

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 12th OF JULY, 2023

MISC. PETITION No. 409 of 2022

BETWEEN:-

1. MADHAV DIED THROUGH LRS.
SITARAM S/O MADHAV PHONGLA,
AGED ABOUT 55 YEARS,
OCCUPATION: AGRICULTURIST
ANJAD, TEHSIL THIKARI (MADHYA
PRADESH)

2. MADHAV DIED THROUGH LRS.
MANISH S/O SITARAM, AGED ABOUT
28 YEARS, OCCUPATION:
AGRICULTURIST ANJAD, TEHSIL
THIKARI (MADHYA PRADESH)

3. ARVIND S/O SITARAM, AGED ABOUT
25 YEARS, OCCUPATION:
AGRICULTURIST ANJAD, TEHSIL
THIKARI BARWANI (MADHYA
PRADESH)

....PETITIONERS

(BY SHRI ROHIT KUMAR MANGAL, ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH
THROUGH COLLECTOR BARWANI
(MADHYA PRADESH)

2. SUB DIVISIONAL OFFICER
(REVENUE) RAJPUR, TEHSIL
RAJPUR, DIST BARWANI (MADHYA
PRADESH)

3. CHIEF MUNICIPAL OFFICER
MUNICIPAL COUNCIL NAGAR
PANCHAYAT, ANJAD, TEHSIL
THIKARI DISTRICT BARWANI
(MADHYA PRADESH)

4. PUBLIC AT LARGE THROUGH
REPRESENTATIVES OM PRAKASH
S/O BOLARAM BHAVSAR, AGED
ABOUT 49 YEARS, OCCUPATION:

**BUSINESS JATASHANKAR CHOWK,
ANJAD (MADHYA PRADESH)**

- PUBLIC AT LARGE THROUGH
REPRESENTATIVES ASHOK S/O
5. SURAJMAL LUNKAD, AGED ABOUT
64 YEARS, OCCUPATION: BUSINESS
BADWANI ROAD, ANJAD (MADHYA
PRADESH)**

- PUBLIC AT LARGE THROUGH
REPRESENTATIVES UDAY SINGH S/O
6. BHARAT SINGH MANDLOI, AGED
ABOUT 64 YEARS, OCCUPATION:
AGRICULTURIST GADI MOHALLA,
ANJAD (MADHYA PRADESH)**

.....RESPONDENTS

***(BY SHRI VINAY KUMAR ZELAWAT, LEARNED SENIOR ADVOCATE
ALONGWITH SHRI AASHAY DUBEY, LEARNED COUNSEL FOR THE
RESPONDENT NO. 5.***

(BY SHRI RIZWAN NIZAM, ADVOCATE FOR RESPONDENT NO. 3.

(BY SHRI KRATIK MANDLOI, GOVERNMENT ADVOCATE)

(BY SHRI AASHAY DUBEY, ADVOCATE FOR RESPONDENT NO. 4)

*This petition coming on for admission this day, the court passed
the following:*

ORDER

The petitioner has filed this petition being aggrieved by orders dated 22.12.2021 and 13.01.2022, whereby the trial Court has directed the defendants to file translated copy of Exhibit-D/3 in Hindi and English and also observed that the plaintiff shall have the right for cross-examination of translation.

2. The petitioner/plaintiff filed a suit for declaration and permanent injunction in respect of the immovable property described in Para-2 of the plaint. Both the parties placed their evidence and the suit was fixed for final argument. On 22.01.2022, the counsel for the defendants submitted that exhibit-D/3 is a document of the year 1912 which is 30 years old, therefore, it can be read into the evidence. The learned trial court found that the document is written in language, not known to the

parties as well as to the Court. Therefore, the final argument was deferred and parties were directed to suggest the common name of the translator. Since the consensus did not arrive, therefore, the Court directed the defendants to file translated copy of exhibit-D/3 in Hindi as well as English language and gave a right to the plaintiff to cross-examine the translator if not satisfied with the translation.

3. Thereafter, the defendants filed an application under Section 151 of the C.P.C. which was taken up on 13.01.2022. The said application was opposed by the plaintiff and again Court passed the same order permitting defendants to file translated copy of the Exhibit D-3. Hence, this petition has been filed before this Court challenging the orders dated 22.12.2021 and 13.01.2022.

