

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.03.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

C.S.No.582 of 2016

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

.. Plaintiffs

Vs.

M/s.Harshika Food Products,
No.182, Thiiruvalluvar Street,
Vellore Main Road,
Vellore - 632 001.

.. 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 itself, its servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale using the trade mark "AACHI SNACKS"/AACHI SNACKS or any other similar Trade mark or similar sounding expression 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 marks AACHI and use the same in pouches, snacks or any other goods or use the mark in invoices, letters heads and visiting cards or any other trade literature or by using any other trade mark which is any way visually, or phonetically similar to the plaintiffs' registered trade mark Nos.838786, 922594, 922595, 976559, 1025302, 1025303, 1025304, 1025305, 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, 1567068, 1581011, 1595537, 1595538, 1595539, 1595540, 1595542, 1595544, 1595545, 1604348, 1702840, 1702848, 1720889 & 1843529 or in any manner infringe the plaintiff's registered Trade Mark.

b) grant 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 Trade Mark "AACHI SNAKCS"/AACHI 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 any way visually or deceptively or phonetically similar to the plaintiffs' Trade Mark AACHI in respect of snacks or any other goods or use the mark in invoices, letters heads and visiting cards or any other trade literature or by using any other trade mark which is any way visually, or phonetically similar to the Plaintiffs' Trade mark AACHI or in any manner pass off the plaintiffs' goods.

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 trade mark "AACHI SNACKS" or other identical trade mark used in the pouches and packets bearing the word AACHI.

d) direct the defendant to render an account of profits made by them by the use of the impugned trademark "AACHI SNACKS" 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.

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

Ms.Gladys Daniel, learned counsel on record for plaintiffs (to be noted, there are two plaintiffs) is before this Commercial Division.

2. Sole defendant has been duly served, but has not chosen to appear or enter appearance through a counsel. Sole defendant was set *ex-parte* and the suit was set down for recording *ex-parte* evidence before Additional Master III. One Mr.B.Gnana Sambandam, an employee of plaintiff No.2 has deposed on behalf of both plaintiffs as P.W.1. 12 documents i.e., Exs.P1 to P12 have been marked.

3. The case of the plaintiffs, in a nutshell, is that the first plaintiff who is an individual/natural person is the owner of certain trademarks and the second plaintiff, which is a Private Limited Company i.e., a juristic person is a licensee under first plaintiff qua the registered trademark.

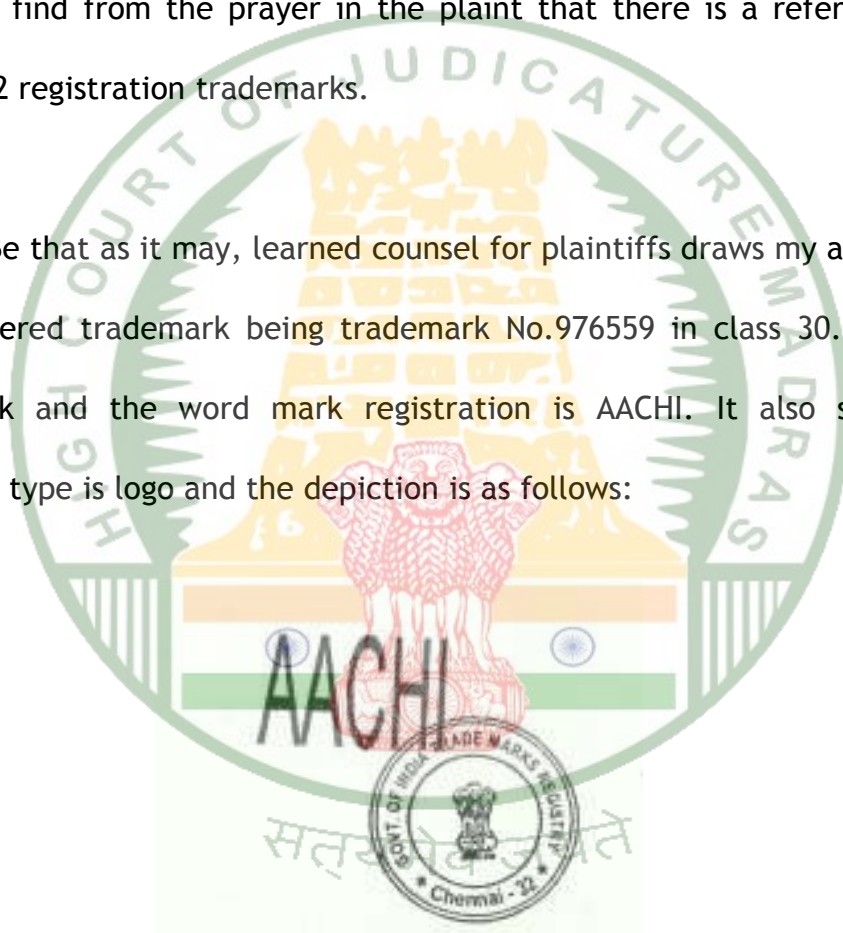
4. Registered trademarks in favour of plaintiffs, I am informed number over 100 in India, besides several other registrations in abroad.

