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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 23rd DAY OF SEPTEMBER 2021

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.S.No.829 of 2008

1. Mr.A.D.Padmasingh Isaac

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.,

No.6, Ground Floor,

15th Street, Anna Nagar, 'G' Block,

Chennai - 600 040.

Represented by its Director,

Mr. Ashwin Pandian

...Plaintiffs

Versus

Ganapathi Cottage Industries,

Ayanavaram, Chennai - 600 023.

...Defendant

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
itself, its servants, agents, distributors, or anyone claiming through him from
manufacturing, selling, advertising and offering for sale using the trade



mark Ganapathi in **AACHI** or any other similar sounding expression or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way phonetically similar to the plaintiffs' trade mark **AACHI** or in relation to any Readymade Dosai Idly Wet Mix items and use the same pouches, packets or use the mark in invoices, letters heads and visiting cards or any other trade literature or by using any other trade mark which is in any way phonetically similar to the Plaintiffs' registered Trade Mark Nos. 922594, 922595, 1372439, 838786, 976559 or in any manner infringe the Plaintiff's registered Trade Mark.

b) 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 Ganapathi in **AACHI**.

c) directing the Defendant to render an account of profits made by them by the use of the impugned trademark as shown in Document No.2 on the goods referred and decree the suit for the profits found to have been made by the Defendants, after the Defendants have rendered accounts.

d) directing the Defendant to pay to the Plaintiffs the costs to the suit.

This civil suit coming on this day before this Court for hearing in the presence of Ms.T.Hemalatha for Mrs.Gladys Daniel, Advocates for the plaintiffs herein 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 herein and the other exhibits therein referred to and upon perusing the evidence adduced therein and this having observed that the plaintiff is a registered holder of the trademark and the said trademark is being used by the plaintiff in various edible products including the products made out of cereals, it is ordered and decreed as follows:-

That Ganapathi Cottage Industries, the defendant herein, by itself, its 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 trade mark Ganapathi in **AACHI** or any other similar sounding expression or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way phonetically similar to the plaintiffs' trade mark **AACHI** or in relation to any Readymade Dosai Idly Wet Mix items and use the same pouches, packets or use the mark in invoices, letters heads and visiting cards or any other trade literature or by using any other trade mark which is in any way phonetically similar to the Plaintiffs' registered Trade Mark Nos. 922594, 922595, 1372439, 838786, 976559 or in any manner infringe the Plaintiff's registered Trade Mark.

2) That the defendant herein, be and is hereby directed 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 Ganapathi in **AACHI**.

3) That the defendant herein, be and is hereby directed to render an account of profits made by them by the use of the impugned trademark as shown in Document No.2 on the goods referred and the profits found to have been made by the Defendants, after the Defendants have rendered accounts.

4) That connected applications, if any, do stand closed.

5) That there shall be no costs of this suit.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
23rd DAY OF SEPTEMBER 2021.

Sd/-

ASSISTANT REGISTRAR(Comm. Cases)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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10.01.2022

C.S.No.829 of 2008

DECREE

DATED : 23.09.2021

THE HON'BLE MR. JUSTICE
R.SUBRAMANIAN

FOR APPROVAL: 20.01.2022

APPROVED ON : 24.01.2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.829 of 2008

1.Mr.A.D.Padmasingh Isaac
trading as Aachi Spices and Foods,
Old No.4, New No.181/1,
6th Avenue, Thangam Colony,
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2.M/s.Aachi Masala Foods (P) Ltd.,
No.6, Ground Floor,
15th Street, Anna Nagar, 'G' Block,
Chennai - 600 040.
Represented by its Director,
Mr.Ashwin Pandian

...Plaintiffs

Vs.

Ganapathi Cottage Industries,
Ayanavaram, Chennai - 600 023.

...Defendant

Prayer: Complaint filed under Order IV Rule 1 of the original side rules and Order VII Rule 1 of C.P.C., r/w. Sections 27(2), 29, 134 and 135 of the Trademarks Act, 1999, praying as follows:-

a) granting a permanent injunction, restraining the Defendant, by itself, its servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale using the trade mark Ganapathi in "AACHI" or any other similar sounding expression or in



any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way phonetically similar to the plaintiffs' trade mark "AACHI" or in relation to any readymade Dosai Idly Wet Mix items and use the same pouches, packets or use the mark in invoices, letter heads and visiting cards or any other trade literature or by using any other trade mark which is in any way phonetically similar to the Plaintiffs' registered Trademark Nos.922594, 922595, 1372439, 838786, 976559 or in any manner infringe the Plaintiff's registered Trademark.

b) 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 Ganapathi in AACHI.

c) directing the Defendant to render an account of profits made by them by the use of the impugned trademark as shown in Document No.2 on the goods referred and decree the suit for the profits found to have been made by the Defendants, after the Defendants have rendered accounts.

d) directing the Defendant to pay to the plaintiffs the costs of the suit.

