

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2016

CORAM

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

C.S.No.703 of 2015

and

O.A.Nos.928 and 929 of 2015, A.No.5737 of 2015  
and A.Nos.2156 and 2157 of 2016

1.A.D.Padmasingh Isaac

2.M/s.Aachi Masala Foods (P) Ltd.,  
rep. By its Director Ashwin Pandian

3.M/s.Aachi Educational and Research  
Foundation (AERF) rep. By its  
Founder Trustee A.D.Padmasingh Isaac

... Plaintiffs

Vs

M/s.Aachi International School,  
Sri Aachi Nagar, Thottappanayakkanur,  
Usilampatti, Madurai – 625 532.

... Defendant

Plaint filed under Order IV Rule 1 of O.S. Rules and Order  
VII Rule 1 C.P.C. R/w Sections 27(2), 29, 134 and 135 of the Trade  
Marks Act, 1999.

For Plaintiffs : Mr.C.Daniel

For Defendant : No appearance

### **JUDGMENT**

The suit has been filed for the following reliefs:

(a)granting a permanent injunction, restraining the defendant by itself, its servants, agents, franchisees or anyone claiming through him from providing educational services or any other services and advertising in any media using the Trade Mark AACHI INTERNATIONAL SCHOOL and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually or deceptively or phonetically similar to the plaintiff's registered trade mark AACHI Nos.838786, 922594, 922595, 976559, 1025302, 1025303, 1025304, 1025305, 1318493, 1318493, 1318494, 1318495, 1334479, 1340323, 1340324, 1340325, 1357284, 1367430, 1372439, 1372440, 1373993, 1374937, 1375754, 1375755, 1375756, 1380625, 1415328, 1415329, 1418281, 1458532, 1479158, 1479159, 1526516, 1555564, 1557660, 1564085, 1567065, 1567066, 1567067, 1567067, 1567068, 1581011, 1595537, 1595538, 1595539, 1595540, 1595542, 1595544, 1595545, 1604348, 1702840, 1702848, 1720889 and 1843529 or in any manner infringe the plaintiff's registered trade mark;

(b)granting a permanent injunction, restraining the defendant, by itself, its servants, agents, franchisees or anyone claiming through him from providing educational services or any other services using same or similar trade mark AACHI INTERNATIONAL SCHOOL by the defendant or any other similar trade mark or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually or deceptively or phonetically similar to the plaintiff's trade mark AACHI with respect to education or any other services or use the mark in invoices, letter heads and visiting cards or any other trade literature or any other manner by using any other trade mark which is in any way visually or phonetically similar to the plaintiff's trade mark AACHI or in any manner pass off the plaintiff's goods or services;

(c)directing the defendant to surrender to the plaintiffs all the prospectus, study materials, advertisement materials and hoardings, letter heads, visiting cards, office stationery and all other materials containing/bearing the trade mark AACHI INTERNATIONAL SCHOOL or other deceptively similar trade mark used;

(d)directing the defendant to render an account of profits

made by them by the use of the impugned trademark AACHI INTERNATIONAL SCHOOL on the services referred and decree the suit for the profits found to have been made by the defendant, after the defendant has rendered accounts;

(e)directing the defendant to pay to the plaintiffs the costs to the suit.

2.When the matter is taken up for hearing, a joint memorandum of compromise dated 02.11.2016 has been filed duly signed by the parties and attested by their counsel.

3.Learned counsel for the plaintiffs as well as the defendant submits that the suit may be decreed in terms of the joint memorandum of compromise dated 02.11.2016. The terms and conditions of the said joint memorandum of compromise read as under:

*"1.That the term plaintiffs shall mean and include their heirs, executors, administrators, successors in interest, assigns or any other persons*

*claiming through or under each of them.*

*2.That the term defendant shall mean and include its heirs, executors, administrators, successors in interest, assigns or any other persons claiming through or under each of them.*

