

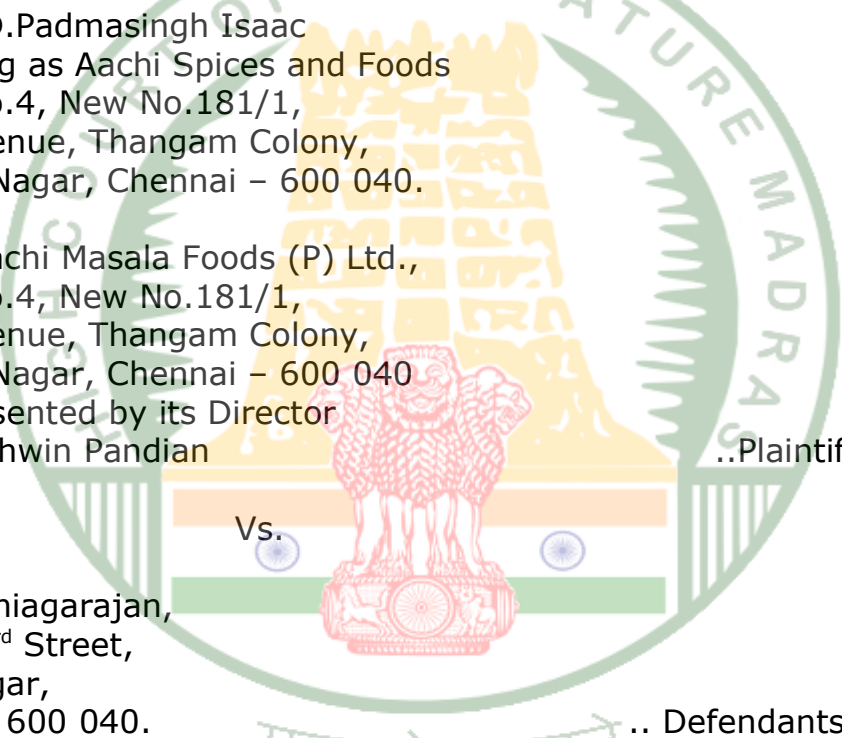
## IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.12.2018

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

**C.S.No.461 of 2018**  
**and O.A.Nos. 664 and 665 of 2018**

- 
1. Mr.A.D.Padmasingh Isaac  
Trading as Aachi Spices and Foods  
Old No.4, New No.181/1,  
6<sup>th</sup> Avenue, Thangam Colony,  
Anna Nagar, Chennai – 600 040.
2. M/s.Aachi Masala Foods (P) Ltd.,  
Old No.4, New No.181/1,  
6<sup>th</sup> Avenue, Thangam Colony,  
Anna Nagar, Chennai – 600 040  
Represented by its Director  
Mr. Ashwin Pandian ..Plaintiffs
- Vs.
- Mallika Thiagarajan,  
AA-19, 3<sup>rd</sup> Street,  
Anna Nagar,  
Chennai- 600 040. .. Defendants
- सत्यमेव जयते

This Civil Suit is preferred, under Order IV Rule 1 of O.S. Rules and Order VII Rule 1 of Civil Procedure Code, read with Sections 27(2), 29, 134, 135 of the Trademarks Act, 1999 praying to

(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 of goods/service using the Trade Mark "ACHI'S SANTHAI" 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 Plaintiff's trade marks AACHI and use the same in pouches, or any other goods/service 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 registered Trade Mark Nos.838786, 1479159, 3371001 & 3371009 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 of goods/service using Trade Mark "ACHI'S SANTHAI" 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 in respect of goods/service 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' Trade Mark AACHI or in any manner pass off the Plaintiff's goods/service.

© 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 "ACHI'S SANTHAI" 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 "ACHI'S SANTHAI" 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 cost to the suit, and

(f) pass such further or other order, as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Plaintiffs : Ms.Gladys Daniel

For Defendant : Set ex-parte

### **JUDGMENT**

There are two plaintiffs and a sole defendant in the instant suit.

2. Instant suit has been filed *inter-alia* complaining of Infringement of plaintiffs' registered trademark and passing off qua plaintiffs' registered trademark. Injunctive reliefs in this regard have been sought for and there are incidental /ancillary limbs of prayers also.

3. Before this Commercial Division proceeds to examine the facts of this case, it is necessary to set out the trajectory of this suit thus far.

