



WEB COPY



C.S.(Comm. Div.)No.122 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2023

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S.(Comm. Div.)No.122 of 2023

1. Mr.A.D.Padmasingh Isaac,
Proprietor,
Aachi Spices and Foods,
Old No.4, New No.181/1,
6th Avenue, Thangam Colony,
Anna Nagar, Chennai - 600 040.

2. M/s. Aachi Masala Foods Private Limited,
No.1926, 34th Street, I Block,
Ishwarya Colony, Anna Nagar West,
Chennai - 600 040,
Represented by its Director,
Mr.Ashwin Pandian

... Plaintiffs

Vs.

Mr.Peter Selvaraj,
Proprietor,
Aasirs Foods,
First Floor, No.17,
North Mada Street,
Thirumullavoyal,
Chennai - 600 064.

... Defendant



PRAYER: Plaintiff filed under Order IV Rule I of Madras High Court Original Side Rules and Order VII Rule 1 of C.P.C. read with Sections 27(2), 29, 134 and 135 of Trade Marks Act, 1999 for the following reliefs:

a) granting a permanent injunction, restraining the Defendant, by itself, its servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the impugned label; AASHIR TURMERIC POWDER or similar label with same or similar get up, and colour scheme as used by the Defendant as shown in Document No. 2 in relation to Turmeric Powder or any masala products and use the same pouches, packets of masalas and spices or any other goods or by using any other Trademark which is in any way visually, and deceptively similar to the Plaintiffs' registered Trademark "AACHI TURMERIC POWDER" as shown in Document No. 1 or use the same in any invoices, letters heads and visiting cards or any other trade literature or by using any other Trademark which is in any way visually, and deceptively similar to the Plaintiffs' registered Trademark No. 4951482, 1595537, 1731915 and 3370962 or in any manner infringe the Plaintiffs' registered Trademark;

b) granting a permanent injunction, restraining the Defendant, by itself, its servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using same or similar get up, and colour scheme used by the Defendant in it's impugned marks; "Aashir" (device) & "AASHIR TURMERIC POWDER" (label) shown in Document No. 2 or by using any other trade mark which is in any



way visually or deceptively similar to the Plaintiffs' Trademark registered device mark "Aachi" and their label mark of "AACHI TURMERIC POWDER" label as shown in Document No. 1 in relation to "Turmeric powder" any other masala items and use the same pouches, packets of masalas and spices or any other goods or use the mark in invoices, letters heads and visiting cards or any other trade literature in any manner to pass off the Plaintiffs goods;

c) directing the Defendant to surrender to the Plaintiffs all the packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the impugned device "Aashir" and impugned label of "AASHIR TURMERIC POWDER" and its packets in the Color Scheme and Get up as shown in Document No. 2 or other deceptively similar trade mark used in the pouches and packets in respect of masalas;

d) directing the Defendant to render an account of profits made by them by the use of the impugned device "Aashir" and impugned label of "AASHIR TURMERIC POWDER" and it's packets in the Color Scheme and get up as shown in Document No. 2 on the goods referred and decree the suit for the profits found to have been made by the Defendant, after the Defendant has rendered accounts;

e) for costs of the suit.

For Plaintiff s : Ms.Gladys Daniel



WEB COPY



C.S.(Comm. Div.)No.122 of 20__

For Defendant : Set *Ex-parte*

JUDGMENT

This suit has been filed for infringement and passing off.

2. The first plaintiff is the proprietor of the trademark 'Aachi', having obtained registration under various classes. The details of the registrations obtained under the Trademarks Act are listed out in paragraph No.10 of the plaint. The plaintiffs have also obtained international registrations for their trademark 'Aachi' in various other countries as well. The details of the international registrations obtained by the plaintiffs are disclosed in paragraph No.12 of the plaint. They have been in the business of manufacture of spices and condiments ever since 1995 as seen from the plaint averments. Their turnover runs to several hundred crores of rupees as seen from the plaint averments. They have also incurred huge expenditure towards advertisement cost for marketing their products by using the trademark 'Aachi' as seen from the plaint averments.



