

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.10.2019

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.S.NO.330 of 2019
and O.A.No.534 and 535 of 2019

1. Mr.A.D.Padmasingh Issac
Trading as Aachi Spices and Foods
Old No.4, New No.181/1, 6th Avenue,
Thangam Colony, 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
3. M/s Heavenly Foods Pvt. Ltd.,
Plot No.1926, 34th Street,
I Block, Ishwarya Colony,
Anna Nagar West, Chennai 600 00.
Represented by its Director
Mrs. Shiny Ashwin.

... Plaintiffs

Vs.

Hotel Aachi Tea and Cofee and
Hotel Aachi Meen Kulambu Saapadu,
Arcot-Vellore Road, Opposite to SSS College,
Arcot Bye Pass.

... Defendant

PRAYER Civil Suit filed under Order IV Rule 1 of the Original Side Rules read and Order VII Rule 1 of the Code of Civil Procedure read with Section 27(2), 29, 134 and 135 of the Trademarks Act, 1999 to grant a decree and judgment for

a) 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 **Hotel Aachi Tea and Cofee and Hotel Aachi Meen Kulambu Saapadu** or any other similar Trade Mark name or similar sounding expression in any media and use the same in name board, invoices, letter hads and visiting cards or by using any other trade mark/ name which is in any way visually or deceptively or photetically similar to the first plaintiff's trade mark/ name **Aachi/Aachi Chetnad 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 using any other trade mark which is in any way visually, or phonetically similar to the plaintiffs' registered Trade Mark Nos.838786, 1116254, 1479159, 1715718, 2965624 or in any manner infringing the 1st plaintiff's registered Trade Marks referred herein.

b) 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 **Hotel Aachi Tea and Cofee** and **Hotel Aachi Meen Kulambu Saapadu** 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 Chetnad Restaurant/Aachi Kitchen** 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 **Hotel Aachi Tea and Cofee** and **Hotel Aachi Meen Kulambu Saapadu** or other identical trade mark used in the pouches and packets bearing the word **Aachi/Aachi Hotel/ Aachi Chetnad Restaurant/ Aachi Kitchen**.

d) directing the defendant to render an account of profits made by them by the use of the impugned trade mark **Hotel Aachi Tea and Cofee** and **Hotel Aachi Meen Kulambu Saapadu** 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 of the suit.

For Plaintiffs : Ms.Gladys Daniel

For Defendant : Exparte

JUDGMENT

The case of the plaintiffs is that the first plaintiff is the proprietor of the trademark **AACHI**. The Trademark **AACHI** is synonymous with a variety of spices, condiments, food products and ready to eat preparations marketed under the name. The first plaintiff started the business in the year 1995 with a trademark "Aachi" which became widely famous around the world and it gained reputation and Goodwill.

2. The first plaintiff entered into a Licence User agreement with Aachi Spices and Foods Private Limited, the 2nd plaintiff on 21.04.2010 to use the trademark. The 3rd plaintiff is the licensee of the first plaintiff's registered Trademarks "Aachi Kitchen and Aachi Chettinad Restaurant". The first plaintiff obtained a registration certificate No.838786 for the Trademark " **AACHI** ". He also obtained a registration of the trade mark " **Aachi Chettinad Restaurant**" under Certificate No.1116254 in respect of food

preparations for Human consumption, like coffee, tea, sugar, rice sago etc, and " **Aachi Kitchen**" under Certificate No.1715718 in respect of restaurants, providing of food and drink, canteen, catering, fast food restaurants and snack bars.

3. In March 2019, the plaintiffs have come across the defendant's hotel under the name " **Hoel Aachi Tea and Cofee and Hotel Aachi Meen Kulambu Sappadu**". This name is a blatant infringement of the plaintiffs' registered Trade Marks " **Aachi**", " **Aachi Chettinad Restaurant**",. The defendant is using an identical trademark of the plaintiff with a malicious intention to cash upon the goodwill and reputation created by the plaintiff. If the usage of the plaintiff's trade mark by the defendant is not stopped, the plaintiffs will put irreparable loss and hardship. Hence, the suit.

4. Though the name of the defendant was printed in the cause list and suit summons were served on the defendant by way of paper publicaion, none appeared on behalf of him and hence, he was set exparte on 06.09.2019 and suit was directed to be listed before learned Additional Master-I for recording *ex parte* evidence.

