

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.08.2019

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

**C.S.No.724 of 2013
and O.A.Nos.857 & 858 of 2013
and A.No.5201 of 2013**

1.Mr.A.D.Padmasingh Issac
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

HOTEL NAMMA AACHI
Old No.10, New No.2/228,
Velacherry Main Road,
Santhosapuram,
Chennai – 600 073.

...Defendant

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 himself, his servants, agents, distributors, or anyone claiming through him

from manufacturing, selling, advertising and offering for sale using the same name AACHI/HOTEL NAMMA AACHI or any other similar Trademark 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 plaintiff's trademark/name AACHI and use the same in pouches, packets or use the mark in invoices, letter heads and visiting cards or part of their Hotel/Restaurant name any other trade literature or Menu card by using any other trade mark which is any way visually, or phonetically similar to the plaintiff's registered Trade Mark AACHI CHETTINADU RESTAURANT under No.1116254 or in any manner infringing the plaintiff's registered Trademarks referred herein.

(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, interest advertisements the mark/name HOTEL NAMMA AACHI/Aachi Chettinad 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 plaintiff's Trademark/name AACHI or in any other manner pass off their business or goods 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 HOTEL NAMMA AACHI or other identical trademark 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 HOTEL NAMMA AACHI 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 : Set *ex parte*
vide order dated 01.08.2019

J U D G M E N T

The present suit was admitted on 28.10.2013 and when the matter was called on 10.07.2019, this Court determined the jurisdiction of the suit and as there was none appeared on behalf of the defendant, this Court directed the Registry to print the name of the defendant along with the name of the counsel who entered appearance for the defendant in the cause list and adjourned the matter. Thereafter, when the matter was listed on 01.08.2019, there was no representation for the defendant. Hence, the sole defendant was set *ex parte* by this Court and the Registry was directed to list the matter before the learned Additional Master-III 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-III on the said date, on the side of the plaintiffs, P.W.1 was examined and 18 documents were examined viz., Ex.P1 to Ex.P18.

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

3.1. The plaintiffs carrying on the business as manufacturers, traders, wholesalers, retailers, producers, inventors, importers, exporters, agents, distributors, consignors, or otherwise dealing in Masala and Food Products under the trademark AACHI. They have been using the trademark "AACHI" since 1995. The trademark AACHI was first conceived and adopted by the first plaintiff through his proprietary concern, Abhishek Enterprises. They invested huge sums of money, for advertisement and sales promotional expenses of the trademark "AACHI". 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. In the year 2002, the first plaintiff entered into a partnership along with his mother-in-law, Mrs.Rani Pandian and set up a partnership firm under the name Naveen Products. The said Partnership firm spent considerably towards advertising the Trademark AACHI. The Aachi Masala Foods (P) Ltd., was incorporated on 13.06.2006 and on 01.12.2006, Abhishek Enterprises and Naveen Products transferred their assets and liabilities to Aachi Masala Foods Private Limited., with effect from

30.11.2006. On 31.03.2007, Mrs.Rani Pandian and the first plaintiff dissolved the partnership firm, Naveen Products.

3.3. A proprietary concern Aachi Spices and Foods was registered on 28.12.2006. Thereafter, Aachi Masala Foods Private Limited acquired the trademark AACHI on 30.11.2006 from Abhishek Enterprises and Naveen Products assigned the same in favour of the first plaintiff, trading as AACHI SPICES AND FOODS ON 30.03.2007. On 01.04.2007, the first plaintiff trading as AACHI SPICES AND FOODS executed a License User Agreement in favour of Aachi Masala Foods Private Limited. The sole proprietary concern of the first plaintiff owned the Intellectual Property Rights under the trademark AACHI. On 17.03.2010, Aachi Spices and Foods Private Limited was incorporated. At the time of aforesaid incorporation, the Memorandum of Association of the Company reiterated at Clause B – 11 that the Trademark AACHI along with its right, title and interest were vested with the first plaintiff who already owned the Trademark AACHI.

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3.4. On 21.04.2010, the first plaintiff entered into a License User Agreement with Aachi Spices and Foods Private Limited to use the trademark AACHI. As a proprietor of the trademark AACHI, the first plaintiff continues to use the said trademark through his licensees AACHI

Spices and Foods Private Limited and the second plaintiff. The trademark AACHI was registered under the Trademark Registration No.922594 and the first plaintiff has become an exclusive owner of the word mark AACHI. Also, the first plaintiff had obtained the registration of the trademark AACHI CHETTINAD RESTAURANT under No.1116254 on 03.07.2002 in respect of Food Preparations for Human Consumption Coffee, Tea, Coca, Sugar, Rice, Tapioca, Sago, Coffee substitutes, flour and preparations made from cereals, bread, biscuits, cakes, pastry and confectionery, ice.