WEB COPY

3. The plaintiffs came to know that the defendant is using an identical trademark 'Aashir', in January, 2023. The learned counsel for the plaintiffs would submit that having come to know of the same, the plaintiffs have issued a cease and desist notice on 23.01.2023. Despite receipt of the cease and desist notice, the defendant has continued to use the infringing trademark as seen from the plaint averments. No reply has also been sent by the defendant to the cease and desist notice dated 23.01.2023. Since the defendant has continued to use the trademark of the plaintiffs, the plaintiffs have filed the present suit, seeking for the reliefs as sought for in the plaint.

4. The defendant was set *ex-parte* by this Court on 18.10.2023. Till date, no application has been filed to set aside the *ex-parte* order by the defendant.

5. Before the learned Additional Master - II, High Court, Madras, the plaintiffs' witness Mr.B. Gnanasambandam (PW1) was examined as a witness. He has also filed the proof affidavit reiterating the plaint averments. Through PW1, the following documents were marked as exhibits:



Exhibit No.	Nature of Documents
P1	Original authorization letters dated 25.10.2023 (Nos.2).
P2	Copy of the board resolution. (Affidavit under Section 65 B of the Indian Evidence Act filed and recorded)
P3	True copy of the list of products manufactured and marketed by the plaintiff's bearing the trademark Aachi. (Affidavit under Section 65 B of the Indian Evidence Act filed and recorded)
P4	Certified copy of the certificate of incorporation of Aachi Masala Foods P Ltd. dated 30.06.2006
P5	Certified copy of the certificate of Commercial Tax Registration of Aachi Masala & Foods (P) Ltd. dated 10.07.2006.
P6	Certified copy of the dissolution deed between Mrs.Rani Pandian and Mr.A.D.Padmasingh Isaac dissolving the partnership firm, Naveen Products dated 31.03.2007
P7	Certified copy of the certificates of Commercial Tax Registration and Central Sales Tax of Aachi Spices & Foods dated 28.12.2006 and 03.01.2007.
P8	Certified copy of the trade mark license user agreement between Mr.A.D.Padmasingh Isaac trading as Aachi Spices and Foods and Aachi Masala Foods Pvt Ltd dated 01.04.2007.
P9	Certified copy of the memorandum of association of Aachi Spices and Foods P. Ltd. dated 06.03.2010.
P10	Certified copy of the certificate of incorporation of Aachi Spices and Foods P. Ltd. dated 17.03.2010.
P11	Certified copy of the trade mark license user agreement between Mr.A.D.Padmasingh Isaac and Aachi Spices and Foods Pvt. Ltd. dated 21.04.2010.
P12	Certified copy of the trademark license user agreement between Mr.A.D.Padmasingh Isaac and Aachi Masala Foods P. Ltd. dated 21.04.2010.
P13	Certified copy of the trademark license user agreement between Mr.A.D.Padmasingh Isaac and Aachi Masala Foods P. Ltd. dated 04.03.2020.
P14	Certified copy of the trademark license user agreement between Mr.A.D.Padmasingh Isaac and Aachi Spices and Foods Pvt. Ltd. dated 04.03.2020.



