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C.S. (Comm. Div.) No.830 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 24.04.2024

Pronounced On : 31.07.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.S. (Comm. Div.) No.830 of 2008

1. 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

Vs.

Arasan Food Products

Kannappa Nagar, Coimbatore - 641 027

... defendant

Prayer: This plaint is filed under Order IV Rule 1 of the Original Side Rules and Order VII Rule 1 of the Code of Civil Procedure, read with



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Section 27(2), 29, 134 and 135 of the Trade Marks Act, 1999 and Sections 54, 55 and 62 of the Copy Right Act, 1957, praying to pass judgment and decree as follows:

a) Granting a permanent injunction restraining the defendants by itself, its servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale spices and masalas using same or similar get up, and colour scheme used by the defendants shown in Document Nos.4 to 7 or any other visually similar mark 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 visually or deceptively or phonetically similar to Plaintiffs' registered trade mark AACHIMASALA SAMBAR POWER as shown in Document Nos.1 to 3 or in relation to any masalas & spices 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 visually, or phonetically similar to the Plaintiffs' registered Trade Mark Nos.922594, 922595,



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1374937, 1340324, 1340325, 1367430, 1372439, 1372440, 1375754, 838786, 976559, 1025305, 1318493, 1318494, 1318495, 1375755, 1375756, 1380625, 1357284 or in any manner infringe the Plaintiff's registered Trade Marks.

b) Granting a permanent injunction restraining the defendant by themselves, their servants, agents, distributors, or anyone claiming through them from reproducing by selling, advertising and or offering for sale by using the impugned copyright of the Plaintiffs as shown in Document Nos.4 to 7 upon the goods or in any media and use the same in invoices, letter heads, visiting cards, masala pouches, or by using any other copyright which is in any way visually, deceptively similar to the Plaintiffs copyright as shown in Document Nos.1 to 3 or in any other manner infringing the Plaintiffs copyright as shown in Document Nos.1 to 3.

c) Granting a permanent injunction restraining the defendants by themselves their agents or servants or anyone claiming through or under them in the course of manufacturing and marketing, selling and advertising from



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using the trademarks as shown in the labels/pouches in its colour scheme and get up in respect of SAMBAR MASALA, RASAM MASALA, CHICKEN MASALA shown in the Document nos.4 to 7 and in the other trade literature in relation to the sale of masalas or any other trademark in the said color scheme get up which is in any manner deceptively or confusingly similar to the color scheme and get up of Plaintiff's labels as shown in Document Nos.1 to 3 and pass off the defendant's masalas as and for the masalas of the Plaintiffs.

d) 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 deceptively similar the color scheme and get up as shown in Document Nos.4 to 7 or other deceptively similar trademark used in the pouches and packets in respect of masalas.

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



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trademark and Get up as shown in Document Nos.4 to 7 on the goods referred and decree the suit for the profits found to have been made by the defendant, after the defendant has rendered accounts; and

f) directing the defendant to pay to the Plaintiffs the costs to the suit.

For Plaintiffs : M/s.Gladys Daniel

For Defendant : Mrs.Subashiny
for Mr.A.Thiyagarajan

JUDGMENT

This suit is filed for permanent injunction restraining the defendant from infringing the plaintiff's registered Trade Marks; copy right; passing-off; directing the defendant to surrender to the plaintiffs all the materials containing/bearing deceptively similar color scheme and get up as shown in Document Nos.4 to 7 or other deceptively similar trademark used in the pouches and packets in respect of masalas; directing the defendant to



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render accounts of profits made by them by the use of the impugned trademark and get up as shown in Document Nos.4 to 7 on the goods referred and decree the suit for the profits found to have been made by the defendant, after the defendant has rendered accounts; and directing the defendant to pay the costs of the suit to the petitioner.

2. The averments made in the plaint are as follows;

The first plaintiff commenced his business in the year 1995 as a proprietary concern with the objective of manufacturing and marketing various kinds of masalas and spices. He began as a small-scale business enterprise for manufacturing and marketing of various masalas and spices for Indian tastes. Over the years, the first plaintiff has grown into one of the leading manufacturers and marketers of spices in India, by its sheer high quality and reliability and due to the enormous goodwill earned by the plaintiffs in the course of their business, by the tireless efforts put in for promoting his products, the trade mark AACHI, has become now a



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common household name. The plaintiffs have also diversified their business activities and started manufacturing and marketing 170 kinds of consumer goods within a short span of 10 years. The plaintiffs have now become one of the leading manufacturers of packaged masalas. Because of the efforts undertaken by the plaintiffs in promoting and advertising their products through various mediums and their market share in these products have risen considerably. The plaintiffs have put in enormous efforts, hard work and money towards advertising their products AACHI in all forms of media, such as radio, newspapers, hoardings, magazines and television networks. The plaintiffs have also received many prestigious awards for the quality of their products and customer service.

2 (b). In order to distinguish their various products from others, the plaintiffs adopted the trade mark 'AACHI' for all their products and services. The trademark 'AACHI' has become very popular because of its continuous and substantial usage over a decade. This trade mark has



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become very popular and is a very valuable intellectual property of the plaintiffs. No one can use the said trade mark 'AACHI' for spices, masalas, food preparation and other goods where the plaintiffs are using the mark. The mark is unique and distinctive of the plaintiffs' goods and no one has used the Trade Mark 'AACHI' for masala preparations and its allied preparations prior to the first plaintiff. Among large varieties of masala preparations of plaintiffs, one of the products is the 'AACHI MASALA SAMBAR POWDER' label mark. This label mark consists of the word AACHI in red letters written prominently against a green background. The word MASALA is written in white letters below the word AACHI. On top is a rectangular strip having green and white lines. Below this, there is a device of a China bowl containing Sambar. The China bowl of sambar is surrounded by vegetables and pulses. The China bowl and vegetables are encompassed in a curved rectangular device. This label was adopted by the plaintiffs and registered it in their favour.



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2 (c). The plaintiffs have honestly adopted the mark and have put in enormous amount of hard work and labour and invested huge sums of money, for advertisement and sales promotional expenses. Because of the efforts made by the plaintiffs, the trade and the public, associated the mark with the plaintiffs and none else. The first plaintiff is also the owner of the Copyright in the AACHI labels. The labels are created by the first plaintiff's employees during the course of their employment. The employees do not retain any contract to the contrary in their favour. The first plaintiff is the sole and absolute owner of the Copyright in the labels used to market the various spices and masalas. The first plaintiff is the owner of the AACHI Sambar Masala label since July 2005, when it was first published. Further, the first plaintiff is also the owner of the AACHI Rasam Masala, AACHI Chicken Masala and AACHI Mutton Masala labels since 2002, which was the year of first publication.

2 (d). The plaintiffs have been using this mark AACHI with respect



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to almost all their goods from commencement of their business. As a result of the efforts undertaken by the plaintiffs, their turn-over has been increasing substantially every year. On acquiring enormous goodwill and reputation, the plaintiffs, in view of protecting their intellectual property, particularly with respect to their Trade Mark, applied for registration of AACHI SAMBAR MASALA label mark on 05-08-2005 in Class 30. The Registrar of Trade Marks, after consideration of substantial use and reputation, granted registration for the label mark AACHI MASALA SAMBAR POWDER for all over India under Registration No.1375755 in Class 30. Since then, the first plaintiff has become an exclusive owner of this mark 'AACHI'. The first plaintiff has sole proprietary right over this mark, and any unauthorized use of the same mark or similar Trade Mark, amounts to passing-off and infringement. Apart from the abovementioned application, the first plaintiff has also filed several applications for registration of the mark AACHI, in different classes, with respect to other



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description of goods in the same class and other classes. The plaintiffs have become synonymous with the goods produced by them and none else. If anyone other than the plaintiffs uses this mark/copyright on their goods, without the express consent of the plaintiffs, then it will amount to infringement of the plaintiffs' registered mark and copyright. Apart from infringement, the use of the same mark or similar mark constitutes falsification of Trade Mark which is a cognizable offence punishable under the Trade Mark Act. As the first plaintiff's business grew extensively and substantially, he had manufactured his products under the supervision and control through one M/s. Nazareth Foods (P) Ltd., since 23.07.2001. In view of further growth, on 20.06.2006, the second plaintiff-Company was incorporated for marketing all their products by use of the mark and all over India and abroad.

