

Before K. Kannan, J.

DESH RAJ AND OTHERS —Petitioners

versus

ROHITAS SINGH—Respondent

CR No.4168 of 2013

July 23, 2013

Code of Civil Procedure, 1908 - O. XVIII RL. 4, O.XIX RL. 3 - Whether affidavit filed in support of pleadings as proof of chief examination must be rejected since it contains several matters which are not supported by pleadings - Held that the Court, on examination of proof of affidavit on being filed, finds that it contains irrelevant or inadmissible particulars, could reject the same and call for fresh affidavit in accordance with directions.

Held, that it cannot be merely seen at a superficial method, for, the matter of fact to be pleaded that is established through evidence and facts which need not be pleaded that are pure matters of evidence is but a thin line, but different all the same. If affidavit which is filed in court were to be stopped by an objection by a party that the affidavit contains more than the pleadings, then the very purpose of this amendment would be completely rendered futile. The proper approach therefore would be to allow full fledged cross examination that would elicit matters which are brought in the affidavit, which are not relevant, or inconsistent or which are out of tune with the pleadings. It is strength of cross examination that can really bring out an issue of whether a matter that is referred to in the affidavit cannot be taken by the court that it conflicts with the pleadings. That should be left only to the stage of cross examination to test the correctness of the matters brought in the proof affidavit. It will be difficult to examine before the commencement of trial, any objection regarding the irrelevant or impermissible material brought in the affidavit and hold that some portions of the affidavit would require to be eschewed or the pleadings would require to be altered.

(Para 2)

Further held, that the Court, on examination of the proof affidavit on being filed, finds that it contains irrelevant or inadmissible particulars, could reject the same and call for fresh affidavit in accordance with directions. Order 19 Rule 3 CPC itself is guidance to what the affidavit should contain. However, if the Court does not hold itself up for examining the proof affidavit filed in each case before the commencement of cross examination, there could be no complaint of error of procedure.

(Para 3)

Aditya Jain, Advocate, *for the petitioners*.

K. KANNAN, J. (ORAL).

(1) The revision is against an order dismissing the contention of the defendants that the affidavit filed by the plaintiff in support of the pleadings as proof of chief examination must be rejected, since the plaintiff has cited several matters in the affidavit which are not supported by pleadings. A procedure that substitutes the prevalent practice of examination-in-chief of the party through proof affidavit was brought through amendment in Code of Civil Procedure in Order XVIII Rule 4 to expedite the course of trial. There are certain inherent difficulties that parties experience when the plaintiff brings in affidavit beyond the pleadings. Various courts have adopted different approaches to ensure that the affidavits conformed to the pleadings and undertake preliminary appraisal of the affidavit before it is taken on record. Some courts have restricted the practice only for examination of documents that have to be assigned exhibit numbers so that documents which are inadmissible are not surreptitiously introduced along with the affidavit. This also becomes relevant, since assigning exhibit numbers to documents which are inadmissible is bound to cause obstruction to the course of justice. An issue such as a document being insufficiently stamped admitted into evidence cannot later be objected in terms of Section 36 of the Stamp Act.

(2) I am setting out some of the examples only because I am conscious that the court which admits a proof affidavit undertakes a certain amount of risk in allowing for parties to introduce in the proof affidavit more than what is justified in the pleadings. It again involves certain forensic skills of the Presiding Officer to note whether the matter brought through an

affidavit really is beyond the pleadings. It cannot be merely seen at a superficial method, for, the matter of fact to be pleaded that is established through evidence and facts which need not be pleaded that are pure matters of evidence is but a thin line, but different all the same. If affidavit which is filed in court were to be stopped by an objection by a party that the affidavit contains more than the pleadings, then the very purpose of this amendment would be completely rendered futile. The proper approach therefore would be to allow full fledged cross examination that would elicit matters which are brought in the affidavit, which are not relevant, or inconsistent or which are out of tune with the pleadings. It is strength of cross examination that can really bring out an issue of whether a matter that is referred to in the affidavit cannot be taken by the court that it conflicts with the pleadings. That should be left only to the stage of cross examination to test the correctness of the matters brought in the proof affidavit. It will be difficult to examine before the commencement of trial, any objection regarding the irrelevant or impermissible material brought in the affidavit and hold that some portions of the affidavit would require to be eschewed or the pleadings would require to be altered. The exercise that sought to be pressed home at trial by the applicants was rightly rejected by the court below and I find no reason to interfere.

(3) I clarify that in any given situation, the Court, on examination of the proof affidavit on being filed, finds that it contains irrelevant or inadmissible particulars, could reject the same and call for fresh affidavit in accordance with directions. Order 19 Rule 3 CPC itself is a guidance to what the affidavit should contain. The provision states that "affidavits shall be confined to such facts as the deponent is able of his knowledge to prove...". It can also devise a special procedure to assign exhibit numbers and examine admissibility of documents before the commencement of the cross examination. However, if the Court does not hold itself up for examining the proof affidavit filed in each case before the commencement of cross examination, there could be no complaint of error of procedure.

(4) The order is maintained and the revision petition is dismissed.