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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 23rd DAY OF NOVEMBER, 2020

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

C.S. No. 132 of 2020
and
O.A.Nos.179 and 180 of 2020
and
A.No.1236 of 2020

1. A.D.Padmasingh Isaac
Proprietor,
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
Mr.Ashwini 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
Mrs. Shiny Ashwin

... Plaintiffs/Applicants
(in all Applications)

/versus/



AACHIS Village Restaurant
No.119/8, NH44, Madurai Bypass Road,
Near Indian Oil Petrol Bunk,
Kakkavadi, Karur-639003.

... Defendant/Respondent
(in all Applications)

C.S.No.132 of 2020

Civil Suit praying that this Hon'ble Court be pleased to pass a 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'S Village Restaurant or any other similar Trade Mark name or similar sounding expression in any media and use the same in the 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, letter heads and visiting card or part of their restaurant name, food preparation, 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 Trade Mark Nos.838786, 1116254, 1479159, 1715718 & 2965624 or in any manner 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's Village Restaurant in relation to the Restaurant or with respect to or any



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 Applicant's/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 restaurant name food preparation any other trade literature or Menu card, by using any other trade mark which is in any way visually, or phonetically similar to the Applicants'/Plaintiffs' registered Trade Mark NOS.838786, 1116254,1479159, 1715718 AND 2965624 or in any manner infringing the 1st Applicant's/1st Plaintiff's registered Trade Marks referred herein pending disposal of the above suit.

O.A.No.180 of 2020

Original Application praying that this Hon'ble Court be pleased to grant an ad interim injunction restraining the Respondent/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 Village 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 Applicants/Plaintiffs Trade Mark/name AACHI/AACHI CHETINAD RESTAURANT/AACHI KITCHEN or in any other manner pass off their hotel, business or goods as and for that of the Applicants/Plaintiffs pending disposal of the above suit.

A.No.1236 of 2020

Application praying that this Hon'ble Court be pleased to permit the Applicants to combine causes of action of infringement of registered trademark and passing off.

This suit alongwith these Applications having been heard on 19.11.2020 in the presence of Mr.C.Daniel, Advocate for the Plaintiffs in C.S.No.132 of 2020 and for the Applicants in all Applications and the defendant herein, not appearing in person or by advocate and the said defendant herein, having been set exparte and upon reading the plaint filed in C.S.No.132 of 2020 and the order herein dated 14.09.2020, and the other exhibits therein referred to and upon perusing the evidence adduced therein and having stood over for consideration till this date and coming on this day before this court for orders in the presence of said advocates for the parties hereto and this court having observed that the plaintiffs have established more than sufficient goodwill and reputation, the balance of convenience is certainly in favour of the plaintiffs, it is ordered and decreed as follows:-



That AACHI's Village Restaurant, the defendant herein, by himself, his servants, agents, distributors, or anyone claiming through him, be and is hereby restrained by an order of permanent injunction from manufacturing, selling, advertising and offering for sale using the name AACHI'S Village Restaurant or any other similar Trade Mark name or similar sounding expression in any media and use the same in the 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, letter heads and visiting card or part of their restaurant name, food preparation, 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 Trade Mark Nos.838786, 1116254, 1479159, 1715718 & 2965624 or in any manner infringing the 1st Plaintiff's registered Trade Marks referred herein.

2. That AACHI's Village Restaurant, the defendant herein, by itself, its agents or servants or anyone claiming through or under him, be and is hereby restrained by an order of permanent injunction from any business marketing, selling advertising using in trade literature, menu cards, invoices, name boards, website, internet advertisements the mark/name AACHI's Village 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/AACHI CHETINAD RESTAURANT/AACHI KITCHEN or in any other manner pass off their hotel, business or goods as and for that of the Plaintiffs.