4. As mentioned supra, there is a sole defendant in the suit.

5. Service on sole defendant was effected on 21.07.2018 before learned Master. Proceedings of learned Master dated 09.10.2018 in this regard, reads as follows:

*'Sole defendant served on 21.07.2018. Hence post before Hon'ble Court.'*

6. After the aforesaid proceedings of learned Master, this suit was placed before this Commercial Division, which in turn directed the suit to be listed in 'UNDEFENDED BOARD' and ultimately, set the sole defendant *ex-parte* on 30.11.2018. The proceedings before this Commercial Division in this regard are dated 24.10.2018, 30.10.2018 and 30.11.2018 which read as follows:

**'Proceedings on 24.10.2018**

*Read this in conjunction with and in continuation of earlier proceedings of this Commercial Division dated 20.08.2018, which reads as follows:*

*'List this matter before learned Master for completion of service on the sole defendant in the main suit.'*

2. Pursuant to the aforesaid proceedings, learned Master has made proceedings dated 09.10.2018, which reads as follows:

*'Sole defendant served on 21.07.2018. Hence post before Hon'ble Court.'*

3. From the proceedings of the learned Master, it comes to light that sole defendant has been duly served in this suit on 21.07.2018.

4. Time limit for filing written statement prescribed under the amended 'The Code of Civil Procedure, 1908', ('CPC' for brevity) as amended by 'The Commercial Courts Act, 2015', ('said Act' for brevity) has expired. No one has entered appearance and no written statement has been filed.

5. Registry is directed to list this matter in the 'UNDEFENDED BOARD' on 30.10.2018. Registry to show the name of the sole defendant along with full/complete address as in the long and short cause titles of the plaint in the next listing.

6. List this matter in 'UNDEFENDED BOARD' on 30.10.2018.

**Proceedings on 30.10.2018**

Read this in conjunction with and in continuation of earlier proceedings of this Commercial Division dated 24.10.2018.

2. Pursuant to earlier proceedings, this suit has been listed under the caption 'UNDEFENDED BOARD' today.

3. However Ms.Gladys Daniel, learned counsel for plaintiffs very fairly points out that time prescribed for completion of pleadings by the defendant is not over as yet, as the suit summons, according to her, were served on 21.07.2018.

List this matter under the same caption on 30.11.2018.

**Proceedings on 30.11.2018**

*Read this in conjunction with and in continuation of earlier proceedings of this Commercial Division dated 30.10.2018.*

*2. Suit is listed under the caption 'UNDEFENDED BOARD' today. There is no representation for the sole defendant.*

*3. It is pointed out that the time prescribed for completion of pleadings is now over and no written statement has been filed. Sole defendant is set ex-parte.*

*4. List this matter before learned Additional Master-II on 11.12.2018 for recording ex-parte evidence. Learned Additional Master-II is requested to record ex-parte evidence preferably on the same day and in any event on or before 14.12.2018.*

*5. Thereafter, list this matter before this Commercial Division under the caption 'ORAL ARGUMENTS' on 19.12.2018.'*

7. After the aforesaid proceedings before this Commercial Division, suit was set down before learned Additional Master-II for recording *ex-parte* evidence. Before learned Additional Master-II, one B.Gnana Sambandam, who has been described as Assistant General Manager - Legal & Secretarial of the second plaintiff company, has been examined as P.W.1. 14 documents i.e., Exs.P1 to P14 have been marked. Thereafter, the suit file has now been placed before this Commercial Division again 'For Arguments'.





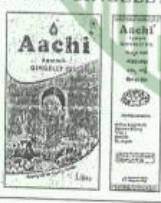
8. Ms.Gladys Daniel , learned counsel on record for plaintiffs is before this Commercial Division.

9. Learned counsel for plaintiffs submits that crux and gravamen of the entire lis is constituted by plaintiffs' two trademark registrations in Classes 35 and 41.














10. Plaintiffs' registration in Class 41 is vide Trademark No.3371009 and the Legal Use Certificate [Trademark Registration Certificate] for this has been marked as Ex.P9. Trademark Registration Certificate in Class 35 has not been marked, but there is an averment in the plaint in this regard which remains unrefuted. Trademark registration in class 35 is Trademark No.3371003 and it is dated 26.09.2016.









11. Though the aforesaid two trademark registrations constitute the nucleus of this lis [which shall hereinafter collectively be referred to as 'suit TMs' for brevity], plaintiffs on the date of filing the plaint, had as many as 127 registrations, enumeration of which has been set out in paragraph 15 in a Tabular Column and the same reads as follows:












TRADEMARK	APPLN. NO.	DATE	CLASS	STATUS
AACHI (Word)	838786	29-01-1999	30	Registered
AACHI (Word)	922593	04-05-2000	03	Registered
AACHI (Word)	922594	04-05-2000	29	Registered

