

(1956) 12 MP CK 0028

In the Madhya Pradesh High Court

Case No : C. Rev. No's. 312 of 1956 and 361 of 1956

Dayabhai Patel

APPELLANT

Vs

Natwarlal

RESPONDENT

Date of Decision : 13-12-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 137, 137(1), 137(2), 137(3)
Constitution of India, 1950 — Article 345

Citation : (1957) JLJ 22

Hon'ble Judges : P.V. Dixit, J

Bench : Single Bench

Advocate : Sanghi and S.L. Dubey, for the Appellant; Chitale, Chafekar and Joshi, for the Respondent

Judgement

Dixit, J.—These two revision-petitions submit for decision an Interesting point as to the validity of a plaint in English in a suit instituted in a Civil Court located in the territory of the former Madhya Bharat, The facts are simple. Natwarlal filed a suit on 13th April, 1986, against Dayabhai, Chhotebhai and Purshottambhai in the Court of the District Judge, Indore, for accounts of a dissolved partnership. The plaint was in English. After the service of the summons, the defendants without filing any written statement raised an objection that as the language of the Court was Hindi and the plaint was in English, the plaintiff be directed to file the plaint in Hindi be fore calling upon the defendants to file their written statements. In reply, the plaintiff, while maintaining that the plaint in English was a valid one, filed a Hindi translation of the plaint. Thereupon the defendants raised further objections that as the plaint filed in English was invalid there was no suit at all that the Hindi translation should be considered as a freshly instituted plaint against the defendants on the date on which the translation had been filed; and that it required fresh court-fees. The learned Additional District Judge of Indore held that it was not permissible for the plaintiff to file the plaint in English. He further held that the English plaint would be treated as the plaint in the suit till the date of the filing of the Hindi translation thereof; that

thereafter the plaint in Hindi would be the plaint in the suit, and that the plaint in English would be used for reference as "authoritative." The learned Additional District Judge also held that no fresh court-fee was necessary. The plaintiff and the defendant Dayabai both have now come up in revision to this Court against the said order of the Additional District Judge, Indore. In Civil Revision No. 312 of 1956 filed by Dayabhai it is contended that the order of the lower Court treating the plaint in English as the plaint in the suit up to the date of the filing of the Hindi translation thereof is erroneous and that having found that every plaint was required by law to be in Hindi, the lower Court should have further held that the plaint in English against the defendants was honest. The defendant prays that the order of the lower Court be set aside and this Court be pleased to pass such order as may be thought just and proper. In the revision-petition No. 361 of 1956 the plaintiff urges that the learned Additional District Judge was wrong in holding that the plaint had to be in Hindi and prays that the order of the lower Court be set aside in toto.

2. Before stating the contentions of the learned counsel appearing for the parties it seems to me necessary to refer to the relevant provisions of Law. After the formation of Madhya Bharat in 1948 and until 23rd January, 1950, the Indore Code of Civil Procedure, which was very similar to the Code of 1908, continued to be in force in that part of Madhya Bharat which was formerly Holkar State. Section 139 of the Indore CPC was analogous to S. 137 of the Indian Civil Procedure Code, 1908, and both English and Hindi were used as languages of subordinate Courts in that part of Madhya Bharat comprising of the former Holkar State. On 27th November, 1948, the Madhya Bharat Government issued a notification (published in Gazette dated 27th November, 1948, at page 158) declaring that all proceedings in and judgments of the subordinate Courts should be in Hindi language written in Devnagari script and directing that this shall be the language of all the subordinate Courts in Madhya Bharat after a period of six months. This notification did not in any way effect sub-section (3) of S. 139 of Indore CPC which permitted the use of English for purposes specified therein. The Indore Code of Civil Procedure, as well as the Codes of Civil Procedure in force in various covenanting States of Madhya Bharat, were repealed by Madhya Bharat Act. N. 70 of 1949 which adapted the Indian Civil Procedure Code, 1908, and made it operative throughout Madhya Bharat. Section 137 of the adapted CPC was in the same terms as S. 137 of the Indian Civil Procedure Code, 1908. The Constitution then came into force. Article 345 of the Constitution is as follows :--

Subject to the provisions of articles 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State:

Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the

State for which it was was being used immediately before the commencement of this Constitution.

