

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated : 20.08.2019**

**Coram**

**The Honourable Mr.Justice KRISHNAN RAMASAMY**

**C.S.No.1057 of 2007**

1.Mr.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,  
Mr.Ashwin Pandian

...Plaintiffs

Versus

1.Chettinad Products  
No.4/2, St.John's College Road,  
Tirunelveli – 627 002.

2.Hari Traders,  
17, Swan West Car Street,  
Tirunelveli – 627 002.

...Defendants

**Prayer:**

This suit is filed under Order IV, Rule 1 of the Original Side Rules and Order VII Rule 1 of the C.P.C read with Sections 27(2), 29, 134 & 135 of the Trademarks Act, 1999 for the following reliefs:

(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 the trade mark AACHIS or AACHI or any other similar sounding expression 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 plaintiffs' trademark AACHI or in relation to any tamarind rice mix 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 trade mark which is in any way visually, or phonetically similar to the plaintiffs' registered Trademark Nos.922594, 922595, 1318494 & 1318495 or in any manner infringe the plaintiff's 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 AACHIS TASTY and packets in the Color Scheme and Get up as shown in Document No.2 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 trademark and Get up as shown in Document No.2 on the goods referred and decree the suit for the profits found to have been made by the defendants, after the defendants have rendered accounts.

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

For Plaintiff : Ms.Gladys Daniel

For Defendants : Set *ex parte*  
vide order dated 01.08.2019

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

The present suit was admitted on 22.11.2007 and when the matter was called on 18.07.2019, this Court determined the jurisdiction of the suit and as there was no representation for the defendants, directed the Registry to print the name of the defendants along with the name of the counsels who entered appearance for the defendants in the cause list and adjourned the matter to 01.08.2019. Accordingly, the matter was listed on 01.08.2019, however, there was no representation for the defendants. Hence, the defendants were set *ex parte* by this Court

and the Registry was directed to list the matter before the learned Additional Master-I on 13.08.2019, for recording the *ex parte* evidence and after recording the same, list the matter before this Commercial Division on 20.08.2019. Accordingly, when the matter was listed before the learned Additional Master-I on the said date, on the side of the plaintiffs, P.W.1, Mr.B.Gnanasambandam was examined and 13 documents were examined viz., Ex.P1 to Ex.P13.

2. Today (20.08.2019), this matter is listed before this Commercial Division for final disposal.

3.1. The first plaintiff commenced his business in the year 1995 as a proprietary concern with the objective of manufacturing and marketing various kinds of masalas and spices under the trademark "AACHI". The trademark "AACHI" was first conceived and adopted by the first plaintiff for masala preparations. Among large varieties of masala preparations of the plaintiffs, the subject matter of this proceeding is in respect of "AACHI KULAMBU MILLAGAI" label mark and work mark "AACHI". The said label mark is consisting of the word "AACHI Masala" in yellow letters written in

red background and 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 trademark of the plaintiffs. They invested huge sums of money, for advertisement and sales promotional expenses of the trademark "AACHI". The plaintiffs have been using the mark "AACHI" as a device mark with respect to almost all the masala preparations from the commencement of its business. The plaintiffs' trademark, "AACHI" has a great reputation and goodwill among the general public not only in India but also in various countries of the world.

3.2. The plaintiff applied for the registration of the label mark on 01.11.2004, in Class 30 and the Registrar of Trademarks granted registration for the label mark "AACHI MASALA" for all over India. The first plaintiff has become an exclusive owner of the mark "AACHI" and he has proprietary right over the said mark "AACHI". The first plaintiff manufactured its products under the supervision and control through one M/s.Nazareth Foods (P) Ltd., since

23.07.2001. On 20.06.2006, the second plaintiff was incorporated for marketing all its product by the use of the mark and all over India and abroad. On 22.12.2006, the first plaintiff changed its trading style from Naveen Products to Aachi Spices and Foods and obtained a certificate of registration under the Central Sales Tax (Registration and Turnover) Rules 1957. Subsequently, from 01.04.2007, by executing a Trademark License user Agreement, the second plaintiff has been marketing all the products using the trademark "AACHI".

