05.1983 and the same is commercial in nature. The subscription voucher Ex.PW8/A and blue book Ex.PW8/C pertaining to above gas connection establish that plaintiff Kesho Ram has been running the business in the said shop prior to 21.05.1983.

27. Apart from the above mentioned documents, the plaintiff has produced document Ex.P7 i.e., Form 'F', which was filled for registration of establishment under Section 13 of the Punjab Shops and Commercial Establishment Act,1958. On the foot of above document, the date is mentioned as 24.07.1958. The address of the shop of the plaintiff is

mentioned as 'Jawali Di Hatti', Mohalla No.13, Shop No.39, Jalandhar Cantt. Abovesaid document also shows that the plaintiff as well as his forefathers have been running the business under the name of 'Jawali Di Hatti' at the spot prior to the abovesaid date i.e., 24.07.1958.

28. Apart from the documentary evidence, the plaintiff has also produced oral evidence in the form of testimony of PW-2 Raman Kumar, PW-3 Chander Goel, PW-5 Sham Lal Gupta, PW-9 Puneet Bharti Shukla and PW-12 Rajeshwar Dayal Aggarwal. PW-2 Raman Kumar is the attorney of plaintiff Kesho Ram whereas PW-3 Chander Goel is the attorney of Vipin Kumar son of Kesho Ram. The other three witnesses viz PW-5 Sham Lal Gupta, PW-9 Puneet Bharti Shukla and PW-12 Rajeshwar Dayal Aggarwal are independent witnesses. PW-5 Sham Lal Gupta has deposed that he is 81 years old. He as well as his family members have grown up by eating the '*Pakor*s' of '*Daal*' of the shop of the plaintiff. He also stated in his cross-examination that defendant Harish Kumar used to do his business on a cart. PW-9 Puneet Bharti Shukla stated that he is the Councilor and he is representative of seven wards in Cantonment area since December 2021. He also corroborated the version of plaintiff. Similarly, he also reiterated that defendant Harish Kumar was selling '*Puris*' in Cantt area by cart and his son is now running a shop in Mohalla No.14 and selling '*Puris*' and '*Daal Sabzi*' at the above shop. PW-12 Rajeshwar Dayal Aggarwal is another independent witness and he also duly supported the case of the plaintiff.

29. Apart from the oral as well as documentary evidence produced by the plaintiff, the admissions made by the witnesses of the defendants are also helpful to the case of the plaintiff. DW-3 Jatin Aggarwal admitted that he has heard that plaintiff's shop 'Jawali Di Hatti' was raided by the Income Tax Department in the year 1992. He also admitted that he has heard that the abovesaid shop is famous by the name of 'Jawali Di Hatti'. Above witness also admitted that it is correct that in the newspaper dated 21.03.1997 (Mark-D), there is a reference of *Pakor*s of 'Jawali Di Hatti' of Kesho Ram. He also admitted that news items published in the newspaper dated 07.03.2000 (Ex.PW7/B) as well as in the newspaper 'Hindustan Times' dated 27.08.2005 (Mark-F) are pertaining to the shop of plaintiff. He further admitted that as per the said news items, aforesaid shop 'Jawali Di Hatti' is 153 years old. He further admitted that *Pakor*s of *Daal* of 'Jawali Di Hatti' are very famous. DW-4 Harish Kumar stated that he is aged about 47 years. He admitted that the shop of plaintiff 'Jawali Di Hatti' has been running at Jalandhar Cantt., before his birth and he has no idea since when, it is running. He also admitted that 'Jawali Di Hatti' is famous for *Daal Pakora*. He also admitted that he has heard that if any outsider comes to Jalandhar, he demands the *Pakor*s of plaintiff's shop 'Jawali Di Hatti'.

It is pertinent to point out here that DW-4 Harish Kumar has admitted the fact that the plaintiff has been running his shop 'Jawali Di Hatti' before his birth. Above witness is 47 years old. It means that as per

the admission of above witness, the plaintiff has been running above business prior to 1977.

30. As far as the evidence of defendants is concerned, the defendants have examined four witnesses. The defendants have produced the record pertaining to the income tax returns of their business w.e.f. 2001 and 2014-2015 filed on behalf of Harish Kumar and the income tax returns from 2015-2016 to 2023-2024 filed on behalf of Rakesh Gupta, Proprietor of 'Jawaley Di Hatti'. In order to establish the fact that the abovesaid trade name was derived by the defendants from the name of their forefather Jawala Prashad, the defendants have produced a pedigree table Ex.DW1/A. A perusal of above document shows that the same is not issued by any authority and it is not even signed or attested by any person. It is a photocopy and same is not properly legible. DW-3 Jatin Aggarwal also admitted the fact that above pedigree table does not bear the signatures of any person and it is not attested by any authority. The defendants have failed to establish the authenticity of above document. Apart from above document, no other document has been produced by the defendants to establish that the name of grandfather of defendant Harish Kumar was Jawala Prashad. Similarly, the defendants have not produced any evidence to establish the use of their trade name 'Jawaley Di Hatti' prior to the plaintiff. No evidence regarding issuance of gas connection or electricity connection regarding the above business was produced by the defendants. In this regard, DW-3 Jatin Aggarwal has categorically



admitted that he has not produced any document like electricity connection bill, Shop Act licence, gas connection, sale tax record to show that his father, great grandfather or grandfather were running a shop in Jalandhar Cantt.

