



C.S.(Comm.Div.) 172 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2022

Coram:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Suit (Comm Div.) No.172 of 2021

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.,
No.1926, 34th Street, I Block,
Ishwarya Colony, Anna Nagar West,
Chennai 600 040.
Represented by its Director
Mr.Ashwin Pandian
3. M/s.Heavenly Foods P 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/



C.S.(Comm.Div.) 172 of 2021

Aachi Chettinadu Hotel,
1/263, Mariamman Koil Street,
Mugalivakkam,
Chennai 600 125

..Defendant

Prayer: Civil Suit has been filed under Order IV, Rule 1 of the
Original Side Rules and Order VII, Rule 1 of the C.P.C. Read with
Sections 27(2), 29, 134 & 135 of the Trade Marks Act, 1999,
praying 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 or providing services using the
name “AACHI CHETTINADU HOTEL” 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 plaintiffs
trade mark/name **AACHI/AACHI CHETTINAD RESTAURANT/AACHI
KITCHEN** and use the same in pouches, packets or use the mark



C.S.(Comm.Div.) 172 of 2021

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in invoices, letters heads and visiting cards or part of their restaurant, hotel 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, 171571`8 & 2965624 or in any manner infringing the 1st plaintiffs 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 CHETTINADU HOTEL**' 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 any manner deceptively or phonetically confusingly similar to the plaintiffs trade mark/name **AACHI/AACHI CHETTINAD RESTAURANT/ AACHI**



C.S.(Comm.Div.) 172 of 2021

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 CHETTINADU HOTEL**' or other identical trade mark used in the pouches and packets bearing the work AACHI/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 CHETTINADU HOTEL**' on the service referred and decree the suit for the profits found to have been made by the defendant, after the defendant has rendered accounts.

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

(f) pass such further or other order, as this Hon'ble Court



C.S.(Comm.Div.) 172 of 2021

may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiffs :Mrs.Gladys Daniel

For Defendant :Set exparte

J U D G M E N T

The present suit has been filed seeking for the relief of permanent injunction, restraining the defendant, his servants or anyone claiming through the defendant from manufacturing, selling, offering, advertising for sale or providing services using the name '**AACHI CHETTINADU HOTEL'**  or any other trade mark name or any name with a similar sounding expression in any media or by using any other trade mark and/or name which are visually, phonetically or deceptively similar to the 1st plaintiff's registered trade mark/name **AACHI / AACHI CHETTINAD RESTAURANT/ AACHI KITCHEN/**  and the plaintiffs have also prayed for a direction to the defendant, to surrender all the materials including the advertising materials,



C.S.(Comm.Div.) 172 of 2021

pouches, packets and hoardings bearing the name '**AACHI CHETTINADU HOTEL**' or any other word identical to the plaintiffs' names **AACHI**/' **AACHI CHETTINAD RESTAURANT**/' **AACHI KITCHEN**/  . The plaintiffs have also sought for a direction to render the account of profits to the defendant.

2. The case of the plaintiffs is with respect to the infringement of their registered trade mark **AACHI** and **AACHI CHETTINAD RESTAURANT**. The trade mark **AACHI** was assigned in favour of the 1st plaintiff by one registered proprietary concern called the Aachi Masala Foods (P) Limited on 30.03.2007. The plaintiffs state that, in the year 1999, the trade mark **AACHI** was first applied for and registered in the name of the 1st plaintiff trading as Naveen products. The plaintiffs also state that there are currently 178 registrations of the trade mark **AACHI** in various words, labels and stylized marks and the 1st plaintiff also acquired international registration (WIPO) under the Madrid



C.S.(Comm.Div.) 172 of 2021

protocol for the trade mark AACHI word and device under classes 29, 30 and 43 in 107 and 117 designated countries respectively. It is claimed by the plaintiffs that the label marks as a whole have been in use since 1995 and that they have become widely famous among the trading community and the public.