3.3. While so, the plaintiffs Company came to know that the defendants' Tamarind Rice Mix bearing the mark "AACHIS TASTY" which is deceptively similar to that of the plaintiffs' trademark "AACHI MASALA". The defendants' product is available in all the places wherever the plaintiffs' Aachi preparation of Kulambu Millagi preparation is marketed. The defendants' label consists of the words "AACHIS TASTY" written prominently embossed in a red coloured label. The defendants' product is inferior in quality and substandard.

3.4. The defendants' usage of the offending trademark "AACHIS TASTY", causing confusion in the minds of the consumers/general and it is also causing deception in the market since the defendants' offending trademark "AACHIS TASTY" is grammatically, phonetically and visually identical to that of the plaintiffs' trademark. Therefore, left with no other alternative, the plaintiffs have filed the present suit.

4.1. The learned counsel for plaintiffs fairly submitted that the plaintiffs are the prior users and registered proprietors of the trademark "AACHI". She also submitted that the defendant has willfully adopted the registered trademark of the plaintiffs only with a *mala fide* intention to spoil the reputation and goodwill gained by the plaintiffs among the general public/consumers. She would further submit that the plaintiffs have exclusive right over the trademark "AACHI", including its distinctive color scheme and getup. Therefore, the defendants have no right to adopt the said trademark.

4.2. The learned counsel for plaintiff would contend that in the guise of the plaintiffs' trademark, the defendants are passing off the substandard goods to the consumers. She would further contend that the defendants' usage of the plaintiffs' registered trademark "AACHI" would amounts to infringement and passing off their products. She therefore prayed that the defendants may be restrained from using the plaintiffs' registered trademark "AACHI", otherwise, the plaintiffs will suffer a great loss and hardship.

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

6.1. It is seen that originally the plaintiffs are the registered proprietors of the trademark, "AACHI", which is clearly evident from Ex.P4 (Registration Certificate of Trade Mark No.922595, dated 10.01.2004), Ex.P5 (Registration Certificate of Trade Mark No.922594 dated 26.07.2005) , Ex.P6 (Legal Use Certificate Trade Mark No.922595 dated 10.02.2006), Ex.P7 (Registration Certificate of Trade Mark No.1318495 & Legal Use Certificate dated

02.04.2007) and Ex.P10 (Registration Certificate of Trade Mark No.1357284 dated 26.10.2006). It is also seen that there was a Trade Mark License User Agreement entered into between the first plaintiff and the second plaintiff, which is also evident from Ex.P12 (the Trade Mark License User Agreement between Mr.A.D.Padmasingh Isaac trading as Aachi Spices and Foods and Aachi Masala Foods Pvt. Ltd. dated 01.04.2007).

6.2. On Comparing the Ex.P3 (Plaintiff's label AACHI) with Ex.P13 (Defendant's label AACHI TASTY), this Court found that the defendants' offending trademark, "AACHIS TASTY" is visually and phonetically, similar to that of the plaintiffs' trademark. It is crystal clear that the defendants adopted the registered trademark of the plaintiffs only with an evil intention to ride on the immense goodwill and reputation earned by the plaintiffs over the trademark "AACHI". Therefore, the said act of the defendants would not only amounts to infringement of the plaintiffs' registered trademark but also it would amounts to passing off.

**KRISHNAN RAMASAMY, J.,**

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6.3. Taking note of the facts and circumstances of the case, this Court is inclined to decree the suit as sought for by the plaintiffs and on the other hand, considering the above such *mala fide* activities of the defendants, this Court feels that it would be necessary to put costs on the defendants.

7. Accordingly, this Civil Suit is decreed as prayed for and the defendants are directed to pay the cost of Rs.50,000/- (Rupees Fifty Thousand only) to the plaintiffs.

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Index : Yes/No

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