

(2016) 05 SHI CK 0122
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 420 of 2015

Dass Ram

APPELLANT

Vs

Daler Singh

RESPONDENT

Date of Decision : 23-05-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2016) ILRHP 1420

Hon'ble Judges : Mr. Sureshwar Thakur, J.

Bench : Single Bench

Advocate : Mr. Ajay Sharma, Advocate, for the Petitioner; Mr. Ajay Kumar, Senior Advocate with Mr. Dheeraj Vashisht, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Sureshwar Thakur, J.(Oral)—The estate of Seetu, on his demise on 26.1.1971 thereat opened for succession. He died issueless besides on his demise, he left no surviving spouse. His estate stood mutated in favour of Rattani Devi, Kanshi Ram, Sarvan and Mukhitiar Singh. Mutation No. 1782 qua the estate of deceased Seetu records therein the factum of the Revenue Officer sanctioning mutation qua the estate of deceased Seetu not in favour of Mukhitiar Singh rather in favour of Smt. Banti Devi widow of Kishan Chand despite the factum of Mukhitiar Singh being alive at the time when the estate of Seetu opened for succession and stood enjoined to devolve upon his heirs amongst whom Mukhitiar Singh was the one. Consequently, a prayer is made in the plaint of the said mutation recorded in favour of Banti by the Revenue Officer in derogation to the rights of Mukhitiar Singh being declared to be illegal, null and void. The plaintiffs also claimed right of succession to the estate of Mukhitiar Singh on the strength of a testamentary disposition of Mukhitiar Singh, averred in the original plaint, to be of 30.1.1974 on strength whereeto mutation No. 1781 qua the estate of deceased Mukhitiar Singh, their predecessor-in-interest stood attested in favour of the plaintiffs on 18.05.1973.

2. The suit of the plaintiffs was partly dismissed by the learned trial Court. An appeal therefrom was preferred before the First Appellate Court. During the pendency of the appeal, before the learned first Appellate Court, an application was preferred thereat by the plaintiffs/respondents herein under Order 41, Rule 27 of the CPC for adducing evidence qua the mis-reflection occurring in the plaint qua the date of scribing in Urdu of the Will of Mukhtiar Singh, for underscoring the date of its scribing being 30.01.1969 and not 30.01.1974. The said application was allowed by the learned first Appellate Court. Feeling aggrieved against the allowing of the application aforesaid, the petitioner herein/defendant preferred therefrom a petition before this Court which stood also hereat allowed, on the score of this Court holding of in absence of an apposite averment with the leave of the Court concerned standing constituted in the plaint qua 30.01.1969 constituting the date of scribing of the Will of Mukhtiar Singh, rendered the application under Order 41, Rule 27 of the CPC preferred at the instance of the respondents herein for adducing with the leave of the Court material denotative of the date borne on the testamentary disposition in Urdu of deceased Mukhtiar Singh being not 1974 rather 1969 to beget adduction of evidence beyond pleadings rendering it to be discardable. In sequel, the respondents herein instituted an application under Order 6, Rule 17 of the CPC before the learned first Appellate Court. The application came to be decided in favour of the respondents herein/plaintiffs. The defendant/petitioner herein stands aggrieved by the rendition of the learned first Appellate Court on the apposite application preferred before it by the respondents/plaintiffs/appellants. Palpably, the apposite averment constituted in the original plaint instituted by the plaintiffs qua the date of scribing of Will of deceased Mukhtiar Singh is reflective of Mukhtiar Singh executing his testamentary disposition qua his estate in favour of the plaintiffs on 30.01.1974. The aforesaid date of scribing of the Will of deceased Mukhtiar Singh is contended in the application under Order 6, Rule 17, CPC to stand begotten by a pure inadvertence of the translator concerned mistranslating from mutation No. 1781 the date of scribing of the Will of Mukhtiar Singh to be 30.01.1974 whereas it stood scribed by Mukhtiar Singh on 30.01.1969. Since, the counsel for the plaintiffs while drafting the plaint borrowed the date of scribing of the Will from the translation made by the translator of the mutation attested by the Revenue Officer concerned qua his estate hence sequelled an incorporation by pure inadvertence by him in the original plaint of Mukhtiar Singh scribing his testamentary disposition on 30.01.1974, in sequel, whereto, mutation stood attested on 18.05.1973. The testamentary disposition of Mukhtiar Singh is in Urdu. The date of its scribing borne thereon is also in Urdu. Necessarily a proficient translator could in his translated version thereof pronounce the exact date of its scribing by its testator. Even if, the apposite translation has suffered an infirmity or a flaw qua the exact date of its scribing borne on the testamentary disposition of deceased Mukhtiar Singh nonetheless the exact date of its scribing would still stand unearthed on a proper motion made before the learned first Appellate Court succeeding thereat as stands occurred.