5. Be that as it may, suffice to say that the registered trademarks and the Legal Use Certificates for the same have been marked as Ex.P10 series.

Ex.P10 series consists of 31 registrations i.e., Legal Use Certificates at least in two classes. One of which is class 30, which is of utmost relevance for the instant suit.

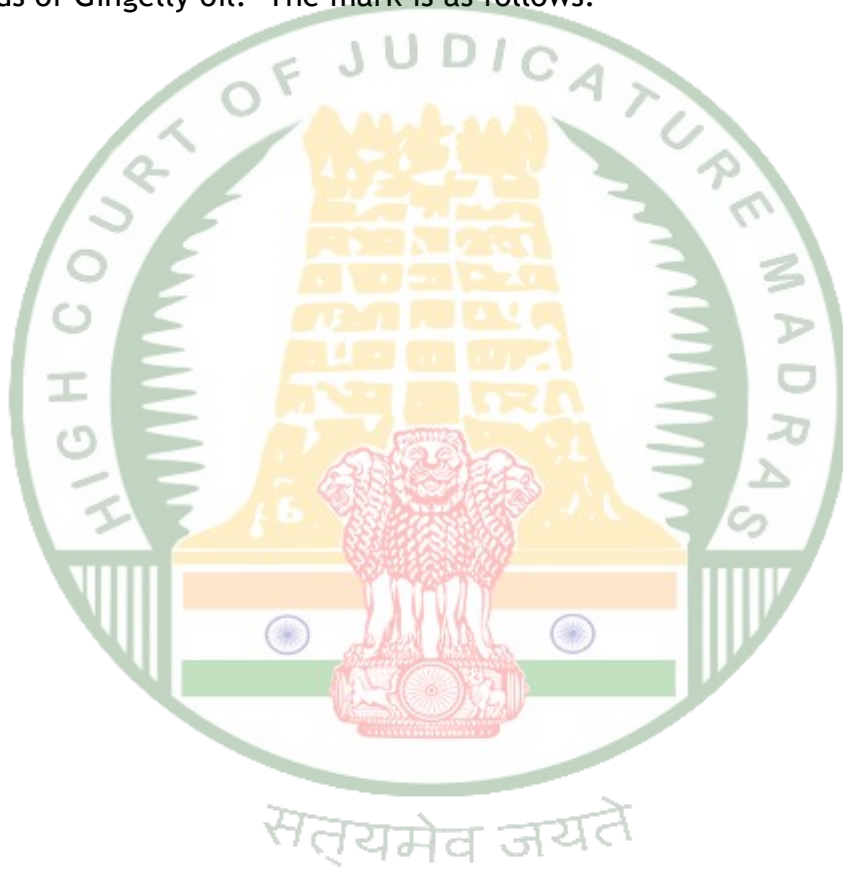
6. I find from the prayer in the plaint that there is a reference to as many as 52 registration trademarks.

