IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-11-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

CIVIL SUIT No.473 of 2012

1.A.D.Padmasingh Isaac
2.M/s.Aachi Masala Foods (P) Ltd.,
Old No.4, New No.181/1,
6th Avenue, Thangam Colony
Anna Nagar
Chennai 600 040
Represented by its Director
Ashwin Pandian .. Plaintiffs

vs

No.1 Aachi Biryani
165, Harrington Road
(near Pachaiyappa College)
Chennai 600 030 .. Defendant

Civil Suit filed under Order IV Rule 1 of the Original Side Rules and Order VII, Rule 1 of the Code of Civil Procedure read with Sections 27(2), 29, 134 and 135 of the Trade Marks Act, 1999, praying for a permanent injunction and directions as stated therein and for costs.

For Plaintiffs : Ms.Glady's Daniel

For Defendant : Set ex-parte

JUDGMENT

A perusal of the plaint averments would disclose among other things, that the first plaintiff was originally trading under the proprietary concern "Abhishek Enterprises" and some time thereafter, adopted the

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proprietary name "Naveen Products" and he applied for registration of the trademark "AACHI" on 4.5.2000, in Class 29 and it was granted under No.922594. The first plaintiff would claim that ever since the registration of the trade mark, he has been the exclusive owner of the trademark "AACHI" and also obtained the registration of the trademark "AACHI CHETTINADU RESTAURANT" under No.1116254 on 3.7.2002.

2.It is further averred that on 20.6.2006, M/s.Aachi Masala Foods (P) Ltd., viz. the second plaintiff, was incorporated to market the product all over India and abroad and on 22.12.2006, the first plaintiff changed his trading style from "Naveen Products" to "Aachi Spices and Foods" and also obtained registration under the CST (Registration and Turnover) Rules, 1957, and the plaintiffs by virtue of trademark licence, have been marketing all the products using the trademark "AACHI" and were granted licence in their favour on 21.4.2010.

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3.It is the specific case of the plaintiffs that during June 2012, they have come across the restaurant run by the defendant under the name and style of "No.1 AACHI BIRYANI", which is a blatant infringement of the first plaintiff's trademark "AACHI Chettinadu Restaurant", and the defendant has deliberately copied the same from the first plaintiff's label with an intention of taking undue

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advantage of reaping the benefit without sowing and hence, they came forward to file the present suit.

4.Though the defendant was served and entered appearance through Counsel, it did not file written statement and therefore, was set ex-parte on 8.12.2014.

5.The plaintiffs, pending disposal of the suit, filed A.Nos.582 and 583 of 2012 praying for interim orders, and this Court vide order dated 27.7.2012, had granted interim relief for a limited period and it was also made absolute on 31.8.2012.

6.This Court, on going through the pleadings, has framed the following issues:-

(i) Whether the plaintiffs after obtaining the registration of the trademarks "AACHI" and "AACHI CHETTINADU RESTAURANT", are entitled to use the same for marketing their products?

(ii) Whether the adoption of the name of "No.1 AACHI BIRYANI" by the defendant is an infringement of the first plaintiff's trademark "AACHI CHETTINADU RESTAURANT"?

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(iii) To what relief the plaintiffs are entitled to?

7.On behalf of the plaintiffs, Mr.B.Gnanasambandam, the Senior Manager – Legal and Statutory, filed his proof affidavit and examined himself as P.W.1 and marked Exs.P1 to P14.

8.The learned Counsel appearing for the plaintiffs, would submit that to contest the claim of the plaintiffs, though the defendant has entered appearance through Counsel, it did not file it's written statement and was set ex-parte and ex-parte evidence was also recorded and Exs.P1 to P14 have been marked and the pleadings coupled with the documentary evidence, had probablised the case of the plaintiffs and prays for decreeing the suit with costs.

9.This Court has gone through the pleadings, proof affidavit of P.W.1 as well as the oral testimony and exhibits and also considered the submissions of the learned Counsel appearing for the plaintiffs.

10.A perusal of Exs.P3 to P6 would clearly indicate that plaintiffs have obtained registered trademarks viz. “AACHI” and “AACHI CHETTINADU RESTAURANT”.

