

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.03.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.911 of 2017

1.Mr.A.D.Padmasingh Isaac
Trading as Aachi Spices and Foods
Old No.4, New No.181/1,
6th Avenue, Thangam Colony,
Anna Nagar,
Chennai - 600 040.

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
Mr.Ashwin Pandian

3.M/s.Heavenly Foods Pvt Ltd.,
Plot No.1926, 34th Street,
I Block, Ishwarya Colony,
Anna Nagar West,
Chennai - 600 040.
Represented by its Director
Mrs.Shiny Ashwin.

.. Plaintiffs

Vs.

Aachi Mess,
Aachi Fruits & Juice
No.22A, Chinna Chokkikulam
Madurai - 625 002.

.. Defendant

This Civil Suit is preferred, under Order VII Rule 1 C.P.C. Read with Order IV Rule 1 of Original Side Rules and Sections 27(2), 29 134 and 135 of the Trademarks Act, 1999 praying to

a) grant a permanent injunction restraining the defendant, by himself, his servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale using the name Aachi Mess, Aachi Fruits & Juice or any other similar Trade mark name or similar sounding expression in any media and use the same in name board, invoices, letter heads and visiting cards or by using any other trade mark/name which is in any way visually, or deceptively or phonetically similar to the 1st plaintiffs' trade mark/name AACHI/AACHI CHETINAD RESTAURANT/AACHI KITCHEN and use the same in pouches, packets or use the mark in invoices, letters heads and visiting cards or part of their Hotel/Restaurant name any other trade literature or Menu Card by using any other trade mark which is any way visually, or phonetically similar to the plaintiffs' registered trade mark Nos.838786, 1116254, 1479159 and 1715718 or in any manner infringing the 1st plaintiff's registered Trade Marks referred herein.

b) grant a permanent injunction restraining the Defendant by itself, its 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 Aachi Mess, Aachi Fruits & Juice in relation to the Restaurant or with respect to or any other food preparation or any other business the impugned trademark/name which is in any manner deceptively or phonetically confusingly similar to the Plaintiff's Trade Mark/name AACHI/AACHI CHETINAD RESTAURANT/AACHI KITCHEN or in any manner pass off their hotel, business or goods as and for that of the plaintiffs.

c) 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 Mess, Aachi Fruits & Juice or other identical trade mark used in the pouches and packets bearing the word AACHI/AACHI HOTEL/AACHI CHETINAD RESTAURANT/AACHI KITCHEN.

d) direct the defendant to render an account of profits made by them by the use of the impugned trademark Aachi Mess, Aachi Fruits & Juice on the service 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 and

f) pass such further or other order, as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Plaintiffs : Ms.Gladys Daniel

For Defendant : Set exparte

JUDGMENT

There are three plaintiffs. Plaintiff No.1 is an individual i.e., a natural person. Plaintiff Nos.2 and 3 are Private Limited Companies i.e., juristic persons. Ms.Gladys Daniel, counsel on record for all the three plaintiffs is before this Commercial Division.

2. The sole defendant was duly served with suit summons, but did not appear or enter appearance through a counsel. The sole defendant was set *ex-parte* and the suit itself was set down for recording *ex-parte* evidence before the learned Additional Master III. One Mr.B.Gnana Sambandam deposed as P.W.1, on behalf of all the three plaintiffs and 24 exhibits i.e., Exs.P1 to P24 were marked through him.

3. Today, this suit is listed for arguments before this Commercial Division.

4. Before proceeding further, it is necessary to set out the case of the plaintiffs in a nutshell. Main thrust of plaintiffs' complaint is that the defendant is infringing and passing off qua four of their registered trademarks. The four trademarks are Trade Mark Nos.838786, 1116254, 1479159 and 1715718. These four trademarks have been marked as Exs.P18 to P21. These

four trademarks are hereinafter referred to as 'suit TMs' for the sake of brevity, convenience and clarity. The details of the suit TMs can be tabulated and set out as follows:

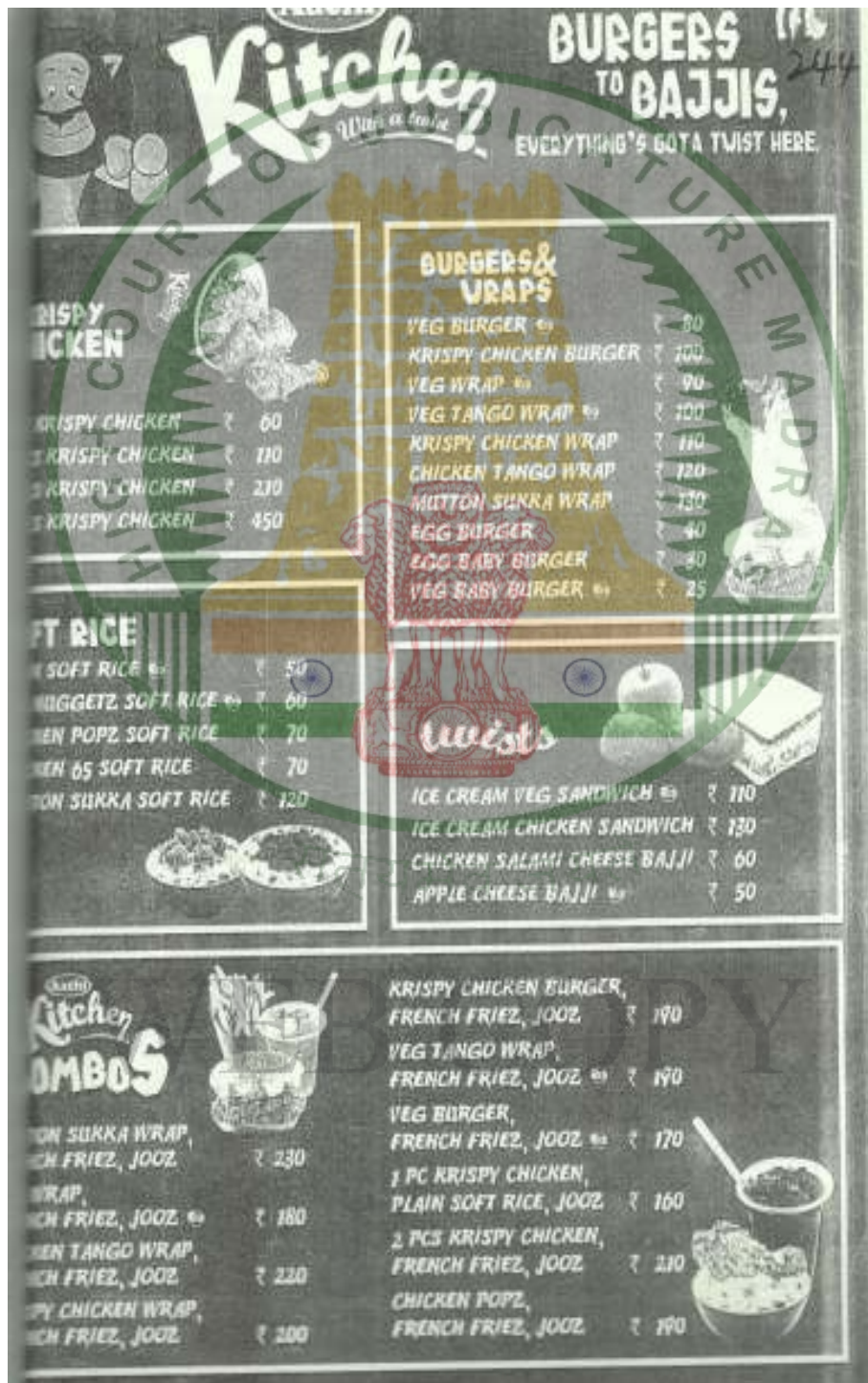
<i>S.No.</i>	<i>Trademark No.</i>	<i>Class and goods</i>	<i>Mark</i>
1	838786	30-Masala Powder and Spices	AACHI
2	1116254	30-All kinds of Food preparations for human consumption coffee, Tea, Coca, Sugar, Rice, Tapioca, Sago, Coffee Substitutes, Flour and Preparations made from cereals, Bread, Biscuits, Cakes, Pastry and Confectionery, Ice	
3	1479159	30-All kinds of Masala Powders and Spices, Honey, Crystallized Fruits, Dates, Fruit Jellies, Jams, processed peanut, pickle, potato chips and potato crisps, all kinds of flour, coffee, Tea cocoa, sugar, rice, tapioca and artificial powder, asafetida, turmeric powder, idly chilly powder appalams, orid dhall, Toor dhall, Moong Dhall and all kinds of Dhall, included in class 30	
4	1715718	43-Services for chain of restaurants, Providing of Food and Drink, Temporary Accommodation, canteen, catering, self service restaurants, fast food restaurants and snack bars	AACHI KITCHEN

5. It is the case of the plaintiffs that somewhere in October 2017, they came to know about the alleged infringement of their suit TMs and passing off by the defendant. The instant suit vide plaint dated 30.10.2017 was presented/filed in this Court on 15.11.2017. Thereafter, this suit took the trajectory, which has been set out supra.