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31.12.2020

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C.S.No.132 of 2020
and
O.A.Nos.179 and 180 of 2020
and
A.No.1236 of 2020

DECREE:

DATED: 23.11.2020

THE HON'BLE MR.JUSTICE
C.V.KARTHIKEYAN

FOR APPROVAL: 18.1.2021

APPROVED ON: 19.01.2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.11.2020

Pronounced on : 23.11.2020

Coram

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.S.No.132 of 2020

and

O.A.Nos.179 & 180 of 2020

and

A.No.1236 of 2020

1.Mr.A.D.Padmasingh Isaac

Proprietor,

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.

Mr.Ashwin Pandian

3.M/s.Heavenly Food Pvt. Ltd.,

Plot No.1926, 34th Street,

I Block, Ishwarya Colony,

Anna Nagar West, Chennai – 600 040.

Represented by its Director,

Mrs.Shiny Ashwin

...Plaintiffs

Vs



Near Indian Oil Petrol Bunk,
Kakkavadi,
Karur – 639 003.

...Defendant

Prayer: This Civil Suit filed under Order IV Rule 1 O.S. Rules Order VII Rule 1 CPC, read with Sections 27(2), 29, 134 and 135 of the Trade Marks Act, 1999, praying for a Judgment and Decree against the Defendant:

(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'S Village Restaurant or any other similar Trade Mark name or similar sounding expression in any media and use the same in the 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, letter heads and visiting card or part of their restaurant name, food preparation, 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 Trade Mark Nos.838786, 1116254, 1479159, 1715718 & 2965624 or in any manner 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's Village 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/AACHI CHETINAD 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 materials, cartons, advertisement materials and hoardings, letter heads, visiting cards, office stationery and all other materials containing / bearing the name AACHI'S Village Restaurant 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'S Village Restaurant 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 the cost of the suit.

For Plaintiffs - Ms.Gladys Daniel

For Defendant - set exparte.

JUDGMENT

The Plaintiffs have filed the suit under Sections 27(2), 29, 134 and 135 of the Trade Marks Act, 1999, read with the relevant provisions of the Original Side Rules of the Madras High Court and the Code of Civil Procedure, 1908, seeking a Judgment and Decree against the Defendant



primarily from using the registered trademark 'Aachi' and for consequential reliefs.

2.The 1st Plaintiff is the Proprietor of the trademark 'Aachi'. The 2nd Plaintiff is the Licensee of the trademark 'Aachi' and the 3rd Plaintiff is the licensee of the trademark 'Aachi Kitchen' and 'Aachi Chettinad Restaurant'.

3.The Plaintiff has claimed that they have registered the word mark 'Aachi' both in India and several other countries. They have been using the mark from the year 1995. They also claimed that substantial goodwill and reputation had been established.

4.The 1st Plaintiff had also obtained registration of the trademark 'Aachi Chettinad Restaurant' under No.1116254 on 03.07.2002, with respect to Food Preparation of Human Consumption, coffee, tea, and such other beverages and also preparations made from bread, biscuits, cakes, pastry and confectionery, ice.

5.The 1st Plaintiff had also obtained registration mark of the 'Aachi Kitchen' under No.1715718 in respect of restaurants, providing of food and drink and such other services. The 1st Plaintiff has been using the trademark 'Aachi Kitchen' with respect to restaurant business through the 3rd Plaintiff.



6.The 1st Plaintiff had also obtained registration mark Aachi in Tamil in Registration No.1479159.

7.The Defendant is said to be running the hotel under the name 'Aachi's Village Restaurant. It had been claimed in the plaint that the name of the Defendant's hotel is identical to the Plaintiffs' registered trade mark. It had been stated that the Defendant had deliberately copied the trade mark of the Plaintiffs' with intention to encroach the goodwill and reputation created by the Plaintiff. It had also been stated that the general public would mistake the restaurant of the Defendant to be an undertaking of the Plaintiffs'. It was under these circumstances that the suit had been filed seeking the relief as stated above.

8.The Plaintiffs had also filed O.A.Nos.179 and 180 of 2020 seeking interim injunction which had also been granted. The Defendant had been served with the suit summons. The name of the Defendant had also printed in the cause list on 16.10.2020. Since there was no representation, the Defendant was set exparte on 16.10.2020.

