



WEB COPY

1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27 / 07 / 2016

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.NO.89 OF 2008

1.A.D.Padmasingh Isaac

Trading as

Aachi Spices and Foods

Old No.4, New No.181/1, 6<sup>th</sup> Avenue,

Thangam Colony, Anna Nagar,

Chennai - 600 040.

2.M/s.Aachi Masala Foods (P) Ltd.,

No.6, Ground Floor, 15<sup>th</sup> Street,

Anna Nagar, "G" Block,

Chennai - 600 040.

Represented by its Director

Ashwin Pandian

.. Plaintiffs

***Versus***

K.Satheesh Kumar

.. Defendant

**PRAYER:** Plaint filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 CPC read with Sections 27(2), 29, 134 and 135 of the Trade Marks Act, 1999, praying for a judgment and decree against the defendant for the following:

(a) granting a permanent injunction, restraining the defendant, by itself, its servants, agents,



distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale using same or similar mark AACHI MASALA 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 plaintiffs' trade mark AACHI or in relation to any Mineral Water and use the same pouches, packets or use the mark in invoices, letter heads and visiting cards or any other trade literature or by using any other trade mark which is in any way visually or phonetically similar to the plaintiffs' registered trade mark Nos.922594, 922595, 1318494 & 1318495 or in any manner infringe 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 AACHI or other deceptively similar trade mark used in the pouches and packets in respect of masalas.

(c) directing the defendant to render an account



of profits made by them by the use of the impugned trade mark ACHI MASALA 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.

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

For Plaintiffs : Ms.Gladys Daniel  
For Defendant : No appearance

### **J U D G M E N T**

The suit is filed by the plaintiffs against the defendant for the following reliefs:

(a) to grant permanent injunction, restraining the defendant, by itself, its servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale using same or similar mark AACHI MASALA 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 plaintiffs' trade mark AACHI or in relation to any Mineral Water and use the same pouches, packets or use the mark in



invoices, letter heads and visiting cards or any other trade literature or by using any other trade mark which is in any way visually or phonetically similar to the plaintiffs' registered trade mark Nos.922594, 922595, 1318494 & 1318495 or in any manner infringe the plaintiffs' registered trademark;

(b) to direct 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 AACHI or other deceptively similar trade mark used in the pouches and packets in respect of masalas.

(c) to direct the defendant to render an account of profits made by them by the use of the impugned trade mark ACHI MASALA 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.

(d) directing the defendant to pay costs of the suit to the plaintiffs.







01.06.2016, despite the fact that he was served as early as on 17.11.2008 of the suit summons.

5. On the side of the plaintiffs, one Mr. B. Gnanasambandam, Senior Manager of the plaintiffs' company was examined as P.W.1. The plaintiffs have marked as many as 13 documents Exhibits P1 to Ex.P13 in support of their case. The documents viz., Exs.P4, P5 and P6 are all certificates of registration of the plaintiffs' trade mark and Ex.P7 is a trade mark certificate and Ex.P9 is the certificate issued under the Central Sales Tax Rules 1957. The certificates of registration under TNGST and VAT are also marked as Exs.P11 and P12, in addition to the filing of the suit notice and the reply notice.

6. Heard the learned counsel appearing for the plaintiffs and perused the materials available on record.

7. The only question that has to be decided by this Court is whether the plaintiffs are entitled to a decree as prayed for.

8. It is contended that if one was not careful enough to note the peculiar features of the wrapper on the plaintiffs' goods, will undoubtedly mistake the defendant's



wrapper for the plaintiffs' if shown to him sometime after the consumer had seen the plaintiffs'. Any purchaser who is familiar with the plaintiffs' goods may buy the defendant's goods assuming that the plaintiffs' had diversified into Mineral water. In the instant case, the unwary purchasers of average intelligence with the imperfect recollection will undoubtedly mistake one for the other. It would be enough if the impugned mark bears such an overall similarity to the mark as would be likely to mislead a person usually dealing with one to accept the other if offered to him. Further, it is contended that the defendant's trade mark is a blatant imitation of the plaintiffs' trade mark and the same has been adopted for evil intention of commercial gain for which the defendant is not entitled under law. The defendant is using the deceptively similar mark of the plaintiffs'.

9. As the plaintiffs' have been carrying on business using the trade mark AACHI, with respect to masalas since 1995 and the defendant is a recent entrant into this filed, considering these facts, as a prior user and a registered trade mark owner, the plaintiffs' have exclusive right to the trade mark AACHI.

10. It is settled law that no man is entitled to represent his goods or business as being the goods or





business of another person, whether such representation is made by the use of any mark, name, sign, symbol, device or other means.

11. Considering the oral and documentary evidence viz., Exs.P1 to P7 adduced by P.W.1, this Court is of the view that the plaintiffs' have proved the suit claim against the defendant and hence, the plaintiffs are entitled for the reliefs against the defendant, as asked for.

12. In the result, the suit is decreed as prayed for by the plaintiffs. No costs.

**LIST OF WITNESSES EXAMINED ON THE SIDE OF THE PLAINTIFF**

P.W.1 - Mr.B.Gnanasambandam

**LIST OF DOCUMENTS MARKED ON THE SIDE OF THE PLAINTIFF**

| <b><i>Sl.N<br/>o.</i></b> | <b><i>Exhib<br/>its</i></b> | <b><i>Description of documents</i></b>                                                                                                        | <b><i>Date</i></b> |
|---------------------------|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 1                         | P-1                         | Authorisation letters given by first and second plaintiffs                                                                                    | 16.06.2016         |
| 2                         | P-2                         | Original label of the plaintiffs' trademark "Aachi"                                                                                           |                    |
| 3                         | P-3                         | Certified copy of plaintiffs' advertisement in Ritz Magazine                                                                                  |                    |
| 4                         | P-4<br>(series)             | Copy of the registration certificate of the Trade Mark "Aachi Masala Kulambu Chilly Powder" under No.1318495 along with legal use certificate |                    |
| 5                         | P-5<br>(series)             | Copy of the registration certificate and legal use certificate for the trade mark Aachi under A.No.922595                                     |                    |