2 (e). On 22.12.2006, the first plaintiff changed his trading style from Naveen Products to Aachi Spices and Foods and obtained a



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Certificate of Registration under the Central Sales Tax (Registration and

Turnover) Rules, 1957. Subsequently, from 01.04.2007, by executing a

Trade Mark License user Agreement, the second plaintiff has been

marketing all the products using the Trade Mark 'AACHI'. Nazareth Foods

(P) Ltd. used to process the masala preparations as job worker under the

supervision and control and packs the product according to the labels and

packets with the Trade Mark, supplied by the second plaintiff, with due

approval of the first plaintiff.

2(f). While that being so, in August 2008, the plaintiffs came across

the defendant's Sambar masala preparation bearing the mark ARASAN

MASALA in the same colour scheme and get up, which is a blatant

infringement of the plaintiffs' registered trade mark AACHI MASALA.

The two marks are visually and deceptively similar. It is a conscious copy.

Hence, the adoption of the impugned mark itself is dishonest and solely

with the object of exploiting the commercial goodwill attached to the



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plaintiffs' registered Trade Mark. The plaintiffs have no objection for use of the word mark ARASAN. However, the plaintiffs are aggrieved by use of their label. The defendant's product is available in all places wherever the plaintiffs' Aachi preparation of Sambar powder is marketed. The defendant's label consists of the words ARASAN written prominently in red, embossed in a green coloured label, and it is an imitation of the plaintiffs' colour combination in its wrapper. The defendant's Sambar Powder uses the strip of green and white, bordering the word ARASAN displayed on identical device. The word "MASALA", found below the label strip, contains the name "ARASAN MASALA", which is a conscious copy of the plaintiffs'. The prominent green background, the word ARASAN in red, the word Masala in white, and the green and white borders at the cutting ends, are deceptively similar to that of the plaintiffs. Below the impugned word mark, the device is a picture of a China bowl containing Sambar surrounded by vegetables. It is visually similar to the



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mark used by the plaintiffs.

2(g). Apart from the Sambar Masala, the defendant has also adopted the colour scheme and get-up of the plaintiffs' mark with respect to MUTTON MASALA, CHICKEN MASALA and RASAM MASALA. The pouches used by the defendant are a slavish imitation of the plaintiffs' label with respect to the above Masalas. The plaintiffs are the prior adopter of the said labels since 2002 for Chicken Masala and Rasam Masala. The defendant has adopted identical colour scheme, get-up and layout with respect to the Rasam Masala, Chicken Masala and Sambar Masala. However, with respect to the Mutton Masala, the defendant has adopted the colour scheme and get-up of the plaintiffs' Chicken Masala. If one was not careful enough to note the peculiar features of the wrapper on the plaintiffs' goods, one will undoubtedly mistake the defendant's wrapper for the plaintiffs' if shown to him some time after the consumer had seen the products of the plaintiffs'. Any purchaser who is desirous of getting a



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packet of AACHI MASALA Sambar Powder, Rasam powder, Mutton masala or Chicken masala, will buy the defendant's product, bearing a deceptively similar get-up. In the instant case, the unwary purchasers of average intelligence with the imperfect re-collection, will undoubtedly mistake one for the other. Hence, infringement of Trade Mark, Copyright and passing-off is total. The similarity of the two marks between the plaintiffs and that of the defendant's is such that the second mark is consciously copied, and hence, no further evidence is required for the grant of injunction.

2 (h). It is therefore clear that in order to come to the conclusion that whether one mark/copyright is deceptively similar to another, the broad and essential features of the two are to be considered. It would be enough if the impugned mark/copyright bears such an overall similarity to the mark as would be likely to mislead a person usually dealing with one to accept the other, if offered to him. In this case, the wrappers are practically



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the same and the colour scheme of the two wrappers is almost the same; the design on both, though not identical, bears such a close resemblance that one can easily be mistaken for the other. The defendant's wrapper is a blatant imitation of the plaintiffs' colour scheme and get-up and the same has been adopted for evil intention of commercial gain, which the defendant is not entitled to under law. The defendant is using deceptively similar mark/copyright as that of the plaintiffs'. The use of the label mark ARASAN is bound to create confusion and deception in the market. The Trade Mark and general public will assume that there is a business relationship between the plaintiffs and the defendant, where there is no such relationship. However, the mark of the defendant is deceptively similar to that of the plaintiffs' registered trade mark/copyright, causing confusion among the minds of the trade and the general public at large. The plaintiffs have been carrying on business using the trade mark AACHI, with respect to Masalas since 1995. The defendant is a recent



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entrant into this field.

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2(i). Considering the above facts, as a prior user and a registered trade mark owner, the plaintiffs have exclusive right to the distinctive colour scheme and get-up with respect to their registered label mark 'AACHI MASALA SAMBAR POWDER'. The use of the ARASAN MUTTON MASALA, CHICKEN MASALA and RASAM MASALA, amounts to passing-off of the plaintiffs' label and an infringement of Copyright. The products manufactured by both the plaintiffs and the defendant are being sold through the same trade channels. The defendant is deemed to have knowledge of the nature and scope of the plaintiffs' business and manufacturing activities, bearing the trade mark/copyright AACHI MASALA labels and its get-up. Hence, the adoption and use of the impugned mark and the label amounts to fraud under the Trade Marks Act. The defendant has no valid reason whatsoever to use the mark ARASAN labels, which are visually identical to that of the plaintiffs'. It is



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clear from the manner in which the defendant has adopted the said mark that it could not have been an innocent coincidence. The defendant's acts are dishonest and motivated purely by mala-fide intentions to poach upon the reputation and goodwill enjoyed by the plaintiffs. The defendant should not be allowed to malign and dilute the goodwill and reputation enjoyed by the plaintiffs. The conduct of the defendant, amounts to falsification of Trade Mark as an offence punishable under the Trade Marks Act, apart from action of infringement of the plaintiffs' registered trade mark, copyright and passing-off.

3. The defendant, in the written statement denies various allegations made in the plaint. According to the defendant, the suit is not properly instituted. The suit is false, frivolous, vexatious and not sustainable, either in law or on facts of the case. The plaintiffs have not even referred to any authorization by the Board of Directors to institute the suit. There is no authority even to the person who has verified the pleadings to institute the



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present suit. The suit is therefore unsustainable and liable to be dismissed *in-limine*. The defendant denies that the plaintiffs have earned reputation and goodwill by their tireless efforts and that their product under the name of "AACHI" has become a common house hold name. The averment of the plaintiffs that they have started manufacturing and marketing of 170 kinds of consumer goods and that they have become one of the leading manufacturers of packaged Masalas, is denied. The defendant also objects the contention of the plaintiffs that their market share in packaged Masalas have arisen considerably. It is particularly denied that the first plaintiff has obtained a copyright with respect to the labels used to market the various spices and Masalas. The defendant further states that the plaintiffs have categorically stated in paragraph 6 of the plaint that they have adopted the trade mark "AACHI" for all their products and services in order to distinguish their various products. The plaintiffs have in fact proceeded to dwell on the usage of the mark "AACHI" and had repeatedly stated that the



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trade mark "AACHI" is unique and distinctive of the plaintiffs' goods. The defendant states that it is not in dispute that the plaintiffs have a product in the market under the name of "AACHI MASALA SAMBAR POWDER". In fact, the defendant has got nothing to do with the mark "AACHI" adopted by the plaintiffs and nowhere in the plaint, the plaintiffs have ever whispered that the defendant has adopted the plaintiffs' trade mark. As such, the suit is misconstrued and misconceived and had been brought about with ulterior motives to defeat the market gained by the defendant, who is a competitor and the question of infringement of trade mark does not arise at all.

3 (a). It is the grievance of the defendant that in the business of Masalas and spices, the depiction of the products in relation to the spices is sold, is an indication, which has become customary and forms part of the bona-fide and established practice of trade. The defendant specifically denies the contention of the plaintiffs that the mark/copyright "AACHI



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MASALA" has become synonymous with the goods produced by them.

No where it is the case of the plaintiffs that their trade mark/copyright for the name "AACHI MASALA" has been infringed and as such, the purpose of the suit is nothing but an attempt to stall the defendant's business. The defendant reserves their right to initiate appropriate suit for damages against the plaintiffs for having pulled the defendant into vexatious litigation. It is further submitted that there can be no infringement of the plaintiffs' trade mark "AACHI MASALA" by the defendant whose products bear the name "ARASAN MASALA". The word AACHI and ARASAN are no where near being visually or phonetically similar and the question of the defendant adopting the plaintiffs' mark does not arise at all.

