
(1986) 09 MAD CK 0006
In the Madras High Court
Case No : C.R.P. 3970 of 1985

North Tamil Section of Seventh Day

APPELLANT

Vs

P. Mahadevan and another

RESPONDENT

Date of Decision : 03-09-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, Order 40 Rule 1

Citation : (1986) 09 MAD CK 0006

Hon'ble Judges : Shanmukham, J

Bench : Single Bench

Advocate : U.N.R. Rao for Mr. S. Swaminathan, for the Appellant; G. Subramaniani for Mr. V. Nicholas, for the Respondent

Judgement

Shanmukham, J.—The revision is directed against the order passed by the learned District Judge, of Dharmapuri at Krishnagiri, in C.M.A.

No. 45 of 1985. The learned District Judge set aside the order of the learned District Munsif of Dharmapuri in I.A.16 of 1985 in O.S. 6 of 1985.

A dispute arose between the learned counsel appearing for the two opposing parties whether the judgment was by consent and, therefore, no

revision lies. This has necessitated me to call for a report from the learned District Judge. In his report dated 6-6-1986, the learned District Judge

stated as follows:--

The order passed by me in C.M.A. 45 of 1985 on the file of my Court on 28-8-1985 was not only on merits but also with the consent of both the advocates.

It follows immediately that the consent of parties was not obtained by the learned District Judge. It might be open to a counsel representing a party

to concede a legal position. The effect of the order passed by consent in the

instant case is to set aside the order passed after contest in I.A.16 of

1985 in O.S.6 of 1985 by the District Munsif, Dharmapuri. In such a case, it is rather desirable that the consent of the parties is obtained;

otherwise it will not only reflect on the Bar but also on the court. It is useful at this stage to refer to O.23, R. 3 C.P.C., as amended by Act 104 of

1976 which requires that a compromise in a suit should be in writing if a decree were to be made in accordance therewith. It is needless to state

that the above procedure is also applicable to interlocutory applications. Sathiadev, J. in *Durairaj v. Shanmugham* 1980-1-M.L.J. 291, has

observed as follows:--

The lower appellate Court has not noticed the amended provisions of the CPC about the manner in which a compromise should be recorded in a

pending proceeding. There is no compliance with the provisions of O.23, R. 3 because the endorsement tantamounts only to a compromise. The

endorsement having not been based on a valid compromise entered into between the parties to the proceedings, it was not a consent order, and,

therefore, the order of remand was illegal.

In the circumstances, I have no hesitation to hold that the judgment in this case rendered on a compromise is invalid in law.

Coming to the merits in this case, I find that the learned District Judge has not at all examined several documents which were noticed by the trial

Court and also other attendant circumstances before he rendered the decision. The only consideration which influenced the learned District Judge

to pass the order is that the respondents ""are admittedly the principal and Headmistress of the suit institutions and there is no dispute about the

same. Till now they alone have been managing the entire affairs, both educational and financial, of the institution and as such they are entitled to

manage the academical affairs of the institution as before."" In my view, this is not a proper way of disposal, particularly on the facts in this case. It is

common ground that the respondents were acting as Principal and Headmistress of the Institution concerned. But on that score alone, it cannot be

said that they are entitled to manage the Institution, both academical and otherwise. If such a contention were to be upheld without reservation it

will lead to disastrous result because any Principal or Headmaster will immediately say that a particular Institution is only under their control, and

the administration of the Institution shall not be controlled by a Management.

2. In this case, it is relevant to notice that the petitioner had produced Exs.A1 to A36 while the respondents had produced Exs.B1 to B13. It is

significant to notice, as rightly considered by the learned trial Judge, that Ex. A31 letter written by him to the petitioner organisation would show

that, when an Advocate notice was received for eviction of the premises, he sought the assistance of the petitioner to handle the situation. So too, a

reading of Ex. A12, reveals that details of wages of the Institution were sent to the petitioner by the respondents. Again, in Ex. A13, the first

respondent explains to the petitioner about the travelling allowance to teachers. Under Ex. A15, the first respondent seeks clarification regarding

salary payable to a teacher. Ex. A18 shows that the first respondent sought a requisition to the petitioner to transfer a teacher. Likewise, under Ex.

A20, the first respondent writes about the complaint against a teacher. Above all, in Ex. A22, the first respondent requests the petitioner to appoint

five teachers in school and call them as early as possible. Under Ex. A24, the first respondent sends two cheques for the signature of the petitioner

to disburse Christmas allowance. All the above documents which were considered by the learned trial Judge certainly go a long way to prove that

the petitioner is running the educational institutions concerned, while the respondents are working under them. When so much is established, it is

but fair that the petitioner's application was rightly accepted by the learned District Munsif. It is argued by Mr. G. Subramaniam, learned senior

counsel representing the respondents that no ground is made out for appointment of Receiver. But the argument overlooks the important allegation

averred by the petitioner that the respondents are trying to create trouble in the smooth running of the institution. That has been accepted by the

learned District Munsif. Thus, I find a case has been made out under O.40, R. 1, C.P.C. and, in my view, the order passed by the learned District

Munsif alone is an effective one on the facts in this case. As earlier pointed out, the learned District Judge has disturbed the well considered order

of the learned District Munsif, without going into the details and without considering the documents that were exhibited on both sides, I must add

that the learned District Munsif has referred to the documents produced by respondents and rejected them. In the result, the revision succeeds and

the judgment and decree of the learned District Judge in C.M.A. No. 45 of 1985 are set aside and those in I.A. 16 of 1935 in O.S. 6 of 1985 are restored. There will be no order as to costs. It is made clear that the disposal of the suit has to be made uninfluenced by any observation made by me in this revision which had finally disposed of only an interlocutory application, in the suit.