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C.R.P.No.5056 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2024

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THE HONOURABLE MR.JUSTICE **V. LAKSHMINARAYANAN**

C.R.P.No.5056 of 2024
and
C.M.P.No.28353 of 2024

S.Suresh

.. Petitioner

VS

1.S.Murugan
2.G.Selvaraj

.. Respondents

Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 15.11.2024 passed in I.A.No.4 of 2024 in O.S.No.3905 of 2023 by the XI Assistant City Civil Judge, Chennai.

For Petitioner : Mr.G.Mutharasu
for Mr.P.Babu

For Respondents : Mr.M.Silambarasan
for Mr.R.Ganesh Babu

ORDER

This civil revision petition challenges the order passed by the learned XI Assistant City Civil Court at Chennai in I.A.No.4 of 2024 in O.S.No.3905 of 2023 dated 15.11.2024.



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2. O.S.No.3905 of 2023 is a suit for declaration that the plaintiff alone has the right to conduct the business with respect to the shop portion under the name and style 'Saraswathi Sarees' situated at No.54, M.C.Road, Old Washermenpet, Chennai – 21 and for the consequential relief of permanent injunction. The defendants, who are two in number, entered appearance and filed a detailed written statement denying the averments made in the plaint.

3. On the basis of the pleadings of the parties, issues were framed and the parties were pushed to trial. The plaintiff entered the witness box and filed his proof affidavit on 21.06.2024. Cross-examination was also conducted on 25.06.2024. Thereafter, the defendants filed an application in I.A.No.4 of 2024 on 25.06.2024 seeking to eschew the evidence of the plaintiff with respect to paragraph Nos. 16 to 21 of the proof affidavit. The basis for this application is that the evidence that had been deposed by the plaintiff by way of proof affidavit traverses the averments made in the written statement and since no reply statement was filed in terms of Order VIII Rule 9 of the Code of Civil Procedure, the plaintiff is not entitled to do so.



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4. This application was resisted by the plaintiff pointing out that the proof affidavit is his examination in chief and the proof affidavit need not contain verbatim averments of the plaint and therefore, he is entitled to make such statements as he deems necessary in order to obtain a decree in his favour.

5. The learned Trial Judge on consideration of the affidavit and counter came to a conclusion that as paragraph Nos. 16 to 21 are denial of the case of the defendants and since it is not supported by a pleading, they have to be eschewed. Consequently, he allowed the application. Aggrieved by the same, the plaintiff is on revision before me.

6. I heard Mr.G.Mutharasu representing Mr.P.Babu for civil revision petitioner and Mr.M.Silambarasan representing Mr.R.Ganesh Babu for the respondents.

7. Both the learned counsel reiterated the contentions they made before the Court below.

8. I have carefully considered the submissions and I have gone through the records.



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9. The learned Trial Judge seems to be under the impression that once a written statement is filed, a reply statement has to be mandatorily presented in order to deny the same in the proof affidavit. Prayer to file a reply statement under Order VIII Rule 9 C.P.C. is only optional. A plaint and written statement are mandatory pleadings for a Court to frame issues and to proceed with trial. Reply statement is not. Post amendment to the C.P.C., the plaintiff is entitled to tender his evidence by way of his proof affidavit. His proof affidavit need not be a parrot like reproduction of the plaint. Proof affidavit, being an examination in chief, is restricted only by Section 142 of The Indian Evidence Act. This states no leading questions can be put to a party either in an examination in chief or during the course of re-examination. This, too, can be done with the leave of the Court.

10. Having held that Order VIII Rule 9 C.P.C. is not mandatory, let me now look at the proof affidavit filed by the plaintiff. Mr.G.Mutharasu has enclosed it in the typed set of papers. From paragraph nos. 16 to 21, the plaintiff has denied the claim made by the defendants. In case, the plaintiff does not deny the statements made by the defendants, it is possible that the



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defendants would argue that the plaintiff has admitted their case.

The rule that no evidence can be let in without any pleading cannot be stretched to situations as covered in the present case. There is a plaint, which is a pleading on which the plaintiff has spoken from paragraph nos. 2 to 15.

11. It is not uncommon, even when chief examination was being recorded by a party entering the witness box and not by way of proof affidavit, for the plaintiff to state after his examination is over, that the case of the defendant is unsustainable. Post the requirement to lead evidence by way of a proof affidavit, the plaintiff merely states that the pleading of the defendants is false. It is always open to a party to plead that the pleadings of other side is false. The fact that he denied the case of the defendant shows the plaintiff is not accepting the case of the defendant. Yet, it is after his positive evidence to substantiate his case. Therefore, the finding of the learned Trial Judge that the plaintiff has not taken steps to deny the written statement filed by the defendants and therefore is not entitled to let in any evidence does not appeal to me.

12. A plaintiff is not a soothsayer to anticipate what the defendant will plead and deny the same in his plaint. It is only after



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the written statement comes on record, he is aware as to what is the stand taken by the defendant. The first available opportunity for him to deny the same, since Order VIII Rule 9 C.P.C. is not mandatory, is when he enters the witness box. That is exactly what has taken place in the present case.

13. In the light of the above discussion, I am unable to sustain the order passed by the learned XI Assistant Judge, City Civil Court, Chennai. The order passed in I.A.No.4 of 2024 in O.S.No.3905 of 2023 dated 15.11.2024 is set aside. The proof affidavit will continue to have paragraph nos. 16 to 21. It is open to the defendants to cross examine the plaintiff on those aspects also.

14. The civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No
Neutral Citation:Yes/No
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To
The XI Assistant City Civil Court,
Chennai.



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V. LAKSHMINARAYANAN,J.

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