In fact, the defendant's Company under the name "ARASAN FOOD PRODUCTS" has been established from the year 1999 and has also several other companies under the name and style of Arasan Soap Company, Arasan Opticals, and Arasan Computers. In fact, all the Masala powder



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packets of the defendant contain the name ARASAN MASALA, the photograph of a child, the Vegetarian Symbol, the name of the powder/product, and the Agmark print ever since 1999.

3 (b). The plaintiffs themselves had admitted in paragraph 16 of the plaint that the word "ARASAN" had been written prominently on the defendant's label and the contention that the word "MASALA" found in the defendant's product is a conscious copy of the plaintiffs, which is highly far-fetched and illogical. The defendant states that in the spices industry, the word "MASALA" is well established and commonly used in wide-spread manner by different manufacturers. There is no scope for attaching uniqueness to the said word, which is a common household name and the plaintiffs cannot seek monopoly over the word "MASALA". The word "MASALA" by itself does not constitute a trade name or trade mark. The word "MASALA" means a combination or mixture of various spices used for different food preparations. The word "MASALA" is therefore a



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widely used household word, cutting across several persons and households. Statements and words which signify the nature of a product, cannot be claimed to be owned by any particular person. Further, the word "MASALA" is not coined by any particular individual, much less the plaintiffs and the plaintiffs cannot claim that the word "MASALA" is a conscious copy to that of the plaintiffs. The defendant states that the dissimilarities between their products and the plaintiffs' products would themselves go to show the stark difference in the presentation of each product. The defendant denies the allegation of infringement of trade mark, copyright and passing-off. At no point of time, had this defendant been consciously/unconsciously copied the plaintiffs' mark and at no point of time given the distinctive designs between the plaintiffs and the defendant's wrappers, can there be a passing-off. A bare perusal of the wrappers itself shows that they are totally different.

3(c). Further, even in paragraph 20 of the plaint, the plaintiffs have



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categorically admitted that the designs on both the wrappers are not identical and have simply thrown a vague allegation that there is a close resemblance. Once the question of identity does not arise, there can be no further allegation of resemblance or imitation and the suit is nothing but an attempt to stall the growth of the defendant who is steadily rising in the market. The plaintiffs have stated that the defendant is the recent entrant into the field, whereas, the defendant has been in the market ever since the year 1999 and therefore, the question of the plaintiffs being a prior user, does not arise at all. The defendant denies the averment in Paragraph 26 of the plaint by stating that the defendant has got rights accrued to him to use his label and design, as he has been continuously and consistently using the same for the last 9 years and the question of poaching the reputation and goodwill enjoyed by the plaintiffs, does not arise at all. The cause of action to file the present suit itself is false. The plaintiff is not entitled for any of the relief sought for.



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4. The plaintiffs have filed reply statement denying all the allegations and averments contained in the written statement filed by the defendant. The averments made in paragraph No.3 of the written statement with regard to authorization by the Board of Directors to institute the present suit, is being vehemently denied by the plaintiffs. The defendant is making baseless allegations against the plaintiffs' suit. The proprietor of the plaintiff No.1 is the Managing Director of the Plaintiff No.2. The 2nd plaintiff is a closely owned Limited Company of the family of the proprietor of the 1st plaintiff. The Board of Directors of the 2nd plaintiff has duly authorized the filing of the present suit by necessary Board resolution and that the suit has been filed appropriately and therefore, the suit is sustainable.

4(a). The plaintiffs deny the defendant's averment mentioned in paragraph No.6 of the written statement regarding registration of the plaintiffs' trade mark for " AACHI MASALA SAMBAR POWDER". The



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plaintiffs trade mark for "AACHI MASALA SAMBAR POWDER" is registered under No.1375755 in Class 3.0 on 05.08.2005. It is admitted by the plaintiffs that the defendant has not adopted the plaintiffs' registered trade mark AACHI, but the plaintiffs contention is that the defendant is infringing the plaintiffs' LABEL mark AACHI MASALA SAMBAR POWDER. The plaintiffs are objecting the use of the deceptively similar label by the defendant and not objecting to the word mark ARASAN. Hence, the present suit is not misconstrued or misconceived as alleged by the defendant.

4(b). The plaintiffs deny the defendant's averment mentioned in paragraph Nos.7 and 8 of the written statement regarding denial of the copy right of 1st plaintiff with respect to the labels used to market the various spices and masalas. The plaintiffs are the sole and absolute owners of the label AACHI SAMBAR MASALA, AACHI RASAM MASALA, AACHI CHIKEN MASALA and AACHI MUTTON MASALA which is



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depicted in unique manner, having a different colour scheme and get up.

Hence, it becomes a very valuable intellectual property of the plaintiffs.

The plaintiffs deny the defendant's averment that it is customary and established practice of Trade. The plaintiffs' label mark is unique and distinctive of the goods manufactured by them which cannot be exploited by any one.

4 (c). The plaintiffs also deny the other averments contained in paragraph Nos.9 to 22 of the written statement stating that the reputation and goodwill gained by the plaintiffs are proved by sufficient documentary evidence by way of sales figures, turn over and promotional expenses from 1999 till date. Further, it is reiterated that the present suit is filed only for use of the deceptively similar label by the defendant and the plaintiffs are not objecting to the word mark ARASAN or ARASAN MASALA. The defendant knowingly and dishonestly adopted the impugned label mark, so as to trade upon the reputation and goodwill built up by the plaintiffs in



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respect of the said trademark. The Hon'ble Apex Court in a landmark case

in *Parle Products (P) Ltd. Vs. J.P. & Co., Mysore, reported in AIR 1972*

SC 1359 held that in order to come to the conclusion as to whether one

mark is deceptively similar to another, the broad and essential features of

the two rival marks should be considered and it should not be placed side

by side to find out the differences in design. It would be enough if the

impugned mark bears such an overall similarity to the registered mark as

would be likely to mislead and cause confusion in the minds of the public.

In the instant case, the broad and essential features of the plaintiffs' mark

have been slavishly imitated by the defendant with respect to SAMBAR,

RASAM, CHICKEN and MUTTON masalas. The Hon'ble Apex Court

held that the rival marks need not be identical, but bears such a close

resemblance that one can easily mistaken for the other, then there is an

infringement of trade marks. In the instant case, the defendant made such

a copy of the plaintiffs' trademark, which could not have been an innocent



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coincidence, since the defendant has come up with the identical colour scheme and get up for the same masalas and spices. Further, no document has been filed by the defendant to show that the defendant has been using the impugned labels from 1999. The suit was filed immediately after the impugned label was adopted. The plaintiffs are the prior user of the said trademark. The plaintiffs have no reason to poach upon the alleged reputation of the defendant, which had not even been set out in the form of turnover particulars, whereas, the plaintiffs' annual turnover is over Rs.300 Crores. Therefore, it is clear that the defendant has dishonestly adopted the label of the plaintiff to affect the reputation of the plaintiffs and the action of the defendant amounts to passing-off.

5. The defendant has filed additional written statement stating that the present suit has been filed for infringement of the plaintiffs' registered label in respect of AACHI SAMBAR MASALA POWDER, AACHI RASAM MASALA and AACHI CHICKEN MASALA, filed as plaintiffs'



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Document Nos.1 to 3 on the ground that the plaintiffs have obtained registration of the said label and for copyright, infringement and passing off and for other consequential relief. But, the said registration obtained by the plaintiffs for their labels contained in plaint document Nos.1 to 3, is not valid and subsisting as on date, as the plaintiffs have discontinued the use of said labels. As per the statutory provision, a mark is said to be revoked/rectified, if the same has not been put to use. In the present case, the plaintiffs have rolled out their products under a changed label and are not using the labels as filed as document Nos.1 to 3 with the plaint. This change has been effected by the plaintiffs subsequent to the filing of the suit, thereby making the cause of action for the suit itself becoming infructuous. Thus, in view of non-use of the labels, the registrations obtained by the plaintiffs are invalid and are liable to be rectified.