6. Today in the hearing, learned counsel for plaintiffs Ms.Gladys Daniel brings to my notice that the depiction of the suit TMs by the plaintiffs has been marked by way of a photograph being Ex.P22 and the same is as follows:



To be noted, one photograph is that of the Restaurant and the other is Menu card. These two together constitute Ex.P.22. (Ideally it should have been marked as Ex.P22 series)



7. To buttress the case of infringement and passing off, my attention is drawn to the alleged offending mark that has been used by the defendant, has been marked as Ex.P 24. Ex.P 24 is as follows:



8. To be noted, in the suit TMs, the word AACHHI is a very prominent part of the mark.

9. Plaintiffs have set out the manner in which the suit TMs evolved. This is articulated in paragraph Nos.8 to 10 of the plaint, which read as follows:

"8. A proprietary concern Aachi Spices and Foods was registered on 28.12.2006. Aachi Masala Foods P Ltd., who acquired the trademark AACHI on 30.11.2016 from Abishek Enterprises and Naveen Products assigned the same in favour of the 1st plaintiff, trading as Aachi Spices And Foods on 30.03.2007. On 01.04.2007, the 1st plaintiff, trading as Aachi Spices and Foods executed a License User Agreement in favour of Aachi Masala Foods P Ltd. The sole proprietary concern of the 1st plaintiff owned the Intellectual Property Rights under the trademark AACHI. The Trademark AACHI expanded on its list of products. The business of AACHI was expanding in mammoth proportions. On 17.03.2010, Aachi Spices and Foods Private Limited were incorporated. At the time of incorporation of Aachi Spices and Foods Private Limited the Memorandum of Association of the company reiterated at Clause B-11 that the Trademark AACHI along with its right, title and interest were vested with the 1st plaintiff who already owned the Trademark AACHI. On 21.04.2010 the 1st plaintiff entered into a Licence User Agreement with Aachi Spices and Foods Private Limited to use the trademark AACHI. On 21.04.2010 the 1st plaintiff entered into a fresh License User Agreement with AACHI Masala Foods Private Limited.

9. The 1st plaintiff is the proprietor of the trademark AACHI. He continues to use the trademark AACHI through his Licensees AACHI Spices and Foods Private Limited and the 2nd Plaintiff. The 3rd Plaintiff is the licensee of the 1st Plaintiff's registered Trade Marks AACHI KITCHEN and AACHI CHETTINAD RESTAURANT.

10. The Plaintiffs have also diversified their business activities and started manufacturing and marketing various kinds of consumer goods, within a short span of 17 years. The

Plaintiffs have now become one of the leading manufacturers of packaged masalas. Because of the efforts undertaken by the Plaintiffs in promoting and advertising their products through various mediums, their market share in these products have risen considerably. The Plaintiffs have put in enormous effort, hard work and money towards advertising their products AACHI in all forms of media such as radio, newspapers, hoardings, magazines and television networks. The Plaintiffs have also received many prestigious awards for the quality of products and customer service.”

10. Plaintiffs have also mentioned about the manner in which they have used and promoted the mark, which are contained in paragraph Nos.13 and 14 of the plaint, which read as follows:

“13. The subject matter of this proceeding is in respect of 'AACHI' word mark. This word mark as whole has been used by the Plaintiffs since 1995 and has become a well known Trade Mark of the Plaintiffs. The Plaintiffs have honestly adopted the mark and have put in enormous amount of hard work and labour and invested huge sums of money, for advertisement and sales promotional expenses. Because of the efforts made by the Plaintiffs, the trade and the public, associate the mark with the Plaintiffs and none else. The Trade Mark of the Plaintiffs as used is registered.

14. The plaintiffs have been using this mark AACHI with respect to almost all the masala preparations from the commencement of its business. As a result of the efforts undertaken by the Plaintiffs its turnover has been increasing, substantially every year. The turnover and promotional

expenditure incurred by M/s.Abishek Enterprises, M/s.Naveen Products, M/s.Nazareth Foods Pvt. Ltd. and M/s.Aachi Masala Foods Pvt. Ltd., since 1995 is given hereunder:

S.No.	Year	Turnover (in Rs)	Advertising Expenditure (in Rs)
1	1995-1996	3,96,420.00	9,983.00
2	1996-1997	4,37,568.00	4,691.00
3	1997-1998	5,10,755.00	352.00
4	1998-1999	14,68,159.00	15,820.00
5	1999-2000	20,27,457.00	16,775.00
6	2000-2001	52,03,979.00	57,676.00
7	2001-2002	64,12,491.00	2,13,512.00
8	2002-2003	1,69,44,334.00	6,62,290.00
9	2003-2004	9,00,05,884.00	19,63,479.00
10	2004-2005	24,46,95,540.00	1,13,28,450.00
11	2005-2006	79,47,99,230.00	4,63,96,880.00
12	2006-2007	1,36,54,50,781.00	5,68,45,817.00
13	2007-2008	2,07,85,55,508.00	7,87,06,261.00
14	2008-2009	4,14,12,42,106.00	9,40,86,979.00
15	2009-2010	4,73,98,26,852.00	10,76,86,530.00
16	2010-2011	6,40,40,50,524.00	11,63,97,497.00
17	2011-2012	7,59,35,14,309.00	12,42,15,050.00
18	2012-2013	8,82,91,64,390.00	13,72,06,476.00
19	2013-2014	11,27,06,92,876.00	19,57,87,446.00
20	2014-2015	13,20,61,70,537.00	21,00,17,044.00

11. From the aforesaid details, it comes to light that the plaintiffs have been expending/shelling out, substantial sums of money towards advertisement expenditure.

12. Be that as it may, learned counsel for plaintiffs brings to my notice that plaintiffs have been very diligently protecting their suit TMs as well as the other trademark registrations in their favour. It is highlighted that they have been so diligent that the plaintiffs have taken immediate action against a person in California in the Trademark Trial and Appeal Board in United States of America. The order dated 13.09.2016 has been marked as Ex.P23. This is being referred to, to emphasise that the plaintiffs have been very diligent in protecting their mark and particularly suit TMs. With regard to the relationship between the three plaintiffs, it is to be mentioned that the first plaintiff, who is a natural person is the owner of the suit TMs. The second plaintiff, which is a juristic person and a company is a general licensee under the first plaintiff vide License User Agreement, which has been marked as Ex.P13. With regard to plaintiff No.3, which is also a juristic person, I am informed that plaintiff No.3 is a license with regard to one specific service i.e., Restaurant services and this License User Agreement between the first plaintiff and the third plaintiff has been marked as Ex.P15.

13. Notwithstanding the fact that the defendant has not chosen to enter appearance and resist the suit, owing to which the defendant has been set *ex-parte* in this suit, I have perused the pleadings, deposition and exhibits/documents that have been placed before me. I find that the deposition of P.W.1 is in tune/ tandem with the pleadings in the plaint. In other words, the deposition of P.W.1 supports the pleadings in the plaint.

14. I have also compared the two marks i.e., Exs.P18 to P21 on one side and Exs.P22 and P24 on the other side.

15. I find that the plaintiffs have made out a clear case for infringement and passing off. Therefore, the plaintiffs will certainly be entitled to the reliefs of injunctions against infringement and passing off, which are sub-paragraphs (a) and (b) of plaint paragraph No.38. The other sub-paragraphs are (c) to (f). While sub-paragraphs (c) and (d) are usual prayers for surrender of offending mark and accounts, sub-paragraph (e) is for costs of the suit. To be noted, sub-paragraph (f) is a residuary prayer.

16. In the light of the conclusion that the plaintiffs are entitled to injunctive reliefs qua infringement of suit TMs and passing off, it follows as a sequitur that the plaintiffs are entitled to surrender of offending materials as well as accounts as sought for in sub-paragraphs (c) and (d) of the plaint prayer paragraph.

17. With regard to the costs prayer, on coming to know of the offending use by the defendant in October 2017, plaintiffs have diligently filed the plaint dated 30.10.2017 on 15.11.2017 and carried it to its logical end by pursuing the matter diligently. Therefore, the plaintiffs are entitled to costs.