4.	AACHI (Word)	922595	04-05-2000	32	Registered
5.	AACHI (Word)	922596	04-05-2000	03	Registered
6.	AACHI (Word)	976559	12-12-2000	30	Registered
7.	AACHI APPALAMS (Label) 	1318494	01-11-2004	30	Registered
8.	AACHI MASALA KULAMBU CHILLY POWDER (Label) 	1318495	01-11-2004	30	Registered
9.	AACHI READY TO EAT SEER FISH KULAMBU (Label) Neai Meen, Kulambu in Tamil)	1340324	23-02-2005	29	Registered
10.	AACHI PRAWN KULAMBU (Label) (Erral Kulambu)	1340325	23-02-2005	29	Registered
11.	AACHI MASALA SAMBAR POWDER (Label)	1375755	05-08-2005	3-	Registered
12.	AACHI (Word)	1458527	01-06-2006	42	Registered
13.	AACHI (Label in TAMIL & ENGLISH)	1479159	17-08-2006	30	Registered
14.	AACHI (Word)	1555564	03-05-2007	29	Registered
15.	AACHI GINGELLY OIL (Label) 	1557660	11-05-2007	29	Registered
16.	AACHI (Word)	1564085	31-05-2007	05	Registered
17.	AACHI (Word)	1567065	11-06-2007	31	Registered
18.	AACHI (Word per)	1567066	11-06-2007	27	Registered
19.	AACHI (Word)	1567067	11-06-2007	34	Registered
20.	AACHI (Word)	1567068	11-06-2007	21	Registered
21.	AACHI Badam Drink (Label)	1581011	18-07-2007	29	Registered

















					
22.		1595536	28-08-2007	21	Registered
23.		1595537	28-08-2007	30	Registered
24.		1595538	28-08-2007	05	Registered
25.		1595539	28-08-2007	29	Registered
26.		1595540	28-08-2007	03	Registered
27.		1595541	28-08-2007	42	Registered
28.		1595542	28-08-2007	32	Registered
29.		1595543	28-08-2007	34	Registered
30.		1595544	28-08-2007	31	Registered
31.		1595545	28-08-2007	27	Registered
32.	AACHI CHICKEN CURRY MASALA (Label) 	1604348	21-09-2007	30	Registered
33.	AACHI TURMERIC POWDER (Label) 	1702840	24-06-2008	30	Registered

34.	AACHI CHEMBA PUTTU POWDER (LABEL) 	1702848	24-06-2008	30	Registered
35.	AACHI KITCHEN (Word)	1715718	30-07-2008	42	Registered
36.	AACHI Chicken Masala (Label) 	1720889	13-08-2008	30	Registered
37.	AACH RASAM POWDER (Label) 	1720890	13-08-2008	30	Registered
38.	AACHI MASALA CHICKEN 65 (Label) 	1720892	13-08-2008	30	Registered
39.	AACHI Turmeric Powder (Label) 	1731901	15-09-2008	30	Registered
40.		1731902	15-09-2008	05	Registered
41.	AACHI (Label) (Oval Shape) 	1731903	15-09-2008	03	Registered
42.	AACHI ASAFOETIDA (Label) 	1731904	15-09-2008	30	Registered








43.	AACHI DIARICE (Label)	1731905	15-09-2008	30	Registered
					
44.	AACHI SAMBAR POWDER (Label)	1731906	15-09-2008	30	Registered
					
45.	AACHI CHICKEN MASALA (Label)	1731907	15-09-2008	30	Registered
					
46.		1731911	15-09-2008	42	Registered
47.		1731912	15-09-2008	34	Registered
48.		1731913	15-09-2008	32	Registered
49.		1731914	15-09-2008	31	Registered
50.		1731915	15-09-2008	30	Registered
51.		1731916	15-09-2008	29	Registered
52.		1731917	15-09-2008	21	Registered
53.		1731918	15-09-2008	05	Registered










54.		1731919	15-09-2008	03	registered
55.		1731920	15-09-2008	21	Registered
56.		1731921	15-09-2008	27	Registered
57.		1731937	15-09-2008	32	Registered
58.		1731938	15-09-2008	31	Registered
59.		1731939	15-09-2008	30	Registered
60.		1731941	15-09-2008	27	Registered
61.	AACHI MASALA MUTTON MASALA (Label) 	1731953	15-09-2008	30	Registered
62.	AACHI MASALA RASAM POWDER (Label) 	1731954	15-09-2008	30	Registered
63.	AACHI IDLY DHOSAI MAAVU (Word) (In Tamil)	1843529	24-07-2009	30	Registered
64.	AACHI TOMATO SOUP (Label)	1895723	15-12-2009	29	Registered
65.	AACHI BADAM DRINK (Label)	1895724	15-12-2009	29	Registered
66.	AACHI - MULTI GRAIN IDLY Break Fast Mix (Label)	2965621	18-05-2015	30	Registered














