

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :14.10.2019

Coram

The Honourable Mr.Justice N.SATHISH KUMAR

C.S.No.286 of 2014

1. Mr.A.D. Padmasingh Issac
 2. M/s. Aachi Masala Foods (P) Ltd.,
Old No.4, New No.181/1,
6th Avenue, Thangam Colony,
Anna Nagar, Chennai – 600 040
rep. By its Director,
Mr. Aswin Pandian
- ...Plaintiffs

Versus

Aachi Kitchen,
107/2, Ampa Skywalk Mall,
Nelson Manickam Road,
Aminjikarai,
Chennai – 600 029.

...Defendants

This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules and Order VII, Rule 1 of the Code of Civil Procedure read with Sections 27(2), 29, 134 & 135 of the Trade marks Act, 1999, prayed (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/AACHI KITCHER Perfect Chettinad 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 Plaintiff' trade mark/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 in any way visually, or phonetically similar to the Plaintiff' registered Trade Mark AACHI CHETTINADU RESTAURANT under NO.1116254 or in any manner infringing the 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 KITCHEN Perfect Chettinad/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 Trade Mark/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 plaintiff all the packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the name AACHI KITCHEN perfect Chettinad or other identical 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 AACHI KITCHEN Perfect Chettinad 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 : Mrs.Gladys Daniel

For Defendant : Defendant set exparte
vide order dated 23.09.2019.

J U D G M E N T

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The suit has been filed 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/AACHI KITCHER Perfect Chettinad 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 Plaintiff' trade mark/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 in any way visually, or phonetically similar to the Plaintiff' registered Trade Mark AACHI CHETTINADU RESTAURANT under NO.1116254 or in any manner infringing the 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 KITCHEN

Perfect Chettinad/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 Trade Mark/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 plaintiff all the packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the name AACHI KITCHEN perfect Chettinad or other identical 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 AACHI KITCHEN Perfect Chettinad 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.

2. The case of the plaintiffs is that the plaintiffs trademark 'AACHI' is synonymous with a variety of spices, condiments, food products and ready to eat preparations marketed under the name. The trademark 'AACHI' has created for itself an indelible mark in the market with respect to food preparations. The plaintiffs trademark 'AACHI' has gained reputation, goodwill amongst the public and it has become a common household name. The plaintiffs have been using the trademark 'AACHI' in respect of all the masala preparations from the commencement of its business. The 1st plaintiff has sole proprietary right over the mark 'AACHI'. The list of all the applications registered in the name of the plaintiffs are mentioned hereunder:

No.	Trademark/D Evice	Appln.No.	Date	Class	Advt. Jr.	Status
1.	AACHI	838786	29.01.1999	30	1377	Registered
2.	AACHI	922594	04.05.2000	29	Mega (Spl- 2)	Registered

No.	Trademark/D Evice	Appln.No.	Date	Class	Advt. Jr.	Status
3.	AACHI	922595	04.05.2000	32	Mega (Spl-2)	Registered
4.	AACHI	976559	12.02.2000	30	1374	Registered
5.	AACHI Masala Chilly Powder	1025302	11.07.2001	30	1382	Registered
6.	AACHI Asafetida	1025303	11.07.2001	30	1382	Registered
7.	AACHI Turmeric Powder	1025304	11.07.2001	30	1382	Registered
8.	AACHI SPICES	1025305	11.07.2001	30	1374	Registered
9.	AACHI Masala Idly Chilly Powder (Label)	1318493	01.11.2004	30	1330	Registered
10.	AACHI Appalams	1318494	01.11.2004	30	1370	Registered
11.	AACHI Masala Kulambu Chilly Powder (Label)	1318495	01.11.2004	30	1330	Registered
12.	AACHI Orid Dhall (Label)	1334479	25.01.2005	30	1336	Registered
13.	AACHI Ready to Eat Nethili Kulambu (Label)	1340323	23.02.2005	29	1396	Registered
14.	AACHI Ready to Eat Seer Fish Kulambu (Label)	1340324	23.02.2005	29	1366-sup-1	Registered
15.	AACHI Prawn	1340325	23.02.2005	29	1336-sup-1	Registered