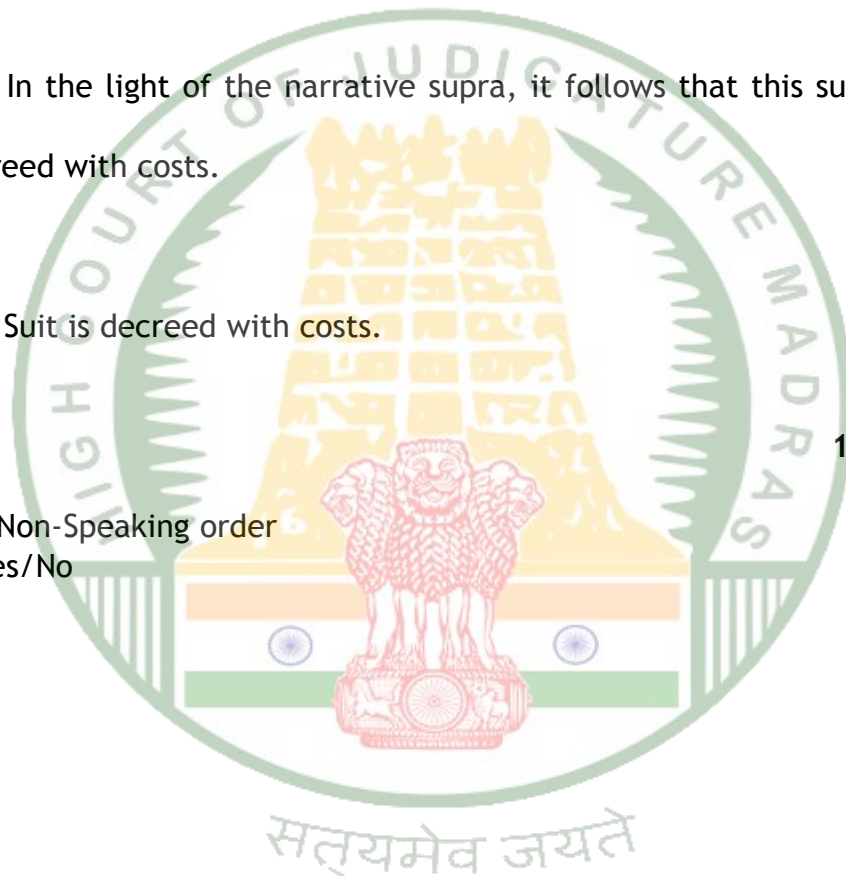
18. With regard to the residuary prayer, as there is a prayer for accounts, I make it clear that if the plaintiffs are able to get accounts, which is being decreed or quantify the damages in manner, it is open to the plaintiffs to seek damages, if they choose to do so and if so advised.

19. In the light of the narrative supra, it follows that this suit deserves to be decreed with costs.

20. Suit is decreed with costs.

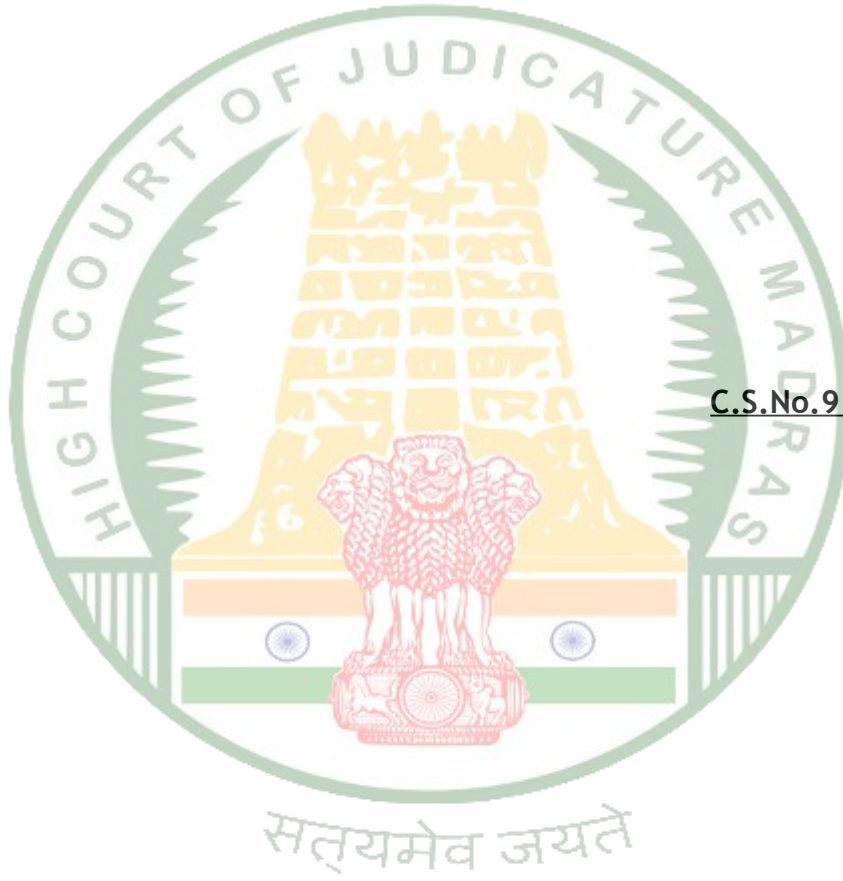
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Speaking/Non-Speaking order
Index : Yes/No
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C.S.No.911 of 2017

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14.03.2018