					
57.	AACHI - MULTI GRAIN DOSA - Break Fast (Label)	2965622	18-05-2015	30	Registered
					
58.	AACH KITCHEN WITH TWIST (Label)	2965624	18-05-2015	43	Registered
					
59.	AACHI FRIED CHICKEN MIX (Label)	2965625	18-05-2015	30	Registered
					
	AACHI JALEBI MIX (Label)	2965626	18-05-2015	30	Registered
					
	AACHI DIET IDLY (Label)	2965627	18-05-2015	30	Registered



					
72.	AACHI Chicken Kabab / 65 Masala (Label) 	3352398	02-09-2016	30	Registered
73.	AACHI Lemon Rice Powder (Label) 	3352399	02-09-2016	30	Registered
74.	AACHI Gobi Manchurian Masala (Label) 	3352400	02-09-2016	30	Registered
75.	AACHI BIRYANI MASALA (Label) 	3352401	02-09-2016	30	Registered
76.	AACHI FISH CURRY MASALA (Label) 	3352402	02-09-2016	30	Registered
77.	AACHI FISH FRY MASALA (Label) 	3352404	02-09-2016	30	Registered
78.	AACHI IDLY CHILLY POWDER	3352405	02-09-2016	30	Registered

Page No. \*

	(Label)					
79.	FRISPOO Kara Boondhi - AACHI (Label)		3352406	02-09-2016	30	Registered
80.	FRISPOO Ribbon Pakoda - AACHI (Label)		3352407	02-09-2016	30	Registered
81.	FRISPOO Mixture - AACHI (Label)		3352408	02-09-2016	30	Registered
82.	FRISPOO Ompudi - AACHI (Label)		3352409	02-09-2016	30	Registered
83.	FRISPOO Cream & Onion - AACHI (Label)		3352410	02-09-2016	30	Registered
84.	FRISPOO Kara Sev - AACHI (Label)		3352411	02-09-2016	30	Registered
85.	FRISPOO Crunchy Corn Sticks-		3352412	02-09-2016	30	Registered

	AACHI (Label) 				
86.	FRISPOO Crunchy Corn Sticks – AACHI (Label) 	3352413	02-09-2016	30	Registered
87.		3370938	26-09-2016	01	Registered
88.		3370945	26-09-2016	10	Registered
89.		3370946	26-09-2016	11	Registered
90.		3370947	26-09-2016	12	Registered
91.		3370948	26-09-2016	13	Registered
92.		3370949	26-09-2016	14	Registered
93.		3370950	26-09-2016	15	Registered
94.		3370952	26-09-2016	17	Registered
95.		3370968	26-09-2016	39	Registered
96.		3370969	26-09-2016	40	Registered
97.		3370971	26-09-2016	42	Registered



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98.	<b>Aachi</b>	3370972	26-09-2016	43	Registered
99.	<b>Aachi</b>	3370973	26-09-2016	44	Registered
100.	<b>Aachi</b>	3370974	26-09-2016	45	Registered
101.	AACHI (Word)	3370975	26-09-2016	01	Registered
102.	AACHI (Word)	3370976	26-09-2016	02	Registered
103.	AACHI (Word)	3370977	26-09-2016	04	Registered
104.	AACHI (Word)	3370978	26-09-2016	06	Registered
105.	AACHI (Word)	3370979	26-09-2016	07	Registered
106.	AACHI (Word)	3370980	26-09-2016	08	Registered
107.	AACHI (Word)	3370982	26-09-2016	10	Registered
108.	AACHI (Word)	3370983	26-09-2016	11	Registered
109.	AACHI (Word)	3370984	26-09-2016	12	Registered
110.	AACHI (Word)	3370985	26-09-2016	13	Registered
111.	AACHI (Word)	3370986	26-09-2016	14	Registered
112.	AACHI (Word)	3370987	26-09-2016	15	Registered
113.	AACHI (Word)	3370991	26-09-2016	19	Registered
114.	AACHI (Word)	3370992	26-09-2016	20	Registered
115.	AACHI (Word)	3370994	26-09-2016	23	Registered
116.	AACHI (Word)	3370998	26-09-2016	28	Registered
117.	AACHI (Word)	3370999	26-09-2016	29	Registered
118.	AACHI (Word)	3371000	26-09-2016	30	Registered
119.	AACHI (Word)	3371001	26-09-2016	32	Registered
120.	AACHI (Word)	3371003	26-09-2016	35	Registered
121.	AACHI (Word)	3371005	26-09-2016	37	Registered
122.	AACHI (Word)	3371006	26-09-2016	38	Registered
123.	AACHI (Word)	3371007	26-09-2016	39	Registered
124.	AACHI (Word)	3371008	26-09-2016	40	Registered
125.	AACHI (Word)	3371009	26-09-2016	41	Registered
126.	AACHI (Word)	3371010	26-09-2016	42	Registered
127.	AACHI (Word)	3371013	26-09-2016	45	Registered

16. The growth of...

12. Learned counsel for plaintiffs submits that plaintiffs had a steady growth and the manner in which suit TMs and the other aforementioned trademark registrations vest in the plaintiffs is articulated in paragraph 7 of the plaint. Learned counsel refers to paragraph 7 of the plaint, which reads as follows:

*'7. A proprietary concern Aachi Spices and Foods was registered on 28.12.2006. Aachi Masala Foods (P) Ltd who acquired the trademark AACHI on 30.11.2006 from Abishek Enterprises and Naveen Products assigned the same in favour of the 1<sup>st</sup> Plaintiff, on 30.03.2007. On 01.04.2007, the Plaintiff executed a License User Agreement in favor of Aachi Masala Foods (P) Ltd. The sole proprietary concern of the 1<sup>st</sup> Plaintiff owned the Intellectual Property Rights under the trademark AACHI. The Trademark AACHI expanded on its list of products. The business of AACHI was expanding in mammoth proportions. On 17.03.2010, Aachi Spices and Foods Private Limited was incorporated. At the time of incorporation of Aachi Spices and Foods Private Limited the Memorandum of Association of the company reiterated at clause B-11 that the Trademark AACHI along with its right, title and interest were vested with the 1<sup>st</sup> Plaintiff who already owned the Trademark AACHI. On 21.04.2010 the 1<sup>st</sup> Plaintiff entered into a LICENSE USER AGREEMENT with Aachi Spices and Foods Private Limited to use the trademark AACHI. On 21.04.2010 the 1<sup>st</sup> Plaintiff entered*



*into a fresh LICENSE USER AGREEMENT with AACHI Masala Foods Private Limited.'*

13. Learned counsel also submits that huge sums of monies are being spent every financial year by the plaintiffs towards advertisement expenditure and learned counsel for plaintiff submits that a tabular column giving the turnover as well as the advertisement expenditure (financial year wise) has been set out in Paragraph 14 of the plaint. Tabular column in paragraph 14 of the plaint reads as follows:

<b>S.No.</b>	<b>YEAR</b>	<b>TURNOVER (in Rs)</b>	<b>ADVERTISING EXPENDITURE (in Rs)</b>
1.	1995-1996	3,96,420.00	9,893.00
2.	1996-1997	4,37,568.00	4,691.00
3.	1997-1998	5,10,755.00	352.00
4.	1998-1999	14,68,159.00	15,820.00
5.	1999-2000	20,27,457.00	16,775.00
6.	2000-2001	52,03,979.00	57,676.00
7.	2001-2002	64,12,491.00	2,13,512.00
8.	2002-2003	1,69,44,334.00	6,62,290.00
9.	2003-2004	9,00,05,884.00	19,63,479.00
10.	2004-2005	24,46,95,540.00	1,13,28,450.00
11.	2005-2006	79,47,99,230.00	4,63,96,880.00
12.	2006-2007	1,36,54,50,781.00	5,68,45,817.00
13.	2007-2008	2,07,85,55,508.00	7,87,06,261.00
14.	2008-2009	4,14,12,42,106.00	9,40,86,979.00

<b>S.No.</b>	<b>YEAR</b>	<b>TURNOVER (in Rs)</b>	<b>ADVERTISING EXPENDITURE (in Rs)</b>
15.	2009-2010	4,73,98,26,852.00	10,76,86,530.00
16.	2010-2011	6,40,40,50,524.00	11,63,97,497.00
17.	2011-2012	7,59,35,14,309.00	12,42,15,050.00
18.	2012-2013	8,82,91,64,390.00	13,72,06,476.00
19.	2013-2014	11,27,06,92,876.00	19,57,87,446.00
20.	2014-2015	13,20,61,70,537.00	21,00,17,044.00

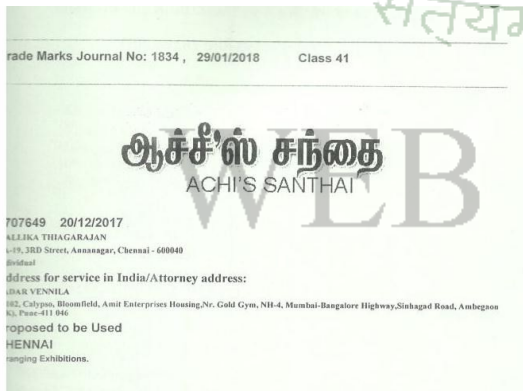
14. According to learned counsel for plaintiffs, they came to know about the infringement of suit TMs sometime in January 2018 and the manner in which they came to know and the details of the same have been articulated in Paragraph 19 of the plaint. This Commercial Division was taken through paragraph 19 of the plaint by learned counsel for plaintiffs and the same reads as follows:

*'19. That in around January 2018 to the shock of the plaintiffs, it was discovered that the Defendant's Trade Mark application for registration of their Trade Mark ACHI'S SANTHAI under A.No.3707649 in class 41 is advertised in the Trade Mark Journal No:1834 dated 29/01/2018 at page No.6607. The Defendant is providing service with respect to arranging exhibitions in Class-41 under this impugned Trade Mark "ACHI'S SANTHAI". Immediately the Plaintiffs' have initiated appropriate opposition proceedings under No:930864*

