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C.S.No.835 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.07.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

C.S.No.835 of 2016

1.A.D.Padmasingh Isaac,
Trading as Aachi Spices and Foods,
Old No.4, New No.18/1,
6th Avenue, Thangam Colony,
Anna Nagar, Chennai - 600 040.

2.M/s.Aachi Masala Foods (P) Ltd.,
Old No.4, New No.181/1,
6th Avenue, Thangam Colony,
Anna Nagar, Chennai - 600 040.
Represented by its Director,
Mr.Ashwin Pandian,

3.M/s.Heavenly Foods Pvt. Ltd.,
Plot No.1926, 34th Street,
I Block, Ishwarya Colony,
Anna Nagar West,
Chennai - 600 040.
Represented by its Director,
Mr.Gibson Gnanasiromani Vedamani

... Plaintiffs

Vs.

Aachi Chettinadu Restaurant,
No.3/4, J.N.Road,
Tiruvallur - 602 001.

... Defendant



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Prayer:-

Civil Suit has been filed under Order IV, Rule 1 of the Original Side Rules and Order VII, Rule 1 of the CPC r/w Sections 27(2), 29, 134 and 135 of the Trade Marks Act, 1999, prays for a judgment and decree against the defendant on the following terms:

a) granting a permanent injunction restraining the defendant, by himself, his servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale using the same name Aachi Chettinadu Restaurant 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 first plaintiff's trade mark/name AACHI/AACHI CHETTINAD RESTAURANT / AACHI KITCHEN and use the same in pouches, packets or use the mark in invoices, letter heads and visiting cards or part of their Hotel/Restaurant name any other trade literature or Menu card by using any other trade mark which is in any way visually, or phonetically similar to the plaintiff registered Trade Mark Nos.838786, 1116254, 1479159, 1715718 or in any manner infringing the plaintiff's registered Trade Marks referred herein.

b) granting a permanent injunction restraining the defendant, by itself, its agents, or servants or anyone claiming through or under him any business marketing, selling advertising using in trade literature, menu cards, invoices, name boards, website, internet advertisements the mark/name Aachi Chettinadu Restaurant in relation to the Restaurant or with respect to or any other food preparation or on any other business the impugned trademark/name which is in any manner deceptively or phonetically



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confusingly similar to the Plaintiff's Trade Mark/name AACHI/AACHI CHETTINAD RESTAURANT / AACHI KITCHEN or in any other manner pass off their hotel, business or goods as and for that of the Plaintiffs.

(c) To direct the defendant to surrender to the Plaintiff all the packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationary and all other materials containing/bearing the name Aachi Chettinadu Restaurant or other identical trade mark used in the pouches and packets bearing the word AACHI/AACHI HOTEL/ AACHI CHETTINAD RESTAURANT / AACHI KITCHEN.

(d) To direct the defendant to render an account of profits made by them by the use of the impugned trademark Aachi Chettinadu Restaurant on the service referred and decree the suit for the profits found to have been made by the defendants, after the defendants have rendered accounts and

(e) for costs of the suit.

For Plaintiffs : M/s.C.Daniel & Gladys Daniel

For Defendant : Set *ex-parte* on 12.07.2024

J U D G M E N T

The Plaintiffs have filed the suit under Sections 27(2), 29, 134 and 135 of the Trade Marks Act, 1999, read with the relevant provisions of the Original Side Rules of the Madras High Court and the Code of Civil Procedure, 1908, seeking a Judgment and Decree against the Defendant primarily from using the registered trademark 'AACHI' and for consequential reliefs.



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2. The 1st Plaintiff is the Proprietor of the trademark 'AACHI'. The 2nd Plaintiff is the Licensee of the trademark 'AACHI' and the 3rd Plaintiff is the licensee of the trademarks 'AACHI KITCHEN' and 'AACHI CHETTINAD RESTAURANT'.

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

4. The 1st Plaintiff had also obtained registration of the trademark "AACHI CHETTINAD RESTAURANT" under No.1116254 on 03.07.2002, with respect to Food Preparation of Human Consumption, coffee, tea, coca, sugar, rice, tapioca, sago, coffee substitutes, flour and preparations made from cereals, bread, biscuits, cakes, pastry, and confectionery, ice. The 1st Plaintiff had also obtained registration mark of the 'AACHI KITCHEN' under No.1715718 in respect of restaurants, providing of food and drink and such other services. The 1st Plaintiff has been using the trademark 'AACHI KITCHEN' with respect to restaurant business through the 3rd Plaintiff. The 1st Plaintiff had also obtained registration mark AACHI in Tamil in Registration No.1479159.



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5. The Defendant is said to be operating a hotel under the name "Aachi Chettinadu Restaurant." It has been claimed in the plaint that the name of the Defendant's hotel is identical to the Plaintiff's registered trademark. It has been stated that the Defendant deliberately copied the Plaintiff's trademark with the intention of taking undue advantage and reaping the benefit without any effort. Additionally, the Defendant's service is alleged to be inferior in quality and substandard. Furthermore, this is likely to undermine the goodwill and reputation that the Plaintiff has built over the years. It has also been stated that the general public might mistakenly believe that the Defendant's restaurant is an undertaking of the Plaintiff. Under these circumstances, the suit has been filed seeking the relief as stated above.