9.The Plaintiff was called upon to adduce evidence to substantiate the suit claim. Accordingly, the Plaintiffs examined D.Gnanasambandam,



Deputy Manager, - Legal and Statutory of the 2nd Plaintiff company as PW1.

He also produced 34 documents, which were marked as Exs.P1 to P34.

Ex.P30 is a copy of the Legal User Certificate of the trademark No.1116254 dated 03.07.2002 for the trademark 'Aachi Chettinad Restaurant'. Ex.P31 is the copy of the Legal User Certificate of the trademark No.1715718 dated 30.07.2008 with respect to the trademark 'Aachi Kitchen'. Ex.P32 is the copy of the Legal User certificate of the trademark No.1479159 dated 17.08.2006 for registration of the mark 'Aachi' in Tamil. Ex.P14 (series 2 Nos.) are the Name Board Aachi Kitchen and the Menu Card of Aachi Kitchen. The Name Board is reproduced below:-



WEB COPY 10.Ex.P34 is the Name Board of the Defendant, namely Aachi's Village Restaurant, which is reproduced below:-



11.I hold that in view of the registrations of the trademark 'Aachi Kitchen' and 'Aachi Chettinad Restaurant', the continuation of the



Defendant of the restaurant using the mark 'Aachi' would cause confusion in the minds of the general public who would certainly get the impression that the restaurant of the Defendant is actually a branch or another undertaking of the Plaintiffs. Though the suit summons had been served, the Defendant had taken a conscious decision to abstain from participating in the Judicial Proceeding. In the Plaint, the details have been given with respect to the turnover and the promotional expenditure incurred and it is seen that the Plaintiffs have established more than sufficient goodwill and reputation. The balance of convenience is certainly in favour of the Plaintiffs.

12. In view of the registrations, I hold that, the Plaintiffs have made out a case for grant of relief sought in the suit. Accordingly, the suit is decreed as prayed for, with costs. Consequently, the connected Applications are closed.

13. Insofar as the costs are concerned, in view of the fact that the Defendant had shown scant regard for the sanctity of the judicial proceedings by deliberately avoiding appearance, I hold that the plaintiffs are entitled to costs as determined under the amended Section 35 of the



High Court.

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14. Registry is delegated by the Court to determine the costs as per the Bill of Costs submitted by the plaintiffs in accordance with Section 35 CPC as amended by the Commercial Courts Act 2015. The plaintiffs are specifically entitled to the fees and expenses of the witness, the legal fees and expenses incurred and for any other expenses incurred in connection with the judicial proceedings and also for recovery of the actual Court fees paid into Court.

Sd/-C.V.K.J.
23.11.2020

List of Witness in C.S.No.132 of 2020

P.W.1 – (B.Gnanasambandam)

List of Exhibits:

1. Ex.P1 (Series 3 Nos) are the Original Authorization Letters dated 02.11.2019.
2. Ex.P2 is the List of Products manufactured and marketed by the Plaintiffs bearing the trademark AACHI.
3. Ex.P3 is the photocopy of the Certificate of incorporation of Aachi Masala Foods Pvt. Ltd., dated 30.06.2006.
4. Ex.P4 is the photocopy Certificate of Commercial Tax Registration of Aachi Masala & Food (P) Ltd., dated 10.07.2006.