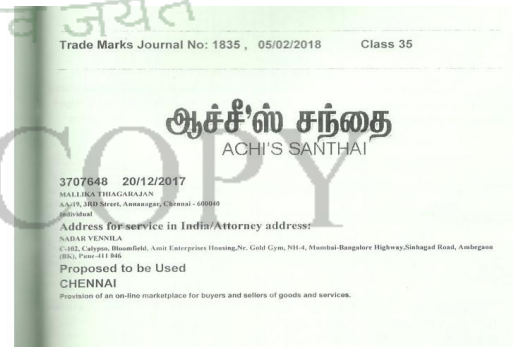
*the Trade Mark Registry at Chennai opposing the Defendant's Trade Mark application from grant of registration. Shortly thereafter, in February 2018, the Defendant Trademark application No.3707648 for the mark ACHI'S SANTHI in Class 35 was advertised in Trademark Journal No.1835. The Defendant has adopted the word ACHI'S SANTHI per se which amounts to deception and confusion in the market and an infringement of the Plaintiff's Intellectual Property Rights.'*

15. Saying so, learned counsel submitted that the publication of plaintiffs' application in the trademark journals have been marked as Exs.P11 and P13 in Classes 41 and 35 respectively. Exs.P11 and P13, which are publications in trademark journals in Classes 41 and 35 respectively are as follows:

Ex.P11



Ex.P35



16. Learned counsel for plaintiffs submits that plaintiffs have opposed the aforesaid applications for trademark registrations. Notices of opposition have been marked as Exs.P12 and P14. Learned counsel submits that even as of today, defendant's applications for aforesaid registrations in classes 41 and 35 are lying in / pending under objection. Learned counsel submits that stage is set in the Trade Mark Registry for hearing in the opposition proceedings.

17. Be that as it may, the trajectory of this suit thus far has been captured in various proceedings of this Commercial Division, which have been extracted and reproduced supra. A perusal of the trajectory of this suit thus far, as captured in proceedings before learned Master as well as before this Commercial Division (extracted and reproduced supra elsewhere in this judgment will reveal that sole defendant, in spite of being served, albeit by substituted service (owing to difficulty in being served through normal modes), has not chosen to come before this Commercial Division either in person or through a counsel. Obviously, no written statement has been filed.

18. In the aforesaid backdrop, learned counsel for plaintiff very fairly points out that defendant's applications are for proposed use and it is for arranging exhibitions and also for provision of an online marketplace for buyers and sellers of goods and services as is evident from Exs.P11 and P13 respectively.

19. It has already been set out supra that as many as 14 exhibits, namely Exs.P1 to P14 have been marked and the details of the 14 exhibits are as follows:

S.No.	Exhibits	Description of Documents
1	P1	The original Authorisation Letter dated 08.12.2018
2	P2	(series) (2 Nos.) are the copy of the certificate of Incorporation of Aachi Masala Food Pvt. Ltd., dated 30.06.2006 and the copy of the certificate of Incorporation of Aachi Spices and Foods P. Ltd., dated 17.03.2010 (Compared with original)
3	P3	(series) (3 Nos.) are the copies of (1) Deed of Assignment between Abishek Enterprises and Aachi Masala Foods P.Ltd., dated 01.12.2006. (2) Deed of Assignment between Naveen Product and Aachi Malasala Foods P. Ltd., dated 01.12.2006, (3) Deed of Assignment between Aachi Masala Foods P. Ltd., and Mr.A.D.Padmasingh Isaac Trading as Aachi Spices and Foods dated 30.03.2007
4	P4	The copy of Dissolution Deed between Mrs.Rani Pandian and MrA.D.Padmasingh Isaac dissolving the partnership firm, Naveen product dated 31.03.2007 (compared with original)
5	P5	(series) (3 Nos) are the copies of certificate of Commercial Tax Registration of Aachi Masala and Foods P. Ltd., dated 10.07.2006, Certificate of Commercial Tax Registration and Central Sales Tax of Aachi Spices and Foods P. Ltd., dated 28.12.2006 and 03.01.2007 (compared with original)



S.No.	Exhibits	Description of Documents
6	P6	The copy of Memorandum of Association of Aachi Spices and Foods P. Ltd., Dated 06.03.2010 (Compared with original)
7	P7	(Series) (3 Nos.) are the copies of Trade Mark License User Agreement between Mr.A.D.Padmasingh Isaac trading as Aachi Spices and Foods and Aachi Masala Foods (P) Ltd., Dated 01.04.2007, Trade Mark Licence User Agreement between Mr.A.D.Padmasingh Isaac and Aachi Spices and Food P.Ltd., Dated 21.04.2010, Trade Mark License User Agreement between Mr.A.D.Padmasingh Isaac and Aachi Masala Foods P. Ltd., Dated 21.04.2010 (compared with original)
8	P8	The copy of List of Products Manufactured and Marketed by the plaintiff's bearing the Trade Mark "Aachi".
9	P9	(series) (4 Nos) are copies of Legal Use Certificate and Trade Mark Under No.838786, 1479159, 3371001 and 3371009 (Compared with original)
10	P10	The copy of the Trademark Registration Certificate of the Mark Aachi in various countries around the world (compared with original)
11	P11	The Defendant Trade Mark A.No.3707649 dated 20.12.2017 Class 41 (under Section 65 B Indian Evidence Act, 1872)
12	P12	The Notice of opposition dated 26.04.2018 under Section 65N Indian Evidence Act, 1872)
13	P13	The Defendant Trade Mark A.No.3707648 dated 20.12.2017 Class 35 (under Section 65 B Indian Evidence Act, 1872)
14	P14	The Notice of opposition dated 26.04.2018 (under Section 65B Indian Evidence Act, 1872)