Taking advantage of this provision, the Madhya Bharat Legislature enacted "The Madhya Bharat Official Language Act, 1950" (Act No. 67 of 1950). It came into force on 22nd July, 1950. Section 2 of this Act provides :--

Under Article 345 of the Constitution of India, Hindi written in Devnagari script is adopted as the language to be used for all official purposes in the State of Madhya Bharat except such purposes as are specifically excluded by the Constitution or as may be excluded by Government from time to time by notifying in the Government Gazette.

On 26th January, 1952, the Madhya Bharat Government issued a notification, in exercise of its powers under S. 2 of the Madhya Bharat Official Language Act, 1950, excluding from the operation of the provisions of S. 2 of the Act judgments recorded by District and Sessions Judges in cases of offences punishable with death or transportation for life, or in suits the valuation of which was Bs. 20,000/- or more and in cases involving important questions of law and likely to go up in appeal to the Supreme Court. Thereafter the Code of Civil Procedure, 1908, was amended by the Parliament by Act No. 2 of 1951. This amending Act extended the CPC 1908 to all Part B States including the State of Madhya Bharat. The amending Act came into force on 1st April, 1951, and thereafter the Code of Civil Procedure, 1908, became operative in Madhya Bharat and the Madhya Bharat "Indian CPC Adaptation Act, 1949" (Act No. 70 of 1949), stood repealed. The material provision is S. 137 of the CPC 1908 which is as follows :--

(1) The language which, on the commencement of this Code, is the language of any Court subordinate to a High Court, shall continue to be the language of such subordinate Court until the State Government otherwise directs.

(2) The State Government may declare what shall be the language of any such Court and in what character applications to and proceedings in such Courts shall be written.

(3) Where this Code requires or allows anything other than the recording of evidence to be done in writing in any such Court, such writing may be in English; but if any party or his pleader is unacquainted with English, a translation into the language of the Court shall, at his request, be supplied to him; and the Court shall make such order as it thinks fit in respect of the payment of the costs of such translation.

3. The contention of Mr. Dubey, learned counsel appearing for Dayabhai was that by virtue of the notification issued by the Madhya Bharat Government on 27th November, 1948, Hindi written in Devnagari script was the official language of all subordinate Courts in Madhya Bharat for all purposes immediately before the commencement of the Constitution and not English; that, therefore, the proviso to Art. 343 of the Constitution had no applicability; that after the enactment of

the Madhya Bharat Official Language Act, 1950 (Act 67 of 1950), Hindi was adopted as the language to be used for all official purposes in the State of Madhya Bharat excepting those specified in the notification issued on 26th January, 1952, under S. 2 of the Official Language Act; that under sub-sections (1) and (2) of S. 137 of the Code of Civil Procedure, Hindi language adopted and declared to be the language for all official purposes and by Act No. 67 of 1950 became the language of subordinate Courts in Madhya Bharat and that therefore, the plaint had to be in Hindi in order to be a valid plaint. As to sub-section (3) of S. 137 Civil Procedure Code, while admitting that it permitted the use of English for certain purposes subject to the condition of a translation being supplied to a party unacquainted with English, learned counsel submitted that this sub-section applied to those cases where after the institution of a suit something other than the recording of evidence was required or allowed by the Code to be done in writing by the Court or by a party or parties in the Court itself during and in the proceedings and that the drawing up of a plaint or its presentation was not a thing required or allowed to be done in writing in the Court. It was further said that sub-section (3) of S. 137 must not be construed so as to bring about an inconsistency between the sub-section and the provisions of S. 2 of the Official Language Act and defeat the provisions of the Official Language Act and that if there was any inconsistency, the provisions of the Official Language Act must prevail over sub-section (3) of S. 137 inasmuch as the Official Language Act was a Law made by the Legislature under Art. 345 of the Constitution. In answer to this argument, Mr. Chitale, learned counsel for the plaintiff Natwarlal, contended that before the commencement of the Constitution, Hindi was no doubt made the language of subordinate Courts under the notification issued on 27th November 1948, but that was subject to the option given by S. 137 (3) of the Code of Civil Procedure, 1908, as adapted in Madhya Bharat by Act No. 70 of 1949 with regard to the use of English for purposes specified in the sub-section; that the notification of 1948 could not be and did not affect the option given by S. 137 (3); and that, therefore, English was the optional language, which was being used immediately before the commencement of the Constitution for the purposes mentioned in sub-section (3) of S. 137 of the adapted Civil Procedure Code, and could therefore under the proviso to Art. 345 of the Constitution be used for those purposes even after the coming into force of the Constitution. Learned counsel for the plaintiff proceeded to urge that the Madhya Bharat Official Language Act simply adopted Hindi as the language to be used for all official purposes in the State of Madhya Bharat. It was not a law excluding the use of English altogether or for those official purposes in the State for which English was being used immediately before the commencement of the Constitution, and that, therefore, after the enactment of the Official Language Act, though Hindi become the official language of the subordinate Courts, the use of English was permissible to the extent allowed by sub-section (3) of S. 137 of the adapted CPC and that this position continued even after the extension of the Code of Civil Procedure, 1908, to Madhya Bharat on 1st April, 1951. It was further said that sub-section (3) of S. 137 of the Code of Civil Procedure, 1908, was not controlled

