

BEFORE THE ADDITIONAL MASTER-IV
HIGH COURT, MADRAS.

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

Date: 12.06.2026

Time: 12.54 P.M.

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

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

Solemnly Affirmed:

Q64: (Exs.R20, R21 & R31 are shown to the witness.) I put it to you that as per the Exs.R20, R21 & R31 it can only be seen that you have been using the trade name Ashtavaidya Herbal Pharma.

A: Yes.

Q65: I put it to you that your mere use of the word Ashtavaidya as part of your trade name will not entitle you to seek registration for the mark Ashtavaidya.

A: I deny.

Q66: (Ex.P1 is shown to the witness.) Is it correct to state that you have obtained the registration for the trademark Ashtavaidya only in the year 2019?

A: Yes. Witness adds: In Class 5, Ashtavaidya name has been registered in the year 2008 itself and in the year 2019 in class 3 the same name has been registered.

Q67: Have you produced any documents before this Hon'ble Court to show that you are the registered proprietor of the trademark Ashtavaidya which was registered in the year 2008 in class 5?

A: No.

Q68: Is it correct to state that there is no prefix or suffix other than term Ashtavaidya in your trademark?

A: Yes.

Q69: I put it to you that by using the term Ashtavaidya to your products will not distinguish your products from the product sold by the people belonging to the Ashtavaidya families.

A: I deny.

Q70: (Ex.P1 is shown to the witness.) As per the registration under Trademark No.4190562 in class 3 granted to you in the year 2019, it is stated that “the mark shall be limited to the colours as shown in the representation on the form of the application”, is it correct?

A: Yes.

Q71: Please tell this Hon'ble Court, what documents you have produced before the registrar to prove that you have been using the mark Ashtavaidya with the colour scheme shown in your trademark application since 1998?

A: I have to verify the documents and say.

Time: 01.30 P.M.

Time: 02.29 P.M.

Q72: Have you produced any documents before this Hon'ble Court to prove that you have been using the mark Ashtavaidya with the colour scheme shown in your trademark application since 1998?

A: Yes.

Q73: Can you point out which document from your exhibit proving the same?

A: There is no document produced.

Q74: In para 5 of your proof affidavit you have stated that “Therefore, Ashtavaidya means a physician one who has expertise in all the eight branches of medicine as stated above and not as alleged by the petitioners and the title Ashtavaidya is the unique identity of the petitioners and their family members. The said practice of such ayurvedha medicine is not bestowed only to the petitioners and their family alone as alleged by the petitioners. Hence, anybody who wants to practice the said ayurvedha system of medicine can very well practice the same and there is no bar in practicing such ayurvedha system of medicine” How do you substantiate the same?

A: All BAMS., ayurvedha practitioners are having knowledge of eight branches of ayurvedha medicine.

Q75: Can you name any person using the title Ashtavaidya apart from the petitioner's family?

A: Yes. I have opposed the application of SNA Oushadhasala who was using the name Ashtavaidya.

Q76: Can you tell which place SNA Oushadhasala?

A: I am not aware of the further details.

Q77: I put it to you that you have not produced any products to show that you are selling products from 1998 onwards under the trademark Ashtavaidya.

A: Yes. I have not produced. I am not in possession of the products in the year 1998.

Q78: I put it to you that you were not manufacturing and selling any ayurvedic products under the name Ashtavaidya from 1998 or under the trademark Ashtavaidya from 2008, since you have not produced any documents or evidence to substantiate.

A: I deny.

Q79: From which year onwards you started using the trademark Ashtavaidya?

A: From 1998 onwards I am using the firm name Ashtavaidya Herbal Pharma and from 2008 after registering the trademark, I am using the trademark as Ashtavaidya.

Q80: Is it correct to state that prior to 2008 you were not using the trademark Ashtavaidya.

A: Yes. I was not using the registered trademark Ashtavaidya prior to 2008.

Q81: (Proof Affidavit of RW1 is shown to the witness.) In para 12 of your proof affidavit you have stated that “I am using the trademark Ashtavaidya since the year 1998 with regard to manufacturing and selling of goods in cosmetics, hair lotions and dentifrices and the said trademark was registered with an image **Ashtavaidya** in my name since 29.05.2019 in class 3.” I put it to you that you have been using the trademark Ashtavaidya even prior to your registration in the year 2008 without any valid documents or license.

A: I deny.

Q82: Do you stand by the statement made by you in para 12 of your proof affidavit that “I am using the trademark Ashtavaidya since the year 1998 with regard to manufacturing and selling of goods in cosmetics, hair lotions and dentifrices and the said trademark was registered with an image **Ashtavaidya** in my name since 29.05.2019 in class 3.”?

A: Yes. It is correct.

Q83: Were you aware at the time of adopting the name Ashtavaidya that Ashtavaidya refers to a specific families in Kerala traditionally practicing ayurvedha?

A: I am not aware. Witness adds: At the time of getting license, I have searched for the same and I could not find any family referring to Ashtavaidya.

Q84: Is it correct to state that the term Ashtavaidya is inherently descriptive of a family of physicians?

A: No. Witness adds: It is not a descriptive of a family.

Q85: Are you aware that Section 9(1)(a) & (b) of the Trademark's Act 1999 prohibits registration of mark that devoid of distinctive character or are descriptive?

A: Yes, I know to some extent of the Act.

Q86: Despite knowing that Ashtavaidya is a descriptive term, you still sought registration. How do you justify this?

A: No one else had the name registered as Ashtavaidya. So, I had applied for it.

Q87: I put it to you that the petitioner's family and other Ashtavaidya families alone have prior rights to the term Ashtavaidya by virtue of their hereditary practice.

A: It is not necessary.

Q88: I put it to you that the trademark No.4873072, trademark No.1215649 and trademark No.1215650 with the term Ashtavaidya as a part of it were registered in the name of petitioners and their family members prior to the trademark applications filed by you in the year 2008.

A: I have to see the documents.

Q89: I put it to you that at the time of your trademark application you have not disclosed to the Registrar of Trademark that Ashtavaidya is a traditional title associated with specific families and got your trademark registered on that cause.

A: I deny.

Q90: At the time of filing your trademark application, did the Registrar of Trademark raise any objection under Section 9 of the Trademarks Act?

A: No objection has been raised.

Time : 03.57 P.M.

Taken down in open Court, with the assistance 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