20. This Commercial Division has perused the deposition of PW1 as well as the aforesaid exhibits. Deposition of PW1 is cogent and convincing. The aforesaid exhibits (some of which have been alluded to supra) are such that they compliment, buttress and

bolster the plaint averments. This takes us to the prayer paragraph in the plaint. Prayer paragraph in the plaint is Paragraph No.31 and the same reads as follows:

*' 31. The Plaintiffs, therefore, pray for a Judgement and Decree for:*

*(a) granting a permanent injunction, restraining the Defendant, by itself, its servants, agents, distributors, or anyone claiming through him from manufacturing, selling, advertising and offering for sale of goods/service using the Trade Mark "ACHI'S SANTHAI" 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 Plaintiff's trade marks AACHI and use the same in pouches, or any other goods/service 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 registered Trade Mark Nos.838786, 1479159, 3371001 & 3371009 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 of goods/service using Trade Mark "ACHI'S SANTHAI" 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 in respect of goods/service 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' Trade Mark AACHI or in any manner pass off the Plaintiff's goods/service.*

*(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 "ACHI'S SANTHAI" 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 "ACHI'S SANTHAI" 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 cost to the suit, and*

*(f) pass such further or other order, as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.'*

21. From the narrative supra, it is clear that plaintiffs are entitled to an injunctive decree in terms of sub-paragraph (a) of prayer paragraph. With regard to sub-paragraphs (b), (c) and (d) as the defendant is only a proposed user and as there is no material before this Commercial Division, as of today, to show the actual use of the mark by the defendant, these prayer limbs are not granted for the present reserving the rights of the plaintiffs in this regard, if cause of action arises in future.

22. This Commercial Division now considers the prayer limb for costs contained in sub-paragraph (e) and the usual residuary limb in any prayer paragraph (contained in sub-paragraph (f)) together.

23. This suit has been presented on 10.07.2018. The defendant has applied for registration of marks [exhibits P11 and P13] as alluded to supra and are pursuing the same before the Trademark Registry, while it is being opposed and contested by the plaintiffs. Notwithstanding the fact that plaintiffs have taken all efforts for service of suit summons in usual mode, the defendant compelled the plaintiff to effect service through substituted service. The proceedings of learned Master extracted supra will reveal that the plaintiffs have ultimately effected service by way of substituted service as all conventional methods did not yield result. The obtaining position of simultaneously pursuing the applications before the Trademark Registry on the teeth of opposition / objection by the plaintiffs would show that the defendant has deliberately evaded service qua conventional methods.

24. However, the defendant has been ultimately served by resorting to substituted service.

25. Learned counsel for plaintiffs requests this Commercial Division to consider imposing compensatory costs/exemplary costs on defendant in the light of conduct of the defendant which has been referred to supra. Learned counsel also pointed out that the defendant has compelled plaintiffs to carry this matter for a substantial time in this Court, expending money, energy and effort. Reference to Section 35-A 'The Code of Civil Procedure, 1908' ('C.P.C.' for brevity) as amended by 'The Commercial Courts Act, 2015' ('said Act' for brevity) was also made. Section 35-A provides for compensatory costs in respect of false or vexatious defences. In the instant case, defendant pursuing the trademark registration applications on the teeth of opposition, but evading conventional modes of service, compelling substituted service and not appearing before this Court even after service being effected through substituted service, in the considered view of this Commercial Division will qualify as a vexatious defence (within the meaning of Section 35-A of amended CPC as amended by said Act) as it is a vexatious manner of defending a suit. Be that as it may, in the light of the trajectory and in the light of the defendant's approach to this suit, this Commercial Division is convinced that it is appropriate to impose compensatory costs of Rs.1 lakh (Rupees One Lakh only) on the defendant.



