
(2003) 07 MAD CK 0122

In the Madras High Court

Case No : C.R.P. (PD) . No's. 707 of 2003 and C.M.P. No. 4464 of 2003

G. Madesan, G. Murugesan, G. Saravanan and G. Arumugam **APPELLANT**

Vs

The Dharmapuri Municipality **RESPONDENT**

Date of Decision : 30-07-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 13, Order 18 Rule 4, Order 18 Rule 5

Citation : (2003) 3 LW 688 : (2003) 3 MLJ 297

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : V. Ayyadurai, for the Appellant; N.A., for the Respondent

Final Decision : Dismissed

Judgement

S. Ashok Kumar, J.—The petitioners are the plaintiffs in O.S. No. 51 of 2002 in a suit filed by them for a declaration that the property tax assessment made by the defendant for the year 2002 is null and void. The plaintiffs filed I.A. No. 673 of 2002 to examine them orally in the court by way of chief examination rather than filing an affidavit for chief examination as contemplated under Order 18 Rules 4 and 5. The learned District Munsif, Dharmapuri dismissed that application on the ground that after the amendment to the Code of Civil Procedure, chief examination to a party would be done only by filing an affidavit and opportunity should be given to the other side for cross examination. Aggrieved over the said order, this revision has been filed.

2. Mr. V. Ayyadurai, learned counsel appearing for the petitioners would strongly contend that a harmonious construction of Order 18 Rule 4 and Order 18 rule 5 would show that in all appealable orders Order 18 Rule 5 should be followed and therefore the petitioners should have been examined by court in chief examination. In support of his contention the learned counsel for the revision petitioners also cited a decision reported in Laxman Das Vs. Deoji Mal and Others, wherein the said court has held as follows:-

"Order 18, Rule 4 of Amended Act provides for recording of examination in chief by affidavit in every case but Rule 5 thereof remains unchanged which provides for recording of evidence by the court in case the ultimate judgment and decree to be passed by the court is appealable. To provide the harmonious construction of these provisions Order 18, Rule 4 is to be read with Order 18, rule 13 but as there is no change in Order 18, Rule 5, it cannot be said that even in cases where the ultimate order shall be appealable the evidence can be recorded as provided either under Order 18, Rule 4 or Order 18, Rule 13. Giving any other interpretation would render Rule 5 thereof nugatory and such an interpretation is not permissible. Therefore, in view of the above, the words "in every case", contained in Rule 4 of Order 18 have to be understood in a limited sense that every case wherein the ultimate order is not appealable and by no means it can take in its ambit the orders which would be appealable.

In view of the above, the position which emerges is that in cases where the final orders to be passed by the court would not be appealable, the discretion has been conferred upon the court to accept the examination-in-chief in the form of affidavit as provided under Order 18, Rule 4 or to record the subsequent thereof by the court itself as provided under Order 18, Rule 13 but in cases where orders would be appealable the evidence is to be recorded strictly as provided under Order 18 Rule 5."

3. In spite of notice, there is no representation for the respondents. It is true that as per the Amended Act under Order 18 Rule 4, chief examination of a party will be done by way of filing an affidavit along with documents, copies of which will be given to the other side and the other side will be given opportunity to cross examine the party, who files an affidavit. The very purpose of introducing such a procedure is for the purpose of saving the time of the court. The said order and invention of the legislature has been made out in the following judgments:

In the judgment reported in Subbammal Vs. Paramasivam Asari, , this court has held as follows:

"15. It is an accepted principle of interpretation that when there is a general enactment as well as special enactment in respect of the same head in a statute, the particular enactment over-rides the general enactment. The contention of the learned counsel for the petitioner that the amended provision is a general enactment and that Order 18, Rule 5 of the CPC is a special enactment cannot be the correct way of understanding. The question of general v. special generally arises in the case of interpretation of two statutory provisions. Here, it is a case of provisions of the same statute placed side by side and both the provisions can function in their own parallel channels. If the words of the provisions are clear, they must be followed and more so, they must be given effect to the intendment of the enactment.

16. In this case, it is seen that the defendant has to be examined himself and that he has already filed a proof of affidavit for his chief examination. The

petitioner/ plaintiff has to cross examine him. It is needless to state that the petitioner has no role in so far as the chief examination is concerned and what he is going to say in the chief examination has already been stated in the form of affidavit and a copy of which has already been given to the petitioner herein and the petitioner shall have full opportunity of cross-examining him in the court."

The same principle has been laid down in Salem Advocate Bar Association Vs. Union of India (UOI), .

4. In view of the principles laid down in the judgments referred to above, Order 18 Rule 4 and Order 18 Rule 5 are two channels both of which can be used by the court according to its discretion and convenience. The party to the suit cannot refuse to file an affidavit for the purpose of chief examination and cannot insist that he should be orally examined by the court. I do not find any error in the order of the learned District Munsif, Dharmapuri, which warrants interference. Therefore the Civil Revision Petition is dismissed. Consequently, the connected C.M.P. is also dismissed. No costs.