

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 08.12.2016

PRONOUNCED ON: 20.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.781 of 2009

1. A.D.Padmasingh Isaac Trading as
Aachi Spices and Foods, Chennai-40

2. M/s.Aachi Masala Foods (P) Limited
represented by its Director
Ashwin Pandian

Plaintiffs

Vs

M/s.Kanmani Masala
Dindigul

Defendant

Prayer:- This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of CPC read with Sections 27(2), 29, 134 and 135 of the Trade Marks Act 1999, for the reliefs as stated therein.

For Plaintiffs : Ms.Daniel Gladys

For Defendant : Set Exparte

JUDGEMENT

This civil suit has been filed, to pass a judgement and decree, against the Defendant:-

- a) granting permanent injunction, restraining the Defendant from manufacturing, selling, advertising and offering for sale using same or similar get up and colour scheme used by the Defendant shown in Document No.2 and trademark KANMANI MASALA-KULAMBU CHILLY POWDER or any other similar trademark or in any media and use the same in invoices, letter heads and visiting cards or by using any other trademark which is in any

way visually or deceptively or phonetically similar to the Plaintiff's trademark AACHI MASALA-KULAMBU CHILLY POWDER as shown in Document No.1 or in relation to any masala items and use the same in pouches, packets or use the mark in invoices, letter heads and visiting cards or any other trade literature or by using any other trademark which is in any way visually, or phonetically similar to the Plaintiff's registered trademark nos.922594, 922595, 1318495, 1357284 or in any manner infringing the Plaintiffs' registered trademark.

- b) 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 name KANMANI MASALA-KULAMBU CHILLY POWDER and packets in the colour scheme and get up as shown in Document No.2 or other deceptively similar trademark used in the pouches and packets in respect of masalas.
- c) directing the Defendant to render account of profits made by them by use of the impugned trademark and get up as shown in Document No.2 on the goods referred and granting decree for the profits found to have been made by the Defendant, after the Defendant have rendered the accounts.
- d) directing the Defendant to pay the costs of the suit to the Plaintiff.

2. The case of the Plaintiff is that the Plaintiff Company has been carrying on the business of manufacturing and selling various kinds of masalas and spices from 1995. The Plaintiffs are dealing in about 130 different products bearing the trademark AACHI. The Plaintiffs have also spent huge money towards advertising their products under the trademark AACHI in all forms of media and had also received awards for the quality of their products and customer service. The expression AACHI has become very popular and is a very valuable intellectual property of the Plaintiffs and the said trademark is

unique and distinctive. The subject matter of the suit is the label mark of the Plaintiffs. Viz. 'AACHI KULAMBU CHILLY POWER', which is consisting of the word AACHI masala in yellow letters written in red background. Above the word AACHI masala, a device of a multi coloured flying bird displayed inside the device of an oil drop in yellow background. Below this pictorial device, a device of China plate, containing various ingredients of masalas and spices prominently displayed in various colours. This label is the registered trademark of the Plaintiffs. The turnover and promotional expenditure incurred by the Plaintiff was Rs.3,96,420 and Rs.9,893 for the financial year 1995-1996 and had been gradually increased in the subsequent years and it was Rs.1,015,014,560 and Rs.28,955,025/- in the financial year 2008-2009.

3. It had further been stated in the plaint that the Registrar of Trademarks had granted registration for the trademark AACHI MASALA KULAMBU CHILLY POWDER in Reg.No.1318495 on 1.11.2004 in Class 30. Thus, the Plaintiffs have sole proprietary right over the said trademark. While so, in March 2009, the Plaintiffs came to know the Defendant's product Kulambu Chilly Powder, bearing the mark KANMANI MASALA-KULAMBU CHILLY POWDER in the same colour scheme and get up, which is a blatant infringement of the registered trademark of the Plaintiffs AACHI MASALA-KULAMBU CHILLY POWDER and both are visually and phonetically similar. As the Defendant is violating and copying the trademark of the Plaintiffs, the conduct of the Defendant would amount to fraud.

4. It had been further stated that the Defendant is using the

deceptively similar mark of the Plaintiffs. The use of the trademark KANMANI MASALA KULAMBU CHILLY POWER is bound to create confusion and deception in the market. The general public will assume that there is a business relationship between the Plaintiffs and the Defendant has no right whatsoever to use the mark KANMANI MASALA-KULAMBU CHILLY POWDER, which is visually, phonetically and deceptively identical to that of the Plaintiffs. The conduct of the Defendant amounts to falsification of the trademark, an offence punishable under the Trade Marks Act, 1999 apart from action of infringement of the registered trademark of the Plaintiffs and passing off. The Defendant should not be allowed to malign and dilute the goodwill and reputation enjoyed by the Plaintiffs. In such circumstances, this civil suit has been filed for the reliefs as stated above.