6. The plaintiffs have filed additional reply statement denying the averments made in the additional written statement filed by the defendant



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with regard to the validity of plaint documents 1 to 3 stating that the registration obtained by the plaintiffs for the labels contained in plaint Document Nos.1 to 3 are valid and subsisting as on date and the plaintiffs are continuing to use the said labels and therefore, the said documents are not liable to be rectified. The plaintiffs are using the plaint documents and the copies of the plaint documents with manufacturing date as of November 2019, are filed along with this additional reply statement. Pouches of the plaintiffs in respect of which registration has been obtained are not in use and are not liable to be rectified. Therefore, the defendant is dis-entitled to move any application before this Court for framing any issue on invalidity of the plaintiffs trademark or to move the Intellectual Property Appellate Board to rectify the registration or to seek dismissal of the suit.

7. Upon considering the pleading of both the parties, the following issues were framed by this Court on 14.02.2017 which is before filing of



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additional written statement and additional reply statement dated

10.07.2019 and 30.11.2010 respectively.

i. Whether the plaintiffs are prior adopter of the colour scheme, get-up and lay out of the labels in the Sambar Masala, Chicken Masala and Rasam power?

ii. Whether the defendant has adopted the identical colour scheme, get-up and lay out with respect to the Rasam Power, Chicken Masala and Sambar Masala are similar to the corresponding labels of the plaintiffs?

iii. Whether the defendants are infringing the Registered TM No.1375755 with respect to Sambar Powder?

iv. Whether the defendants are infringing the plaintiffs Copy Right in the Document Nos.1 to 3?

v) Whether the plaintiffs are entitled to rendition of accounts and surrender of profits?

vi) To what other relief the plaintiffs are entitled to?

8. Subsequently, the following issues were framed for determination



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in the suit on 24.08.2021, after filing of additional written statement and additional reply statement;

i) Whether the colour scheme, get up and lay out of Arasan Sambar Masala, Chicken Masala and Rasam Powder are deceptively similar to the corresponding labels of the plaintiffs?

ii) Whether the plaintiffs are the prior user of the colour scheme, get up and lay out of the labels in the Sambar Masala, Chicken Masala and Rasam Powder?

iii) Whether the action of the defendant amounts to infringement of the plaintiffs' copyright in Document Nos.1 to 3?

iv). Whether the cause of action for the suit survives, in view of the fact that both the parties have changed their labels?

v) Whether the plaintiffs can claim monopoly over mere colour scheme/colour combination?

vi) Whether the plaintiff is the prior user, in respect of the labels in question?



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vii) Whether the defendant is liable to render accounts and surrender accounts?

viii) whether the defendant as arrayed in the suit is a juristic person and the suit is maintainable?

ix) To what reliefs the parties are entitled to?

9. Therefore, on 29.09.2021, yet another issue was framed based on the application in A.No.3458 of 2021 in C.S.No.830 of 2008;

"Whether the use of the defendant's trademark constitutes infringement of the 1st plaintiff's registered trademark Nos.922594, 922595, 1374937, 1340324, 1340325, 1367430, 1372439, 1372440, 1375754, 838786, 976559, 1025305, 1318493, 1318494, 1318495, 1375755, 1375756, 1380625, 1357284?"

10. After framing of issues, in order to substantiate the claim of the plaintiffs, on the side of the plaintiffs, one B.Gnanasambandam, the General Manager-Legal & Statutory of the 2nd plaintiff, was examined as



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P.W.1 and 17 documents were marked as Ex.P.1 to Ex.P.17. On completion of the plaintiffs' side evidence, on the side of the defendant, one V.Pargunam was examined as D.W.1 and 6 documents were marked as Ex.D1 to Ex.D6.

11. Both the plaintiffs and the defendant have filed their respective written arguments reiterating their respective stands.

12. The learned counsel for the plaintiffs submitted that the 1st plaintiff is the registered proprietor of the trademark AACHI used in respect of various spices and masalas. The mark was adopted in the year 1995. The 2nd plaintiff is the licensee of the 1st plaintiff. The plaintiffs are manufacturing and marketing various products under the trademark AACHI. The present suit is in respect of the plaintiffs' labels used for AACHI MASALA Sambar Powder, Rasam Powder, Mutton Masala and Chicken Masala. The 1st plaintiff is the registered proprietor of the label AACHI MASALA SAMBAR POWER for all over India under



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Registration No.1375755 in Class 30 and its Registration certificate is marked as Ex.P.10. The mark is in continuous use since 2005 and the registration is valid and subsisting as on date in the name of the 1st plaintiff. The 1st plaintiff is the prior adopter of the other suit subject labels for Chicken Masala and Rasam Masala since 2002 (Ex.P.8). The defendant has adopted the identical colour scheme, get up and layout with respect to their Rasam Masala, Chicken Masala and Sambar Masala. However, with respect to the Mutton Masala, the defendant has adopted the colour scheme and get up of the plaintiff's chicken masala. Defendant's label ARASAN MASALA SAMBAR MASALA, ARASAN MASALA MUTTON MASALA, ARASAN MASALA CHICKEN MASALA and ARASAN MASALA RASAM MASALA are marked as Ex.P.17 series.

12 (i). During pendency of the suit, several other trademark registrations for Rasam Powder, Chicken Masala and Mutton Masalas were obtained by the plaintiffs under Nos.1731906, 1720890, 1731954,



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1720889, 1731907, 1720891 and 1731953 and the legal use certificates of the said registrations are also marked as Ex.P13. The plaintiffs also filed additional reply statement on 12.12.2019 to confirm that though the plaintiffs adopted new labels for the subject masala products, they are continuing to use the suit subject labels in the plaint documents 1 to 3 marked as Ex.P.8 and to prove the same, the plaintiffs have marked its original labels of AACHI Sambar Powder, AACHI Rasam Powder, AACHI Chicken Masala, with manufacturing date as of November 2019 marked as Ex.P9, thereby denying the baseless allegations of the defendant's additional written statement dated 29.08.2019.

12 (ii). The contention of the learned counsel for the plaintiffs is that the plaintiffs adopted unique colour combination, get-up and lay-out for AACHI MASALAS as seen in Ex.P.8, including Rasam Powder and Chicken Masala in 2002 and has been using the same till today without any cessations as proved from Ex.P.9. Subsequently, owing to the success



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and popularity of its products, the plaintiffs have adopted similar labels in most of its AACHI masalas, including AACHI MASALA SAMBAR POWDER in 2005 and acquired registration for most of them in Class 30 as evidenced from the legal use certificate of the trademarks marked as Ex.P.12. The labels attached to the defendant's products ARASAN MASALA Sambar Masala, Rasam Powder, Chicken Masala (Ex.P.17) are visually identical and deceptively similar to that of the plaintiffs' trademark AACHI MASALA SAMBAR POWDER, AACHI MASALA RASAM POWDER & CHICKEN MASALA (Ex.P.8). The defendant has copied the colour combination and get-up of the plaintiffs labels for their corresponding masalas in a manner so as to deceive the customers of average intelligence with imperfect recollection to mistake the defendant's substandard products as that of the plaintiffs' widely famous and reputed masala products due to such close resemblance in the rival label marks. Further, the defendant has adopted all the peculiar features of the plaintiffs'



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mark with unique appearance including the prominent background colours of the respective masalas, the word ARASAN written in red, similar to that of AACHI, the word masala in white and then combination of the respective colour with white at the cutting ends of the wrapper, the bowl placed in the center of the label containing the respective dishes to be prepared with the masalas, thereby, making the impugned labels visually identical and deceptive similar to that of the plaintiffs' respective labels which are prior in adoption with immense popularity and reputation among the traders and the purchasing community. There cannot be any doubt that the identity and deceptively similarity of the impugned labels to the labels in the plaint documents 1 to 3 as proved from the above explanations and evidences, is not a mere coincidence, but instead, a calculated attempt on the part of the defendant to confuse innocent customers to believe that the impugned products are the same as those of the corresponding products of that of the plaintiffs.



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12 (iii). The plaintiffs' labels were created by their employees during the course of employment and the 1st plaintiff is the sole and absolute owner of the copyright in all the AACHI labels also and the employees do not retain any contract to the contrary in their favour. The defendant's unauthorised imitation of the artistic labels of the plaintiffs' and their continuous usage, constitutes infringement of the copyright in the said labels and thereby violates the copyright law.

