

RAJASTHAN HIGH COURT

Prahlad Singh

Vs.

Suraj Mal

S.B. Civil Writ Petn. No. 5812 of 2004

(Dalip Singh, J.)

25.11.2008

ORDER

Dalip Singh, J.

1. This writ petition has been filed by the plaintiff challenging the order dated 17-7-2004 passed by the learned appellate Court by which the learned appellate Court has rejected the application filed under Order 41 Rule 2.7, C. P. C. on 3-8-1998.

2. The plaintiff filed a suit for permanent injunction which came to be dismissed by the learned trial Court vide judgment and decree dated 6-9-1998 and an appeal came to be filed which is pending before the learned lower appellate Court. In the suit the plaintiff relied upon a registered sale-deed dated 26-7-1926 (Annexure-1) executed by one Bhanwaria and based his title in the property upon the said sale-deed. The said registered sale-deed, it may be mentioned here, is in Urdu script and language, as would be evident from the perusal of Annexure-1, a Photostat copy of the sale-deed dated 26-7-1926 which has been filed before this Court also and annexed to this writ petition.

3. After filing of the appeal against the dismissal of suit by the learned trial Court vide judgment and decree dated 3-8-1998, the plaintiff-petitioner submitted an application under Order 41 Rule 27, C. P. C., though specifically the said provision has not been mentioned in the said application, copy of which has been filed as Annexure-2 on record, with prayer that the plaintiff had during the trial filed a copy of the registered sale-deed which is written in Urdu script and with a view to facilitate the Court to peruse and go through the contents of the said document, the appellant is filing a correct translation of the same in Devanagari script having translated the document from Urdu script to Devanagari script (in Hindi). It was prayed that the said document

which is a translation in Devanagari script may be taken on record.

4. An additional copy of the document which was retained by the petitioner apart from the one which has been filed before the learned appellate Court prepared from the same process, as per the learned counsel for the petitioner, has been filed before this Court as Annexure-3.

5. The submission of the learned counsel for the petitioner is that the matter was taken up by the Court on 10-9-1998, after the application came to be filed on 3-8-1998 and the counsel for the parties did not appear, as is evident from the order-sheets dated 10-9-1998 that the Advocates were on strike and only the plaintiff-appellant who is the petitioner before this Court was present and the learned appellate Court passed the order on 10-9-1998 allowing the application dated 3-8-1998 filed under Order 41, Rule 27, C. P. C. by the said order dated 10-9-1998 which has been filed as Annexure-4.

6. Since the learned counsel for the petitioner has placed reliance upon the aforesaid order dated 10-9-1998, it is relevant to reproduce the same. The order dated 10-9-1998 read as follows:-

(Vernacular matter omitted - Ed.)

7. As would be evident from the above, the application dated 3-8-1998 was allowed and the translated version of the sale-deed which was filed along with the application dated 3-8-1998 was ordered to be taken on record by the learned appellate Court vide the above order dated 10-9-1998 and the case was fixed for hearing the arguments on the appeal.

8. It appears that the case continued for the hearing of the appeal for a long time and during this period on 14-7-2004, the respondent filed a reply to the application dated 3-8-1998. It is not clear under what circumstances, the aforesaid reply came to be filed on 14-7-2004 to the application dated 3-8-1998 when the said application had already been allowed by the learned appellate Court by the order dated 10-9-1998 (Annexure-4), quoted above. Be that as it may, on the reply being filed to the said application, the learned appellate Court by the impugned order dated 17-7-2004 after hearing the learned counsel for the parties dismissed the application submitted by the plaintiff-appellant by the impugned order dated 17-7-2004 *inter alia* on the ground that there was no justification as provided in the grounds under Order 41 Rule 27, C. P. C. for taking additional evidence in appeal and further that the said document is only

notarized and attested by the Notary Public, there is no mention as to who has translated the document and does not bear his signatures and there is no endorsement to the effect that the document has been translated by the counsel who attested it to be a true translation. The relevant portion of the impugned order of the learned appellate Court dated 17-7-2004 reads as follows :-

(Vernacular matter omitted - Ed.) 9. Being aggrieved by the aforesaid order, the plaintiff had approached this Court by means of the present writ petition under Arts. 226 and 227 of the Constitution of India.

