

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.08.2019

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

C.S.(A)No.628 of 2011
and
O.A.Nos.780 & 781 of 2011

1.A.D.Padmasingh Isaac
Plot No: 1926, 34th Street,
I Block, Ishwarya Colony,
Anna Nagar West, Chennai 600 040.

2.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
Ashwin Pandian

...Plaintiffs

Versus

Annai Masala Food Products,
9 – B. Karaiyan Pillaiyar South Lane,
Nagapattinam – 611 001.
Tamil Nadu,
India.

...Defendant

This Civil Suit is filed under Order IV, Rule 1 of the Original Side Rules and Order VII, Rule 1 of the Civil Procedure Code read with Sections 27(2), 29, 134 and 135 of the Trade Marks Act, 1999, 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 any goods using same or similar get up, and colour scheme used by the defendant shown in Document No.2 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 in any way visually or deceptively or phonetically similar to the plaintiff's trade mark Aachi Trumeric Powder as shown in Document No.1 or in relation to any masala items 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 No. 1702840 & 1731901 or in any manner infringe the plaintiff's registered Trade Mark;

(b) granting 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 or the label mark Annai Turmeric Powder in relation to the food preparation or any other business the impugned trademark/name which is in any manner deceptively or phonetically confusingly similar to the plaintiff's label Mark Aachi Turmeric Powder or in any other manner pass off their business or goods as and for that of the plaintiff's;

(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 the label Mark Annai Turmeric Powder or other deceptively similar trade mark used in the pouches and packets bearing color scheme and get up as that of plaintiff's registered Trade Mark Aachi Turmeric Powder;

(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 defendant, after the defendant have rendered accounts;

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

For Plaintiffs : M/s.C.Daniel & Gladys Daniel

For Defendant : Set ex parte

vide order dated 31.07.2019

JUDGMENT

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

2. The learned counsel for the plaintiffs submitted that the 1st plaintiff originally started the trading business under the name and style "Abishek Enterprises". The 1st plaintiff was engaged in the business of manufacturing and marketing spices and condiments under the trademark 'Aachi'. The mark 'Aachi' was first adopted in the year 1995. However, the trading style of the 1st plaintiff was subsequently changed from "Abishek Enterprises" to "Naveen Enterprises" and finally into

"Aachi Spices and Foods". The 1st plaintiff trademark as Aachi Spices and Foods is registered under the CST on 28.12.2006 and 03.01.2007 respectively and the same has been marked as Ex.P8. With the growth of the organisation, Nazareth Foods Pvt. Ltd., was incorporated to undertake the manufacturing activities, and the photocopy of the certificate with regard to such incorporation is marked as Ex.P5.

2.1 The learned counsel for the plaintiff further submitted that the subject matter of the suit is with respect to the plaintiff's Trademark Aachi Turmeric Powder, as depicted in Ex.P2. After the mark 'Aachi' acquired distinctiveness, the 1st plaintiff applied for registration of the said Trademark on 15.09.2008 and 24.06.2008. The registration certificate was granted in favour of the 1st plaintiff, vide Trademark Registration No.1702840 and 1731901, which are marked as Ex.P.3, and hence, the 1st plaintiff is the registered proprietor of the trademark 'Aachi'. The mark 'Aachi' (word) and (device) has been registered as set out in Ex.P3

2.2 The plaintiff's counsel further submitted that the 2nd Plaintiff, viz., Aachi Masala Foods (P) Ltd., was incorporated to both market and manufacture the 'Aachi' products of the 1st plaintiff. The certificate of incorporation of the 2nd Plaintiff has been marked as Ex.P6 and the registration of the 2nd Plaintiff with Commercial Taxes has been marked as Ex.P9. The 2nd Plaintiff is the licensee of the 1st Plaintiff. Exs.P10 & P13 are the licenses granted by the 1st Plaintiff in favour of the 2nd Plaintiff. Aachi Spices and Foods Private Limited was incorporated on 17.03.2010 and the Incorporation Certificate and Memorandum of Association are Exs.P11 & P7. Aachi Spices and Foods Private Limited is also a licensee of the 1st Plaintiff as seen in Ex.P12.

2.3 The learned counsel further submitted that the plaintiffs have been manufacturing and marketing spices and other allied food products since 1995 under the trademark 'Aachi'. The turnover of the plaintiffs in the year 2006 was about Rs.230 crores. The plaintiffs have also spent several crores for advertising the trademark 'Aachi'. A sample

advertisement of the plaintiffs is Ex.P4. The mark 'Aachi' acquired tremendous reputation and goodwill and the trade and public associate the trademark 'Aachi' only with the plaintiffs.

2.4 The learned counsel further contended that the plaintiffs came to know about the use of the trademark 'Annai Turmeric Powder' in July 2011. **The trade label of the defendant's product viz., 'Annai' is deceptively similar to the trademark 'Aachi' belonging to the plaintiffs.** The use of the colour scheme, get up, design and device mark of the trademark 'Annai' are also similar to that of plaintiff's trade mark 'Aachi'. After knowing the same, the plaintiffs have come forward with the above suit in August 2011. On 27.09.2011, an order of interim injunction was granted in favour of the plaintiffs and the same is still in force. Therefore, the learned counsel prayed for decreeing the suit as prayed for.

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3. Heard the learned counsel for plaintiff and perused the material available on record. As far as defendant is concerned, it is seen from the records that, despite the name of the defendant is printed in the cause list, none appeared on their behalf when the matter was called on 31.07.2019. Therefore, the sole defendant was set *ex parte* by this Court vide order dated 31.07.2019, and the matter was directed to be listed before the learned Additional Master – IV, for recording *ex parte* evidence. On the side of the plaintiff, the Deputy General Manager-Legal and Statutory of the plaintiffs company examined himself as P.W.1, and 14 documents were marked viz., Exs.P1 to P14.

4. On perusal of the averments in the plaint, proof affidavit and also Ex.P1 to P4, it is seen that the plaintiff is the registered proprietor of the trademark 'Aachi' along with its reliable colour scheme, get up and design and label. The plaintiff also filed Exs.P1, P10, P11 and P13 in order to substantiate that they are the legal user of the trademark 'Aachi' which is inclusive of the work along with the device, which

includes colour scheme, get up and design.

5. Further, the plaintiff filed Ex.P14, which is the defendant's label mark 'Annai' and E.P2 which is plaintiff's label mark 'Aachi'. On perusal of both the label mark of the defendant and plaintiffs, it clearly seen that the defendant is copying the colour scheme, get up and design and the device mark of the plaintiffs, which amounts to infringement, in terms of Section 29 of the Trademarks Act, 1999.

6. Thus, from the above facts, it is clear that the plaintiff is the registered owner of the label mark "Aachi", and they have the exclusive right to use the label mark, get up, design and device mark in respect of their product. **In view of the exclusive right to use the label mark, get up, design and device mark "Aachi" by the plaintiff, the adoption of the label mark, "Annai", by the defendant would clearly amounts to infringement of label mark, get up, design and device mark of the**

plaintiffs. Hence, the plaintiffs are entitled to the relief as prayed in the suit.

7. In the result, the suit is decreed as prayed for with costs of Rs.50,000/-.

Index : Yes/No
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