3.5. While so, in the month of June 2013, the plaintiffs Company came to know that the defendant is running a hotel under the name HOTEL NAMMA AACHI which is visually and phonetically similar to that of the plaintiffs' trademark AACHI Chettinad Restaurant. The defendant is fully knowingly violating and copying the Trademark of the plaintiffs. The plaintiffs have exclusive right over the trademark AACHI since they have been carrying on the business using the trademark AACHI, with respect to masalas since 1995, whereas, the defendant adopted the registered trademark of the plaintiffs very recently. The defendant's usage of the offending trademark HOTEL NAMMA AACHI creates confusion and deception in the market.

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 and that the defendant has 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 defendant is passing off the substandard goods to the consumers. She would further contend that the defendant's usage of the plaintiffs' well known mark "AACHI" would amounts to infringement and passing off. She therefore prayed that the defendant may be restrained from using the plaintiffs' registered trademark "AACHI", otherwise, the plaintiffs will be put to loss and hardship.

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

6.1. On perusing the Proof Affidavit of P.W.1 and also the documents marked on the side of the plaintiffs, this Court finds that the first plaintiff got registered the trademark, "AACHI CHETTINAD RESTAURANT" under No.1116254 on 03.07.2002 which is clearly evident from Ex.P17, the Legal Use Certificate of Trade Mark No.1116254 in Class 30, dated 03.07.2002 and it is also seen that considering the application filed by the first plaintiff for the registration of the word mark "AACHI" on 04.05.2000, in Class 29, the Registrar of Trade Marks granted registration for the Trademark "AACHI", which is evident from Ex.P16, Registration Certificates of the Mark AACHI in various countries around the world.

6.2. There is no doubt, the defendant's offending trademark, "HOTEL NAMMA AACHI" is visually and phonetically, similar to that of the plaintiffs' trademark which is evident from Ex.P18, Defendant's Name Board HOTEL NAMMA AACHI and Ex.P2, List of Products Manufactured and Marketed by the plaintiffs bearing the Trademark AACHI – Photostat Copy clearly shows that the plaintiffs are manufacturing and marketing various products like biscuits, pickle, oil, ghee, masala powder, semiya, soup, etc., It is clear that the defendant adopted the registered trademark of the plaintiffs only with an evil intention to encash the goodwill of the plaintiffs' company. Therefore, the said act of the defendant

would not only amounts to infringement of the plaintiffs' registered trademark but also it would amounts to passing off. Finally, the plaintiff proved the suit claim beyond doubts.

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 defendant, this Court feels that it would be necessary to put costs on the defendant.

7. Accordingly, this Civil Suit is decreed as prayed for and the defendant is directed to pay the cost of Rs.1,00,000/- (Rupees One Lakh only) to the plaintiffs. Consequently, connected Applications are closed.

20.08.2019

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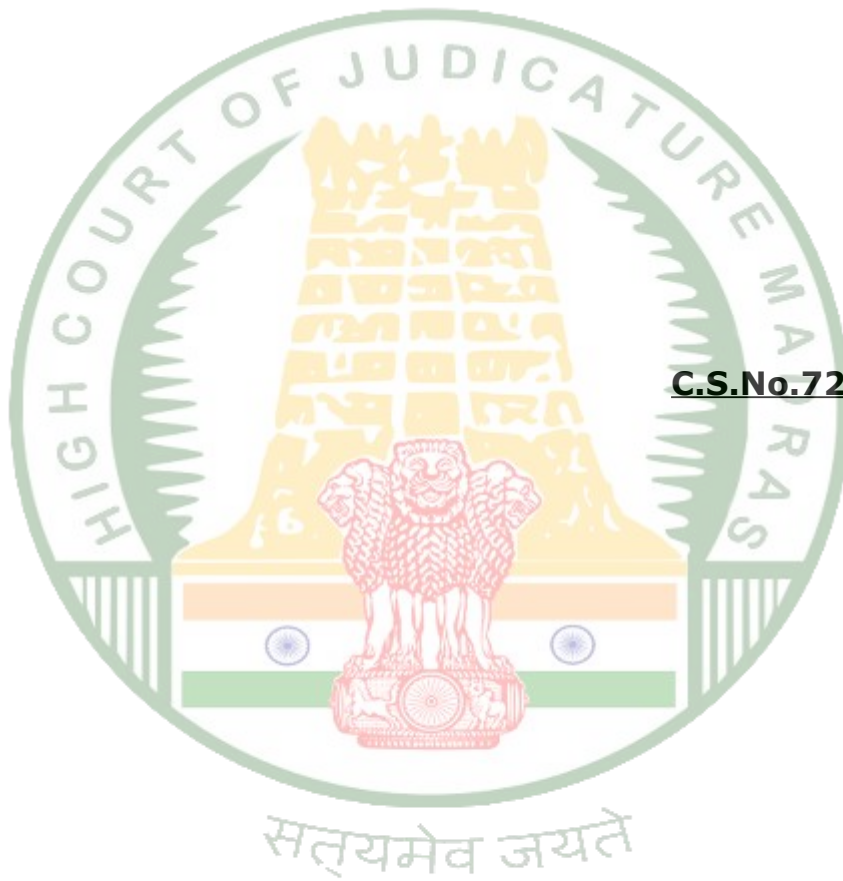
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KRISHNAN RAMASAMY, J.,

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