WEB COPY



C.S.(Comm. Div.)No.122 of 2021

Exhibit No.	Nature of Documents
P15	Certified copy of the plaintiffs advertisement in RITZ Magazine.
P16	Certified copy of the registration certificates of the mark AACHI in various countries around the world.
P17	Certified copy of the Madrid Protocol Registration in classes 29, 30, 43 with respect to the Trademark AACHI (Word) & (Device) designation 107 & 117 countries valid and subsisting as on date.
P18	Certified copy of the sample sales invoices for the years 2000-2003 & 2005-2022.
P19	Certified copy of the sample advertisement invoices and expenses for the years 1999-2020.
P20	Certified copy of the Chartered Accountant Certificates.
P21	Original plaintiff's Label.
P22	Certified copy of the legal use certificate dated 14.07.2017 for Trademark No. 1595537 in class 30.
P23	Certified copy of the legal use certificate dated 28.03.2019 for Trademark No. 1731915 in class 30.
P24	Certified copy of the legal use certificate dated 21.07.2022 for Trademark No.3370962 in class 30.
P25	Certified copy of the legal use certificate dated 20.01.2022 for Trademark No.4951482 in class 30.
P26	Original defendant's Label.
P27	Office xerox copy of the plaint in C.S. (Comm.Div.) No. 13/2021.
P28	Printout copy of the Judgment in C.S.(Comm.Div.) No.13/2021 dated 04.04.2022. (Affidavit under Section 65 B of the Indian Evidence Act filed and recorded)
P29	Office copy of the Contempt Notice dated 23.01.2023.
P30	Original cease & Desist Notice dated 23.01.2023 with postal receipt and returned cover.



WEB COPY

6. As seen from the exhibits, the plaintiffs' trademark 'Aachi' is a reputed trademark and they are into the business of manufacture of spices and condiments from the year 1995 onwards. They have also obtained registrations for the trademark 'Aachi' under various classes, both in India as well as in other countries. To prove their respective registrations under various classes for their trademark 'Aachi', the plaintiffs have filed the legal usage certificates, which have been marked as Exs.P22 to P25. In so far as the International Registrations obtained by the plaintiffs are concerned, to prove the same, the plaintiffs have filed registration certificates which have been marked as Exs.P16 and P17. The sales invoices of the plaintiffs for the year 2000 - 2003 and 2005 - 2022, which have been marked as Ex.P18, prove that the plaintiffs are having a huge turnover. Ex.P19 is the certified copy of the sample advertisement invoices and expenses for the years 1999 - 2020 which will prove that the plaintiffs have incurred huge advertisement cost for marketing their products by using the trademark 'Aachi'. The certified copy of the Chartered Accountant certificates which has been marked as Ex.P20 also proves the plaintiffs' huge turnover and the huge advertisement cost incurred by them. As seen from the exhibits, viz., Exs.P27 and P28, the plaintiffs had earlier filed a suit against the very same



WEB COPY

defendant for infringement of the plaintiffs' trademark and for passing off.

Even in the said suit, viz., C.S.(Comm. Div.)No.13 of 2021, the defendant was set *ex-parte* and an *ex-parte* judgment and decree came to be passed, granting the reliefs sought for by the very same plaintiffs in the said suit. In the earlier suit, the defendant had sold the products in the name of 'Aashir Kulambu Chilli Powder'. Infact, as seen from Ex.P29 which is the contempt notice dated 23.01.2023 issued by the plaintiffs for the alleged disobedience of the earlier judgment and decree dated 04.04.2022 passed in C.S.(Comm. Div.)No.13 of 2021, the plaintiffs informed the defendant that contempt proceeding has been initiated against them for the alleged disobedience of the Judgment dated 04.04.2022 passed in C.S.(Comm. Div.)No.13 of 2021.

7. It is also brought to the notice of this Court by the learned counsel for the plaintiffs that contempt petition has already been filed against the defendant for the disobedience of the judgment and decree dated 04.04.2022 passed in C.S.(Comm. Div.)No.13 of 2021.

8. The cease and desist notice sent by the plaintiffs prior to the filing



average intelligence will get confused as to whether 'Aashir' is also manufactured by the plaintiffs and it is their product.

11. The defendant has attempted to ride over the reputation of the plaintiffs by using the infringed trademark. The mark of the defendant 'Aashir' and the label are deceptively similar to that of the plaintiffs' trademark and its label. The plaintiffs' label and the defendant's label are reproduced hereunder:





WEB COPY

12. As seen from both the labels, the font adopted by the defendant for their trademarks 'Aashir' is an identical font in white inside a red device imitating the plaintiffs' font and colour combination of its registered device 'Aachi'. It is clear that with the malafide intent, the defendant has copied the plaintiffs' trademark 'Aachi' and its label and the defendant is also using the infringed trademark for the sale of similar products as that of the plaintiffs.

