
(2016) 03 MAD CK 0136
In the Madras High Court
Case No : C.S. No. 494 of 2014.

A.D.Padmasingh Isaac and another

APPELLANT

Vs

New Aachi Grinder Fresh, No.14, Angale Parameshwari
Street, MGR Nagar, Chennai-600078

RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:

Trade Marks Act, 1999 — Section 23, 67, 75

Citation : (2016) 2 MIPR 85

Hon'ble Judges : M. Sathyanarayanan, J.

Bench : Single Bench

Advocate : Gladys Daniel, Advocate, for the Appellant

Final Decision : Disposed Off

Judgement

M. Sathyanarayanan, J. - The plaintiffs would aver as follows:

1. The 1st plaintiff is the proprietary concern of A.D. Padmasingh Isaac, trading as Aachi Spices and Foods, Chennai and the 2nd plaintiff is M/s. Aachi Masala Foods (P) Limited, Chennai - 600040, represented by its Director Mr. Ashwin Pandian.

2. According to the plaintiffs, over the years, they have grown into one of the leading manufacturers and marketers of spices in India, by their sheer high quality and reliability and due to the enormous goodwill earned by the plaintiffs in the course of their business. Due to tireless efforts put for promoting their products, the Trade Mark "AACHI" has now become a common household name and they are presently dealing in over 400 different products with Trade Mark "AACHI". The plaintiffs had also placed the Trade Mark "AACHI".

3. The plaintiffs would further submit that Trade Mark "AACHI" was first conceived and adopted by the 1st plaintiff through his proprietary concern, M/s. Abhishek Enterprises, which commenced its business in the year 1995 and in the year 2002, he has entered into a partnership along with his mother-in-law

and set up a partnership firm under the name and style of M/s. Naveen Products. M/s. Aachi Masala Foods (P) Limited, was incorporated on 13.03.2006. M/s. Abishek Enterprises and M/s. Naveen Products had transferred their assets and liabilities on 01.12.2006 in favour of M/s. Aachi Masala Foods (P) Limited, with effect from 30.11.2006. Thereafter, on 31.03.2007, the partnership firm M/s. Naveen Products was dissolved and the proprietary concern M/s. Aachi Spices and Foods was registered on 28.12.2006. M/s. Aachi Spices and Foods (P) Limited, who had acquired the Trade Mark "AACHI" on 30.11.2006 from M/s. Abishek Enterprises and M/s. Naveen products, has assigned the same in favour of the 1st plaintiff on 30.03.2007 and on 01.04.2007, the 1st plaintiff executed a License Use Agreement in favour of M/s. Aachi Masala Foods (P) Limited.

4. The plaintiffs would further state that business of "AACHI" was expanding in mammoth proportions and the 1st plaintiff is the proprietor of the Trade Mark "AACHI" and he continues to use the Trade Mark "AACHI" through his Licensees M/s. Aachi Spices and Foods Private Limited and the 2nd plaintiff.

5. The plaintiffs would further claim that now they have become one of the leading manufacturers of packaged masalas and because of the efforts undertaken by the plaintiffs in promoting and advertising their products through various mediums, their market share in these products have risen considerably and at present there are 51 registrations of the Trade Mark "AACHI" in various word, label and stylized marks. The Trade Mark "AACHI" has become very popular and is a very valuable intellectual property of the 1st plaintiff and the Word mark "AACHI" has been used by the plaintiffs ever since 1995. The registration of the Word mark "AACHI" was also done on 29.01.1999 in Class No.30 and the Registrar of Trade Mark, granted registration for the Trade Mark "AACHI", under Registration No. 838786. Since then, the 1st plaintiff has become an exclusive owner of Word mark "AACHI" and also he has obtained registration of the mark "AACHI" in tamil vide Registration No. 1479159 and the registration is valid and subsisting.

6. The 1st plaintiff also obtained registration of the Trade Mark "AACHI IDY DOSAI MAAVU" under Registration No. 1843529 on 24.07.2009 in Class No.30. They are having a big turnover and details of which have been incorporated in Paragraph No.15 of the plaint. In Paragraph No.16 of the plaint, the plaintiffs have given list of applications registered in the name of the plaintiffs, which are numbering 51.

7. It is the specific case of the plaintiffs that during July 2014, they came across the defendant's product idly/dosai batter bearing the mark "New AACHI Grinder Fresh", which is a blatant infringement of the plaintiffs' registered Trade Mark "AACHI/AACHI IDLI DOSAI MAAVU" and the two are visually similar and also a conscious copy and it has been done by the defendants with the intention of taking undue advantage of reaping the benefit without sowing. The product of defendant is inferior in quality and substandard. As the consequence, unwary purchasers of average intelligence with the imperfect re-collection will

undoubtedly mistake one for the other and hence infringement of Trade Mark is total.

