

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12272 OF 2016

Balvanta Bhimashankar Dehadray,
Age: 72 years, Occ: Medical Practitioner,
R/o: Puntamba, Taluka: Rahata &
Gurudatta Colony, Ward No. 6,
Near Kamgar Hospital, Shrirampur,
Taluka: Shrirampur, Dist: Ahmednagar. ...Petitioner.

Versus

1. The State of Maharashtra.
2. District Inspector,
Land Record Office Ahmednagar,
Tq. & District: Ahmednagar.
3. Sub-Divisional Inspector,
Land Record Office, Rahata,
Dist: Ahmednagar.
4. Village Panchayat, Puntamba,
Taluka: Rahata, Dist: Ahmednagar.
5. Ashok Dattatraya Kulkarni,
Age: 55 years, Occ: Service,
R/o: Puntamba, Taluka: Rahata,
Dist: Ahmednagar. ...Respondents.

Advocate for Petitioner : Shri S.S. Kulkarni.
AGP for Respondent Nos. 1 to 3 : Shri V.S. Badakh.
Advocate for Respondent No. 5 : Shri S.B. Kadu.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 16th January, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by

the consent of the parties. The petitioner is aggrieved by the orders dated 14/04/2016 and 14/11/2016, passed by the Trial Court, by which, application Exhibit 134 and 136 respectively, filed by the petitioner/plaintiff seeking leave to place on record the translated copy of a document, have been rejected.

2. The petitioner/plaintiff has placed reliance upon a document which is in Modi script in R.C.S. No. 245/2011, filed for the purposes of seeking injunction, removal of encroachment and for possession. According to the plaintiff, the Modi script emerging from the concerned document renders a meaning, by which, the plaintiff gets a title to the suit property. A translator has translated the said document, copy of which is placed on record. The document is dated 17/06/1905. The said translator was examined before the Trial Court and he has proved the document in Modi script.

3. Grievance is that, though the translation of the original document was prepared, the plaintiff did not file it and as such, desires to place it on record so that all the litigating sides, including the Court itself, would understand the meaning of the said document which would have a direct impact on the claims put forth by the petitioner.

4. Realizing the error committed, the plaintiff preferred application Exhibit 135, praying for leave to produce the translated copy of the original document and re-examining the said translator for the purposes of proving the translation. The Trial Court has rejected the application for the reason that the plaintiff's evidence was earlier closed on 18/01/2016, and though subsequently, he was again given an opportunity on 19/01/2016, yet the plaintiff has faltered. The plaintiff's evidence was closed on 09/02/2016, and the evidence of defendants Nos. 1 to 4, was closed on 01/03/2016. Even thereafter, by imposing costs of Rs. 1,000/-, the third witness of the plaintiff, which is the translator, was examined.

5. It emerges from the record that the third witness of the plaintiff was the translator. He has highlighted the contents of the document in Modi script. However, a verbatim translation is not on record.

6. The learned AGP, and the learned counsel for respondent No. 5 have strenuously opposed this petition. However, they have no answer to offer with regard to, what would be the position, if the Trial Court desires to go through every sentence in document which is in Modi script. Learned counsel for respondent No. 5, submits that it was the duty of the plaintiff to ensure that the translation was

placed on record and failure on his part therefore, would lead to the dismissal of the suit.

7. It is quite obvious that if the translation of the said document is not before the Court, it would be difficult even for the Court to consider its contents which according to the plaintiff is decisive and crucial for making a declaration, as to who would be the owner of the suit property. In all probability, the present situation is likely to cause a rejection of the suit. The endeavor of the Court should be to ensure that justice is done and in the face of a peculiar situation as it emerges in this proceedings, the translation, if placed on record, would assist the litigating sides and more importantly the Court itself for properly adjudicating on the disputes set out in the suit.

8. Considering the above, this petition is allowed. The impugned orders dated 14/04/2016 and 14/11/2016, are quashed and set aside and application Exhibit 134 and 136 are allowed subject to the petitioner depositing costs of Rs. 5,000/-. Learned advocate for the respondents submit that said amount can be donated to Advocates' Bar Association of Bombay High Court, Bench at Aurangabad. The said costs shall, therefore, be deposited with the Advocates' Bar Association of Bombay High Court, Bench at Aurangabad, on/or before 02/02/2018, and the receipt evidencing

the said payment shall be produced before the Trial Court on/or before 09/02/2018.

9. Consequentially, the Trial Court shall take the translated copy of the Modi script document on record and subject to the recording of evidence, would grant an Exhibit number to the said document in accordance with the Indian Evidence Act.

10. Since, the plaintiff is being granted the liberty to examine the witness, the defendants will also have the opportunity for further cross-examination, keeping in view the peculiar facts of this case and without laying down any precedent.

11. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

S.P.C.