

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.11.2019

Coram

The Honourable Mr.Justice N.SATHISH KUMAR

**C.S.No.607 of 2011
and O.A.Nos.760 & 761 of 2011
and A.No.6138 of 2019**

1.Mr.A.D.Padmasingh Isaac
Plot No.1926, 34th Street,
I Block, Ishwarya Colony,
Anna Nagar West, 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

Versus

Ponmari Residency,
No.26 D, Kotagiri Road,
Charring Cross,
Ooty - 643 001.
The Nilgiris,
The Tamilnadu.

...Defendant

This suit is filed under Order IV Rule 1 of the Original Side Rules and Order VII Rule 1 of the C.P.C r/w. Sections 27(2), 29, 134 and 135 of the Trade Marks Act, 1999 for the following reliefs:

(a) granting 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 same name AACHI or used by the plaintiffs and the trademark name AACHI MULTICUISINE RESTAURANT 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 trademark/name which is in any way visually or deceptively or phonetically similar to the plaintiffs' trade mark/name AACHI and use the same in pouches, packets or use the mark in invoices, letters heads, name boards and visiting cards or part of their trading style any other trade literature or by using any other trade mark which is in any way visually, or phonetically similar to the plaintiffs' registered trade mark Nos.838786, 922594, 922595, 976559, 1025302, 1025304, 1025305, 1116254, 1340323, 1375755, 1375756, 1380625, 1415328, 1415329, 1418281, 1458532, 1479158, 1479159, 1555564, 1564085, 1567065, 1567068, 1595537, 1595538, 1595539, 1595540 or in any manner infringing the plaintiff's registered trademarks referred herein.

(b) granting a permanent injunction restraining the defendants 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, websites, internet advertisements the mark/name AACHI in relation to the restaurant or with respect to or any other food preparation or on any other

business the impugned trademark/name which is in any manner deceptively or phonetically confusingly similar to the plaintiffs' trademark/name AACHI or in any other manner pass off their business or good as and for that of the plaintiffs.

(c) 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 AACHI or other deceptively similar trade mark used in the pouches and packets bearing the word AACHI.

(d) directing the defendant to render an account of profits made by them by the use of the impugned trademark on the service referred and decree the suit for the profits found to have been made by the defendants, after the defendants have rendered accounts.

(e) directing the defendant to pay to the plaintiffs the costs to the suit.

For Plaintiffs : Ms.Gladys Daniel

For Defendant : Mr.Harishankar Mani

J U D G M E N T

Today (01.11.2019), this matter is listed under the caption,
"For Clarification".

2. The learned counsel appearing for the defendant submitted that the defendant undertook to withdraw any application filed for registration of the trademark AACHI MULTICUISINE RESTAURANT 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 similar to that of the plaintiffs' trademark/name AACHI or in any other manner whatsoever. He has also filed the Memorandum of Compromise dated 16.09.2019, entered into between the plaintiffs and the defendant before this Court.

3. The learned counsel for the plaintiffs prayed that the Memorandum of Compromise filed by the defendant's counsel may be recorded and the suit may be decreed in terms of the said Memorandum of Compromise.

4. The said Memorandum of Compromise reads as follows:

"1. The defendant agrees that the 1st plaintiff is the Registered Proprietor of the trademark AACHI in word and various device registrations.

2. The defendant agrees that the 1st plaintiff is the prior user of the trademark AACHI and the 2nd plaintiff is its licensee.

3. The plaintiffs and the defendant have agreed to compromise the matter in the following terms:

4. The terms plaintiffs and defendant shall mean and include its heirs, executors, administrators, successors and assigns of each party.

5. The defendant submit to a judgment and decree as prayed for in terms of prayers (a) & (b) of para 31 of the Plaint for

(a) granting 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 same name AACHI or used by the plaintiffs and the trademark name AACHI MULTICUISINE RESTAURANT 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 trademark/name which is in any way visually or deceptively or phonetically similar to the plaintiffs' trade mark/name AACHI and use the same in pouches, packets or use the mark in invoices, letters heads, name boards and visiting cards or part of their trading style any other trade literature or by using any other trade mark which is in any way visually, or phonetically similar to the plaintiffs' registered trade mark Nos.838786, 922594, 922595, 976559, 1025302, 1025304, 1025305, 1116254, 1340323, 1375755,

1375756, 1380625, 1415328, 1415329, 1418281, 1458532, 1479158, 1479159, 1555564, 1564085, 1567065, 1567068, 1595537, 1595538, 1595539, 1595540 or in any manner infringing the plaintiff's registered trademarks referred herein.

(b) granting a permanent injunction restraining the defendants 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, websites, internet advertisements the mark/name AACHI in relation to the restaurant or with respect to or any other food preparation or on any other business the impugned trademark/name which is in any manner deceptively or phonetically confusingly similar to the plaintiffs' trademark/name AACHI or in any other manner pass off their business or good as and for that of the plaintiffs.

6. The defendant undertakes to withdraw any application filed for registration of the trademark AACHI MULTICUISINE RESTAURANT in relation to the restaurant or with respect to or any other food preparation or on any other business the impugned trademark/name which is in any manner deceptively or phonetically confusingly similar to the plaintiffs trademark/name AACHI or in any other manner.

7. The defendant undertakes not to oppose the Applications filed by the plaintiffs for the registration of the trademark AACHI.

8. The defendant has not adopted and shall not adopt any of the word or visual features of the plaintiffs' trademark AACHI in future.

9. *The defendant shall not make any application for registration of the trademark AACHI or its formative marks in future.*

In view of the decree for permanent injunction, the plaintiffs have given up the relief contained in prayers (c), (d) & (e) in para 31 of the suit including cost of the suit."

5. The said Memorandum of Compromise is recorded and the same shall form part of the decree.

6. Considering the submission made by the plaintiffs' counsel, this Court is inclined to decree the present suit in terms of the Memorandum of Compromise, dated 16.09.2019, filed by the defendant's counsel. Accordingly, as per the terms of the said Memo of Compromise, this Suit is decreed as prayed for, in respect of prayer (a) & (b). As far as prayer (c), (d) & (e) are concerned, the plaintiffs have given up the same, as they stated in the Memorandum of Compromise. Consequently, connected Applications are closed.

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