

BEFORE THE ADDITIONAL MASTER-IV
HIGH COURT, MADRAS.

OP(TM).No. 36 & 41 OF 2024

Date: 10.06.2026

Time: 12.31 P.M.

Name : Mr. A.V. Sankaran Namboothiri (RW1)

Chief examination by Mr. W.M. Abdul Azeez, Counsel for R1.

Solemnly Affirmed:

On perusal of evidence and documents and found that by over sight the documents marked as Exs.R1 to R4 during cross examination of PW1 on various dates were not enlightened before this court. So, the numbering of the exhibits marked through RW1 has crept in by mistake. Hence, the said exhibits are renumbered and marked as follows. With respect to the documents objected the exhibit is changed correspondingly.

Ex.R5 is the printout of the order passed by the 2nd respondent dated 17.08.2017.

Ex.R6 is the printout of the affidavit filed by the father of the 2nd petitioner before the 2nd respondent dated 30.01.2021.

Ex.R7 is the printout of the application filed by the petitioner's company for registration of Trade mark for the second time after abandonment of earlier

application dated 20.02.2021.

Ex.R8 is the printout of the publication of the same Trade Mark in Journal No.1991 in Class – 05 dated 15.03.2021.

Ex.R9 is the printout of the application filed by the petitioner's company for rectification dated 02.04.2021.

Ex.R10 is the printout of the e-register – main page of TM Application No.2428940 dated 10.10.2024.

Ex.R11 is the printout of the e-register – main page of TM Application No.4373072 dated 10.10.2024.

Ex.R12 is the printout of the e-register – main page of TM Application No.1700244 dated 10.10.2024.

Ex.R13 is the printout of the e-register – main page of TM Application No.4190562 dated 16.09.2024.

Ex.R14 is the printout of the computer generated TM-Search Report in Class-05 dated 16.09.2024.

Ex.R15 is the printout of the computer generated TM-Search Report in Class-03 dated 16.09.2024.

Ex.R16 is the original product packing of the 1st respondent.

Ex.R17 is the printout of the product packing of the petitioner.

Ex.R18 is the printout of the registered trademark logo of the 1st respondent company.

Ex.R19 is the printout of the logo of the petitioner's company.

Ex.R20 is the original certificate of registration issued by Additional Sales Tax Officer under the Kerala General Sales Tax Rules, 1963 dated 25.06.1998.

Ex.R21 is the original certificate of registration issued by Additional Sales Tax Officer Ettamanur under the Kerala Central Sales Tax dated 25.06.1998.

Ex.R22 is the original certificate of Registration given by Trade mark Registry dated 26.11.2002.

Ex.R23 is the original certificate of Renewal of Licence to manufacture for sale of Ayurvedic / Siddha / or Unani Drugs dated 12.01.2004.

Ex.R24 is the original certificate of Authorisation dated 27.07.2004.

Ex.R25 is the original details of advertisements given in local Mathrubhumi Illustrated Weekly Publications from 2005.

Ex.R26 is the original certificate of Renewal of Licence to manufacture for sale of Ayurvedic / Siddha / or Unani Drugs along with list of drugs and along with translation dated 12.05.2005.

Ex.R27 is the original tax invoice No.662 given by 1st respondent dated 11.12.2006.

Ex.R28 is the original tax invoice No.666 given by 1st respondent dated 12.12.2006.

Ex.R29 is the original certificate of registration issued by department of commercial taxes dated 01.04.2007.

Ex.R30 is the original certificate of registration issued by Trademarks Registry dated 18.06.2008.

Ex.R31 is the original acknowledgment issued by Department of industries in Government of Kerala dated 17.11.2008.

Ex.R32 is the original computer generated invoices of 1st respondent from 13.04.2010 to 21.04.2024.

Ex.R33 is the original tax invoice No.240 received by the 1st respondent dated 21.10.2010.

Ex.R34 is the original tax invoice No.2504 received by the 1st respondent along with translation dated 11.11.2010.

Ex.R35 is the original tax invoice No.255 received by the 1st respondent along with translation dated 12.08.2011.

Ex.R36 is the original tax invoice No.83 received by the 1st respondent dated 10.09.2011.

Ex.R37 is the original balance sheet as on 31st March, 2011 of 1st respondent dated

24.09.2011.

Ex.R38 is the original tax invoice No.190 received by the 1st respondent dated 03.03.2012.

Ex.R39 is the original tax invoice No.1314 received by the 1st respondent dated 16.03.2012.

Ex.R40 is the original balance sheet as on 31st March, 2012 of 1st respondent dated 24.09.2012.

Ex.R41 is the original certificate of Registration issued by Trademarks Registry dated 29.05.2019.

Ex.R42 is the original licence to manufacture for sale of ayurvedic (including Siddha) or Unani Drugs dated 18.06.2021.