13. The plaintiffs have also pleaded in the plaint that the defendant's products are inferior in quality and substandard to that of the plaintiffs' quality and standard. Being a recent entrant and a beginner in the business of masala and spices, the defendant is trying to earn a name within a short span of time by poaching upon the goodwill and reputation of the plaintiffs' by adopting a deceptively similar label with same colour scheme as that of the plaintiffs' for their substandard products. It is clear from the defendant's wrapper that the defendant has imitated the plaintiffs' colour scheme, label and layout with an unlawful intention of commercial gain.



14. The plaintiffs have proved the suit claim. Hence, they are entitled for the permanent injunction and the reliefs sought for in prayer Nos.A and B of the plaint. However, in so far as the prayer Nos. C & D are concerned, the learned counsel for the plaintiffs on instructions is not pressing for the same, as no evidence has been let in by the plaintiffs to prove the same. Since the defendant has infringed the trademark of the plaintiffs, the defendant is liable to pay cost of the suit.

15. For the foregoing reasons, the suit is partly decreed in favour of the plaintiffs by granting the following reliefs:

a) permanent injunction, restraining the Defendant, by itself, its servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using the impugned label; AASHIR TURMERIC POWDER or similar label with same or similar get up, and colour scheme as used by the Defendant as shown in Document No. 2 in relation to Turmeric Powder or any masala products and use the same pouches, packets of masalas and spices or any other goods or by using any other Trademark which is in any way visually, and deceptively similar to the Plaintiffs' registered Trademark "AACHI TURMERIC POWDER" as



WEB COPY

shown in Document No. 1 or use the same in any invoices, letter heads and visiting cards or any other trade literature or by using any other Trademark which is in any way visually, and deceptively similar to the Plaintiffs' registered Trademark No. 4951482, 1595537, 1731915 and 3370962 or in any manner infringe the Plaintiffs' registered Trademark;

b) permanent injunction, restraining the Defendant, by itself, its servants, agents, distributors, or anyone claiming through them from manufacturing, selling, advertising and offering for sale using same or similar get up, and colour scheme used by the Defendant in it's impugned marks; "Aashir" (device) & "AASHIR TURMERIC POWDER" (label) shown in Document No. 2 or by using any other trade mark which is in any way visually or deceptively similar to the Plaintiffs' Trademark registered device mark "Aachi" and their label mark of "AACHI TURMERIC POWDER" label as shown in Document No. 1 in relation to "Turmeric powder" any other masala items and use the same pouches, packets of masalas and spices or any other goods or use the mark in invoices, letter heads and visiting cards or any other trade literature in any manner to pass off the Plaintiffs goods.



C.S.(Comm. Div.)No.122 of 20__

WEB COPY

16. In so far as the relief Nos. C and D sought for in the plaint by the plaintiffs are concerned, the same is dismissed as not pressed. The defendant is directed to pay the plaintiffs the costs of the suit.

12.12.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
ab



List of Witness examined on the side of the Plaintiffs:-

Mr.B.Gnanasambandam (PW1)