3. The plaintiffs further state that the 3rd plaintiff is the licensee of the 1st plaintiff to exploit the registered trademarks **AACHI KITCHEN/**  and **AACHI CHETTINAD RESTAURANT** and that the 1st plaintiff obtained the registration of the trade mark **AACHI CHETTINAD RESTAURANT** under No.1116254 on 3.7.2002 in respect of food preparations for human consumption such as coffee, tea, cocoa, sugar, rice, tapioca, sago, coffee substitutes, flour and preparations made from cereals, bread, biscuits, cakes, pastry, confectionery and ice. With respect to the mark **AACHI KITCHEN**, the plaintiffs state that the 1st plaintiff obtained the registration under No. 1715718 in respect



C.S.(Comm.Div.) 172 of 2021

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of restaurants, providing of food and drink, temporary accommodation, canteen, catering, self service restaurants, fast food restaurants and snack bars. Subsequently, the 1st plaintiff has also acquired registration for the device mark  under No. 2965624 in class 43 with respect to restaurants providing of food and drink, temporary accommodation, canteen, catering, fast food restaurants and snack bars. The plaintiffs also state that they have now become one of the leading manufacturers of packaged masala products and that the mark **AACHI** has become synonymous with the goods produced by them and none else in the market.

4. The grievance of the plaintiffs is that in November 2019, they stumbled upon the defendant's hotel under the name **AACHI CHETTINADU HOTEL** . The plaintiffs state that they are perturbed by the defendant's restaurant name which is



C.S.(Comm.Div.) 172 of 2021

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a total copy of the plaintiffs' registered trade mark. Plaintiff's state that the defendants are reaping benefits without sowing and they're taking an undue advantage of the plaintiffs' mark. Plaintiff's also claim that the defendant's service is of inferior quality and substandard. The plaintiffs further claim that the defendant's offending mark is visually and phonetically similar to the plaintiffs' trade mark and that the defendant's mark is a conscious copy of the plaintiffs' marks which is widely famous, thereby leading to passing off of the defendant's service as that of the plaintiffs.

5. The defendant was served and the defendant did not choose to defend themselves either in person or through counsel and was called absent and was set ex-parte by this Court on 30-11-2021.

6. The only issue that arises for consideration in the



C.S.(Comm.Div.) 172 of 2021

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present suit is whether the defendant, by using the mark **AACHI**
CHETTINADU HOTEL/  has infringed the plaintiff's
trademarks **AACHI / AACHI CHETTINAD RESTAURANT / AACHI**
KITCHEN/  and whether the same is phonetically and
visually similar to the trade mark of the plaintiffs and as to
whether the plaintiffs are entitled for the reliefs sought for in
this suit.

7. This Court on going through the pleadings and the materials relied upon came to a conclusion that oral evidence is not required in this case and accordingly, directed the learned Additional Master IV to mark the documents and accordingly, Ex. P-1 to Ex. P-30 were marked.

8. Heard Mrs. Gladys Daniel, learned counsel for the plaintiff and carefully perused the documents relied upon by the Plaintiff.



C.S.(Comm.Div.) 172 of 2021

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9. On carefully going through *Exhibit P1 (Legal use certificate of Trade mark No. 838786)*, it can be seen that the plaintiffs are the registered trade mark owner of the word mark **AACHI**. It can be seen that the word mark has a distinct identity and has been in usage since 1995. It can also be seen that the mark AACHI has become a well-known mark for masala and food products. From going through *Exhibit P2 (Legal use certificate of Trade mark No. 1116254)*, it is distinct that the 1st plaintiff is the owner of the trade mark **AACHI CHETTINAD RESTAURANT** and from *Exhibits P4 and P5 (Legal use certificate of Trade mark Nos. 1715718 and 2965624 respectively)* it is clear that the 1st plaintiff is the owner of the registered trade mark **AACHI KITCHEN** and the label . From perusing *Exhibit P3 (Legal use certificate of Trade mark No. 1479159)*, it is evident that the 1st plaintiff has also obtained registration for the mark **AACHI** in Tamil. A perusal of *Exhibits P21, P23 and P24*, reveal that the 3rd



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plaintiff is the licensee and has been using the trade mark **AACHI KITCHEN/**  since the year 2014. Further, the 1st plaintiff possesses international registration (WIPO) under the Madrid protocol for the trade mark AACHI word under classes 29, 30 and 43 in 107 countries and the same is clear from the documents marked as *Exhibits P19 and P20*.

10. It is clear from going through the above mentioned *Exhibits* that the defendant's hotel **AACHI CHETTINADU HOTEL/**  is identical to the plaintiffs' mark **AACHI CHETTINAD RESTAURANT** and indeed these two marks are visually and phonetically similar. The plaintiffs are prior users of the registered trademarks **AACHI / AACHI CHETTINAD RESTAURANT / AACHI KITCHEN/**  . Hence, the use of the hotel name **AACHI CHETTINADU HOTEL/**  by the defendant amounts to infringement and passing off.