No.	Trademark/D Evice	Appln.No.	Date	Class	Advt. Jr.	Status
	Kulambu (Label)					
16.	AACHI	1357284	16.05.2005	32	1337-sup-1	Registered
17.	AACHI Refined Sunflower Oil	1367430	28.06.2005	29	1349	Registered
18.	AACHI	1372439	19.07.2005	29	1340-sup-1	Registered
19.	AACHI Ghee (Label)	1372440	19.07.2005	29	1370	Registered
20.	AACHI WHEAT	1373993	26.07.2005	30	1398	Registered
21.	AACHI Herbal Soapnut Powder (Label)	1374937	02.08.2005	03	1350	Registered
22.	AACHI Seedless Dates (Label)	1375754	05.08.2005	29	1349	Registered
23.	AACHI Masala Sambar Powder (Label)	1375755	05.08.2005	30	1377	Registered
24.	AACHI Ready to Cook Instant Biriyani (Label)	1375756	05.08.2005	30	1349	Registered
25.	AACHI Readt to Cook Instant Biriyani (Word)	1380625	16.08.2005	30	1348	Registered
26.	AACHI Masala Rice for Biriyani	1415328	20.01.2006	30	1386	Registered
27.	AACHI Masala Rice for	1415329	20.01.2006	30	1386	Registered

No.	Trademark/D Evice	Appln.No.	Date	Class	Advt. Jr.	Status
	Biriyani (Label)					
28.	AACHI Gulab Jamun-Mix (Label)	1418281	01.02.2006	30	1393	Registered
29.	AACHI (Tamil)	1458532	01.06.2006	42	1388	Registered
30.	AACHI (Tamil & English)	1479158	17.08.2006	42	1386-sup-1	Registered
31.	AACHI (Tamil & English)	1479159	17.08.2006	30	1388	Registered
32.	AACHI Pongal Sambar Ready to Eat (Label)	1526516	01.02.2007	30	1399	Registered
33.	AACHI	1555564	03.05.2007	29	1400	Registered
34.	AACHI Gingeley Oil (Label)	1557660	11.05.2007	29	1400	Registered
35.	AACHI	1564085	31.05.2007	05	1400	Registered
36.	AACHI	1567065	11.06.2007	31	1400	Registered
37.	AACHI	1567066	11.06.2007	27	1400	Registered
38.	AACHI	1567067	11.06.2007	34	1400	Registered
39.	AACHI	1567068	11.06.2007	21	1400	Registered
40.	AACHI Badam Drink (Label)	1581011	18.07.2007	29	1408	Registered
41.	AACHI (Label)	1595537	28.08.2007	30	1408	Registered
42.	AACHI (Label)	1595538	28.08.2007	05	1408	Registered
43.	AACHI (Label)	1595539	28.08.2007	29	1408	Registered
44.	AACHI (Label)	1595540	28.08.2007	03	1408	Registered
45.	AACHI (Label)	1595542	28.08.2007	32	1408	Registered
46.	AACHI (Label)	1595544	28.08.2007	31	1408	Registered

No.	Trademark/D Evice	Appln.No.	Date	Class	Advt. Jr.	Status
47.	AACHI (Label)	1595545	28.08.2007	27	1408	Registered
48.	AACHI Chicken Curry Masala (Label)	1604348	21.09.2007	30	1425	Registered
49.	AACHI Turmeric Powder (Label)	1702840	24.06.2008	30	1408	Registered
50.	AACHI Chema Puttu Powder (Label)	1702848	24.06.2008	30	1408	Registered
51.	AACHI Chicken Masala (Label)	1720889	13.08.2008	30	1442	Registered

3. When the things stood thus, the defendant started the restaurant bearing the name 'AACHI KITCHEN Perfect Chettinad' infringing the plaintiffs registered trademark 'AACHI Chettinad Restaurant'. The two marks are visually and phonetically similar. Hence, the suit has been filed for the relief as stated supra.

4. Though suit summons was served, the defendant had not entered appearance either in person or through counsel. Therefore, the defendant was set ex parte by this court vide order

dated 23.09.2019.

5. On the side of the plaintiffs, the Deputy Manager - Legal and Statutory of the second plaintiff Company was examined as P.W.1 and the following documents were marked as Exs.P1 to P18.