7. Be that as it may, learned counsel for plaintiffs draws my attention to one registered trademark being trademark No.976559 in class 30. This is a word mark and the word mark registration is AACHI. It also shows that trademark type is logo and the depiction is as follows:



In class 30, the goods are Masala Powder, Spices (Food) and Preparation made from cereals for sale in the State of Tamil Nadu. It is also mentioned in this Legal Use Certificate (which is part of Ex.P.10 series) that this is associated with trademark No.838786. This trademark registration certificate shows that the plaintiffs have renewed the mark and that the registration is now valid upto 12.12.2020. In other words the registration is subsisting.

8. One other registered trade marks being trademark No.1557660, dated 11.05.2007 is also of relevance for the instant lis is the submission of learned counsel for plaintiffs. I find that this registration is in class 29 and the goods are all kinds of Gingelly oil. The mark is as follows:



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9. The plaint is predicated on the ground that the plaintiffs came to know about the use of an offending mark, which according to the plaintiffs is infringement of their aforesaid registered trademark by the defendant for its snacks. According to the plaintiffs, the offending mark used by the defendant

is as follows:



10. Even in the plaint itself, the evaluation of various marks including the aforesaid two marks have been articulated in paragraph No.7 of the plaint. The other details about the strength of the mark have been articulated in paragraph Nos.10, 11 and 13 of the plaint, which read as follows:

“10. The Trademark AACHI was first applied for and registered in the name of 1st plaintiff trading as Naveen Products in the year 1999. Since then 105 applications have been filed for the Trademark AACHI in respect of various goods that have been manufactured and marketed by the AACHI group of Companies.

At present, there are 51 registrations of the Trademark AACHI in various word, label and stylized marks.

11. As submitted earlier, the 1st plaintiff, in order to distinguish its various items of products from others adopted the Trade mark AACHI for all its products and services. The expression AACHI has become very popular because of its continuous and substantial usage of this mark over a decade. This trade Mark has become very popular and is a very valuable intellectual property of the 1st plaintiff. No one can use the said expression AACHI for spices and masalas and other goods or services for which the 1st plaintiff is using the mark. The mark is unique and distinctive of the plaintiff's goods and no one has used the Trade Mark AACHI for masala preparations and its allied preparations prior to the 1st plaintiff.

13. On acquiring enormous goodwill and reputation, the 1st plaintiff with a view to protecting his interlinings property, particularly with respect to his Trade Mark applied for the registration of this word mark on 29.01.1999, in Class 30. The Registrar of Trade Marks granted registration for the Trade Mark "AACHI" under Registration No.838786. Since then the 1st plaintiff has also obtained registration of the mark AACHI in tamil vide Registration No.1479159 and the registration is valid and subsisting."

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11. The turnover details of plaintiffs (including their predecessor entities) have been set out in paragraph No.14 of the plaint and I deem it appropriate to extract the same.

<i>S.No.</i>	<i>Year</i>	<i>Turnover (in Rs)</i>	<i>Advertising Expenditure (in Rs)</i>
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

12. I have perused the deposition of P.W.1. The deposition is cogent and it is in tune/tandem with the pleadings in the plaint.

13. Though the defendant has not chosen to enter appearance and dispute or refute the plaint averments, deposition and the exhibits, I have

perused the pleadings, deposition and exhibits. In the light of the fact that plaintiffs have registration for the word mark AACHI, and in the light of the fact that the products which the defendant is dealing with will also qualify as preparation made from cereals, coupled with the fact that the channel of trade has many overlaps, I am convinced that the plaintiffs have made out a case for being entitled to decree as prayed for.

