

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2019

CORAM:

The Hon'ble Mr.Justice Krishnan Ramasamy

C.S.No. 1058 of 2007
and
Application No. 1332 of 2007

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 – 600040.

2. M/s. Aachi Masala Foods (P) Ltd.,
No. 6, Ground Floor
15th Street, Anna Nagar, 'G' Block,
Chennai – 600040
Represented by its Director
Mr.Ashwin Pandian

... Plaintiffs

Vs.

Madurai Aache Appalam
Chinthamani
Madurai – 625009.

... Defendant

Prayer :- Plaint 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 and 135 of the Trade Marks Act, 1999 is praying for :

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 Appalams, Spice & food preparations in Class 29 & 30 using same or similar business name or trade mark MADURAI 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 trade mark which is in any way visually or deceptively or phonetically similar to the Plaintiff's trade mark AACHI or in relation to any Appalams, spice & food preparations in Class 29 & 30 and use the same pouches, packets 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 in any way visually, or phonetically similar to the Plaintiff's registered Trade Mark Nos. 922594, 922595, 1318494 & 1318495 or in any manner infringe the Plaintiff's registered Trade Mark.

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 MADURAI 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 trademark 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 : Mr.Gladys Daniel

For Defendant : Set exparte

JUDGMENT

The present Civil Suit has been filed by the plaintiff, seeking for the relief, as stated in the prayer portion of this judgement.

2. The first plaintiff is the owner of the trademark 'AACHI' and thereafter, the said trademark was assigned in favour of the second plaintiff. Simultaneously, one Naveen product which is a partnership firm also using the trademark name AACHI and the said Naveen product also assigned the trademark AACHI in favour of the second plaintiff. Thereafter, the second plaintiff assigned the trademark in favour of the first plaintiff and the first plaintiff gave licence to the second plaintiff to use the trade mark AACHI. Therefore, both the plaintiffs are entitled to use the word AACHI.

3. Under these circumstances, the plaintiffs came to know about the use of the same trademark AACHI by the defendant under the name and style of Madurai Aachi Appalam having office at Chinthamani, Madurai – 625009.

4. It is the contention of the plaintiffs that the defendant was well aware of the goodwill and reputation of the plaintiffs' trademark. The products manufactured by both the Plaintiffs and the defendant are being sold through the same trade channels. Therefore, they contended that the defendant is deemed to have knowledge of the nature and scope of the plaintiffs' business and manufacturing activities, bearing the trademark AACHI. Hence, the adoption and use of the impugned mark and the label amounts to fraud under the Trade Marks Act. Further, the plaintiffs' stated that the defendant has no valid reasons whatsoever to use the mark MADURAI AACHI, which is phonetically and deceptively similar to that of the plaintiff's; the defendant's acts are dishonest and motivated purely by *mala fide* intentions to poach upon the reputation and goodwill enjoyed by the plaintiffs; the defendant's should not be allowed to malign and dilute the goodwill and reputation enjoyed by the plaintiffs.

5. Therefore, the plaintiff approached this Court and filed the present suit. After filing the suit plaintiffs got the interim injunction, restraining the defendant from using the registered Trade Mark Nos. 922594, 922595, 1318494 & 1318495.

6. Heard the learned counsel appearing for the plaintiffs. Insofar as the defendant is concerned, though suit summon was served on the defendant on 11.03.2008, despite receipt of the summon, none appeared on behalf of the defendant. Hence, the defendant was set *ex parte* by this Court by an order dated 17.06.2019 and thereafter, the matter was listed before the learned Additional Master for recording *ex parte* evidence. Mr.C. Gladys Daniel, who is a representing counsel on behalf of the plaintiff examined Mr.B.Gnanasambandam as P.W.1. He deposed his evidence and marked Exs.P1 to P14.

7. This Court also gone through the proof affidavit filed by PW1 and the documents filed by the plaintiff in support of their claim.

8. On perusal of the averments in the plaint, proof affidavit and also Ex.P4, P.5, P.6, P.7, and P.8, viz., Registration Certificates of

Trademark issued by the Trademark Registry, vide Nos. 922594, 922595, 1318495, 922594 and 1357284 respectively, it is seen that the plaintiffs are the registered proprietors of the trademark "AACHI" with its reliable colour scheme, get up and design and label, and they are using the said trademark in respect of the product, viz. APPALAM, under the style AACHI APPALAM. The plaintiffs also filed Ex.P13 in order to substantiate that they are the legal user of the trademark 'Aachi'.

9. Thus, from the above facts, it is clear that the plaintiffs are the registered owner of the trademark "Aachi", and they have the exclusive right to use the trademark in respect of their product, under the name and style "Aachi Apallam". **In view of the exclusive right to use the trademark, "Aachi' " by the plaintiff, the adoption of the trademark, " Madurai Aachi Appalam", by the defendant would clearly amounts to infringement, in terms of Section 29 of the Trademarks Act, 1999.** Hence, the plaintiffs are entitled to the relief as prayed in the suit.

10. In the result, the suit is decreed as prayed for with costs of Rs.50,000/-. Consequently, the connected application is closed.

02.07.2019

Index : Yes/No
Internet : Yes
Speaking / Non-speaking Order

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