

**CEYLON TEA MARKETING LTD.**  
**v.**  
**PREPACKED EXPORTS (PVT) LTD. AND OTHERS**

SUPREME COURT  
FERNANDO, J.,  
DHEERARATNE, J.,  
GUNAWARDENA, J.  
S.C. H.C. LA NO. 3/97  
HC (CIVIL) NO. 8/96(3)  
D.C. COLOMBO NO. 4545/Spl.  
AUGUST 27, 1997.

*High Court of the Provinces (Special Provisions) Act, No. 10 of 1996 – Commercial High Court – Jurisdiction of other High Courts of the Western Province sitting in Colombo.*

**Held:**

Under the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996 every High Court of the Western Province sitting in Colombo has jurisdiction under this Act.

**APPEAL** from the order of the Commercial High Court.

*Chula de Silva* with *S. Srikantha* and *M. Maharoo* for petitioner.

*Bimal Rajapakse* with *Ajith Anawaratne* for respondents.

*Cur. adv. vult.*

August 27, 1997

**FERNANDO, J.**

Mr. Chula de Silva on behalf of the plaintiff-petitioner submits that the learned High Court Judge erred in refusing the interim injunction because of this mistaken assumption that the plaintiff-petitioner was seeking to restrain the defendant from using the trade mark "Lucky Leaf". Mr. de Silva submits that his case was that while the defendant was entitled to imitate the registered trade mark "Get up" of the plaintiff, and that such conduct was in violation of the plaintiff's right under section 117 of the Code of Intellectual Property Act, and also constituted passing off as well an unfair competition. The defendant

does not claim to have had any prior use of that "Get up". The defendant's right are confined to the registered trade mark "Lucky Leaf".

Court accordingly grants special leave to appeal upon the questions set out in paragraph 10 of the petition.

Counsel invite Court to determine this appeal forthwith.

At this stage Mr. Rajapakse concedes that the plaintiff should be granted an interim injunction as prayed subject to the exception that the defendant is entitled to use his registered trade mark, as appears in H1.

Court makes order accordingly.

Both counsel state that under the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996, every High Court of the Western Province sitting in Colombo has jurisdiction under that Act.

Since the learned High Court Judge who heard this matter appears to have expressed a concluded opinion on the merits of the case, it is desirable that the trial be heard by another Judge.

Court accordingly direct the senior High Court Judge presiding in Court No. 1, to hear this case or to nominate another Judge to hear this case.

Registrar will forward a copy of this order to the High Court immediately as the case is fixed for trial on 4.9.97.

No costs.

**DHEERARATNE, J.** – I agree.

**GUNAWARDENE, J.** – I agree.

*The Senior High Court Judge presiding in Court No. 1 directed to hear the case or nominate another judge to hear the case.*