(The counsel for the petitioner raised his objection for the following documents as follows : Ex.R5 to Ex.R15 are online copies of the document which are not accompanied with the latest 63(4)(C) certificates, for which the respondent counsel has explained that the said documents were filed prior to the amendment.)

Certificate under section 65B of Indian Evidence Act is filed for Exs.R5 to R15.

Cross examination by Mr. Jaison S. Rozario for M/s. Shivakumar and Suresh,
Counsel for the petitioner.

Q1: Tell us your name, age and occupation before this court?

A: My name is A.V. Sankaran Nambothiri, I am 60 years old and production and sale of Ayurvedha products.

Q2: What is your educational qualification?

A: Pre-degree (+12).

Q3: Are you a qualified ayurvedha physician?

A: No.

Q4: I put it to you that you have no knowledge and qualification in the field of Ayurvedha.

A: I deny. I have knowledge of ayurvedha but not qualified.

Q5: Is it correct that in para 5 of your proof affidavit you have stated that Ashtavaidya is a physician means who has knowledge in 8 (eight) branches of ayurvedha?

A: Yes.

Q6: Can you mention what are the eight branches of ayurvedha?

A: Kaya, Bala, Vrisha, Damshttra, Jara, Graha is all that I remember.

Q7: Do you have any expertized all the eight branches of ayurvedha?

A: No.

Q8: I put it to you that without having any expertized in eight branches of ayurvedha, you are using the mark Ashtavaidya in order to mislead the public by making them to believe, you have expertized in all eight branches of ayurvedha.

A: I deny.

Q9: Does your firm Ashtavaidya Herbal Pharma operate any website?

A: Yes.

Q10: Would you deny that if I states that the website under the url:<http://ashtavaidya.com/> is your firm's official website?

A: Yes.

Q11: Can you state the date or year on which your website was registered?

A: I can only say after going through the files.

Q12: Can you tell me when was the last time you modify the contents in your website?

A: I used to do but after seeing the documents only, I can answer.

Q13: (Ex.P27 is shown to the witness.) Is this your official website?

A: Yes.

Q14: In Ex.P27 you have stated that “Ayurvedha practice which is popular in Kerala is based one text called Ashtanga Hridayam by Vagbhata and 8 families practice this knowledge as an oral tradition with their expertise in each of the 8 branches. Those eight families are Pulamanthol, Alathiyoor, Kuttanchery. Thrissur thaikkattu and Elayidathu Thaikkattu, Chiratmon, Vayaskara and Vellodu, is it correct?

A: It is true that those eight families are practicing but it is not that those eight families alone are practicing.

Q15: I put it to you that in Ex.P27 website you have only stated about the eight families. Can you deny?

A: I did not mention in the website that eight families alone are practicing but those eight families are also practicing.

Q16: I put it to you that in Ex.P27 website, you have nowhere mentioned any other name of the family other than eight families.

A: Yes.

Q17: In Ex.P27 website, you have stated that Ashtavaidya families play a key role in

maintaining Kerala status as the most authentic ayurvedic practice with scientific panchakarma (five fold cleansing therapy) practice and Kerala special therapies such as pizichil (oil bath) Njavarakkizhi (rice pudding therapy) and sirodhara (oil dripping for the head), is it correct?

A: I have nowhere stated in my website that ashtavaidya families alone are practicing these therapies.

Q18: I put it to you that in Ex.P27, you have nowhere mentioned about any other families other than Ashtavaidya families who played key role in maintaining the Kerala's most authentic ayurvedic practice.

A: Yes.

Q19: Do you belong to any of the Ashtavaidya families or other ayurvedic families?

A: No.

Q20: Would you deny if I state that Elayidathu Thaikkattu is the family of the petitioner?

A: I do not know about the family. But only Vaidhyarathranam Oushad Sala has filed the present case.

Q21: I put it to you that since you do not belong to ashtavaidya families or any of the ayurvedic families, you have no right to use the name Ashtavaidya as trade name and / or trademark and misuse the same and mislead the public as if, you belong to the ashtavaidya family.

A: I deny. Witness adds: I have taken license in the name of Ashtavaidya Herbal Pharma in the year 1998 in the Drugs Department. On basis of that I have registered the trademark. Hence, I am using the name.

Q22: Can you state from when do you started using the mark Ashtavaidya as per your trademark registration?

A: From 2008 onwards, I am using the trademark.

Q23: I put it to you that as per your documents Ashtavaidya Herbal Pharma is a trade name and it does not prove your use of the trademark Ashtavaidya perse in accordance with your trademark application.

A: I cannot say without seeing the documents.

Q24: I put it to you that you have not produced any documents to prove that you have been using the trademark Ashtavaidya as per your trademark registration.

A: I deny.

Time : 01.30 P.M.

Taken down in open Court, in the presence of Malayalam Advocate Commissioner as translator read over and explained to the witness in Malayalam and the same is admitted by the witness to be correct and signed before me.

ADDITIONAL MASTER-IV