

1942

Present : Soertsz and de Kretser JJ.

RATNASEKERA, Appellant, and MILLER & Co., LTD., Respondents.

188—D. C. Trincomalee, 2,416.

Summons—Service on defendant—Language of defendant—Civil Procedure Code, s. 55.

The words "language of the defendant" in section 55 of the Civil Procedure Code mean the language the defendant understands. They do not necessarily mean the language of the race to which the defendant belongs.

A PPEAL from a judgment of the District Judge of Trincomalee.

Dodwell Gunawardana, for the defendant, appellant.

E. B. Wikremanayake (with him *F. C. W. VanGeyzel*), for the plaintiff, respondents.

Cur. adv. vult.

December 14, 1942. SOERTSZ J.—

This appeal is devoid of merit. It is I think an attempt on the part of the defendant-appellant to delay his creditors in this case as long as possible. He was sued by plaintiffs for the value of goods sold and delivered to him.

The action was instituted on February 7, 1941. There was great difficulty in serving summons on the defendant. It was over a year later that summons was eventually served. On the day fixed for him to file answer, he was absent and the case was fixed for *ex parte* trial for March 9, 1942. There was another adjournment this time at the instance of the plaintiff and the *ex parte* trial took place on March 12, 1942 and *decree nisi* was entered returnable for April 13, 1942. There were further delays and the *decree nisi* was not served on the defendant till June 15, 1942. On that day a Proctor filed proxy from the defendant and was given time to show cause. The inquiry took place on July 2, 1942.

The defendant asked that the *decree nisi* be set aside on the ground that the service of summons and of the copy plaint on him was not in conformity with section 55 of the Civil Procedure Code inasmuch as the summons and the copy plaint served on him were in the English language. He is a Sinhalese and he contends that he should have been served with a summons and a copy plaint in the Sinhalese language.

Mr. Gunawardana appearing for him submits that the requirement of section 55 in that respect is imperative and that the failure to comply with it has resulted in rendering all subsequent proceedings void. The revelant words of section 55 are—

“The summons together with such copy or concise statement, each translated into the language of the defendant attached thereto shall be delivered . . . to the Fiscal of the District in which the defendant resides who shall cause the same to be duly served on the defendant.”

Counsel's contention went so far as to maintain that in the case of a Sinhalese defendant even if he speaks and reads and writes English and only speaks but does not read or write Sinhalese, the summons and the copy plaint served on him must be in the Sinhalese language. Similarly in Tamil, in the case of a Tamil or a Muslim.

I do not think the Legislature could have contemplated such a fatuous proceeding and the words of the section do not drive us to that conclusion. “The language of the defendant” does not necessarily mean the language of the Ethnic group to which he belongs, but on a reasonable interpretation it means the “language the defendant understand”.

There are, as are known, cases of men who do not understand or who cannot read or write the language of their race, but are proficient in some other language and in the case of such persons their language for the purpose of this section must be said to be that other language.

In this case the evidence makes it clear that the defendant who is a Sinhalese understands English and that he carries on his correspondence in English through a clerk. Most probably he speaks and reads and writes Sinhalese too. In other words he is bilingual and summons and copy plaint in either language would in my opinion be a sufficient compliance

with the requirement of section 55 of the Civil Procedure Code. But in the case of a Sinhalese, who understands only Sinhalese, the summons and the copy plaint must be in that language, whether he can read it or write it or not, for it is imperative that summons and a copy plaint must be served.

The case to which Counsel made reference in the course of argument, are, by no means inconsistent with this interpretation.

I would dismiss the appeal with costs.

DE KRETZER J.—I agree.

Appeal dismissed.
