

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.S.No.239 of 2019

and

O.A.Nos.360 and 361 of 2019

- 
1. A.D.Padmasingh Isaac
Trading as Aachi Spices and Foods,
Old No.4, New No.181/1,
6th Avenue, Thangam Colony,
Anna Nagar,
Chennai 600 040.
2. M/s. Aachi Masla Foods (P) Ltd.,
Old No.4, New No.181/1,
6th Avenue, Thangam Colony,
Anna Nagar,
Chennai 600 040.
Rep. by its Director,
Mr.Ashwin Pandian,
3. M/s.Heavenly Foods Pvt. Ltd.,
Plot No.1926, 34th Street,
I Block, Ishwarya Colony,
Anna Nagar West,
Chennai 600 040.
Rep. by its Director,
Mrs. Shiny Ashwin
- ... Plaintiffs

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Vs

Aachi Briyani & Fast Food,
G.S.T.Road,
Nehru Nagar, Kadaperi,
West Tambaram,

Chennai 600 045.

... Defendant

Plaint 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 and 135 of the Trade Marks Act, 1999 praying to pass judgment and decree 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 name Aachi Briyani & Fast Food 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 trade mark/name which is in any way visually or deceptively or phonetically similar to the 1st plaintiff's trade mark / name AACHI / AACHI CHETINAD RESTAURANT / AACHI KITCHEN and use the same in pouches, packets or use the mark in invoices, letters heads and visiting cards or part of their Hotel / Restaurant name any other trade literature or Menu card by suing any other trade mark which is in any way visually, or phonetically similar to the plaintiff's registered Trade Mark Nos.838786, 1116254, 1479159, 1715718, 2965624 or in any matter infringing the 1st plaintiff's registered Trade Marks 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, internet advertisements the mark/name Aachi Briyani & Fast Food 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 Trade Mark / name AACHI / AACHI

CHETINAD RESTAURANT / AACHI KTICHEN or in any other manner pass off their hotel, 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 of Aachi Briyani and Fast Food or other identical trade mark used in the pouches and packets bearing the word AACHI / AACHI HOTEL / AACHI CHETINAD RESTAURANT / AACHI KITCHEN.
- d) directing the defendant to render an account of profits made by them by the use of the impugned trademark Aachi Briyani & Fast Food 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 : Mr.P.V.Sudakar

For Defendant : No appearance.

Set ex-parte on 19.06.2019

JUDGMENT

The suit has been filed for the reliefs as stated in the prayer portion of this judgment.

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2. The first plaintiff is the proprietor of the trademark "AACHI". He was carrying on business under the name and style of Abishek Enterprises. The said proprietorship concern, by virtue of assignment deed dated 01.12.2006,

which is marked as Ex.P4, transferred their assets and liabilities to the second plaintiff. Thereafter, the first plaintiff and one Rani Pandian formed a partnership Firm under the name and style of Naveen Products and they became the owner of the Trade Mark "AACHI". The said partnership Firm, by virtue of assignment deed dated 01.12.2006, which is marked as Ex.P6, transferred their assets and liabilities to and in favour of the second plaintiff and in turn, the second plaintiff assigned the Trade Mark "AACHI" in favour of the first plaintiff on 30.03.2007, which is marked as Ex.P8. Subsequently, the first plaintiff licensed the Trade Mark to and in favour of the second plaintiff on 01.04.2007, which is marked as Ex.P10. Thereafter, the first plaintiff also licensed the Trade Mark "AACHI" to and in favour of the third plaintiff on 11.08.2014. By virtue of that, now the first plaintiff is the owner and the plaintiffs 2 and 3 are the licensed users of the Trade Mark "AACHI". The plaintiffs have availed the Legal Use certificate of Trade Mark "AACHI", which are marked as Exs.P19 to P23.

3. In the circumstances, the plaintiffs came to know about the use of word "Aachi" by the defendant in the name and style of Aachi Briyani & Fast Food at West Tambaram, Chennai. It is the contention of the plaintiffs that they are also running restaurant in the registered name and style of "AACHI KITCHEN" in Chennai. The name boards and menu cards are marked as Ex.P25

series. The use of identical trademark will cause irreparable loss and hardship to the plaintiffs' business and reputation and also would cause confusion among the general public at large.

4. Immediately, upon noticing the use of the word "Aachi" by the defendant, the plaintiffs have approached this Court for appropriate orders. According to the plaintiffs, the cause of action arose in Chennai as they are carrying on business at Annanagar, Chennai, within the jurisdiction of this Court. Therefore, he has filed the present suit under Section 134 (2) of the Trade Marks Act. The suit can be filed where they are running the business even if the cause of action arose in a different place.