31. The defendants have pleaded that earlier they were running business in Jalandhar Cantt under the name of 'Jawaley Di Hatti' but thereafter, their shop was got vacated by the landlord, as such, they shifted their business to Central Town, Jalandhar. Abovesaid plea of the defendants also remained unproved. The defendants have not even disclosed their shop number or the name of the landlord, from whom the shop was taken on rent by them. Rather, DW-4 Harish Kumar has admitted the fact that Jatin Aggarwal son of Harish Kumar Aggarwal is running the shop under the name and style of "Gandhi Di Hatti" in Mohalla No.14, Jalandhar Cantt for the last 05 years and prior to that, he was doing his business of '*Puri Channa*' on a cart. He further stated that father of Jatin Aggarwal namely Harish Kumar Aggarwal was also running the same cart of '*Puri Channa*' during his life time at Jalandhar Cantt. He further admitted that from the said business of cart, Jatin Kumar has now shifted his business in a shop adjoining to his shop under the name and style of "Gandhi Di Hatti'. He also candidly admitted that he has never seen father, grandfather or great grandfather of Harish Kumar Aggarwal doing any business. He also stated that however, he knows that they were doing the business of '*Puris*' and '*Pakor*as'. He further admitted

that if some one runs his business under the name of 'Jawali Di Hatti', it is to be presumed that the said business is being run by the owner of 'Jawali Di Hatti'.

32. As far as the judgments referred by the learned counsel for the defendants are concerned, in the opinion of this court, abovesaid judgments are not applicable to the facts of present case. In judgment titled as **Shree Balaji Chemicals Safidon and others Vs Baldev Raj Giridhar and others** (supra), there was no visual or phonetic similarity between the marks/words "Girdhar" and "Garg" or the marks/words 'Girdhar Khadi" and "Garg Khadi", hence, it was held by the Hon'ble Punjab & Haryana High Court that there is no possibility of confusion or deception. In the present case, there is clearly visual and phonetic similarity between the words 'Jawaley Di Hatti' and 'Jawali Di Hatti', as such, the law laid down in the abovesaid case does not apply to the facts of present matter. Similarly, the judgment titled as **Precious Jewels and another Vs Varun Gems** (supra) does not apply to the facts of present case because the use of trademark 'Jawaley Di Hatti' by the defendants is not bonafide. They have started using above trademark just to take benefit of goodwill and reputation of the plaintiff. Their malafide intention is also evident from the fact that apart from using the similar trade name 'Jawaley Di Hatti', they have used the words "Jalandhar Chhawni Walon Ki Purani Dukan" on their hoardings to pass of their goods as the goods of the plaintiff.

33. From the above evidence produced by the parties, it is clear that the plaintiff has been able to establish the prior use of his trade name 'Jawali Di Hatti' and the defendants have failed to establish either prior use of their trade name 'Jawaley Di Hatti' or that the name of grandfather of defendant no. 2 was Jawala Parshad or that abovesaid trade name was derived from his name. From a perusal of photographs Ex.PW2/B, Ex.PW2/C and mark-G and mark-H, it is clear that the defendants have not only used trademark similar to the trade name of the plaintiff but they have also mentioned on the sign board the words "Jalandhar Chhawani Walon Ki Purani Dukan". By using the similar trade name of their business and abovesaid words, the defendants have been clearly passing off their goods as the goods of the plaintiff and they have been making the general public believe that the goods sold by them are of the plaintiff. The defendants have failed to establish that they were running the shop under the name of 'Jawaley Di Hatti' at Jalandhar Cantt., as such, they do not have any right to use the above name or to use the words on their hoardings "Jalandhar Chhawani Walon Ki Purani Dukan". As the defendants have been passing off their goods as goods of the plaintiff, they are also liable to render the accounts of the profits earned by them by using the trademark/trading style of the plaintiff.

34. In view of above discussion, issues No. 1, 1-A, 1-B & 2 are decided in favour of plaintiff and against the defendants. Similarly, the issue No.5 is also decided against the defendants and in favour of

plaintiff.

**ISSUE No.3:**

35. Onus to prove this issue was on the defendants, however, no evidence in this regard was led by the defendants. Moreover, keeping in view the observations of this court during disposal of issues No. 1, 1-A, 1-B, 2 & 5, there is no doubt about the fact that the present suit is duly maintainable against the defendants. Hence, this issue is decided against the defendants and in favour of plaintiff.

**ISSUE No.4**

36. Onus to prove this issue was on the plaintiff. The plaintiff has placed on record copy of attorney executed by Kesho Ram in favour of Raman Kumar as Mark-A. On the basis of above attorney as well as other evidence produced on record, the plaintiff has duly established that abovesaid Raman Kumar is duly appointed attorney of Kesho Ram. Abovesaid issue was framed on the basis of a preliminary objection taken by the defendants in their written statement but the defendants have not led any evidence to establish that abovesaid Raman Kumar is not the attorney holder of Kesho Ram. In these circumstances, this issue is decided in favour of plaintiff and against the defendants.

**ISSUE No.6 (RELIEF)**

37. In view of the findings of this court on all the above mentioned issues, present suit is hereby decreed with costs and defendants are permanently restrained from using the trade name 'Jawaley Di

Hatti' and/ or any deceptively similar and identical trade name, which is similar to the trade name of plaintiff 'Jawali' Di Hatti'. The defendants are also permanently restrained from passing off their goods/business under the trademark/trading style 'Jawaley Di Hatti' and/or any trademark/trading style deceptively similar and identical to the trademark/trading style of plaintiff 'Jawali Di Hatti'. A preliminary decree of rendition of accounts is also passed in favour of plaintiff and the defendants are hereby directed to render the accounts of the profits earned by them by using the trademark/trading style of the plaintiff. Decree sheet be prepared accordingly. File be consigned to the record room.

**PRONOUNCED**  
**DATED:20.01.2025**

\*Vivek

**(JASWINDER SINGH)**  
**ADDITIONAL DISTRICT JUDGE**  
**JALANDHAR**