C.S.(Comm.Div.) 172 of 2021

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11. This Court in the case of **[ISSAC ISAAC Mathai vs. Sowkhya Way2health P. Ltd.] reported in MANU/TN/2823/2013** held that adding of one or two words in a mark does not make any difference as far as phonetic similarity is concerned. The relevant paragraphs from the judgment are extracted below:

60. It may also be noticed here that act of the defendant/respondent is not bonafide, though they are claiming to use the trademark "SOUKYA WAY2HEALTH", but in all their letter heads and other documents displayed "SOWKHYA" prominently, whereas "WAY2HEALTH" is not that prominent. Besides, e-mail address is also deceptively similar to that of the plaintiffs/applicants, i.e., www.sowkhya.com.

61. It is well settled law that when there is



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C.S.(Comm.Div.) 172 of 2021

phonetic similarity between the two names, then adding of one or two words does not make it distinct from similarity. It can therefore, be safely said that the defendants/respondents have deliberately infringed the registered trademark of the plaintiffs/applicants.

12. Exhibit P30 contains the label of the defendant. A mere look at the trade mark '**AACHI CHETTINADU HOTEL**' /



that is used by the defendant shows that it is a conscious copy of the plaintiff's registered trademark. This mark is phonetically and visually similar to the plaintiff's trademarks '**AACHI / AACHI CHETTINAD RESTAURANT/ AACHI KITCHEN**'



. The defendant has adopted this trademark only with a view to exploit the commercial goodwill achieved by the plaintiffs.



C.S.(Comm.Div.) 172 of 2021

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13. It must be borne in mind that the consumer who avails the services of these restaurants will be in the category of a man of average intelligence and imperfect recollection. To such a man, there is absolutely no chance of drawing a distinction between the Plaintiff's and the Defendant's restaurant. This is not a case of deceptive similarity but one of exact reproduction of the Plaintiff's registered trademark. The Defendants are deliberately using the trademark '**AACHI CHETTINADU HOTEL**' /  to mislead the general public at large and they are trying to cash in on the goodwill and reputation enjoyed by the Plaintiffs. A careful look at the impugned marks blatantly reveal that it is visually and phonetically identical to the Plaintiff's registered trade mark. In view of the same, there is absolutely no doubt in the mind of this Court that the Plaintiffs are entitled to the reliefs sought for by them.



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14. In the present case, both the parties are involved in the restaurant business. The defendant's mark is phonetically and visually identical to the plaintiff's trade mark and it is bound to cause confusion as both the services will be availed by the same class of consumers. The above discussion leads to the conclusion that the mark "**AACHI CHETTINADU HOTEL**" /



used by the defendant has infringed the plaintiff's trademarks '**AACHI / AACHI CHETTINAD RESTAURANT/ AACHI KITCHEN**' /



. Accordingly, the plaintiff is entitled for the reliefs sought for in this suit except the relief of rendition of accounts, which stands rejected considering the facts and circumstances of the case. The point for determination is answered accordingly.

15. In fine, there shall be a judgement and decree as prayed for in favour of the plaintiff in the following terms:

(a) Declaring that the Permanent injunction, restraining the defendant, by itself, their servants, agents, men, or anyone



C.S.(Comm.Div.) 172 of 2021

claiming through them from manufacturing, marketing, distributing, offering and advertising for sale using the name

AACHI CHETTINADU HOTEL/



or any other trade mark name or any name with a similar sounding expression in any media or by using any other trade mark and/or name which are visually, phonetically or deceptively similar to the 1st plaintiff's registered trademarks

AACHI / AACHI CHETTINAD RESTAURANT/ AACHI KITCHEN/



and registered trademark nos. 838786, 116254, 1479159, 1715718 and 2965624 or in any manner infringing or passing off the 1st plaintiff's registered trademarks referred herein.

(b) There shall be a further decree directing the defendant to surrender all the materials bearing the impugned mark of the defendant, and

(c) The defendant is directed to pay a cost of a sum of Rs



C.S.(Comm.Div.) 172 of 2021

25,000 to the plaintiff.

