

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.501 of 2019
and
O.A.Nos.781 & 782 of 2019

1.A.D.Padmasingh Issac,
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 Masala Foods (P) Ltd.,
Old No.4, New No.181/1,
6th Avenue, Thangam Colony,
Anna Nagar, Chennai - 600 040.
Represented by its Director,
Ashwin Pandian.

3.M/s.Heavenly Foods Pvt. Ltd.,
Plot No.1926, 34th Street,
I Block, Ishwarya Colony,
Anna Nagar West, Chennai - 600 040.
Represented by its Director,
Shiny Ashwin.

... Plaintiffs

Vs.

Aachi Mess & Aachi Briyani Stall,
No.69/4, Anna Salai,
TNSTC Depot Opposite
Vellore - 632 001.

... Defendant

Plaint filed under Order VII Rule 1 C.P.C. read with Order IV Rule 1 of the High Court Original Side Rules praying 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 MESS & AACHI BRIYANI STALL 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 1st plaintiff's trademark/name AACHI/AACHI CHETTINAD 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 restaurant name any other trade literature or Menu card by using any other trademark which is in any way visually, or phonetically similar to the plaintiff's registered trademark Nos.838786, 1116254, 1479159, 1715718 & 2965624 or in any manner infringing the 1st plaintiff's registered trademark 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 MESS & AACHI BRIYANI STALL 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/AACHI CHETTINAD 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 AACHI MESS & AACHI BRIYANI STALL or other identical trademark used in the pouches and packets bearing the word AACHI/AACHI HOTER/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN.

(d) directing the defendant to render an account of profits made by them by the use of the impugned trademark AACHI MESS & AACHI BRIYANI STALL on the service referred and decree the suit for the profits found to have been made by the defendant, after the defendants have rendered accounts;

(e) directing the defendant to pay to the plaintiffs the costs to the suit, and

(f) pass such further or other orders, as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiffs : Mr.Gladys Daniel
For defendant : Mr.K.V.Sajeev Kumar

J U D G M E N T

The suit has been laid for the following reliefs:

(i) 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 MESS & AACHI BRIYANI STALL 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 1st plaintiff's trademark/name AACHI/AACHI CHETTINAD 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 restaurant name any other trade literature or Menu card by using any other trademark which is in any way visually, or phonetically similar to the plaintiff's registered trademark Nos.838786, 1116254, 1479159, 1715718 &

2965624 or in any manner infringing the 1st plaintiff's registered trademark referred herein.

(ii) 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 MESS & AACHI BRIYANI STALL 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/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN or in any other manner pass off their hotel, business or goods as and for that of the plaintiffs.

(iii) 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 MESS & AACHI BRIYANI STALL or other identical trademark used in the pouches and packets bearing the word AACHI/AACHI HOTER/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN.

(iv) directing the defendant to render an account of profits made by them by the use of the impugned

trademark AACHI MESS & AACHI BRIYANI STALL on the service referred and decree the suit for the profits found to have been made by the defendant, after the defendants have rendered accounts;

(v) directing the defendant to pay to the plaintiffs the costs to the suit, and

(vi) pass such further or other orders, as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

2. When the matter is taken up for hearing, a memorandum of compromise entered into between the plaintiffs and defendant dated 21.10.2019, signed by the parties and duly attested by their respective counsel has been produced.

3. Learned counsel appearing for the plaintiffs as well as the learned counsel appearing for the defendant would submit that the suit may be decreed in terms of memorandum of compromise dated 21.10.2019. The memorandum of compromise reads as under:

1. The defendant agrees that the 1st plaintiff is the registered proprietor of the trademark AACHI in word and various device registrations.

2. The defendant agrees that the 1st plaintiff is the

prior user of the trademark AACHI and the 2nd and 3rd plaintiffs are its licensees.

3. The plaintiffs and the defendant have agreed to compromise the matter in the following terms:

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

5. The defendant submit to a judgment and decree as prayed for in terms of prayers (a) & (b) of para 40 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 name AACHI MESS & AACHI BRIYANI STALL 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 1st plaintiff's trademark/name AACHI/AACHI CHETTINAD 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 restaurant name any other trade literature or Menu card by using any other trademark which is in any way visually, or phonetically similar to the plaintiffs' registered

trademark No.838786, 1116254, 1479159, 1715718 & 2965624 or in any manner infringing the 1st 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 MESS & AACHI BRIYANI STALL 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/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN or in any other manner pass off their hotel, business or goods as and for that of the plaintiffs.

6. The defendant undertakes to withdraw any application filed for registration of the trademark AACHI MESS & AACHI BRIYANI STALL 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/AACHI CHETTINAD RESTAURANT/AACHI KITCHEN or in any other manner pass off their hotel, business or goods as and for that of

the plaintiffs.

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

8. The defendant has not adopted and shall not adopt any of the word or visual features of the plaintiffs' trademark AACHI in future.

9. The defendant shall not make any application for registration of the trademark AACHI or its formative marks in future.

In view of the decree for permanent injunction the plaintiffs have given up the relief contained in prayers (c), (d) & (e) in para 40 of the suit including cost of the suit.

4. Accordingly, the suit stands decreed in terms of memorandum of compromise dated 21.10.2019 and the said memorandum of compromise is taken on record and the same shall form part of the decree. No costs. Consequently, connected original applications are closed.

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