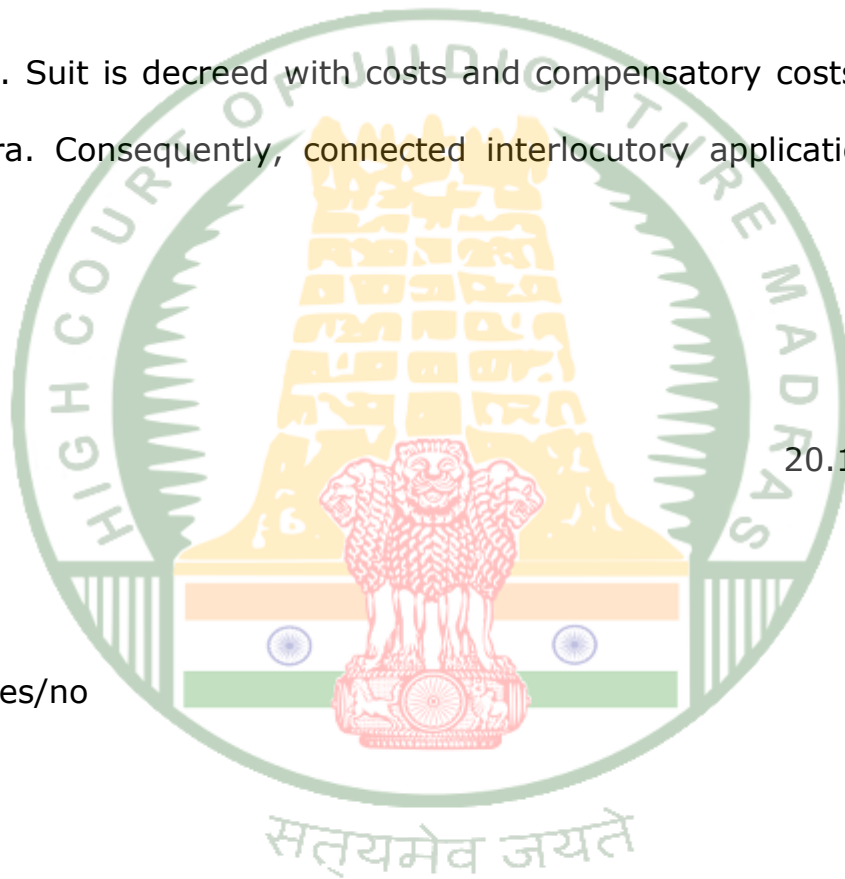
26. Plaintiffs will obviously be entitled to costs as the plaintiffs have incurred substantial expenditure in carrying this suit to its logical end.

27. Suit is decreed with costs and compensatory costs as set out supra. Consequently, connected interlocutory applications are closed.

20.12.2018

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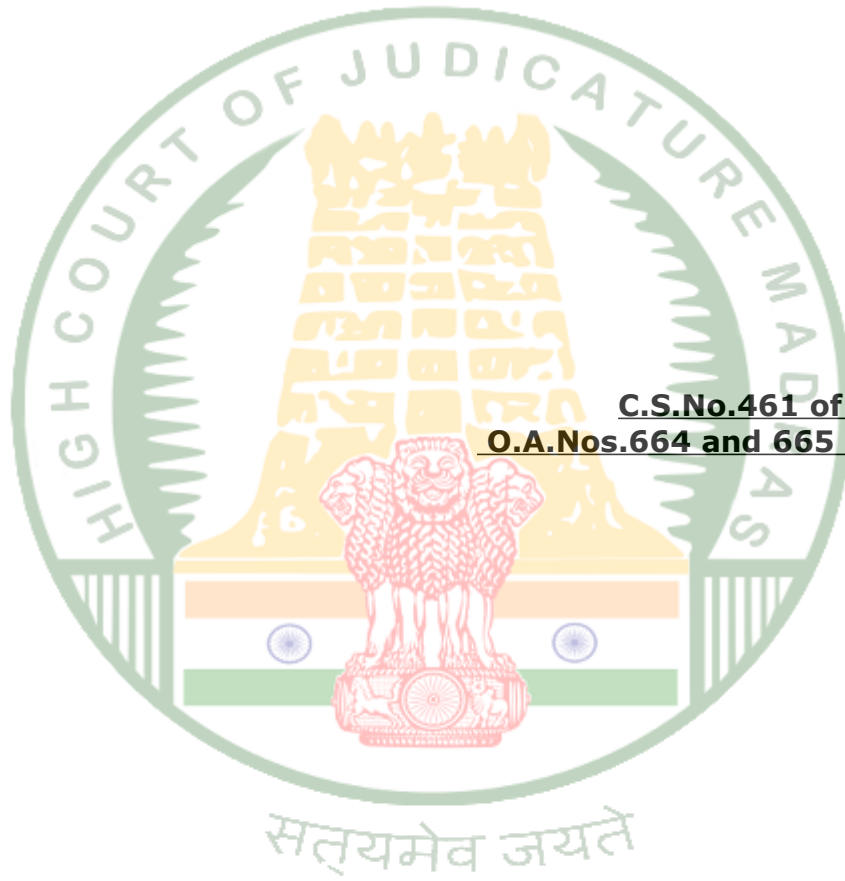
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M.SUNDAR.J.

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**C.S.No.461 of 2018 &  
O.A.Nos.664 and 665 of 2018**

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