15. The suit is allowed in the above terms.

03.01.2022

Index:Yes/No
Internet : Yes/No
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List of Witness examined on the side of the Plaintiffs:-

List of Witness examined on the side of the Defendant :-

List of the Exhibits marked on the side of the Plaintiff:-

Sl. Nos.	Particulars
P1.	Legal use certificate of Trade Mark No.838786 in Class 30 dated 29.01.1999
P2.	Legal use certificate of Trade Mark No.1116254 in Class 30 dated 03.07.2002
P3.	Legal use certificate of Trade mark No.1479159 in Class 30 dated 17.08.2006
P4.	Legal use certificate of Trade mark no.1715718 in



C.S.(Comm.Div.) 172 of 2021

Sl. Nos.	Particulars
	Class 43 dated 30.07.2008
P5.	Legal use certificate of Trade mark No.2965624 in Class 43 dated 18.05.2015
P6.	Certificate of incorporation of Aachi masala Foods p Ltd dated 30.06.2006
P7.	Certificate of incorporation of Aachi Spices and Foods P Ltd., dated 17.03.2010
P8.	Memorandum of Association of Aachi Spices and Foods P ltd dated 06.03.2010
P9.	Certificate of Commercial Tax Registration and Central Sales Tax of Aachi Spices & Foods (P) ltd dated 28.12.2006, 03.01.2007
P10.	Certificate of Commercial Tax Registration of Aachi Masala and Foods (P) Ltd dated 10.07.2006
P11.	Dissolution deed between Mrs.Rani pandian and the Mr.A.D.Padmasingh Isaac dissolving the partnership firm, naveen products dated 31.03.2007.
P12.	Trade mark license user Agreement between Mr.A.D.Padmasingh Issac trading as Aachi spices and Foods and Aachi masala Foods p Ltd dated 01.04.2007.
P13.	Trade mark license user Agreement between Mr.A.D.Padmasingh Issac and Aachi Spices and Foods Pvt ltd dated 21.04.2010.
P14.	Trade mark license user Agreement between Mr.A.D.Padmasingh Issac and Aachi Masala Foods P Ltd dated 21.04.2010.
P15.	Trade mark license user Agreement between Mr.A.D.Padmasingh Issac and Aachi Masala Foods P Ltd



C.S.(Comm.Div.) 172 of 2021

Sl. Nos.	Particulars
	dated 04.03.2020.
P16.	Trade mark License user Agreement between MR.A.D.Padmasingh Isaac and Aachi Spices and Foods p ltd dated 04.03.2020.
P17.	Certified copy of the plaintiffs Advertisement in RITZ Magazine dated December 2006
P18.	Printouts of the list of products manufactured and marketed by the plaintiffs bearing the trademark AACHI (under Section 65B of the Evidence Act, 1872).
P19.	Registration certificates of the mark AACHI in various countries around the world.
P20.	Madrid protocol Registration in classes 29, 30, 43 with respect to the Trademark AACHI (word) & (device) designating 107 and 117 countries and subsisting as on date.
P21.	Aachi kitchen's name board (under Section 65B of the Evidence Act, 1872)
P22.	Aachi kitchen's menu card
P23.	Printout of the Certificate of incorporation of M/s.Heavenly Foods (P) Ltd., and memorandum and Articles of Association, dated 01.04.2014
P24.	Trade Mark license user agreement between MR.A.D.Padmasingh Issac, Aachi Spices and Foods and Heavenly Foods (P) ltd dated 11.08.2014.
P25.	Print out of order passed by trade mark Trial and Appellate Board, United States patent and Trademark office dated 13.09.2016 (under Section 65B of the Evidence Act, 1872)



C.S.(Comm.Div.) 172 of 2021

Sl. Nos.	Particulars
P26.	Original board Resolution dated 13.08.2020 and 10.09.2020.
P27.	Chartered Accountant certificates dated 02.03.2017 and 20.07.2020
P28.	Sample sales invoices for the years 2000-2020
P29.	Sample invoices of advertisements for the years 1999-2020
P30.	Printout of the Defendant's name board (under Section 65B of the Evidence Act, 1872)

List of the Exhibits marked on the side of the Defendants:-



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C.S.(Comm.Div.) 172 of 2021

N.ANAND VENKATESH. J.,

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Civil Suit (Comm.Div.) No.172 of 2021

03.01.2022