S.N o.	Date	Description of documents	Exhibit
1.	01.10.2019	Original Authorization letters	P-1
2.	-	Printout copy of the list of products manufactured and marketed by the plaintiffs bearing the trademark 'Aachi'	P-2
3.	30.06.2006	Photocopy of the certificate of Incorporation of Aachi Masala Foods (P) Ltd	P-3
4.	01.12.2006	Copy of the Deed of Assignment between Abishek Enterprises and Aachi Masala Foods (P) Ltd	P-4
5.	31.03.2007	Photocopy of the dissolution deed between Mrs. Rani Pandian and the Mr. A.D.Padmasingh Isaac dissolving the partnership firm, Naveen products	P-5
6.	01.12.2006	Copy of Deed of Assigment between Naveen Products and Aachi Masala Foods Pvt. Ltd	P-6
7.	28.12.2007 and 03.01.2007	Photocopy of the Certificate of Commercial Tax Registration and Central Sales Tax of Aachi Spices and Foods	P-7
8.	30.03.2007	Copy of Deed of Assignment between Aachi Masala Foods Pvt. Ltd and Mr. A.D.Padmasingh Issac trading as Aachi Spices and Foods	P-8
9.	10.07.2006	Photocopy of the Certificate Commercial Tax	P-9

S.No.	Date	Description of documents	Exhibit
		Registration of Aachi Masala and Foods (P) Ltd	
10.	01.04.2007	Photocopy of the Trade mark License user agreement between Mr.A.D.Padmasingh Isaac trading as Aachi Spices and Foods and Aachi Masala foods (P) Ltd	P-10
11.	17.03.2010	Photocopy of the Certificate of Incorporation of Aachi Spices and Foods P Ltd	P-11
12.	06.03.2010	Photocopy of the Memorandum of Association of Aachi Spices and Foods Ltd	P-12
13.	21.04.2010	Photocopy of the Trade Mark License user Agreement between Mr.A.D.Padmasingh Isaac and Aachi Spices and Foods (P) Ltd	P-13
14.	21.04.2010	Photocopy of the Trade Mark License user Agreement between Mr.A.D.Padmasingh Isaac Aachi Masala foods (P) Ltd	P-14
15.	-	Copy of the Plaintiffs' Advertisement in RITZ Magazine	P-15
16.	-	Photocopy of the Legal use certificates of the mark AACHI in various countries around the world	P-16
17.	03.07.2002	Photocopy of the Legal use certificate of the Trade Mark No.11162541 in Class 30	P-17
18.	-	Printout copy of the defendant's name board bearing the name AACHI KITCHEN Perfect Chettinad.	P-18

6. Heard the learned counsel for the plaintiffs and perused the materials.

12/15

7. P.W.1 has spoken about the list of products manufactured and marketed by the plaintiffs with the registered trademark 'AACHI'. The certificate of incorporation of Aachi Masala Foods (P) Ltd, dated 30.06.2006 has been marked as Ex.P3. The photocopies of the trademark license user agreement between Mr.A.D.Padmasigh Issac and Aachi Spies and Foods (P) Ltd dated 21.04.2010, have been marked as Exs.P13 and P14. Ex.P16 has been marked to show that the plaintiff has obtained registration certificate of the mark 'AACHI' in various countries around the world. Ex.P17 is the photo copy of the legal user certificate of the Trade Mark No.1116254 in Class 30, dated 03.07.2002. Ex.P18 is the printout copy of the defendant's name board bearing the name 'AACHI KITCHEN Perfect Chettinad'.

8. P.W.1 has not only spoken about the business under the trademark 'AACHI' but has also spoken about the turnover, goodwill and reputation gained by the plaintiff amongst the public. Ex.P18, defendant's name board bearing the word mark 'AACHI

KITCHEN Perfect Chettinad' is visually and phonetically similar to that of the plaintiff 'Aachi Chettinad Restaurant' and, in fact, it leads to confusion among the people.

9. From the above documents, the plaintiffs have proved their claim. Accordingly, the suit is decreed in respect of prayers 'a' and 'b'. As far as prayers 'c' and 'd' are concerned, the learned counsel for the plaintiff submitted that the plaintiffs will be satisfied if the suit is decreed in respect of prayers 'a' and 'b'. Hence, the suit is dismissed against the prayers 'c' and 'd'.

10. In the result, the suit is decreed as indicated above with costs.

14.10.2019

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C.S.No.286 of 2014

N.SATHISH KUMAR, J.,

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C.S.No.286 of 2014

14.10.2019

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