

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.08.2019

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

**C.S.No.291 of 2014
and O.A.Nos.334 & 335 of 2014
and A.No.2910 of 2014**

1.Mr.A.D.Padmasingh Isaac

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

OM Hospitality (AACHIS)
trading as Aachi's Chettinad Cuisine,
No.3157, 12th Main Road,
Indira Nagar,
Bangalore – 560 008.

...Defendant

(Amended as per order dated 25.06.2015 in A.No.4101 of 2015)

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 r/w. Sections 27(2), 29, 134 and 135 of the Trade Marks 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/AACHI'S CHETTINAD CUISINE 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 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 in any way visually, or phonetically similar to the plaintiff's registered Trademark AACHI CHETTINAD 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, internet advertisements the mark/name AACHI'S CHETTINAD CUISINE/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 AACHI'S CHETTINAD CUISINE or other identical trade mark used in the pouches and packets bearing the word.

(d) directing the defendant to render an account of profits made by them by the use of the impugned trademark AACHI'S CHETTINAD CUISINE 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 Plaintiff : Ms.Gladys Daniel
For Defendant : Mr.R.Pushkar
for M/s.Rohan K.George

J U D G M E N T

The present suit has been filed by the plaintiffs for the reliefs stated in the prayer portion of this Judgment.

2. The learned counsel on both sides submitted in unison that the matter has been settled between the parties and they have also filed a Memorandum of Compromise dated 05.08.2019, entered

between the parties, before this Court. They also prayed that the suit may be decreed in terms of the said Memorandum of Compromise and the same may be recorded.

3. The said Memorandum of Compromise reads as follows:

"1. The terms, plaintiffs and defendant shall mean and include its heirs, executors, administrators, successors and assigns of each party.

2. The defendant submits to a judgment and decree as prayed for in terms of prayers (a) & (b) of paragraph 38 of the plaint 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 same name AACHI/AACHI'S CHETTINAD CUISINE 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 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 in any way visually, or phonetically similar to the plaintiff's registered Trademark AACHI CHETTINAD 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, internet advertisements the mark/name AACHI'S CHETTINAD CUISINE/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 plaintiffs' Trademark/name AACHI or in any other manner pass off their business or goods as and for that of the plaintiffs.

3. The defendant undertakes to withdraw any application filed for registration of the trademark AACHI'S CHETTINAD CUISINE/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 plaintiffs' Trademark/name AACHI or in any other manner.

4. The defendant undertakes not to oppose the Applications filed by the plaintiffs for the registration of the trademark AACHI.

5. The defendant has not adopted and shall not adopt any of the visual features of the plaintiff's Trademark AACHI in future.

KRISHNAN RAMASAMY, J.,

mrr

6. *The defendant shall not make any application for registration of the Trademark AACHI in future."*

4. The above Memorandum of Compromise is recorded and the same shall form part of the decree.

5. Considering the submission made by the learned counsel on both sides, this Court is inclined to decree the suit in terms of the said Memorandum of Compromise. Accordingly, this Civil Suit is decreed in terms of the Memorandum of Compromise entered between the parties. No costs. Consequently, connected Applications are closed.

सत्यमेव जयते

09.08.2019

mrr

Index : Yes/No

WEB COPY

C.S.No.291 of 2014