7. Despite the defendant has been duly served and their name was printed in the cause list, there was no appearance, either in person or through counsel, and hence, the defendant was set *ex-parte* by this Court on 12.07.2024.

8. On the side of the plaintiffs, the one Mr.Gnanasambandam, Director of the second plaintiff company was examined as PW1, and and he has reiterated the averments made in the plaint and also marked 21 documents



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as Exs.P1 to P21.

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9. Heard the learned counsel appearing for the plaintiffs and perused the materials available on record.

10. On a perusal of the plaint averments, Proof Affidavit of the plaintiff and documents marked on behalf of them, this Court finds that the suit claim is proved by the plaintiffs, and hence, the plaintiffs are entitled to the decree as sought for in the suit. Accordingly, the suit is decreed as prayed for, with costs. The defendant is directed to surrender all materials bearing the name "Aachi Chettinadu Restaurant" or similar trademarks (including packing materials, cartons, advertisement materials, hoardings, letterheads, visiting cards, and office stationery) and to render an account of the profits made from the use of these trademarks within two months from the receipt of a copy of this judgment and decree. Consequently, connected pending applications, if any, are closed.

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Index: Yes/No.

Speaking Order : Yes/No.

Neutral Citation Case : Yes/No.

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Copy to: The Sub Assistant Registrar, (Original Side),



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Madras High Court, Chennai.

List of Witness examined on the side of the plaintiffs

Mr.Gnanasambandam

- PW1

Documents exhibited by the Plaintiffs:

<i>Date</i>	<i>Nature of documents</i>	<i>Exhibits</i>
24.07.2024	Original Authorization Letters (3 Nos)	Ex.P1
	Print out of list of products manufactured and marketed by the plaintiffs' bearing the trade mark AACHI. (Affidavit under Section 65 B of the Indian Evidence Act filed and recorded)	Ex.P2
	Photocopy of certificate of incorporation dated 30.06.2006 of Aachi Masala Foods Pvt. Ltd.,	Ex.P3
	Photocopy of Certificate of Commercial Tax Registration of Aachi Masala & Foods (P) Ltd, dated 10.07.2006	Ex.P4
	Photocopy of Dissolution between deed between Mrs.Rani Pandian and Mr.A.D.Padmasingh Isaac dissolving the partnership firm, Naveen Products, dated 31.03.2007	Ex.P5
	Photocopy of Certificate of Commercial Tax Registration and Central Sales Tax of Aachi Spices & Foods, dated 28.12.2006 and 03.01.2007.	Ex.P6
	Photocopy of Certificate of Incorporation of Aachi Spices and Foods P Ltd., dated 17.03.2010.	Ex.P7
	Photocopy of Memorandum of Association of Aachi Spices and Foods P Ltd., dated 06.03.2010	Ex.P8
	Photocopy of 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.	Ex.P9
	Photocopy of Trade Mark License user Agreement between Mr.A.D.Padmasingh Isaac and Aachi Spices and Foods Pvt.Ltd., dated 21.04.2010.	Ex.P10
	Photocopy of Trade Mark License user agreement between Mr.A.D.Padmasingh Isaac and Aachi Masala Foods Pvt. Ltd., dated 21.04.2010.	Ex.P11



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Date	Nature of documents	Exhibits
	Printout of Certificate of incorporation of M/s.Heavenly Foods (P) Ltd., and Memorandum and Articles of Association dated 01.04.2010. (Affidavit under Section 65 B of the Indian Evidence Act filed and recorded)	Ex.P12
	Photocopy of Trade Mark License User Agreement between Mr.A.D.Padmasingh Isaac, Aachi Spices and Foods and Heavenly Foods (P) Ltd., dated 11.08.2014.	Ex.P13
	Invoice receipts for Aachi Kitchen for the year 2014-2015 (Affidavit under Section 65 B of the Indian Evidence Act filed and recorded)	Ex.P14
	Photocopy of Registration Certificate of the mark AACHI in various countries around the world.	Ex.P15
	Photocopy of the Legal use certificate of Trade Mark No.838786 in Class 30, dated 29.01.1999 renewal enclosed.	Ex.P16
	Photocopy of Legal use certificate of Trade Mark No.1116254 in Class 30, dated 03.07.2022 renewal enclosed.	Ex.P17
	Photocopy of Legal use certificate of Trade Mark No.1715718 in Class 43, dated 30.07.2008 renewal enclosed.	Ex.P18
	Legal use certificate of Trade Mark No.1479159 in Class 30, dated 17.08.2006 renewal enclosed.	Ex.P19
	Original Aachi Kitchen Name Board	Ex.P20
	Original Aachi Kitchen's menu card	Ex.P21
	Original defendant's name board Aachi Chettinadu Restaurant.	Ex.P22

List of witnesses examined on the side of the defendant : Nil

List of documents marked on the side of the defendant : Nil

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