by sub section (2) or by S. 2 of the Official Language Act; that sub-section (3) of S. 137 did not restrict the use of English only for proceedings after the institution of the suit or to things done by or in the Court itself; that the institution of a suit by a plaint which had to be done in writing was an act required to be done in writing in the Court and that, therefore, the plaint filed by the plaintiff in English was a valid plaint. Mr. Chitale maintained that there was no inconsistency between S. 2 of the Official Language Act which simply adopted Hindi as the official language and did not exclude the use of English for purpose for which it was being used immediately before the commencement of the Constitution, and the provision of S. 137 (3) of CPC which continued the option as regards the use of English given by S. 137 (3) of the adapted CPC which was in force before the commencement of the Constitution and until 1st April 1951.

4. It appears to me that there is no ambiguity or difficulty in construing the provisions on which learned counsels appearing for the parties have founded their contentions. Before the commencement of the Constitution, the language of the subordinate Courts was no doubt Hindi written in Devnagari script according to the notification issued on 27th November, 1948, and sub-sections (1) and (2) of S. 137 of the adapted Civil Procedure Code, but the recognition of Hindi as the language of subordinate Courts did not in any way effect the permissible use of English for purposes specified in subsection (3) of S. 137 of the adapted Code. The position thus was that before the commencement of the Constitution, English language was being used in subordinate Courts to the extent permitted by S. 137 (3) of the adapted Civil Procedure Code. Now, Article 345 of the Constitution merely empowers the Legislature of a State to adopt by law any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State. It does not say that when Hindi or any other language has been adopted in use in the State as the official language, then the use of English shall be barred altogether so as to render invalid any official proceedings done in that language. On the other hand, the effect of the proviso to Art. 345 of the Constitution is that even after the adoption by the State of any of the regional languages or Hindi as the official language, the English language can continue to be used for those official purpose within the State for which it was being used immediately before the commencement of the Constitution, until the Legislature of the State otherwise provides by law. The Madhya Bharat Official Language Act is clearly not a law contemplated by the proviso. It simply adopts Hindi as the language to be used for all official purposes in the State of Madhya Bharat, It does not purport to be, and is not, a law prohibiting the continuance of the English language for those official purposes within the State for which it was being used immediately before the commencement of the Constitution. The notification issued on 26th January, 1952, under S. 2 of the Official Language Act does no more than to say that for the purposes of judgments of the Court of District and Sessions Judges in certain cases, Hindi shall not be the official language. From this it does not at all follow that the use of English for purposes mentioned in S. 137 (3) of the adapted CPC

was altogether prohibited by the Official Language Act and the notification issued thereunder. It would, therefore, appear that even after the enactment of the Madhya Bharat Official Language Act and the issue of the notification dated 26th January, 1952 thereunder, the use of English by the subordinate Courts for purposes mentioned in S. 137(3) was not prohibited. This position was in no way affected by the extension of the Code of Civil Procedure, 1908, to Madhya Bharat on 1st April, 1951, by Act No. 2 of 1951. S. 137 of the Code of Civil Procedure, 1908, is no different from S. 137 of the adapted CPC which was in force in Madhya Bharat before 1st April, 1951. Hindi which was the official language of the subordinate Courts before 1st April, 1951, continued to be so thereafter under sub-sections (1) and (2) of S. 137 and under sub-section (3) English could also be used by the subordinate Courts in so far as sub-section (3) of S. 137 permitted.