5. The learned Additional Master-I recorded the evidence of one B.Gnanasambandam, Deputy General Manager (Legal and Statutory) as PW1 and marked Ex.P1 to Ex.P26. and posted the suit before this Court for Final Disposal.

6. I have perused the evidence of PW1 and the documents marked as Ex.P1 to Ex.p26. Ex.P2 is the certificate of incorporation of Aachi Masala Foods Private Limited. Ex.P3 to Ex.P5 are the deeds of assignment between Aachi Masala Foods Private Limited as first party and Abishek Enterprises, Naveen Products and A.D.Padmasingh Issac respectively as the 2nd party. Ex.P7 and Ex.P8 are the Certificates of Commercial Tax Registration of Aachi Spices and Foods and Aachi Masala and Foods Private Limited. Ex.P9, Ex.P12, Ex.P13, Ex.P15 are the Trade Mark License User Agreement between A.D.Padmasingh Issac and Aachi masala Foods Private Limited. Ex.P17 is the Registration Certificates of the mark "Aachi". Ex.P18 is the Advertisement of the plaintiffs' products in PITZ magazine. Ex.P19 to Ex.P22 and Ex.P24 are the legal use certificate of trade mark No.838786, 1116254, 1715718, 1479159 and 2965624 respectively issued in favour of the plaintiffs. Ex.P23 is the list of products manufactured and marketed by the plaintiffs bearing the trademark Aachi. Ex.P26 is the Defendant's name board and visiting card contained as " Hotel Aachi Tea and Coffee" and " Hotel Aachi Meen Kulambu

Saapadu".

7. A perusal of the documents shows that the defendant has used the identical mark of the plaintiffs i.e. "AACHI" in its name board and visiting card. The trademark of the plaintiffs "Aachi" has been registered as per Ex.P17 Registration Certificate. Using of the plaintiffs' trademark " Aachi " by the defendant certainly will affect the business and reputation of the plaintiff and such imitation of the plaintiff's registered trademark by the defendant is nothing but infringement. The evidence of PW1 and the documents adduced by the plaintiffs remained unchallenged. The documents also proved the fact that the first plaintiff is the proprietor of the trademark " Aachi " and he is using this trademark through his licensees, the 2nd and 3rd plaintiff. If the defendant is allowed to use the identical trade mark of the plaintiff " Aachi", definitely, it will create confusion and deception in the market and the plaintiffs will put into irreparable loss and hardship. Therefore, the plaintiffs are entitled for a permanent injunction against the defendant.

8. The learned counsel appearing for the plaintiff submitted that the plaintiff would be satisfied if the suit is decreed in respect of prayers 'a' and 'b' alone.

9. Accordingly,

i) The civil suit is partly decreed, in respect of prayers "a" and "b" alone. No costs. Consequently, connected original applications are closed.

ii) In respect of other prayers, the suit is dismissed.

14.10.2019

Plaintiffs side evidence:

PW1 Mr.B.Gnanasambandam

Plaintiffs side exhibits

- Ex.P1 23.09.2019 Authorisation letter given to PW1
- Ex.P2 30.06.2006 Certificate of incorporation of Aachi Masala Foods Private Ltd.(Photostat copy)
- Ex.P3 01.12.2006 Deed of Assignment between Abishek Enterprises and Aachi Masala Food Private Ltd (Photostat copy)
- Ex.P4 01.12.2006 Deed of Assignment between Naveen Products and Aachi Masala Food Private Ltd (Photostat copy).
- Ex.P5 30.03.2007 Deed of Assignment between Aachi Masala Foods Private Ltd. and A.D.Padmasingh Issac (Photostat copy).
- Ex.P6 31.03.2007 Dissolution deed between Mrs. Rani Pandian and Mr.A.D. Padmasingh Issac (Photostat copy).
- Ex.P7 03.01.2007 Certificate of Commercial Tax Registration and Central Sales Tax of Aachi Spices & Foods (Photostat copy).

