

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.02.2017

PRONOUNCED ON: 24.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.737 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.Sri Kallazhakar Enterprises
Theni

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.G.Daniel Gladys

For Defendant : Set Exparte

JUDGEMENT

This civil suit had 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 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 MASALA as shown in Document No.1 or in relation to any masala items 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 trademark which in any way visually, or phonetically similar to the Plaintiffs' registered trademark nos. 922594, 922595, 1318495 and 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 JPR MASALA-KULAMBU CHILLY MASALA 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 has rendered the accounts.
- d) directing the Defendant to pay the costs of the suit to the Plaintiffs.

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.

3. The subject matter of the suit is in respect of AACHI KULAMBU CHILLY MASALA label mark. This label mark 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 a China plate, containing various ingredients of masalas and spices prominently displayed in various colours. This label as a whole is the registered trademark of the Plaintiffs. The turnover and promotional expenditure incurred by the Plaintiff had been gradually increasing every year from 1995. It had further been stated in the plaint that the Registrar of Trademarks had granted registration for the said label mark in Reg.No.1318495 on 01.11.2004 in Class 30. Thus, the Plaintiffs have sole proprietary right over the said label mark. The Plaintiffs had also obtained registration of the trademark AACHI in different classes with respect to other description of goods in the same class and other classes. While so, in March 2009, the Plaintiffs came to know that the Defendant is selling similar Kulambu Chilly Masala, bearing the mark JPR MASALA-KULAMBU CHILLY MASALA in the same colour scheme and get up, which is a blatant infringement of the registered trademark of the Plaintiffs 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 label mark of the Plaintiffs. The use of the same 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 said trademark of the Plaintiff, 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. The trademark has been adopted by the Defendant in order to enrich themselves illegally. 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 service of summons on the Defendant had been completed as early as on 21.9.2010, no written statement has been filed by the Defendant and hence, the matter was posted under the caption of 'Undefended Board'. 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 02.01.2017. 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 to prove the suit claim. Though the documents Ex.P3 to Ex.P13 are xerox copies, it had been stated by PW.1 in the evidence that the said documents had been compared with the originals by him.

6. In this civil suit, the Plaintiffs had sought for the reliefs (a) and (b)

relating to infringement of the trademark of the Plaintiffs by the Defendant and surrender of the materials by the Defendant for destruction respectively. 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.

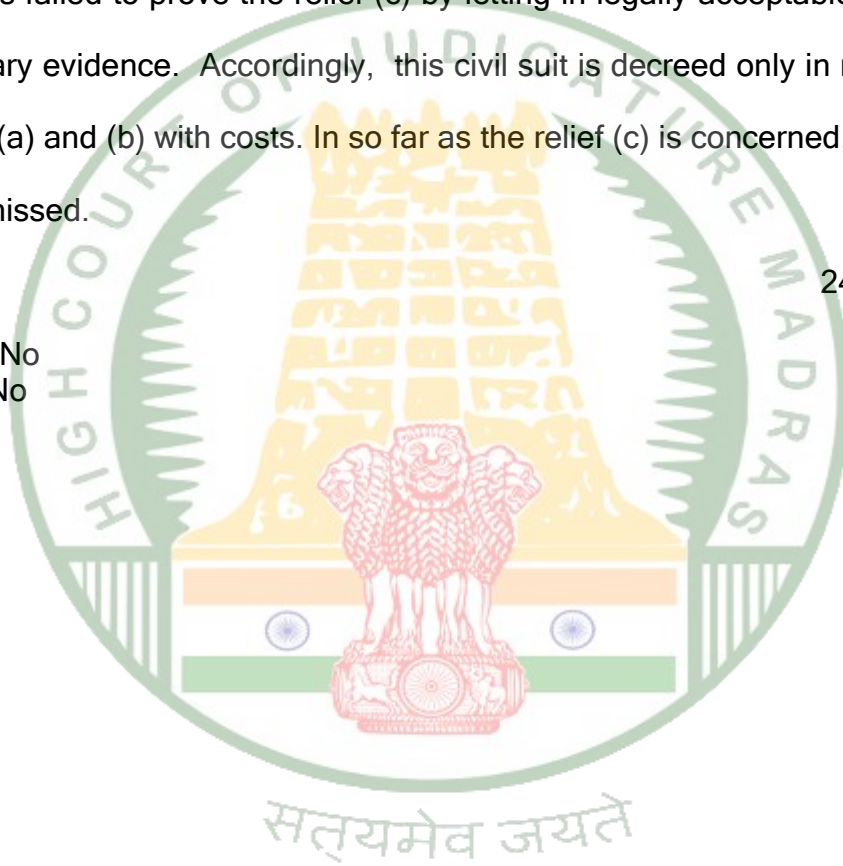
7. In so far as the relief (c), namely, to pass a judgement and decree, directing the Defendant to render accounts of profits made by the Defendant on account of the usage of the trademark of the Plaintiffs by the Defendant is concerned, though for non filing of the written statement, the Defendant had 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 Plaintiffs 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.