12 (iv). The 1st plaintiff is the owner of the AACHI Sambar Masala Label since 2005 and is also the owner of the AACHI Rasam Masala, AACHI Chicken Masala and AACHI Mutton Masala labels since 2002, which is much prior to that of the defendant's and therefore, the adoption by the defendant of identical impugned labels as seen in Ex.P.17, amounts to infringement of the plaintiffs' trademark and copyright in the labels and also passing off. In order to prove its goodwill and reputation, the plaintiffs have filed the sales invoices from 1995 to 2017 as Ex.P.5 and the



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Advertisement Expenses from the year 1999-2020 as Ex.P.6. As stated above, the plaintiffs introduced the suit pouches in 2002 and 2005, whereas, the defendant started selling masalas only from 2008 as evidenced from the response to question Nos.4 and 34 in the cross examinations of the defendant witness, as follows,

Q4. When did you start selling Masala?

A. In 2008.

...

Q34. Is it correct that in 2008 as soon as you started this business the plaintiff filed the suit against you?

A. Yes”.

12 (v). Therefore, the documents and evidence of the plaintiffs clearly point to the fact that the defendant is a subsequent adopter of the impugned labels in the year 2008 and the plaintiffs are the prior users of the trademark in the pouches AACHI MASALA SAMBAR POWDER, RASAM POWDER, CHICKEN MASALA from 2002 and 2005. In



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support of his contentions, the learned counsel for the plaintiffs relied on the judgments of this Court, Delhi High Court, Bombay High Court as well as the Hon'ble Supreme Court as follows;

1. Power Control Appliances and Others Vs. Sumeet Machines Pvt. Ltd. and Others reported in MANU/SC/0646/1994.

2. Parle Products (P) Ltd. Vs. J.P. and Co., Mysore reported in MANU/SC/0412/1972.

3. Tube Investments of India Ltd. Vs. Trade Industries, Rajasthan reported in MANU/SC/2358/1997.

4. K.R. Chinnikrishna Chetty Vs. K. Venkatesa Mudaliar and Others reported in MANU/TN/0139/1974.

5. Bacardi and Company Limited Vs. Bahety Overseas Private Limited and Others reported in MANU/DE/3032/2021.

6. Sopariwala Exports and Others Vs. Kuber Khaini Private Limited reported in MANU/MH/1245/2012.

7. Hasmukhrai and Co. Vs. Raj Tea and Co. and Others reported in MANU/MH/0862/2005.

13. The learned counsel for the defendant submitted that the present



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suit has been filed by the plaintiffs for infringement of trademark and copyright and for passing off, including other consequential reliefs. The present suit fails on the very ground that the defendant, as arrayed in the plaint, is not a juristic person and any order passed in the suit is non-executable. The 1st plaintiff who happens to own the suit trademarks, has not let in evidence as required by law. The 1st plaintiff, being a proprietary concern, cannot be represented by any third party, without proper authorization. Further, the 2nd plaintiff being a body incorporate, will have to be represented by a person duly authorized through Board's resolution. In the present case, both the plaintiffs are not represented by duly authorised person and on this very ground, the evidence produced by the plaintiffs cannot be considered by this Court and the suit fails.

13 (i). The defendant is a proprietary concern, which has been manufacturing/processing and marketing spices and condiments under the mark ARASAN since the year 1999 and having been using the same since



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then. The defendant is the registered proprietor of the trademark ARASAN registered under No.1640863 in class and the same is valid and subsisting as on date. The defendant also has various other business concerns under the mark ARASAN such as, ARASAN SOAP COMPANY, ARASAN OPTICALS and ARASAN COMPUTERS, etc. The defendant has been using the suit labels since 1999 and has been using the same continuously and extensively. The packaging wrapper of the defendant is completely different and distinct and on a cursory look of the label, even undiscerning and illiterate customers can distinguish the products and the source of the products. The defendant-Company has filed various licenses and approvals to prove their use. The defendant's products are sold under the mark ARASAN, which distinguishes the goods of the plaintiffs from that of the defendant. There is no possibility of deception or confusion in the minds of trade and public and that the plaintiffs have also failed to prove any actual instances of confusion or even likelihood of confusion.



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13 (ii). As far as issue No.1, as to whether the colour scheme, get-up and lay-out of Arasan Sambar Masala, Chicken Masala and Rasam Powder, are deceptively similar to the corresponding labels of the plaintiffs, is concerned, it is to be noted that the labels attached to the defendant's products ARASAN MASALA Sambar Masala, Rasam Powder, Chicken Masala (Ex.P17) are not visually identical to that of the plaintiffs' trademark AACHI MASALA SAMBAR POWDER label, registered under No.1375755 (Ex.P10) allegedly used since 2005 and label marks of AACHI MASALA Rasam Powder & Chicken Masala (Ex.P18) since 2002. A mere perusal of the labels of the defendant and the plaintiffs will prove that the images and symbols that are unique to the label of the defendant, such as the photograph of the child, the Vegetarian symbol, the name of the Masala in both instances being different with wholly unique fonts and the Agmark print over it. Mere depiction of the product in relation to the spices being featured prominently on the label, is not a



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ground for labels which amounts to deceptively similar. A simple comparison of the plaintiff's old labels and the defendant's labels proves that the two labels are poles apart, and that there cannot be any deception or confusion produced by such a label in the minds of the public. The contention of the plaintiffs that the word ARASAN is similar to the word AACHI or that it is coloured in a similar way, are not valid, as both the words are not similar in any capacity. As such, the contention made by the plaintiffs that the labels attached to the defendant's products is visually similar to that of the defendant, are vehemently denied.

13 (iii). As far as issue Nos.2, 3 and 6 as to whether plaintiffs are the prior user of the colour scheme, get-up and lay-out of the labels in the Sambar Masala, Chicken Masala and Rasam Powder; whether the action of the defendant amounts to infringement of the plaintiffs' copyright in Document Nos.1 to 3; whether the plaintiff is the prior user, in respect of the labels in question, are concerned, the plaintiffs have miserably failed to



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make out any case regarding prior user. The plaintiffs have not proved with cogent evidence as to when the plaintiffs have been using the suit labels and the very claim of the user as alleged by the plaintiffs, is false. Further, the defendant has been selling condiments and masala powders under the mark since 1999 much prior to the plaintiffs. In the present suit, it is held that the plaintiffs have adopted unique colour combination, get-up and layout for AACHI MASALA. However, it is pertinent to note that the color scheme of the products furnished by the plaintiffs with that the plaintiffs claims is being infringed upon, are not similar in any recognizable manner. In any event, both the plaintiffs and the defendant have changed their label during the pendency of the suit and the cause of action ceases to exist. The plaintiffs have not provided prior user of the suit labels and furthermore, it is trite law that, no one can claim monopoly over mere colour as claimed by the plaintiffs. None of the documents filed by the plaintiffs support their claim of prior user. Further, the plaintiffs have been changing their labels



from time to time. The plaintiffs have failed to prove with cogent evidence as to from when they have been using the suit labels.

13 (iv). As far as issue No.4 regarding the cause of action for the suit survives is concerned, the plaintiff, subsequent to filing of the suit, has changed their label and is not using the labels filed as plaint document Nos.1 to 3. Additionally, both parties have changed their labels. The said fact is most relevant and necessary to decide the issue on hand. The defendant submits that the said registration obtained by the plaintiffs for the labels contained in Plaint document Nos.1 to 3, are not valid and subsisting as on date, as the plaintiffs have discontinued the use of the said labels. As per the statutory provisions, a mark is said to be revoked/rectified if the same has not been put to use. In the present case, the plaintiffs have rolled out their products under a changed label and is not using the labels as filed as Document Nos.1 to 3 with the plaint. This change has been effected by the plaintiffs subsequent to the filing of the



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suit, thereby making the cause of action for the suit itself becoming infructuous. Further, the very case of the plaintiffs that the changed labels of the defendant is also violating the rights of the plaintiffs', is beyond the scope of the pleadings and the same is not sustainable.

13 (v). As far as the issue Nos.5 and 10 as to whether the plaintiffs can claim monopoly over mere colour scheme /colour combination; and as to whether the use of the defendant's Trademark constitutes infringement of the 1st Plaintiff's registered Trademark Nos.922594, 922595, 1374937, 1340324, 1340325, 1367430, 1372439, 1372440, 1375754, 838786, 976559, 1025305, 1318493, 1318494, 1318495, 1375755, 1375756, 1380625, 1357284 are concerned, as already stated, the plaintiffs cannot claim monopoly over mere colour scheme/colour combination of the packaging labels. It is settled law that no one can claim monopoly over colours. Further, a mere perusal of both the labels would bring the stark differences in both the labels that can be easily identified even by illiterate



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customer and customers from all walks of life. The change in labels of the products that are being sold by the plaintiffs, directly affects the validity of this suit, as the cause of action for the suit itself becomes infructuous. Thus, the non-use of the labels in question itself would be enough to ensure that the suit isn't maintainable.