List of the Exhibits marked on the side of the Plaintiffs:-

<i>Exhibit No.</i>	<i>Nature of Documents</i>
<i>P1</i>	<i>Original authorization letters dated 25.10.2023 (Nos.2).</i>
<i>P2</i>	<i>Copy of the board resolution. (Affidavit under Section 65 B of the Indian Evidence Act filed and recorded)</i>
<i>P3</i>	<i>True copy of the list of products manufactured and marketed by the plaintiff's bearing the trademark Aachi. (Affidavit under Section 65 B of the Indian Evidence Act filed and recorded)</i>
<i>P4</i>	<i>Certified copy of the certificate of incorporation of Aachi Masala Foods P Ltd. dated 30.06.2006</i>
<i>P5</i>	<i>Certified copy of the certificate of Commercial Tax Registration of Aachi Masala & Foods (P) Ltd. dated 10.07.2006.</i>
<i>P6</i>	<i>Certified copy of the dissolution deed between Mrs.Rani Pandian and Mr.A.D.Padmasingh Isaac dissolving the partnership firm, Naveen Products dated 31.03.2007</i>
<i>P7</i>	<i>Certified copy of the certificates of Commercial Tax Registration and Central Sales Tax of Aachi Spices & Foods dated 28.12.2006 and 03.01.2007.</i>
<i>P8</i>	<i>Certified copy of the trade mark license user agreement between Mr.A.D.Padmasingh Isaac trading as Aachi Spices and Foods and Aachi Masala Foods Pvt Ltd dated 01.04.2007.</i>
<i>P9</i>	<i>Certified copy of the memorandum of association of Aachi Spices and Foods P. Ltd. dated 06.03.2010.</i>
<i>P10</i>	<i>Certified copy of the certificate of incorporation of Aachi Spices and Foods P. Ltd. dated 17.03.2010.</i>
<i>P11</i>	<i>Certified copy of the trade mark license user agreement between Mr.A.D.Padmasingh Isaac and Aachi Spices and Foods Pvt. Ltd. dated 21.04.2010.</i>



WEB COPY



C.S.(Comm. Div.)No.122 of 2021

Exhibit No.	Nature of Documents
P12	<i>Certified copy of the trademark license user agreement between Mr.A.D.Padmasingh Isaac and Aachi Masala Foods P. Ltd. dated 21.04.2010.</i>
P13	<i>Certified copy of the trademark license user agreement between Mr.A.D.Padmasingh Isaac and Aachi Masala Foods P. Ltd. dated 04.03.2020.</i>
P14	<i>Certified copy of the trademark license user agreement between Mr.A.D.Padmasingh Isaac and Aachi Spices and Foods Pvt. Ltd. dated 04.03.2020.</i>
P15	<i>Certified copy of the plaintiffs advertisement in RITZ Magazine.</i>
P16	<i>Certified copy of the registration certificates of the mark AACHI in various countries around the world.</i>
P17	<i>Certified copy of the Madrid Protocol Registration in classes 29, 30, 43 with respect to the Trademark AACHI (Word) & (Device) designation 107 & 117 countries valid and subsisting as on date.</i>
P18	<i>Certified copy of the sample sales invoices for the years 2000-2003 & 2005-2022.</i>
P19	<i>Certified copy of the sample advertisement invoices and expenses for the years 1999-2020.</i>
P20	<i>Certified copy of the Chartered Accountant Certificates.</i>
P21	<i>Original plaintiff's Label.</i>
P22	<i>Certified copy of the legal use certificate dated 14.07.2017 for Trademark No. 1595537 in class 30.</i>
P23	<i>Certified copy of the legal use certificate dated 28.03.2019 for Trademark No. 1731915 in class 30.</i>
P24	<i>Certified copy of the legal use certificate dated 21.07.2022 for Trademark No.3370962 in class 30.</i>
P25	<i>Certified copy of the legal use certificate dated 20.01.2022 for Trademark No.4951482 in class 30.</i>
P26	<i>Original defendant's Label.</i>
P27	<i>Office xerox copy of the plaint in C.S. (Comm.Div.) No. 13/2021.</i>
P28	<i>Printout copy of the Judgment in C.S.(Comm.Div.) No.13/2021 dated 04.04.2022. (Affidavit under Section 65 B of the Indian Evidence Act filed and recorded)</i>



C.S.(Comm. Div.)No.122 of 2023

<i>Exhibit No.</i>	<i>Nature of Documents</i>
<i>P29</i>	<i>Office copy of the Contempt Notice dated 23.01.2023.</i>
<i>P30</i>	<i>Original cease & Desist Notice dated 23.01.2023 with postal receipt and returned cover.</i>

12.12.2023

ab



WEB COPY



C.S.(Comm. Div.)No.122 of 2023

ABDUL QUDDHOSE. J.,

ab

C.S.(Comm. Div.)No.122 of 2023

12.12.2023