5. Mr. Dubey, learned counsel for the defendant Dayabhai, did not dispute that sub-section (3) of S. 137 allowed the subordinate Courts to use English for certain purposes. He, however, submitted that sub-section (3) had no applicability to a plaint. Learned counsel was first inclined to say that sub-section (3) related only to those cases where something other than the recording of evidence had to be done in writing by the Court itself. He then suggested that it covered only those cases where under the Code something had to be written or allowed to be written during the course of the proceedings in the Court itself either by the Court or by any party. I do not agree with either of these contentions. The use of word "in" in the expression "in any such Court" and not "by" is unintelligible unless what is required or allowed to be done is either by the Court or by any party. The expression "in any such Court" only emphasizes that what is required or allowed to be done must be in "any Court subordinate to the High Court" and not in any other Court. The words "such Court" are significant and they obviously refer to the Court specified in the earlier sub-section of S. 137. I do not find anything in sub-section (3) to persuade me to read the words "to be done in writing in any such Court" as indicating that the writing itself must be in the Court and not outside it. In my opinion, what has to be done in the Court either by the Court or by any party is some act which makes the written thing an Act of the Court or of a party under the Code and not writing itself by the Court or by the party as a preliminary to the doing of the act required or allowed to be done by the Court. It is easy to see if the writing itself has to be done in the Court and not outside, then judgments or orders of the Court which are required to be in writing can be in English if written out and pronounced in the Court but they must be in Hindi if they are written out by the presiding Judge at his home and pronounced in the Court. I do not think such a result was ever intended by the Legislature. If, as I think, for the applicability of sub-section (3) it is not essential that something other than the recording of evidence has to be done in writing by the Court itself or that the writing itself must be done in the Court, then it follows that a plaint which has to be in writing and which has to be presented not only in the Court but to the Court can be in

English under that sub-section, I am, therefore, inclined to take the view that the plaint in English filed by the plaintiff Natwarlal was in order and a valid plaint.

6. The argument of Mr. Dubey that the whole object of the Official Language Act would be defeated if subordinate Courts are allowed to use English even to the extent permitted by Section 137 (3) can be disposed of by saying that the Official Language Act is not a measure enacted solely for declaring the official language of the subordinate Courts. It declares Hindi as the official language for all purposes in all the departments of the State of Madhya Bharat. That being so, to say that the option at use of English subordinate Courts for limited purposes under sub-section (3) of S. 137 CPC will altogether nullify the object of the Official Language Act is really to belittle the importance and influence of the use of Hindi in other departments of the Government in promoting the spread of the Hindi language. It must be noted that there is no inconsistency between the Official Language Act and sub-section (3) of S. 137. The Official Language Act simply declares Hindi as the official language for all purposes in the State of Madhya Bharat; it does not prohibit the use of English altogether or for purposes for which English was being used immediately before the commencement of the Constitution. S. 137 of the Code while recognising Hindi as the language of the Court permits the optional use of English for purposes mentioned in sub-section (3). Even if it is taken that there is some inconsistency, the provisions of sub-section (3) of S. 137 will prevail under Article 254 (1) inasmuch as "civil procedure, including all matters included in the CPC at the commencement of the Constitution" is one of the matters enumerated in the concurrent list: (see item No. 13 of List III of 7th Schedule of the Constitution). All matters included in the CPC at the commencement of the Constitution would clearly cover the matter dealt with by sub-section (3) of S. 137.

7. For the foregoing reasons I am of the opinion that the learned Additional District Judge was wrong in holding that the plaint in English filed by the plaintiff Natwarlal was not valid. The plaint was a valid plaint and the order dated 11th September, 1956, of the learned Additional District Judge must be and is set aside. In the circumstances of the case, I would leave the parties to bear their own costs of these revision-petitions.