13 (vi). As far as issue No.8 as to whether the defendant as arrayed in the suit, is a juristic person and whether the suit is maintainable is concerned, it is pertinent to note that the defendant has made a categorical statement in the written statement itself that the defendant as arrayed in the plaint is not a juristic person and has also given the details of its constitution being a proprietary concern. Still the plaintiffs have chosen not to amend the plaint. Any orders passed by this Court cannot be executed against the defendant as arrayed in the suit and hence the suit is liable to be dismissed on that ground also.

13 (vii). As far as issue Nos.7 and 9 as to whether the defendant is



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liable to render accounts and surrender accounts; and to what reliefs the parties are entitled to, are concerned, in the present suit, the plaintiffs have failed to make out any case for infringement of trademarks as prayed for and passing off and also on the count of copyright infringement. Further, the plaintiffs have also failed to prove any damages caused. As such, the plaintiffs are not entitled to any reliefs as prayed for in this suit. In support of his contentions, the learned counsel for the defendant relied on the following judgments;

*1. Britannia Industries Ltd. Vs. ITC Ltd. and
Other reported in 2021 SCC Online Del 1489, and*

*2. Kellogg Company Vs. Pravin Kumar
Bhadabhai & Another reported in ILR (1996) 11
Delhi.*

14. Heard the learned counsel for the plaintiffs and the learned counsel for the defendant and perused the materials available on record.

15. On three dates viz. 14.02.2017, 24.08.2021, 29.09.2021, issues



have been framed by this Court. Since some of the issues are overlapping

each other, the issues are restructured as follows;

1. Whether the colour scheme, get up and lay out of Arasan Sambar Masala, Chicken Masala and Rasam Powder are deceptively similar to the corresponding labels of the plaintiffs?
2. Whether the plaintiffs are the prior user of the colour scheme, get up and lay out of the labels in the Sambar Masala, Chicken Masala and Rasam Powder?
3. Whether the action of the defendant amounts to infringement of the plaintiffs' copyright in Document Nos.1 to 3?
4. Whether the cause of action for the suit survives, in view of the fact that both the parties have changed their labels?
5. Whether the plaintiffs can claim monopoly over mere colour scheme/colour combination?
6. Whether the plaintiff is the prior user, in respect of the labels in question?



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7. Whether the defendant is liable to render accounts and surrender accounts?

8. whether the defendant as arrayed in the suit is a juristic person and the suit is maintainable?

9. Whether the use of the defendant's trademark constitutes infringement of the 1st plaintiff's registered trademark Nos.922594, 922595, 1374937, 1340324, 1340325, 1367430, 1372439, 1372440, 1375754, 838786, 976559, 1025305, 1318493, 1318494, 1318495, 1375755, 1375756, 1380625, 1357284?"

10. To what other reliefs the plaintiffs are entitled to?

16. Upon hearing the arguments on either side and perusal of the materials available on record, the issues are answered as follows;

17. ISSUE No.1: Whether the colour scheme, get up and lay out of Arasan Sambar Masala, Chicken Masala and Rasam Powder are deceptively similar to the corresponding labels of the plaintiffs?



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17.1 It is the main contention of the plaintiffs that the labels attached to the defendant's products ARASAN MASALA SAMBAR MASALA, ARASAN MASALA CHICKEN MASALA and ARASAN MASALA RASAM MASALA as shown in Ex.P.17 are visually identical and deceptively similar to that of the plaintiffs' trademark AACHI MASALA SAMBAR POWDER, AACHI MASALA CHICKEN MASALA and AACHI MASALA RASAM POWDER. The defendant has copied the colour combination and getup of the plaintiffs labels for their corresponding masalas in a manner so as to deceive the customers of average intelligence with imperfect recollection to mistake the defendant's substandard products for that of the plaintiffs' which is widely famous and reputed masala products due to such close resemblance in the rival label marks.

17.2 Per contra, it is the contention of the defendant that it is to be noted that the labels attached to the defendant's products ARASAN



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MASALA Sambar Masala, Rasam Powder, Chicken Masala (Ex.P17) are not visually identical to that of the plaintiffs' trademark AACHI MASALA SAMBAR POWDER label registered under No.1375755 (Ex.P10) allegedly used since 2005 and label marks of AACHI MASALA Rasam Powder & Chicken Masala (Ex.P18) since 2002. A mere perusal of the labels of the defendant and the plaintiffs will prove that the images and symbols that are unique to the label of the defendant.

17.3. Now it has to be seen as to whether the defendant's label namely ARASAN MASALA SAMBAR MASALA, ARASAN MASALA CHICKEN MASALA and ARASAN MASALA RASAM MASALA as shown in Ex.P.17 are deceptively similar to the corresponding labels of the plaintiffs which are marked as Ex.8.

17.4 A careful perusal of the label of SAMBAR MASALA/POWER of both the defendant and the plaintiffs shows that though the colour of label is more or less same, the rest of the things are



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not similar. In the plaintiff's label, the word “AACHI” is written as “Aachi” i.e. the 1st letter 'A' is written in capital and the other letters are written in small letters and the font styles of AACHI and ARASAN are entirely different. In the plaintiffs' label, it is written as SAMBAR POWDER whereas, in the defendant's label it is written as SAMBAR MASALA. Background is also not similar to the plaintiffs label. Left and right side of the label, ingredients, method and other particulars given in different colour and format in both the labels.

17.5. As far as Rasam masala/powder is concerned, in the plaintiffs' label it is mentioned as “AACHI MASALA RASAM POWDER” whereas in the defendant's label it is mentioned as “ARASAN MASALA RASAM MASALA”. The colour of both the labels are entirely different and the background colour of the bowl in which the RASAM is served is also entirely different.

17.6. Insofar as the Chicken Masala label is concerned, the



label colours of both plaintiff and defendant are entirely different. Though the plaintiff stated that the defendant has copied the colour of plaintiff's Chicken Masala label to his Mutton Masala, the same cannot be taken as imitation. Further, the chicken leg pieces served in the bowl are shown in different angle in both the labels. The background colour is also different.

17.7. Apart from the above differences, there are other differences between the labels of the plaintiffs and the defendant. In the defendant's label, there is a child picture shown in all the Masala labels whereas, which is not there in the plaintiffs' label. Further, in the defendant's label it is mentioned as “AGMARK” which is also not found in the plaintiffs' label. In the defendant's, the wave border is found both in top and below wherein, in the plaintiffs' label, the wave border is only in the top of the label and the colour of the border is also different. Further, naturally, the colour of the Sambar, Rasam and Chicken gravy would be more or less similar and that cannot be taken as imitation. Further, mere



depiction of the product in relation to the spices being featured prominently on the label is not grounds, which amount to deceptively similar. The contention of the plaintiffs that the ARASAN is coloured in a similar way. But both the words are not similar in any capacity and the font style is also entirely different.

17.8 Therefore, on a perusal of Ex.P.8, Ex.P9 and Ex.P.17, this Court does not find that the colour scheme, get up and lay out of Arasan Sambar Masala, Chicken Masala and Rasam Powder are not deceptively similar to the corresponding labels of the plaintiffs and the issue is answered accordingly.

18. ISSUE Nos.2 and 6 : Since the issue Nos.2 and 6 are similar and related, they are being dealt together as follows;

Issue No.2. Whether the plaintiffs are the prior user of the colour scheme, get up and lay out of the labels in the Sambar Masala, Chicken Masala and Rasam Powder? and



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Issue No.6. Whether the plaintiffs are the prior user, in respect of the

labels in question?

18.1. According to the plaintiff the plaintiff is the prior user of the colour scheme get up and lay out of the labels for Sambar Powder, Chicken Masala and Rasam powder.

18.2. The contention of the learned counsel for the plaintiffs is that the plaintiffs adopted unique colour combination, getup and layout for AACHI MASALAS as seen in Ex.P.8 including Rasam Powder, Chicken Masala and Mutton Masala since 2002 which was the year of first publication and has been using the same till today without any cessations as proved in Ex.P.9. Subsequently owing to the success and popularity of its products, the plaintiffs adopted the similar labels for most of its AACHI Masala products including AACHI MASALA SAMBAR POWDER in 2005 and acquired the registration for most of them in class 30 as evidenced from the legal use certificate of the trademarks marked as



18.3. The 1st plaintiff is the owner of the AACHI Sambar Masala Label since 2005 and is also the owner of the AACHI Rasam Masala, AACHI Chicken Masala and AACHI Mutton Masala labels since 2002 which is much prior to the defendant and therefore, the adoption of identical impugned labels as seen in Ex.P.17 by the defendant amounts to infringement of the plaintiffs' trademark and also passing off. In order to prove its goodwill and reputation, the plaintiffs have filed the sales invoices from 1995 to 2017 marked as Ex.P.5 and the Advertisement Expenses from the year 1999-2020 marked as Ex.P.6.

