
LEBBE
vs.
UMMA AND OTHERS

COURT OF APPEAL.
SOMAWANSA, J. (P/CA).
WIMALACHANDRA, J.
CALA 39/2005.
DC AKKARAIPATTU 73/L.
DECEMBER 02, 2005.

Interim injunction - Refusal - Pleadings in Tamil - Not filling English translation of relevant documents in the Court of Appeal - Negligence of the Attorney-at-Law ? - Is it fatal ?

The plaintiff-petitioner sought leave to appeal from an order of the District Court of Akkaraipattu refusing the interim injunction sought. The plaintiff-petitioner annexed several documents to the petition, however most of the documents were in the Tamil language and English translations have not been provided. In the English translation of the plaint there is no schedule describing the subject matter.

HELD:

- (1) The plaintiff-petitioner's substantive relief was declaration of title. In the absence of the description of the land to which the plaintiff seeks a declaration of title, Court is unable to understand the order canvassed by the plaintiff-petitioner.

Per Wimalachandra, J.

"The omission to tender to Court, the necessary documents translated into the English language is in my opinion fatal, as the Court cannot understand the contents of the documents relied upon by the District Judge to make his order. If certified copies translated into the language of the Court could not have been obtained in time it is the bounden duty of the petitioner to mention that fact in his petition and obtain leave of Court to tender them subsequently

- (2) It is not the function of the Court to translate documents

- (3) It is due to the negligence of the Attorney-at-Law that the translations of documents he relied on for his case were not produced. It is a settled principle of law that the negligence of the Attorney-at-Law is the negligence of the client, and the client must suffer for it.

APPLICATION for leave to appeal from an order of the District Court of Akkaraipattu.

Cases referred to :

Francisco Vs Swadeshi Industrial Works - 52 NLR 179 at 180

H. G. Hussan for petitioners.

A. Mohamed Farook for 1st defendant-respondent.

M. Ismail Adamlebbe for 2nd and 4th defendant-respondents.

Cur. adv. vult.

April 24th, 2006.

WIMALACHANDRA, J.

This is an application for leave to appeal filed by the plaintiff-petitioner (plaintiff) from the order of the learned District Judge of Akkaraipattu dated 31.01.2005. By the order the District Judge refused to grant the interim injunction prayed for by the plaintiff

The plaintiff instituted the action bearing No. 83/L for a declaration that the plaintiff is the owner of the land described in the Schedule to the plaint by virtue of deed No. 133 dated 23.09.2003 attested by A. H. Sameen N. P. The plaintiff also sought an interim injunction and a permanent injunction restraining the defendants and their agents, servants and all those acting under them from entering the land described in the schedule to the plaint.

The plaint and application for an enjoining order at the first instance were supported before the District Judge. The learned Judge having entertained the plaintiff's action, entered and issued an enjoining order as prayed for in the prayer to the plaint restraining the defendants and their agents from entering the land described in the schedule to the plaint. The Court also issued notice of the application for the interim injunction and summons on the defendant. The defendants appeared in Court on the summons returnable date and was granted time to file their answer and objections. On the due date the defendants filed answer, and also a petition and affidavit objecting to the application for the interim injunction and moving to have the enjoining order vacated.

The matter of the application for an interim injunction came up for inquiry on 17.01.2005. After hearing the parties, the learned Judge fixed the matter for order on 31.01.2005. On that day the Court pronounced the order refusing the plaintiff's application for an interim injunction. It is against this order the plaintiff has made this application for leave to appeal.

The plaint is in the Tamil language and the plaintiff has tendered an English translation of the plaint. However, in the English translation of the plaint there is no schedule describing the land which is the subject matter of this action. The plaintiff's main relief is for a declaration of title to the property described in the schedule to the plaint and the interim injunction is to restrain the defendants and their agents from entering the said land. In the absence of the description of the land to which the plaintiff seeks a declaration of title, this Court is unable to understand the order canvassed by the plaintiff. Furthermore the plaintiff claims title to the said land by virtue of deed No. 133 dated 23.09.2003. In these circumstances this Court is unable to ascertain whether the land described in the aforesaid deed is the same as the land supposed to have been described in the schedule to the plaint. Besides the English translation is an uncertified and unsigned photocopy. This Court cannot place much reliance on such a document.

The plaintiff has annexed several documents to the petition filed in this Court. However, most of those documents are in the Tamil language and English translations have not been provided. The documents produced marked as annexures Nos 6, 7, 9, 10, 11 are in the Tamil language and no English translations have been produced. The plaintiff is claiming title to the property in dispute by the aforesaid deed No. 133 dated 23.09.2003 attested by Notary Public A. H. Sameen. The plaintiff has not provided an English translation of this document, and this document is vital to the plaintiff's case as his case is based on this deed by which he claims the title to the property in dispute. It is my considered opinion that the order canvassed by the petition cannot be reviewed in the absence of the English translations of the aforesaid documents. The plaintiff has not even taken any effort or interest to incorporate the schedule of the land as claimed by him into his petition or affidavit.

The omission to tender to the Court the necessary documents translated into the English language is in my opinion fatal, as the Court is unable to understand the contents of the documents relied on by the learned Judge to make his order. If certified copies translated into the language of the Court could not have been obtained in time it is the bounden duty of the petitioner to mention that fact in his petition and obtain the leave of Court to tender them subsequently. The petitioner (plaintiff) has failed to abide by this provision.

It is not the function of the Court to translate documents. If the Court attempts to translate documents discrepancies could occur. In the case of *Francisco Vs. Swedeshi Industrial Works* 180 Basnayake, C. J. made the following observations in this regard :—

“It is wrong for the Judge how ever well versed he may be in the language in which the documents is written to undertake its translaton and adopt a version which neither party has placed before him (1 NLR 248). The danger of such a course has been pointed out more than once by the Privy Council”

It appears to me that it was due to the negligence of the Attorney-at-Law that the translations of the documents he relied on for his case were not provided. It is a settled principle of law that the negligence of the Attorney-at-Law is the negligence of the client and the client must suffer for it. Relief will not be granted for default in diligently prosecuting the leave to appeal application where the Attorney-at-Law is in default for not providing the translations of the vital documents he relied on for his case. This is more important when the learned Judge has made use of those documents in making the order which is now canvassed before this Court.

In these circumstances I do not consider it necessary for the purpose of this case to decide the merits of this application. For the foregoing reasons the plaintiff's application for leave to appeal is dismissed but in all the circumstances, without costs

ANDREW SOMAWANSA, J.(PICA) — I agree.

Application dismissed.