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Court : Allahabad

Decided On : Mar-09-1959

Reported in : AIR1959All459

Judge : O.H. Mootham, C.J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 137(2)

Appeal No. : Writ Petn. No. 221 of 1958

Appellant : Mohd. AzimuddIn Ashraf and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : Standing Counsel for Opposite Party No. 2

Advocate for Pet/Ap. : Niamatullah and ;Mohd. Husain, Advs.

Disposition : Petition allowed

Judgement :

ORDER

O.H. Mootham, C.J.

1. This is a petition under Article 226 of the Constitution.

2. The petitioners were defendants in a suit which had been instituted against them in the court of the Munsif, Barabanki. In that suit they sought to file a Written Statement in Urdu in the Persian script, but by an order dated 23-8-1958, the learned Munsif held that as the language of the court was Hindi written in Devnagri script the Written Statement could not be accepted and he accordingly rejected it. It is against that order that the present petition has been filed.

3. The contention of the petitioners is that by virtue of the proviso to a Notification dated 8-10-1947, issued by the State Government under Section 137 of the Code of Civil Procedure they were entitled to file a Written Statement in Urdu written in the Persian script, and they pray that the order of the learned Munsif be quashed and that he be directed to accept their written statement.

4. Now Section 137 of the Code of Civil Procedure, so far as it is material, provides that:

'137. (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.'

The notification of 8-10-1947, to which I have referred and which was made under Sub-section (2) of this section, declared that Hindi shall be the language of the Civil Courts subordinate to the High Court of Judicature at Allahabad and of the Chief Court of Avadh and that applications and proceedings in such Courts shall be written in the Devnagri character. To that declaration there was however a proviso which reads thus:

'Provided that the continued use of any other language or script in use under the existing law and rules shall be permissible in accordance with the executive instructions issued by the Provincial Government from time to time.'

It is common ground that Urdu, written in the Persian script, was in use in the year 1947 in the United Provinces, and in particular in Avadh. The learned Munsif was, however, of the view that the proviso meant that the use of any language or script other than Hindi in the Devnagri script was not permissible save in accordance with such executive instructions as the Provincial Government might thereafter make; and as it had made none the language of the Court was exclusively Hindi. Both learned counsel are agreed that this is not the true meaning of the proviso, and I agree with them.

The words which are significant in the proviso are the words 'continued use', and their employment is in my opinion inconsistent with the construction which the learned Munsif has placed on this proviso. In my judgment the meaning and effect of the proviso is that, subject to such executive instructions as may from time to time be issued by the Provincial Government, any language or script, other than Hindi in the Devnagri script, which is already in use may continue to be used.

5. I accordingly allow this petition and quash the order of the learned Munsif dated 23-8-1958. The learned Munsif will now accept the Written Statement which has been tendered by the petitioners. I make no order as to costs.

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