

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.01.2020

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Civil Suit(Comm.Div.)No.511 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,
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.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,
Mrs.Shiny Ashwin.

.. Plaintiffs

/versus/

Aachi Virunthagam,
2851/6, Trichy Road,
Opp. Vinodhagan Hospital,
Thanjavur 613 007.

.. Defendant

Prayer:-

This Civil Suit is filed under Order IV, Rule 1 of the Original Side Rules and Order VII, Rule 1 of the C.P.C. read with Section 27(2), 29, 134 and 135 of the Trade Marks Act, 1999 praying to pass for a judgment and decree: (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 VIRUNTHAGAM or any other similar Trade Mark name or similar sounding expressing 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 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 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 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 VIRUNTHAGAM 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 material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the name AACHI VIRUNTHAGAM 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 profit made by them by the use of the impugned trademark AACHI VIRUNTHAGAM 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;and (e)directing the defedant to pay to the plaintiffs the costs to the suit.

For plaintiffs :Mr.C.Daniel

For Defendant :Mr.Niranjan S.Kumar

JUDGMENT

Today, a memo of compromise duly signed by the plaintiffs, defendant and their respective counsel is filed. The memo of compromise is recorded. The terms of compromise reads as below:

"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 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) and (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 VIRUNTHAGAM 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 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 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 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, websites, internet advertisements the mark/name AACHI VIRUNTHAGAM 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.

6.The defendant undertakes to withdraw any application filed for registration of the trademark AACHI VIRUNTHAGAM 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' trade mark/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.

Dated at Chennai on this the 11th day of December 2019."

2. In view of the compromise arrived between the parties, the Civil Suit is decreed in terms of the memorandum of compromise entered between the plaintiffs and the defendant on 11.12.2019. The terms of the compromise memo shall form part of the decree. No costs.

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Speaking Order / Non-Speaking Order
Index : yes/no
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Dr.G.JAYACHANDRAN,J.

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