4. Shri Rohit Kumar Mangal, learned counsel for the petitioner submits that there is a specific provision under Order XIII Rule 7 Sub-Rule 3 of the C.P.C. (Madhya Pradesh State amendment) to deal with this type of situation in the pending suit and according to which every document produced in evidence which is not written either in the Court's language or English, shall be accompanied by a correct translation into English. If the document is admitted in the exhibit, the opposite party shall either admit the correctness of the translation or submit his own translation. It is further submitted by the learned counsel when Exhibit.D-3 was tendered into evidence, the defendants ought to have filed an English translation of the said document. When this document was confronted with the witness of the defendants in respect of the credibility of that document, a witness (DW) stated that he can not read the language in which it is written. Since the defendants in their evidence shown an inability to read that document, hence according to Shri Mangal, learned counsel for the petitioner, the translation cannot be taken on record at the stage of final arguments.

The learned Court has travelled beyond its jurisdiction by directing defendants to submit translations. The procedure prescribed under the law if not followed and any deviation amounts would lead to a miscarriage of justice. To support this contention, the learned counsel has placed reliance upon the judgment passed by Apex Court in the case of *LIC of India Vs. Ram Pal Singh Bisen (2010) 4 SCC 491* . This judgment is also cited on the point that mere filing or exhibiting of a document in Court does not amount to proof of its contents, therefore, even if the document has been marked as exhibit-D/3, the contents cannot be treated as proved.

5. Shri Zelawat learned, Senior counsel for respondent No. 3 submits that the Court has not committed any error of law while permitting defendants to produce the translation which is a mandatory requirement under Order XIII Rule 5 Sub-Section 3 of the CPC. In support of his contention, the learned Senior Advocate has placed reliance on the judgment passed by Apex Court in the case of *Chandreshwar Bhuthnath Devanathan Vs. Baboy Matiram Varenkar (2018) 12 SCC 548* that even an application under Order XLI Rule 27 of the Code of Civil Procedure is not required for submitting a translation of any document which is not in the local language or English language. The translation can be filed at any stage of the suit. In this case, the High Court discarded the document which was in the Portuguese language. The Supreme Court has said that the Court ought to have called the translation or permit the parties to do the translation.

6. Shri Dubey, learned counsel for respondent No. 4 submits that when this document was tendered into the evidence, the plaintiff objected only to the extent that there is no seal of Municipal Council, therefore, it cannot be proved as a certified copy of the document.

Learned Court overruled that objection and permitted it to mark as Exhibit-D/3. The plaintiff did not raise any objection in respect of his language or the translation otherwise the Court would have directed the defendants to submit the translation. Defendant No. 4 submitted the translation which was not accepted by the plaintiff, therefore, the Court has again passed an order.

Appreciations & Conclusion

7. The Sub-rule 3 of Rule 27 of Order XLI the Code of Civil Procedure is reproduced below :-

“Every document produced in evidence, which is not written in the Court language or in English, shall be accompanied by a correct translation into English and every document which is written in Court language but in a script other than Devanagari shall be accompanied by a correct transliteration into Devnagri script. If the document is admitted in evidence the opposite party shall either admit the correctness of the translation or transliteration or submit his own translation or transliteration of the document”.

8. It is correct that this rule mandates that every document which is not in a Court's language or English shall be accompanied by a correct translation into English. This provision also provides that if the document is admitted in evidence, the opposite party shall either admit the translation or submit his own translation. Opposite party means the party who is opposing the said document. The liberty has been given to the plaintiff to file his own translation. However, this rule nowhere gives an opportunity for cross-examination of translator but the trial Court has granted liberty for that the defendants have no objection.

9. In the considered opinion of this Court, when the document has been tendered and exhibited, it should be readable to the parties as well as to the Court. Therefore, the law has specifically provided for the filling of its translation. Even, if at the time of production of the

document, no translation was filed, which is not fatal and it could have been filed at any stage of the trial to adjudicate the matter. Even otherwise, the plaintiff did not raise any objection at the time of exhibiting the document in respect of its language and translation, therefore, he is stopped from assailing the order.

8. With the aforesaid, the present petition is dismissed.

Certified copy as per rules.

(VIVEK RUSIA)
JUDGE

Vindesh