5. Ex.P5 is the photocopy of the Dissolution Deed between Mrs.Rani Pandian and Mr.A.D.Padmasingh Isaac dissolving the partnership firm, Naveen Products dated 31.03.2007.
6. Ex.P6 is the photocopy of the Certificate of Commercial Tax Registration and Central Sales Tax of Aachi Spices & Foods dated 28.12.2006 and 03.01.2007.
7. Ex.P7 is the photocopy of the Trade Mark License user Agreement between Mr.A.D.Padmasingh Isaac trading as Aachi Spices and Foods and Aachi Masala Foods Pvt. Ltd., dated 01.04.2007.
8. Ex.P8 is the photocopy of the Certificate of incorporation of Aachi Spices and Food Pvt. Ltd., dated 17.03.2010.
9. Ex.P9 is the photocopy of the Memorandum of Association of Aachi Spices and Food Pvt. Ltd., dated 06.03.2010.
10. Ex.P10 is the photocopy of the Trade mark License user Agreement between Mr.A.D.Padmasingh Isaac and Aachi Spices and Foods Pvt. Ltd., dated 21.04.2010.
11. Ex.P11 is the photocopy of the Trade Mark License user Agreement between Mr.A.D.Padmasingh Isaac and Aachi Masala Foods Pvt. Ltd., dated 21.04.2010.
12. Ex.P12 is the downloaded copy of the Certificate of incorporation of M/s.Heavenly Foods (P) Ltd., and Memorandum and Articles of Associations dated 01.04.2014.
13. Ex.P13 is the photocopy of the Trade Mark License user Agreement between Mr.A.D.Padmasingh Isaac, Aachi Spices and Foods and M/s.Heavenly Foods (P) Ltd., dated 11.08.2014.
14. Ex.P14 (series 2 Nos) are the Aachi Kitchen's name board and Aachi Kitchen's Menu card.
15. Ex.P15 is the photocopy of the registration certificate of the mark Aachi under No.1219486 in Australia.
16. Ex.P16 (series) are the photocopy of the registration certificate of the mark Aachi under Nos.T0800640A and T0800642H in Singapore.



17. Ex.P17 is the photocopy of the registration certificate of the mark Aachi under No.1403435 in Canada.
18. Ex.P18 (series) are the photocopy of the registration certificate of the mark Aachi under Nos.4077412 and 3983355 in USA.
19. Ex.P19 is the photocopy of the registration certificate fo the mark Aachi under No.2501626 in UK.
20. Ex.P20 is the photocopy of the registration certificate of the mark Aachi under No.80478 in Nigeria.
21. Ex.P21 is the photocopy of the registration certificate of the mark Aachi under No.08024801 in Malaysia.
22. Ex.P22 (series) are photocopy of the registration certificate of the mark Aachi under Nos.77942 and 77943 in Bahrain.
23. Ex.P23 is the photocopy of the registration certificate of the mark Aachi under No.806755 in New Zealand.
24. Ex.P24 is the photocopy of registration certificate of the mark Aachi under No.589536 in Switzerland.
25. Ex.P25 (series) are the photocopy of registration certificate of the mark Aachi under Nos.25/1195 and 1266/7 in Saudi Arabia.
26. Ex.P26 (series) are the photocopy of the registration certificate of the mark Aachi under Nos.59734 and 59735 in Qatar.
27. Ex.P27 is the photocopy of the Madrid Protocol Registration in classes 29, 30, 43 with respect to the Trademark AACHI designating 107 countries valid and subsisting as on date.
28. Ex.P28 is the Certified Copy of the Plaintiffs Advertisement in RITZ Magazine for the year December 2006.
29. Ex.P29 is the photocopy of the Legal Use Certificate of Trade Mark No.838786, dated 29.01.1999.



30. Ex.P30 is the photocopy of the Legal Use Certificate of Trade Mark No.1116254, dated 03.07.2002.

31. Ex.P31 is the photocopy of the Legal Use Certificate of Trade Mark No.1715718, dated 30.07.2008.

32. Ex.P32 is the photocopy of the Legal Use Certificate of Trade Mark No.1479159, dated 17.08.2006.

33. Ex.P33 is the photocopy of the Legal Use Certificate of Trade Mark No.2965624 dated 18.05.2015.

34. Ex.P34 is the Defendant's Name Board Aachi's Village Restaurant.

Sd/-C.V.K.J.
23.11.2020

// Certified to be true copy//
Dated at Madras this day of 2020.

Court Officer(O.S.)

From 25th day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.