*3.That the plaintiffs have no objection to use of the trademarks as specified here below in use by the defendant and those claiming through and under the defendant since 1992 in respect of*

|           |                                                                               |                   |
|-----------|-------------------------------------------------------------------------------|-------------------|
| <i>1</i>  | <i>Form B License of ACHI Financiers</i>                                      | <i>29.05.1992</i> |
| <i>2</i>  | <i>Form B License of SRI ACHI Finance</i>                                     | <i>10.06.1996</i> |
| <i>3</i>  | <i>SRI ACHEE Pawn Brokers</i>                                                 | <i>15.11.1996</i> |
| <i>4</i>  | <i>ACHI ANDAYEE Pawn Brokers</i>                                              | <i>31.03.2004</i> |
| <i>5</i>  | <i>SRI ACHI Banker Firm</i>                                                   | <i>01.04.2004</i> |
| <i>6</i>  | <i>SRI ACHI OCHAYEE NAGAI ADAGU KADAI</i>                                     | <i>28.07.2004</i> |
| <i>7</i>  | <i>ACHI Finance &amp; ADAGU KADAI</i>                                         | <i>28.07.2004</i> |
| <i>8</i>  | <i>SRI AACHI Jewellers</i>                                                    | <i>13.02.2007</i> |
| <i>9</i>  | <i>SRI AACHI Readymades</i>                                                   | <i>24.04.2007</i> |
| <i>10</i> | <i>SRI AACHI Jewellers</i>                                                    | <i>24.09.2008</i> |
| <i>11</i> | <i>SRI AACHI Jewellers</i>                                                    | <i>03.06.2011</i> |
| <i>12</i> | <i>SRI AACHI Educational and Charitable Trust</i>                             | <i>23.05.2013</i> |
| <i>13</i> | <i>AACHI ANDAYIE Pawn Broker</i>                                              | <i>23.05.2014</i> |
| <i>14</i> | <i>AACHI INTERNATIONAL SCHOOL</i>                                             | <i>29.06.2015</i> |
| <i>15</i> | <i>AACHI INTERNATIONAL SCHOOL (TN 092)<br/>Affiliated to CISCE, New Delhi</i> | <i>15.03.2016</i> |

*4. That the defendant shall use the trademark SRI ACHI for all future businesses.*

*5. That the defendant undertakes not to use the trademark AACHI as such simpliciter in respect of their businesses in future except those set out in Clause 3 above.*

*6. That the defendant undertakes not to enter into the present registered field of activity of the plaintiffs in any manner. The defendant undertakes to continue to use the trademark as SRI ACHI alone in respect of its future businesses and ventures.*

*7. That the defendant shall be the registered proprietor of the trade mark SRI ACHI in respect of those classes of services that are not akin or allied to the plaintiffs present registered field of activity.*

*8. That the defendant has not adopted and shall not adopt any of the visual features of the plaintiffs' trademark AACHI in future.*

*9. That the defendant shall withdraw any application for registration of the trademark AACHI simpliciter. The defendant shall not make any application for registration of the trademark AACHI/ACHI simpliciter in future.*

*10. That the plaintiffs shall withdraw any application for registration of the trademark SRI ACHI simpliciter. The plaintiffs shall not make any application for registration of the trademark SRI ACHI simpliciter in future.*

*11. That the defendant shall not oppose any application for registration of the trademark AACHI in any class filed by the plaintiffs. The defendant shall withdraw any opposition filed to the plaintiffs' trademark application.*

*12. That the plaintiff shall not oppose any application for registration of the trademark SRI ACHI in any class other than the plaintiffs present field of activity particularly classes 3, 5, 21, 27, 29, 30, 31, 32, 34, 42, 43 filed by the defendant. The plaintiffs shall withdraw any opposition filed to the defendant's trademark application in any class other than classes 3, 5, 21, 27, 29, 30, 31, 32, 34, 42, 43.*

*13. That the plaintiffs undertake not to use the trademark SRI ACHI.*

*14. In view of the above the interim application may be closed.*

*15. The plaintiffs have no objection to the use*

*of the Bank account of the defendant.*

*16.The plaintiffs and defendant shall not interfere with each other's business activity subject to abiding with this order.*

*17.That the suit may be decreed in terms of the joint memo of compromise and the memo of compromise may form part of the decree granted by this Hon'ble Court.*

*18.That the parties shall bear their own costs."*

4.Accordingly, the suit stands decreed in terms of the joint memorandum of compromise and the joint memorandum of compromise shall form part of the decree. Consequently, connected applications are closed.

**18.11.2016**

Index:Yes/No  
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To

The Sub Assistant Registrar,  
Original Side,  
High Court, Madras.

**M.M.SUNDRESH,J**

mmi

**C.S.No.703 of 2015**

**18.11.2016**