- Ex.P8 10.07.2006 Certificate of Commercial Tax Registration and Central Sales Tax of Aachi Spices and Foods P. Ltd. (Photostat copy).
- Ex.P9 01.04.2007 Trade Mark License User Agreement between first plaintiff and Aachi Masala Foods Pvt. Ltd. (Photostat copy)
- Ex.P10 17.03.2010 Certificate of incorporation of Aachi Spices and Foods P. Ltd. (Photostat copy)
- Ex.P11 06.03.2010 Memorandum of Association of Aachi Spices and Foods Pvt. Ltd. (Photostat copy)
- Ex.P12 21.04.2007 Trade Mark License User Agreement between first plaintiff and Aachi Spices and Food P. Ltd. (Photostat copy)
- Ex.P13 21.04.2010 Trade Mark License User Agreement between first plaintiff and Aachi Spices and Food P. Ltd. (Photostat copy)
- Ex.P14 01.04.2014 Certificate of Incorporation of 3rd plaintiff (Photostat copy)
- Ex.P15 11.08.2014 Trade Mark License User Agreement between first plaintiff and Aachi Spices and Food P. Ltd. (Photostat copy)
- Ex.P16 - Aachi Kitchen's menu card
- Ex.P17 - Certificate of Registration of Trademark AACHI (Photostat copy)
- Ex.P18 - Plaintiffs' advertisement in PITZ Magazine (Photostat copy)

- Ex.P19 04.03.2019 legal use certificate of Trade Mark No.838786
(Photostat copy)
- Ex.P20 07.08.2019 legal use certificate of Trade Mark No.1116254
(Photostat copy)
- Ex.P21 04.03.2019 legal use certificate of Trade Mark No.1715718
(Photostat copy)
- Ex.P22 12.06.2017 legal use certificate of Trade Mark No.1479159
(Photostat copy)
- Ex.P23 - List of products manufactured and marketed by the
plaintiffs
- Ex.P24 14.06.2017 legal use certificate of Trade Mark No.2965624
(Photostat copy)
- Ex.P25 13.09.2016 Order passed by Trademark Trial and Appellate Board
(Photostat copy)
- Ex.P26 - Defendant's Name Board and visiting card colour photo

Defendant side witness and documents: Nil (Defendant set exparte)

सत्यमेव जयते

14.10.2019

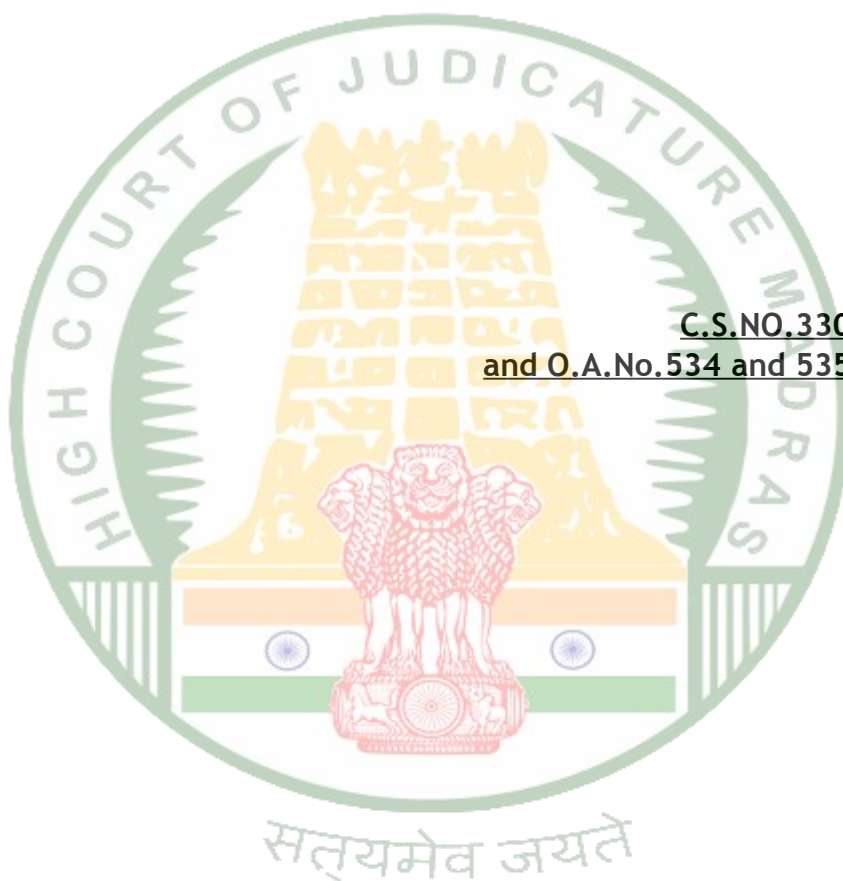
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N.SATHISH KUMAR, J.

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