18.4. It is seen that even though the defendant contended that he is manufacturing/processing and marketing spices and condiments under the mark ARASAN since the year 1999, no document has been produced by the defendant to prove the same. Further, during cross examination, the defendant has admitted that he started selling Masalas in the year 2008 and



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he has also admitted in Q.No.4 and Q.No.34 that they started selling Masala in the year 2008 and soon after starting the business, the plaintiff have filed the present suit.

18.5. Though the plaintiffs have filed sale invoices from the year 1995 to 2017 under Ex.P.5 and advertisement expenses from the year 1999 to 2000 under Ex.P.6, the plaintiffs themselves admitted that they adopted suit labels in year 2002 and 2005 respectively. As admitted by the defendant during cross examination, the defendant has started selling Masalas only in the year 2008.

18.6. Therefore, from the oral and documentary evidence, it is found that the plaintiffs are the prior user of the colour scheme get up and lay out of the labels for Sambar Powder, Chicken Masala and Rasam powder. However, as held in the earlier issues that even though the plaintiffs are the prior user, there is no deceptive similarity except few, which would not create confusion in the minds of public or purchasers. Accordingly, the



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issues are answered in favour of the plaintiff.

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19. ISSUE No.3: Whether the action of the defendant amounts to infringement of the plaintiffs' copyright in Document Nos.1 to 3?

19.1. According to the plaintiffs the plaintiffs' labels were created by their employees during the course of employment and the 1st plaintiff is the sole and absolute owner of the copyright in all the AACHI labels also the employees do not retain any contract to the contrary in their favour. The defendant's unauthorised imitation of the artistic labels of the plaintiffs' and its continuous usage constitutes infringement of the copyright of labels in Doc. No.1 to 3 and thereby, violates the copyright law.

19.2. As already held that the plaintiffs are not objecting to the word mark ARASAN and they are only objecting the use of the deceptively similar labels by the defendant alleging that it creates confusion in the minds of the public.



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19.3. As already held that though the plaintiff is the prior user, the defendant cannot be prevented from selling Masalas. If he is prevented from selling masalas, it would amount to encouraging monopoly in the trade and the plaintiffs are also not asking for the same. The main contention of the plaintiffs is that their label has been infringed by the defendant.

19.4. As already held, this Court finds from Exs.P.8, 9 and 17 that except the colour of the sambar/rasam and chicken gravy shown in the bowls of the respective labels, the other features are not similar and the back ground is also not similar. Therefore, the action of the defendant would not amount to infringement of plaintiffs copyright and the issue is answered accordingly in favour of the defendant.

20. ISSUE No.4: Whether the cause of action for the suit survives, in view of the fact that both the parties have changed their labels?

20.1. According to the defendant the present suit has been filed for



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infringement of the plaintiffs' registered label in respect of AACHI SAMBAR POWDER, AACHI RASAM POWDER and AACHI CHICKEN MASALA, viz. plaintiffs' Document Nos.1 to 3 on the ground that the plaintiffs have obtained registration of the said label and copyright also. But, the said registration obtained by the plaintiffs for their labels contained in plaint document Nos.1 to 3, is not valid and subsisting as on date, as the plaintiffs have discontinued the use of said labels. As per the statutory provision, a mark is said to be revoked/rectified if the same has not been put to use. In the present case, the plaintiffs have rolled out their products under a changed label and are not using the labels, which were filed in document Nos.1 to 3 with the plaint. This change has been effected by the plaintiffs subsequent to the filing of the suit and thereby the cause of action for the suit itself become infructuous. Thus, in view of non-use of the labels, the registrations obtained by the plaintiffs are invalid and are liable to be rectified.



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20.2. According to the plaintiff, during pendency of the suit, several

other trademark registrations for Rasam Powder, Chicken Masala and Mutton Masalas were obtained by the plaintiffs under Nos.1731906, 1720890, 1731954, 1720889, 1731907, 1720891 and 1731953 and the legal use certificates of the said registrations are also marked as Ex.P13.

The plaintiffs also filed additional reply statement on 12.12.2019 to confirm that though the plaintiffs adopted new labels for the subject masala products, they are continuing to use the suit subject labels in the plaint documents 1 to 3 marked as Ex.P.8 and to prove the same, the plaintiffs have marked its original labels of AACHI Sambar Powder, AACHI Rasam Powder, AACHI Chicken Masala, with manufacturing date as of November 2019 marked as Ex.P9.

20.3. However, as already held in the above issues that none of the labels of the defendant are identical or similar to the plaintiffs' label. The claim of the plaintiffs is that even after changing the labels also the



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defendant continuously using the label, which amounts to infringement.

However, this Court finds that there is no similarity and hence there is no infringement. But, Ex.P.8 and Ex.P.9 proves that the plaintiffs are continuously using their original labels of AACHI Sambar Powder, AACHI Rasam Powder, AACHI Chicken Masala and hence the cause of action for the suit is still survives and the issue is answered in favour of the plaintiffs.

21. ISSUE No.5: Whether the plaintiffs can claim monopoly over mere colour scheme/colour combination?

21.1. It is settled law that no one can claim monopoly over colours. Further as contended by the defendant a mere perusal of both the labels would bring the stark differences in both the labels that can be easily identified even by illiterate customer and customers from all walks of life.

21.2. Admittedly, during pendency of the suit, the plaintiff has registered certain trademarks in the Nos.922594, 922595, 1374937,



1340324, 1340325, 1367430, 1372439, 1372440, 1375754, 838786, 976559, 1025305, 1318493, 1318494, 1318495, 1375755, 1375756, 1380625, 1357284. The plaintiffs had already registered the trademark AACHI under the Trademark Act and even the labels are also registered under the Copyrights Act and hence the plaintiffs are the owner of the trademark.

21.3. Admittedly, no one can claim exclusivity on any one of the colour and no one can claim monopoly over colours and in the present case, the plaintiffs claiming monopoly right over the colour. The plaintiffs have produced documents in Ex.P.5, the sales invoices and advertisement expenses in Ex.P.6 and other documents to show that they have invested huge money to achieve the goodwill and reputation and hence the same should be protected.

21.4. However, as already held in the earlier issues that the labels of the defendant is not similar or identical to that of the plaintiffs except few.



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Further mere perusal of both the labels would go to show that it can be easily identified even by illiterate customer and customers from all walks of life. Under these circumstances, the plaintiffs cannot claim any monopoly right over colour and accordingly this issue is answered in favour of the defendant.

22. ISSUE No.7: Whether the defendant is liable to render accounts and surrender accounts?

As already held in the earlier issues, the defendant has not infringed the plaintiffs copyright, trademarks and passing off. Therefore, the defendant is not liable to render accounts and surrender accounts. Accordingly the issue is answered in favour of the defendant.

23. ISSUE No.8: whether the defendant as arrayed in the suit is a juristic person and the suit is maintainable?

23.1. The defendant has been shown as ARASAN FOOD PRODUCTS in the plaint. According to the defendant, even in the written



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statement the defendant has made a categorical statement that the defendant is not a juristic person and also given the details of its constitution being a proprietary concern, but, still the plaintiffs have not chosen to amend the plaint. Even if any order is passed, the same cannot be executed against the defendant as arrayed in the suit and hence, the suit is liable to be dismissed.

23.2. According to the plaintiff, the defendant is the sole proprietor of the impugned masala products. The defendant is exclusively manufacturing the impugned ARASAN MASALA products since 2008 as already admitted by the defendant witness during cross examination and being the sole owner of his business and unlike a juristic person, the defendant is personally liable for the risks and expenses of his business as there is no legal distinction between the owner and their business. Therefore, the sole proprietor can be sued in the name of that business.

23.3. It is to be noted that when it is denied by the defendant that the



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defendant is only a proprietorship concern and it is not a juristic person and therefore the suit is not maintainable against the defendant, it is for the plaintiff to prove otherwise.