8. It is further contended by the plaintiffs that the Word "AACHI" is prominently written in bold letters by the defendant, which is phonetically and visually similar to the plaintiffs' registered Trade Mark and the plaintiffs are objecting only to the use of their Trade Mark "AACHI". On account of use of Word Mark "AACHI", by the defendant, the general public will assume that there is a business relationship between the plaintiffs and the defendant and factually there is no such relationship exists. Since the plaintiffs' Trade Mark has been registered, the defendant is deemed to have knowledge of the nature and scope of the plaintiffs' business and manufacturing activities, bearing the Trade Mark "AACHI" and hence, the adoption and use of the impugned Mark amounts to fraud under the Trade Marks Act. The defendant has no valid reasons whatsoever to use the mark "New AACHI Grinder Fresh", which is visually and phonetically identical to that of the plaintiffs and thus, the acts of the defendant are dishonest and motivated purely by mala fide intentions to poach upon the reputation and goodwill enjoyed by the plaintiffs and hence, the plaintiffs came forward to file the present suit.

9. Though the defendant was served, they did not enter appearance. Hence, they are called absent and set ex parte by this Court on 07.12.2015 and the matter was directed to be listed before the learned Additional Master-I for recording evidence.

10. On behalf of the plaintiffs, Mr. B. Gnana Sambandam, Senior Manager of Rs. and S of the plaintiffs' company examined as PW1, filed his proof affidavit in lieu of cross examination and marked Exhibits P1 to P15.

11. The learned counsel appearing for the plaintiffs has drawn the attention of this Court to the pleading, oral and documentary evidence and would submit that the plaintiffs started using Word Mark "AACHI" right from the year 1995 and the 2nd plaintiff/company came to be incorporated on 13.06.2006 and the 2nd plaintiff had acquired the Trade Mark "AACHI" on 30.03.2007 from M/s. Abishek Enterprises and M/s. Naveen Products and on 01.04.2007, the 1st plaintiff has also executed a License User Agreement in favour of M/s. Aachi Masala Foods (P) Limited, the 2nd plaintiff and by their sheer dint of hard work and perseverance, the plaintiffs have become one of the leading manufacturers of packaged masalas.

12. It is the further submission of the learned counsel appearing for the plaintiffs that the Trade Mark was also registered on 29.01.1999 in Class No. 30. The Registrar of Trade Marks granted registration for the Trade Mark "AACHI" under Registration No. 838786 and thereby the 1st plaintiff has become the exclusive owner of the Trade Mark "AACHI" and registered the mark AACHI in tamil vide Registration No. 1479159 and the registrations are valid and subsists.

13. Learned counsel appearing for the plaintiffs has drawn the attention of this Court to Exs.P11 and P14 and would submit that the comparison of both the

documents would disclose that the defendant knowing pretty well the name and Trade Mark of the plaintiffs, has adopted the mark "AACHI" in a fraudulent manner, only with a view to gain advantage of the popularity of the plaintiffs' products and in the light of the overwhelming documentary evidence, the suit is to be decreed, as prayed for, with cost.

14. This Court has considered the submission made by the learned counsel appearing for the plaintiffs and also perused the pleading, oral and documentary evidence and the following issues arise for adjudication.

- (i) Whether the plaintiffs had acquired the Trade Mark "AACHI"?
- (ii) Whether the plaintiffs by virtue of registration of the Word and Trade Mark "AACHI" become the exclusive owner of the Word Mark "AACHI"?
- (iii) Whether the plaintiffs became one of the leading manufacturers of packaged masalas by using the Word and Trade Mark "AACHI".
- (iv) Whether the defendant has infringed the plaintiffs' Trade Mark "AACHI"?
- (v) Whether, the plaintiffs are entitled to the judgment and decree as prayed for?
- (vi) To what other relief the plaintiffs are entitled to?

Issue No. 1:-

15. It is the specific case of the plaintiffs that the Trade Mark "AACHI" was first conceived and adopted by the 1st plaintiff through his proprietary concern M/s. Abhishek Enterprises and the said business was commenced in the year 1995 and in the year 2002, the 1st plaintiff has entered into a partnership along with his mother-in-law and set up a partnership firm under the name and style of M/s. Naveen Products and subsequently, the 2nd plaintiff was incorporated on 13.06.2006 and M/s. Abishek Enterprises and M/s.Naveen Products transferred their assets and liabilities in favour of the 2nd plaintiff with effect from 30.11.2006 and subsequently, the said firm got dissolved on 31.03.2007. Under Ex.P4, Deed of Assignment dated 02.07.2014 the assignor viz., the 2nd plaintiff has assigned the Trade Mark "AACHI", in favour of the 1st plaintiff. Under Ex.P5, the 2nd plaintiff came to be incorporated as limited company and Ex.P6, is the Memorandum of Association of the 2nd plaintiff company and the said company also got registered with the Commercial Tax authorities under Ex.P7. Ex.P8 series are the Trade Mark License User Agreement entered into between the 1st plaintiff and the 2nd plaintiff with regard to the Word mark "AACHI".