10. The submission of the learned counsel for the petitioner is that as would be evident from a perusal of the order dated 10-9-1998 (Annexure-4), the learned appellate Court having gone through the application and the document allowed the application dated 3-8-1998 and, therefore, there was no occasion for the learned appellate Court to have passed the impugned order dated 17-7- 2004 dismissing the said application dated 3-8-1998 without having reviewed or recalled the earlier order dated 10-9-1998. Learned counsel for the petitioner further submitted that so far as the application is concerned, it was not one under Order 41 Rule 27, C. P. C. of leading any additional evidence but in fact the appellant was only submitting the translated version of the document (Annexure-1), the registered sale-deed of the year 1926 which has already been filed before the learned trial Court and admitted in evidence of the plaintiff and since the parties were not conversant with the Urdu language or the script, the appellant could not state before the Court as to what were the contents of the said documents. When the suit was dismissed by the learned trial Court the appellant with a view to overcome the aforesaid difficulty, produced before the Court the translated version which cannot be said to be by means of an additional evidence strictly in accordance with the provisions of Order 41 Rule 27, C. P. C. and, therefore, the learned appellate Court committed an error in rejecting the application dated 3-8-1998 by the impugned order dated 17-7-2004.

11. Learned counsel for the petitioner further submitted that as would be evident from the document, the counsel has certified and put an endorsement which reads as follows :-

"Attested to be true transliterate of the Urdu script in Hindi.

Sd/-

Advocate

Kota 3-8-98."

12. There is also an endorsement (sic) signed Abdul Jabbar. This is evident from the Annexure-5, the Photostat copy of the document which has been filed along with the writ petition. Learned counsel for the petitioner, therefore, submits that the requirement of law has been met.

13. None appeared for the respondent to contest the writ petition.

14. Having heard learned counsel for the petitioner it was deemed proper to look into the relevant provisions for the production of the documents under the Civil Procedure Code and under the General Rules (Civil), 1986 framed by the High Court in exercise of the powers conferred under Article 227 of the Constitution of India and other enabling powers in that behalf.

15. Learned counsel for the petitioner submitted that while there was no specific provision relating to the filing of the translated copies under the Civil Procedure Code in Rajasthan where no such amendments have been made as in the case of the amended provisions of Civil Procedure Code enacted by the Allahabad High Court, Karnataka High Court and Orissa High Court under Order 13, Rule 11, C. P. C. whereby an amendment in the C. P. C. applicable within those States provision has been made in this behalf. However, in Rajasthan under Rule 37 of the General Rules (Civil), 1986, the provision has been made for the aforesaid purpose. It would be useful to reproduce the aforesaid provision of Rule 37, which reads as follows:-

"37. Translation to be filed with certain documents.- Every document produced by a party or his witness not written in Hindi or English shall be accompanied by a correct translation of the document into Hindi written in the Devnagri script. The translation shall bear a certificate of the party's counsel to the effect that the translation is correct. If the party is not represented by a counsel, the Court shall have the translation certified by any person appointed by it in this behalf at the cost of the party concerned."

16. It may be stated here that while deciding this petition, this Court was to some extent handicapped at not having received any assistance from the opposite side which did not appear at the time of hearing.

17. This petition could have been disposed of by merely placing reliance upon the order dated 10-9-1998 (Annexure-4) passed by the learned appellate Court by which the learned appellate Court had allowed the application dated 3-8- 1998 for taking the

aforesaid translated copy on record and, therefore, in the absence of any order recalling or reviewing the order dated 10-9-1998, there was no occasion for the learned appellate Court to have reviewed its earlier order dated 10-9-1998 and to pass its order dated 17-7-2004.

18. However, looking to the fact that the question was of some importance it has been thought proper to decide the matter in some detail.