14. With regard to the prayers, in the plaint they are contained in the prayer paragraph i.e., paragraph No.31. Paragraph No.31 has six sub paragraphs i.e., (a) to (f). Sub-paragraphs (a) and (b) are injunctive relief qua infringement of trademark and passing off. Sub-paragraphs (c) and (d) are the usual prayers for surrender of offending material and accounts. Sub-paragraph (e) is for costs and sub-paragraph (f) is a residuary limb of the prayer.

15. In the light of me being convinced that the plaintiffs have made out a case for injunctions against infringement and passing off, it follows as a sequitur that the plaintiffs will be entitled to the prayers for delivery of offending material and accounts. This suit has been presented in this Court on 17.08.2016 and the plaintiffs have been compelled to carry this litigation to its logical end over a period of one and half years. Therefore, I am of the view that considering the trajectory of this litigation, the plaintiffs are certainly entitled to costs of this suit.

16. With regard to the residuary prayer contained in sub paragraph (f) of paragraph No.31 of the plaint, as the plaintiffs have asked for accounts under the residuary prayer limb, I make it clear and grant the relief to the plaintiffs that they will be entitled to sue for damages post accounts, which has been sought for in sub-paragraph (d) of the prayer paragraph, if they choose to do so and if they are so advised.

17. Suit is decreed with costs.

14.03.2018

Speaking/Non-Speaking order

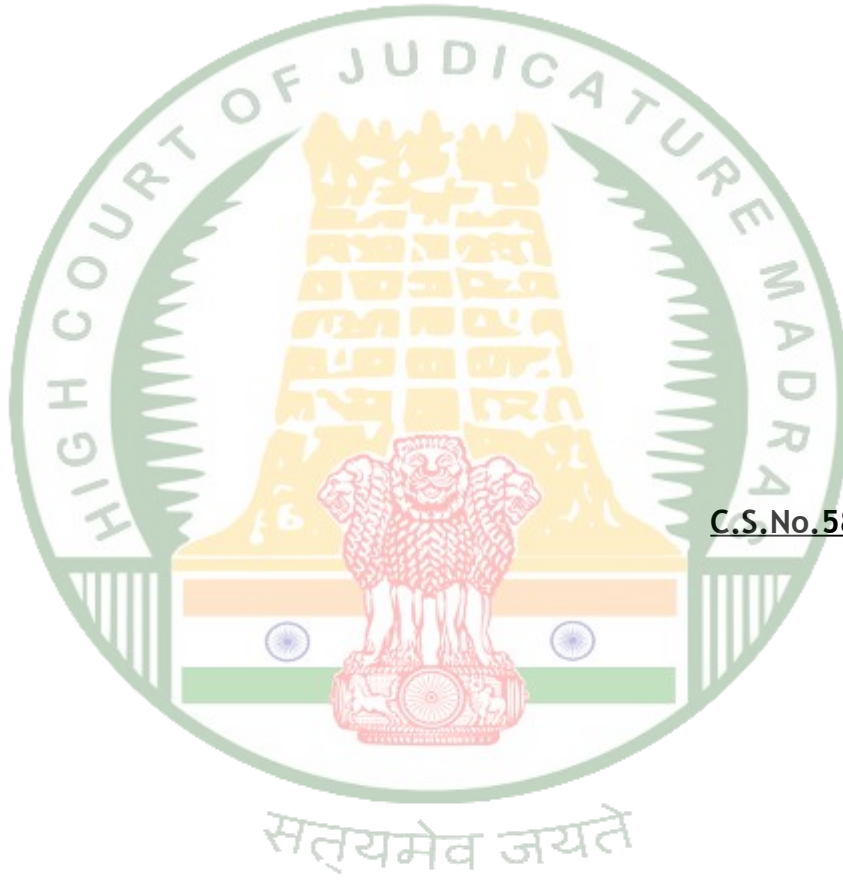
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M.SUNDAR, J.

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