For Plaintiffs : Ms.T.Hemalatha for

Mrs.Gladys Daniel

For Defendant : Set exparte



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JUDGMENT

The 1st plaintiff, who is the registered proprietor of the word mark "AACHI" and the 2nd plaintiff, which has been engaged in manufacture of various food products, particularly, relating to masala powders used in making of South Indian food items like Sambar, Rasam, Briyani etc., has sued for injunction restraining the defendant from using the mark "AACHI" along with the prefix "Ganapathi in AACHI" for its Idly and Dosa batter, contending that such said user would amount infringement of its trademark, since the 1st plaintiff has got a registration for using the word mark "AACHI" for use in masala powders, spices and preparations made from cereals. Even as early as on 12.02.2000, the said registration has been renewed as on date. It is claimed that the 1st plaintiff has permitted the 2nd plaintiff to use the said mark "AACHI".

2.The plaintiffs would claim that as prior users as well as a registered holders of the trademark, they are entitled to injunctive reliefs. A decree for mandatory injunction directing the defendant to surrender all the packing material and advertisement material etc. has also been sought for, apart from the reliefs of accounting and costs.

3.The defendant in the suit was served on 30.11.2010. Despite such



service, the defendant did not chose to appear to contest the suit. Therefore, the defendant was called absent and set exparte on 06.07.2021, when this Commercial Division took cognizance of the suit.

4.One Mr.B.Gnanasambandam has been examined as P.W.1. He has produced various pouches as exhibits to demonstrate that the plaintiff has been using the trade name "AACHI" in almost all of its products. The pouch used by the defendant for packing its products has been filed as Ex.P11. The trademark license user agreement between the 1st plaintiff and the 2nd plaintiff has been produced as Ex.P10. The legal user certificate has been produced as Ex.P12, while the registration certificate has been produced as Ex.P6. Mr.B.Gnanasambandam has also spoken about the likelihood of confusion among the mind of the consumers, if the defendant is allowed to use the trademark "AACHI" particularly in its product, which is also a food product falling within the same clause. A perusal of the evidence shows that the plaintiff is a registered holder of the trademark and the said trademark is being used by the plaintiff in various edible products, including the products made out of cereals.

5.In the light of the evidence available, I am convinced that the plaintiff is entitled to the reliefs sought for in the suit. Therefore, the suit is



decreed as prayed for. No costs. Consequently, connected applications, if any, are closed.

Sd/-R.S.M.J.

23.09.2021

List of witness and documents filed on the side of the plaintiffs:

<i>S.No</i>	<i>Description of Documents</i>	<i>Exhibits</i>
1	(Series 2 Nos.) are the original Authorization letters for 1st & 2nd plaintiffs.	Ex.P1
2	Certified copy of Plaintiffs advertisement in RITZ Magazine.	Ex.P2
3	Original Plaintiffs' label "AACHI MASALA KULAMBU CHILLY MASALA MIXED MASALA".	Ex.P3
4	(Series 44 Nos.) are the originals of the Plaintiffs' Labels.	Ex.P4
5	(Series 15 nos.) are the photocopies of the Legal use certificate of Trademark.	Ex.P5
6	(Series 4 nos.) are the photocopies Registration Certificate of trademark.	Ex.P6
7	The photocopy of the certificate of Incorporation of Nazareth Foods Private Limited dated 23.07.2021	Ex.P7
8	Photocopy of the Certificate of Commercial Tax Registration of Aachi Masala & Foods (P) Ltd., dated 10.07.2006.	Ex.P8
9	(Series 3 nos.) are the photocopies of the Certificate of Commercial Tax Registration and Central Sales Tax of Aachi Spices & Foods dated 28.12.2006 and 03.01.2007.	Ex.P9
10	The photocopy of the Trademark 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.	Ex.P10



S.N o	Description of Documents	Exhibits
11	The original Defendant's label plastic pouch AACHI READY MADE DOSAI IDLY WET MIX	Ex.P11
12	The copy of the legal user certificate in respect of the Trademark AACHI under No.976559 in Class 30 (marked after comparing with the original, verified and returned).	Ex.P12

List of witness and documents filed on the side of the defendant:

Nil

Sd./-R.S.M.J.

23.09.2021

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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