8. 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.

24.02.2017

Index:Yes/No
Web:Yes/No
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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	Authorisation letter given by the Plaintiffs 1 and 2	16012017
2	Ex.P. 2	Original label of the Plaintiff	
3	Ex.P. 3	Copy of the registration certificate and legal use certificate for A.No.1318495	02042009
4	Ex.P. 4	Copy of the registration certificate and legal use certificate for A.No.922595	
5	Ex.P. 5	Copy of the registration certificate and legal use certificate for A.No.922594	
6	Ex.P. 6	Copy of the registration certificate for A.No.1357284	
7	Ex.P. 7	Copy of the advertisement of the plaintiff's goods in RITZ Magazine	
8	Ex.P. 8	Copy of the license user agreement	01042007
9	Ex.P. 9	Copy of the certificate of incorporation of Nazarath Foods Pvt Limited	23072001
10	Ex.P. 10	Copy of the certificate of registration issued under TNGST Act in favour of M/s.Aachi Masala Food Pvt. Limited	
11	Ex.P. 11	Copy of the certificate of registration issued under TNGST Act in favour of M/s.Aachi Spices and Foods	28122006
12	Ex.P. 12	Copy of the certificate of registration issued under TNVAT	03012007
13	Ex.P. 13	Original defendant's label	

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

Nil

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

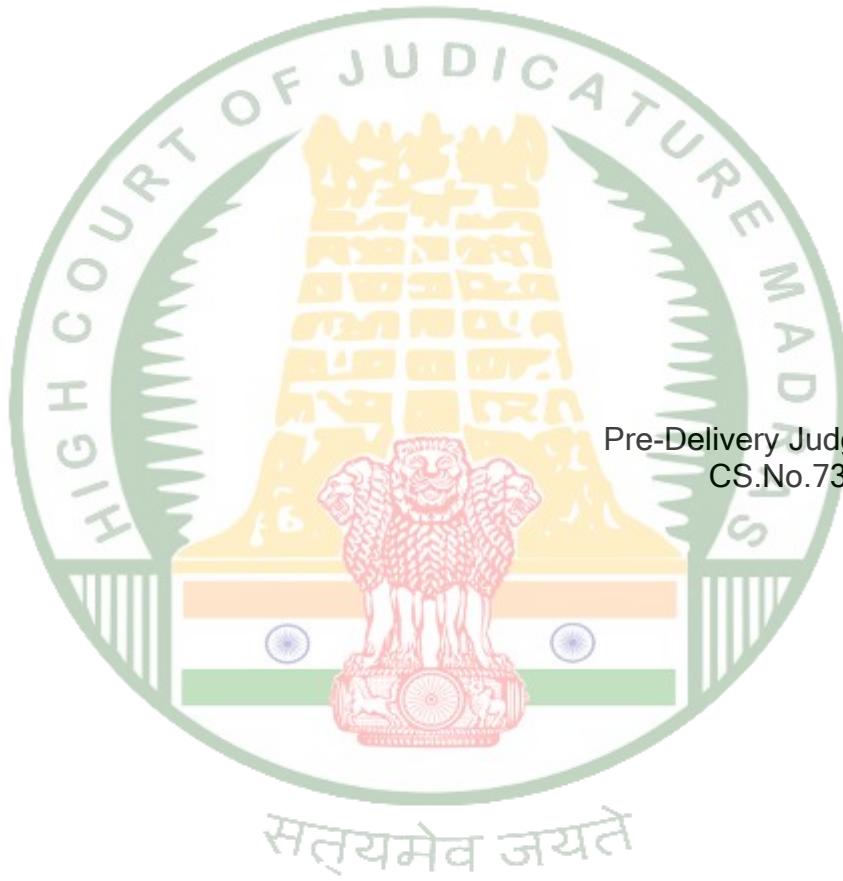
Nil

24.02.2017

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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.737 of 2009

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