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It is also registered under the Central Sales Tax (Registration and Turnover) Rules, 1957, as evidenced by Ex.P8 certificates, issued by the Commercial Tax Authorities. Under Ex.P9, there are licence user agreements between the plaintiffs. Under Exs.P10 and P11 certificates, Aachi Spices and Foods Pvt. Ltd., and Aachi Masala Foods Pvt. Ltd., were also incorporated. Ex.P12 is the photocopy of memorandum of association. A perusal of Ex.P14, which is the original of defendant's menu card, would disclose that it is using the trademark viz. "AACHI BIRYANI" and by virtue of the above said registrations obtained by the plaintiffs, as evidenced by Exs.P3 to P6, the defendant is not entitled to use the same.

11.A perusal of the pleadings would disclose that necessary averments are also made in the plaint with regard to the huge turnover on the part of the plaintiffs by using the trademark as well as marketing their products. In the considered opinion of the Court, the pleadings coupled with the oral evidence and exhibits, have established the case of the plaintiffs in all probabilities and therefore, the plaintiffs are entitled to the decree as prayed for.

12.In the result, the civil suit is decreed with costs and there shall be a judgment and decree for permanent injunction restraining the defendant, by himself,

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his servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale using the same name AACHI used by the plaintiffs and the trademark/name No.1 AACHI BIRYANI or any other similar trademark name or similar sounding expression in any media and use the same in name board, invoices, letterheads and visiting cards or by using any other trademark/name which is in any way visually or deceptively or phonetically similar to the plaintiffs' trademark/name AACHI and use the same in pouches, packets or use the mark in invoices, letterheads and visiting cards or part of their Hotel/Restaurant name any other trade literature or menu card by using any other trademark which is in any way visually, or phonetically similar to the plaintiffs' registered trademark No.1116254 or in any manner infringing the plaintiffs' registered trademarks; for permanent injunction restraining the defendant by itself, it's agents or servants or anyone claiming through or under him any business marketing, selling advertising using in trade literature, menu cards, invoices, name boards, website, Internet advertisements, the mark/name No.1 AACHI BIRYANI in relation to the Restaurant or with respect to or any other food preparation or on any other business the impugned trademark/name which is in any manner deceptively or phonetically confusingly similar to the plaintiffs' trademark/name AACHI or in any other manner

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pass off their business or goods as and for that of the plaintiffs; for a direction directing the defendant to surrender to the plaintiffs all the packing material, cartons, advertisement materials and hoardings, letterheads, visiting cards, office stationery and all other materials containing/bearing the name No.1 AACHI BIRYANI or other deceptively similar trademark used in the pouches and packets bearing the word AACHI and for a direction directing the defendant to render an account of profits made by them by the use of the impugned trademark No.1 AACHI BIRYANI on the service referred.

List of Witnesses:-

P.W.1 Mr.B.Gnanasambandam

List of Exhibits:-

P1	06.02.2015	Original authorisation letter
P2 series		Print out of the list of products manufactured and marketed by the plaintiffs
P3		Original label of the plaintiffs
P4	03.07.2002	Photocopy of the registration certificate of the first plaintiff
P5 Series		Office copy of the TM12 and TM23 filed in respect of the first plaintiff's trademark registration No.1116254
P6 series		Photocopy of the registration certificates of the trademark AACHI

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		(Originals produced in respect of 838786, 922594, 922595, 976559, 1458532, 1479158, 1479159, 1555564, 1564085, 1567065, 1567068, 1595537, 1595538, 1595539, 1595540)
P7	23.07.2001	Photocopy of the certificate of incorporation of Nazareth Foods Pvt. Ltd.
P8	(2 Nos.)	Photocopies of certificate of Commercial Tax series Doc.9 & 10 Registrations of plaintiffs
P9	(3 Nos.)	Photocopies of the license user agreements series Doc.11, 12 & 13 between plaintiffs
P10	17.03.2010	Photocopy of certificate of incorporation of AACHI Spices and Foods Pvt. Limited.
P11	13.06.2006	Photocopy of certificate of incorporation of AACHI Masala Foods Pvt. Limited
P12	06.03.2010	Photocopy of the Memorandum of Association of AACHI Spices and Foods Pvt. Limited
P13		Certified copy of he plaintiffs' advertisement in the RITZ Magazine dated December, 2006.
P14		Original of the defendant's menu card reflecting the trade mark No.1 AACHI BIRYANI

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23.11.2015

//Certified to be a true copy//

Dated this the day of 2016

S.s/17.06.2016 COURT OFFICER

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