23.4. It is settled proposition of law that the proprietorship concern is not a juristic person. If at all any suit is to be filed by a proprietorship concern against a proprietorship concern, only the proprietor of the said proprietorship concern has to file the suit against the proprietor of the said proprietorship concern.

23.5. In the present case, though the defendant has categorically made a statement in the written statement that the defendant is not a juristic person, the plaintiff has not produced any document to show that the defendant/ARASAN FOOD PRODUCTS is either a partnership firm or it is company. If it is not specifically shown as to whether the defendant is a company or partnership firm, naturally the concern would be a proprietary concern. The proprietary concern has no legal entitlement and



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only the proprietor alone has to be sued. Theretofore, this Court finds that the defendant is not a juristic person and the suit is not maintainable against the defendant arrayed in the plaint. The issue is answered accordingly.

24. ISSUE No.9: Whether the use of the defendant's trademark constitutes infringement of the 1st plaintiff's registered trademark Nos.922594, 922595, 1374937, 1340324, 1340325, 1367430, 1372439, 1372440, 1375754, 838786, 976559, 1025305, 1318493, 1318494, 1318495, 1375755, 1375756, 1380625, 1357284?"

24.1. According to the defendant even during pendency of the suit, the plaintiffs are continuously changing the labels of their products being sold by the plaintiff which directly affects the validity of the suit as the cause of action for the suit itself become infructuous and therefore, the suit has to be dismissed as infructuous.

24.2. As already held, the plaintiffs are not claiming that the



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trademark AACHI or the word Masala have been infringed by the defendant. The plaintiffs have no objection to the use of the word mark ARASAN. However, the plaintiffs are aggrieved that the structure and design of the label has been infringed by the defendant. The plaintiffs' labels were created by their employees during the course of employment to attract the customers.

24.3. A careful looking of both the labels, would go to show that except the colour of Sambar and the shape of the bowl, this Court does not find any other similarity and therefore, there is no possibility of creating confusion in the minds of the customers or public or Masala purchasers and hence there is no infringement by the defendant. The issue is answered accordingly.

25. ISSUE No.10: To what other reliefs the plaintiffs are entitled to?

As held in the above issues this Court does not find that the



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defendant has infringed the trade mark or copy right of the plaintiffs. The plaintiffs are not entitled to any relief as sought for. However, the plaintiff can use their registered trademark and the defendant should not infringe the plaintiffs' label/mark. The issue is answered accordingly.

26. Accordingly, the suit is dismissed. Further, considering the facts and circumstances, the respective parties are directed to bear own costs.

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List of Witness Examined on the side of the Plaintiff:

P.W.1 - B.Gnanasambandam

List of Exhibits marked on the side of the plaintiff:

S.No.	Exhibits	Description of Documents
1	P.1	The Original Authorization letters dated 07.09.2021 (Marked with objection, Subject to proof and relevance.)
2	P.2	The photocopy of the Certificate of Commercial Tax Registration of Aachi Masala & Foods (P) Ltd. dated 10.07.2006. (Original is produced, compared and it is undertaken by the plaintiff that it can be produced as and when required.)
3	P.3	(Series 3 Nos.) The photocopy of the Central Sales Tax (Registration and Turnover) Rules 1957. Certificate of Commercial Tax Registration and Central Sales Tax of Aachi Spices & Foods dated 28.12.2006 and 03.01.2007 (Original is produced, compared and it is undertaken by the plaintiff that it can be produced as when required.)
4	P.4	The Certified copy being of the document filed in C.S.No.83/2008 before this Court Plaintiffs Advertisement in RITZ Magazine for the month December 2006. (Marked with Objection, subject to proof and admissibility.)
5	P.5	(Series-2 Nos.) the photocopy of the Invoices from 1995-2007. Original produced for comparison and



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S.No.	Exhibits	Description of Documents
		Certified copies of invoices from C.S.No.135 of 2020 from 2007-2020 of which the plaintiff relies on invoices upto the year upto 2017 Sales Invoices for the years 1995- 2017. (Original is produced, Compared and it is undertaken by the plaintiff that it can be produced as and when required.)
6	P.6	(Series) is the Certified copy from C.S.No.135 of 2020 of the Advertisement Expenses for the years 1999-2020 of which the plaintiff relies only on documents upto the year 2017.
7	P.7	(Series) is the Plaintiffs' webpage along with the Section 65B Certificate of the Evidence Act, 1872. (Marked with Objection, subject to proof and admissibility and Section 65B Affidavit as filed is not in accordance with law.)
8	P.8	(Series 3 Nos) is the Original Plaintiffs label AACHI MASALA SAMBAR POWDER, AACHI CHICKEN MASALA, and AACHI MASALA RASAM POWDER
9	P.9	(Series-4Nos) is the Original Plaintiff's registered labels AACHI Rasam Powder, AACHI Sambar Powder, AACHI Chicken Masala and AACHI Kulambu Chilly powder bearing the manufacturing date as of November 2019. The learned counsel for the defendant vehemently objected for marking documents P10 to P13 stating that the counsel for the plaintiff has given up the



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S.No.	Exhibits	Description of Documents
		relief of infringement of trademark while the issues. were framed. Hence these cannot be marked at all and submitted to send back the case to this Court for deciding the issue. The learned counsel for the plaintiff insists on marking the documents stating that the relief sought for in the suit is for infringement of registered trademark and passing off and the court can always frame additional marked. The following documents are marked as exhibits:
10	P.10	The Photocopy of the Registration certificate of the Trade Mark No. 1375755 dated 05/08/2005. (Original is produced, Compared and it is undertaken by the plaintiff that it can be produced as and when required.)
11	P.11	The Photocopy of the Registration Certificates of Trade Mark Nos. 838786, 976559 and 1025305. (Original is produced, Compared and it is undertaken by the plaintiff that it can be produced as and when required.)
12	P.12	The Photocopy of the Legal Use Certificate of Trade Mark Nos. 922594, 922595, 1374937, 1340324, 1340325, 1367430, 1372439, 1372440, 1375754, 1318493, 1318494, 1318495, 1375756, 1380625 and 1357284 along with Original renewal. (Original is produced, Compared and it is undertaken by the plaintiff that it can be produced as and required.)



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S.No.	Exhibits	Description of Documents
13	P.13	The Photocopy of the Legal Use Certificate under Nos. 1731906, 1731907, 1720889, 1720890, 1720891 and 1731954. (Original is produced, Compared and it is undertaken by the plaintiff that it can be produced as and when required.) The learned counsel for the defendant objected for marking of the document stating that the document have no relevancy to the issues framed. Ex.P13 is marked with objection subject to proof and admissibility.
14	P.14	Ex.P14 is the photocopy of the Certificate of Incorporation of M/s. Nazareth Foods (P) Ltd dated 23/07/2001. (Original is produced, Compared and it is undertaken by the plaintiff that it can be produced as and when required.)
15	P.15	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. (Original is produced, Compared and it is undertaken by the plaintiff that it can be produced as and when required.)
16	P.16	Ex.P16 is the photocopy of the Registration Certificates of the mark AACHI in various countries around the world. (Original is produced, Compared and it is undertaken by the plaintiff that it can be produced as and when required.)



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S.No.	Exhibits	Description of Documents
17	P.17	The original Defendant's Label ARASAN MASALA SAMBAR MASALA, ARASAN MASALA MUTTON MASALA, ARASAN MASALA CHICKEN MASALA and ARASAN MASALA RASAM MASALA.

List of Witness Examined on the side of the Defendant:

D.W.1 - Mr.V.Pargunam

List of Exhibits marked on the side of the defendant:

S.No.	Exhibits	Description of Documents
1	D1	The online status of plaintiff's registration under No.4951475 in class 30 (marked during P.W.1's cross)
2	D2	The certified copy of the defendant's trade mark registration under No.1640863 in class 30
3	D3	The photocopy of the TNGST registration certificate of the defendant (Compared with original)
4	D4	The photocopy of the invoices of the defendant (compared with original)



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S.No.	Exhibits	Description of Documents
5	D5	The original CA certificate for sales and sales turnover
6	D6	The original changed labels of the plaintiff

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Index : Yes / No

Speaking Order : Yes / No

Neutral Case Citation : Yes/No

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P.VELMURUGAN. J.

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Pre-delivery Judgment in

C.S. (Comm. Div.) No.830 of 2008

Judgment delivered on

31.07.2024