3. The counsel for the respondents herein with fervor contends of the amendment as proposed to be incorporated in the plaint is merely a typographical error or is clarificatory in nature and is merely a concert to enable the Court to on the anvil of the apposite documentary evidence embodying the exact date of scribing of the Will of deceased testator Mukhitiar Singh besides when the exact date of its scribing is not permitted to be reflected in the plaint would sequel the Appellate Court to yet proceed to on a mis-reflection in the original plaint of the date of scribing of the testamentary disposition of Mukhitiar Singh, to hence also erroneously decide the lis alike the learned trial Court. The learned counsel appearing for the petitioner herein has contended before this Court with force of the amendment as proposed to be carried out being a belated attempt to effect an amendment in the pleadings especially when there occurs no communication in the application at hand of the respondents herein earlier thereto holding no knowledge qua the exact date of scribing of the testamentary disposition of Mukhitiar Singh rather knowledge thereof erupting on their contacting a translator who on holding an authentic translation thereof communicated to them of the error previously made by the earlier translator of mutation attested in the year 1973 which reflects the purported date of execution of the testamentary disposition of deceased Mukhitiar Singh.

4. The counsel have been heard at length. This Court has considered their rival contentions.

5. The translation by the translator of the date of testamentary disposition of deceased testator Mukhitiar Singh palpably appears to emerge from his purportedly mistranslating it while holding a translation of mutation No. 1781. However, even if the said erroneous translation of the date of scribing of the testamentary disposition of deceased Mukhitiar Singh sprouts from the order of mutation of his estate in consonance therewith standing recorded by the Revenue Officer concerned, nonetheless, the prime document wherefrom the exact/precise date of the scribing in Urdu of the testamentary disposition of the deceased testator would stand disinterred is the testamentary disposition in Urdu of Mukhitiar Singh. Since, the script of the testamentary disposition of Mukhitiar Singh is in Urdu, the precise date of its scribing is obviously also in urdu hence even if the application at hand stands belatedly instituted at the instance of the respondents herein before the Appellate Court, the permission to the respondents herein to incorporate in the plaint the exact date of its scribing as exists on the apposite testamentary disposition in Urdu of the deceased testator rather than the one occurring in the mutation attested in favour of the plaintiffs in consonance therewith obviously would enable the First Appellate Court to arrive at a just decision on the lis which engages the parties. The learned Appellate Court has recorded in its impugned order qua the date of its scribing being 30.01.1969 necessarily hence when the mis-pleading of the aforesaid factum in the plaint has occurred on account of a mis-translation by the translator concerned qua the date on its scribing, translation whereof, he made not from the testamentary disposition in Urdu of deceased Mukhitiar Singh rather

from the mutation attested on its strength in favour of the plaintiffs, naturally when the exact date of its scribing stands borne on the testamentary disposition of the deceased testator and the impugned order reflects of its standing scribed on 30.01.1969, necessarily, the ends of justice warrant of the pronouncement occurring in the impugned order qua the exact date of its scribing when would undo the earlier mis-translation made by the translator concerned from the mutation attested on its anvil by the Revenue Officer concerned in favour of the plaintiffs of hence the leave as sought for in the apposite application for its incorporation in the plaint being tenably affordable to the respondents herein, especially when it would facilitate the first Appellate Court to render correct findings qua its scribing besides would empower it to render a just verdict upon the lis engaging the parties. In aftermath, the inaccurate/mis-precise date of its scribing when has spurred from a mistranslation made by the translator from the apposite mutation attested qua the estate of Mukhtiar Singh which prompted the counsel concerned to adopt it while bonafidely believing it to be true to hence make an erroneous incorporation in the original plaint qua the date of its scribing warrants its being undone besides rectified. Also the cause of justice warrants, the application being accepted as tenably done by the learned Court below. There is no infirmity in the order impugned before this Court.

6. Before parting, it is imperative to contenance or discountenance the submission made by the learned counsel appearing for the petitioner herein of the belated institution of the application at hand before the Appellate Court warranting its facing rejection also it is deemed imperative to advert to his submission of the non communication by the respondents in their application of theirs prior thereto not holding knowledge qua the mis-reflection in the plaint qua the date of scribing of the testamentary disposition of deceased testator Mukhtiar Singh also of theirs not communicating in the apposite application of the manner or the precise date of theirs standing awakened qua the exact date of its scribing, entailing rejection of their application. However, the aforesaid submission stands subsumed in the face of the suit proceeding with an inaccurate reflection in dis-concurrence qua the date of its scribing, precise date whereof occurs on the testamentary disposition in Urdu of deceased Mukhtiar Singh. If permission to the respondents herein to amend their pleadings in consonance therewith is afforded to them obviously mis-portrayals in the original plaint qua the date of scribing of the apposite Will would stand effaced also would constitute the best precise reflection qua the date of its scribing. Also if, the aforesaid apposite communication remained unarticulated by the respondents herein in their application, yet when the exact date of scribing in Urdu stands borne in the testamentary disposition of Mukhtiar Singh obviously warrants its finding reflection in the apposite averments qua it in the plaint. Consequently, the instant petition is dismissed and the impugned order is affirmed and maintained. However, it shall be yet incumbent upon the respondents herein to adduce cogent evidence qua the date of scribing of the testamentary disposition of deceased Mukhtiar Singh. Moreover, it shall be open

to the petitioner herein to adduce evidence in rebuttal qua the date of scribing of the testamentary disposition of deceased Mukhtiar Singh. Records be sent back forthwith. The parties are directed to appear before the learned first Appellate Court on 15th June, 2016. All pending applications also stand disposed of.