5. Though the Defendant was served on 29.11.2009, no written statement has been filed by the Defendant. Further, in spite of the name of the Defendant being printed in the cause list on 6.10.2009, since none appeared for the Defendant, the interim order of injunction already granted had been made absolute by order dated 6.10.2009 and even thereafter, for non filing of the Written Statement, the Defendant was set exparte and Exparte Evidence was ordered to be recorded by the order of this court dated 11.11.2016.

6. One B.Gnanasambandam, AGM of the Plaintiff Company had filed the proof affidavit for his chief examination and receipt of 13 documents. In the Exparte Evidence, the said AGM examined himself as PW.1 and marked Exs.P1 to P13 as documentary evidence.

7. In this civil suit, the Plaintiffs had sought for the relief (a) relating to infringement and passing off the trademark of the Plaintiffs by the Defendant. The Plaintiff has also sought for the relief (b) for surrender of the materials by the Defendant. In this regard, apart from the fact that the Defendant did not let in evidence whatsoever and remained *exparte*, this court finds that there are valid evidence, both oral and documentary, adduced by the Plaintiffs. Therefore, taking into consideration the materials on record and there was also payment of court fee by the Plaintiffs, this Court is of the view that only the reliefs (a) and (b) as prayed for by the Plaintiff can be granted along with costs.

8. In so far as the relief (c), namely, to pass a judgement and decree, directing the Defendant to render accounts of profits made by the Defendant on account of the usage of the trademark of the Plaintiffs by the Defendant is concerned, though for non filing of the written statement, the Defendant had been set *exparte*, which resulted in recording of the *exparte* evidence, in order to sustain such a claim for rendering of accounts of profits, there should be valid evidence on the side of the Plaintiffs, but, on a perusal of the oral and documentary adduced by the Plaintiffs, this court finds no valid evidence both oral and documentary to show that the Plaintiffs had sustained loss of profit because of the use of the trademark of the Plaintiffs by the Defendant. The Plaintiff also did not produce any evidence to show that the Defendant had unlawfully gained against the Plaintiffs. Therefore, in the absence of any evidence, showing that the Plaintiffs have directly suffered and incurred business loss owing to the usage of the trademark of the Plaintiffs by the

Defendant, this court holds that the relief (c) sought for by the Plaintiffs for a direction to render accounts of profits would not lie and accordingly, the same cannot be granted.

9. In the result, considering the oral and documentary evidence, viz. Ex.P1 to Ex.P13 adduced by PW.1, this Court is of the view that the Plaintiff has proved the suit claim only in respect of the reliefs (a) and (b) and that the Plaintiff has failed to prove the relief (c) by letting in legally acceptable oral and documentary evidence. Accordingly, this civil suit is decreed only in respect of the reliefs (a) and (b) with costs. In so far as the relief (c) is concerned, this civil suit is dismissed.

20.12.2016

Index:Yes/No
Web:Yes/No
Srcm

1. List of Witnesses Examined on the side of the Plaintiffs:-

1. P.W.1 - B.Gnanasambandam

2. List of Exhibits Marked on the side of the Plaintiffs:-

S.No	Exhibit	Description	Date
1	Ex.P. 1	The authorisation letter given in favour of PW.1	
2	Ex.P. 2	The plaintiffs' label mark Aachi Masala Kulambu Chilli Powder	
3	Ex.P. 3	The copy of the registration certificate and legal use certificate A.No.1318495	
4	Ex.P. 4	The copy of the registration certificate and legal use certificate of A.No.922595 along with the online status reflecting the renewal of the trade mark.	
5	Ex.P. 5	The copy of the registration certificate of A.No.922594	
6	Ex.P. 6	The copy of the registration certificate of A.No.2357284	
7	Ex.P. 7	The certified copy of the plaintiff's advertisement in Ritz Magazine	
8	Ex.P. 8	The copy of license user agreement	
9	Ex.P. 9	The first page of the Memorandum of Articles of Association of Nazareth Foods Private Limited and the copy of certificate of incorporation	01042007
10	Ex.P. 10	The copy of the certificate of registration under TNGST Act	23072001
11	Ex.P. 11	The copy of certificate of registration under TNGST Act	10072006
12	Ex.P. 12	The copy of the certificate of registration under VAT	03012007
13	Ex.P. 13	The original of defendant's label	

1. List of Witnesses Examined on the side of the defendant:-

Nil

2. List of Exhibits Marked on the side of the defendant:-

Nil

20.12.2016

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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.781 of 2009

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