5. After filing the suit, the suit summons were issued to the defendant-Company, but they failed to appear before this Court. Hence, the sole defendant was set ex-parte on 19.06.2019. Thereafter, the matter was listed before the learned Additional Master for recording evidence.

6. B.Gnanasambandam, the Deputy General Manager - Legal & Statutory of the plaintiffs' company filed proof affidavit and marked Exs.P1 to P26. The Ex.P25 series would show that the defendant's hotel is running under the name of "Aachi Briyani & Fast Food", which is a blatant infringement of the plaintiffs' registered Trade mark "AACHI". The two trade marks are visually and

phonetically similar, which shows that the defendant has copied the plaintiffs' trade mark "AACHI".

7. This Court heard the learned counsel appearing for the plaintiffs and gone through the averments in the plaint and the proof affidavit and also perused Exs.P.1 to P.26.

8. On perusal of the pleadings and documents, this Court finds that the plaintiffs are the registered proprietors of the trademark, "Aachi". In this regard, the plaintiffs also filed the Legal User Certificate of the trademark, "Aachi" and the same have been marked as Exs.P.19 to 23. In these circumstances, the plaintiffs came to know about the use of word "Aachi" by the defendant in the name and style of Aachi Briyani & Fast Food at West Tambaram, Chennai. In this regard, the plaintiffs also filed the name board of the defendant and the plaintiff's name board, marked as Exs.P.26 and P.25. On perusal of Exs.P.26 and P.25, it appears that the defendant clearly infringing the whole tradename of the plaintiffs "AACHI", as part of their (defendant's) tradename, which clearly amounts to infringement in terms of Section 29 of the Trademarks Act, 1999. Accordingly, the plaintiffs are entitled to the relief prayed for in the suit.

9. In the result, the suit is decreed as prayed for, with costs of

Rs.50,000/- (Rupees fifty thousand only) to be paid by the defendant to the plaintiffs within a period of three months from the date of receipt of this judgment. Consequently, connected applications are closed.

01.07.2019

Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
pvs

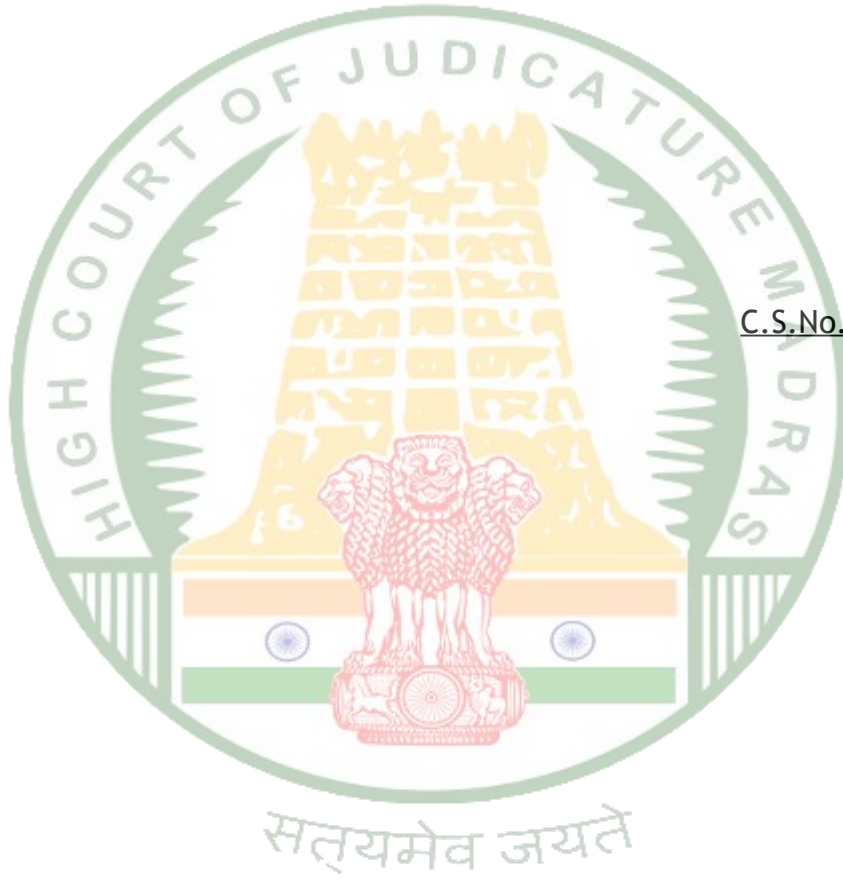
To
The Sub Assistant Registrar,
Original Side,
High Court, Madras.



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KRISHNAN RAMASAMY, J.,

pvs



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