16. In the light of the above oral and documentary evidence, this Court is of the view that Issue No. 1, has to be answered in affirmative in favour of the plaintiffs and accordingly, answered.

Issue No. 2:-

17. The 1st plaintiff with a view to protect his intellectual property, applied for registration of Word Mark "AACHI" on 29.01.1999 in Class No. 30 and the

Registrar of Trade Marks granted registration for the Trade Mark "AACHI" under Registration No. 838786 and thereby, the 1st plaintiff has become the exclusive owner of the Trade Mark "AACHI" and also obtained registration of the mark "AACHI" in tamil vide Registration No.1479159. The plaintiffs have also obtained registration of the Trade Mark "AACHI IDLY DOSAI MAAVU" under Ex.P12 and thereby, became the registered proprietor of the Trade Mark "AACHI IDLY DOSAI MAAVU" and therefore, Issue No. 2, is also answered in the affirmative in favour of the plaintiffs.

Issue No. 3:-

18. The plaintiffs by using the Word mark "AACHI" has developed a very good turn over and for the purpose of advertising, crores of rupees have been spent and averments to that effect are also available at Paragraph No.15 of the plaint. Since the defendant did not enter appearance and chose to contest the claim, this Court is of the view that plaintiffs are one of the leading manufacturers of the packaged masala by using Word and Trade Mark "AACHI". Therefore Issue No. 3, is answered in the affirmative in favour of the plaintiffs.

Issue No. 4:-

19. Under Ex. P14, the defendant started using the Word and Trade Mark "New AACHI Grinder Fresh". The plaintiffs got the registration of Trade Mark "AACHI" under Ex. P11 and in respect of "AACHI IDLI DOSAI MAAVU", got registration under Ex. P12. Therefore, comparison of Ex. P11 and P14 would disclose that the Word marks "AACHI" is similar and therefore, the plaintiffs are right in contending that the defendant knowing pretty well about the same has consciously copied the plaintiffs' registered Trade Mark "AACHI"/"AACHI IDLI DOSAI MAAVU" and the word is phonetically and visually similar to that of the plaintiffs' Trade Mark and therefore, Issue No.4, is answered in favour of the plaintiffs.

Issue No. 5:-

20. In the light of the overwhelming oral and documentary evidence, this Court is of the view that the plaintiffs have probablised their case and therefore, they are entitled to succeed in the suit. In the result, there shall be a judgment and decree as follows:

(a) granting a permanent injunction restraining the Defendant by itself, its servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale using the Trade Mark NEW AACHI GRINDER FRESH/AACHI IDLY DOSAI MAAVU or any other similar Trade Mark or similar sounding expression or in any media and use the same in invoices, letter heads and visiting cards or by using any other trade mark which is in any way visually or deceptively or phonetically similar to the Plaintiffs' trade marks AACHI/AACHI IDLY DOSAI MAAVU and use the same in pouches, packets in relation to flour preparations or any other goods 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. 1843529, 838786 and 1479159, or in any manner infringe the Plaintiff's registered Trade Mark.

(b) granting a permanent injunction, restraining the Defendant, by itself, its servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale using Trade Mark NEW AACHI GRINDER FRESH/AACHI IDLY DOSAI MAAVU or any other similar Trade 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 the Plaintiffs' Trade Mark AACHI/AACHI IDLY DOSAI MAAVU in respect of flour preparations, batter or any other goods 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 Plaintiff's Trade Mark AACHI/AACHI IDLY DOSAI MAAVU or in any manner pass off the Plaintiff's goods.

(c) directing the Defendant to surrender to the Plaintiffs all the packing material, cartons, advertisement materials and hoardings, letter-heads, visiting cards, office stationery and all other materials containing/bearing the Trade Mark NEW AACHI GRINDER FRESH or other identical trade mark used in the pouches and packets bearing the word AACHI.

(d) directing the Defendant to render an account of profits made by them by the use of the impugned trademark New AACHI grinder fresh 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:

(e) directing the Defendant to pay to the Plaintiffs the costs to the suit.