19. In the present case, so far as the impugned order is concerned, suffice it to say that the provisions of Order 41, Rule 27, C.P.C. in my view are not strictly applicable as it is not a case where any additional evidence was sought to be produced by the appellant which had not been filed before the learned trial Court and was being sought to be filed for the first time in the appeal. By the present application, all that the petitioner-plaintiff-appellant sought to do was to file a translated copy of Exhibit-1 the sale-deed dated 26-7-1926 which is in Urdu language by filing a translation in Devanagari script in Hindi for being appreciated by the Court and it is for this purpose that the application (Annexure-2) was filed by the plaintiff-appellant and a look at the said application would go to show that it does not mention any specific provision of law under which the said application has been filed.

20. In that view of the matter, the learned appellate Court, in my view has further committed an error in holding that the appellant has not been able to make out a case in accordance with the provisions of Order 41 Rule 27, C. P. C. by explaining as to why the document could not be filed before the learned trial Court, while it had been taken in evidence of the plaintiff on record without any objection and marked as an exhibit by the learned trial Court.

21. A look at the document, photostat copy (Annexure-5) goes to show that it bears an endorsement by the counsel which reads that it is the "attested transliterated copy of Urdu script in Hindi". There is also an endorsement which reads (sic) and signed by Abdul Zabbar. Though the application is silent on the role of Abdul Zabbar as to whether he was a translator who dictated and translated the document in Devanagari script from Urdu. But it appears that the words (sic) would mean that he has compared both the original in Urdu and the translation in Hindi and found to be correct. I have already noticed the provisions of Rule 37 of the General Rules (Civil), 1986 in this behalf. The aforesaid provision requires (i) that a correct translation of the document which is not written in Hindi or English to be accompanied by a translation of the same into Hindi written in Devanagari script; (2) that the translated document must

application dated 3-8-1998 goes to show that the language of the document is Urdu and only the script from the original Urdu has been converted to Devanagari i.e. Hindi in common parlance. In this case, therefore, all that has been done is the change of the script so that it would be possible for any person not conversant with the Urdu script to read the same in Devanagari script leaving it to the person concerned to form his own opinion regarding the contents of the documents. That, in my view, does not attract specifically even the provisions of Rule 37 as a translation of the document requires interpretation of words and/or sentences from another language as defined under the Concise Oxford Dictionary. The documents (Annexures-3 and 5) when read, go to show that the original character of the document has been retained and merely the script appears to have been changed from Urdu to Devanagari in Hindi.

26. In any case even under Rule 37 or otherwise, it is always open for the Court if the contents of the document filed as a translation or as in this case a transliterated copy are challenged by the opposite party as not being correct to have the same examined or compared by any person appointed in that behalf at the cost of the party who has produced it if the Court has doubts or in its discretion at the cost of the party who seeks to challenge it. If necessary the Court may also examine the persons who have translated or transliterated the document at the instance of the party concerned or the Court, as the case may be.

27. In that view of the matter, the learned appellate Court which did not advert to the provisions of Rule 37 of the General Rules (Civil), 1986, while passing the order dated 17-7-2004 by which it decided the said application afresh after having passed the earlier order dated 10-9-1998 allowing the said application without adverting to the same or mentioning any reason for deciding the application afresh has committed an error of jurisdiction.

28. In that view of the matter, the present writ petition deserves to be allowed. Consequently, the writ petition stands allowed and the impugned order dated 17-7-2004 is set aside. Since none has appeared on behalf of the respondents, there shall be no order as to costs.

29. Having decided this matter, a need was felt during the course of hearing and as was suggested by the learned counsel for the petitioner also that in the courses of study for LL. B. Degrees, some portion should be devoted in the syllabus with regard to the General Rules (Civil) and General Rules (Criminal) along with the papers of Civil Procedure Code and Criminal Procedure Code respectively as of course without the

inclusion of these subjects Law graduates who enroll as members of Bar, as well as become judicial officers are not fully acquainted with these Rules which have been framed with a view to fill in the gaps which have been found by experience while dealing with the provisions of Civil Procedure Code as well as the Criminal Procedure Code during the trial, etc. This of course, is a matter either for the Bar Council or the University to consider for its inclusion in their academic courses to be, taken up by the Universities and law colleges at the instance of the respective Bar Council and so far as the judicial officers are concerned, the matter to be considered by the judicial academies under the High Court of the respective States while imparting training to the newly recruited judicial officers. The suggestion of the learned counsel for the petitioner is worth consideration at the appropriate level.

Petition allowed.