

MANU/BH/0123/1963

Equivalent Citation: AIR1963Pat446, 1963CriLJ660

**IN THE HIGH COURT OF PATNA  
SPECIAL BENCH**

Civil Ref. No. 4 of 1959

Decided On: 06.08.1963

Appellants:**Bharath Sahu**  
**Vs.**

Respondent:**Chandrika Prasad Verma**

**Hon'ble Judges/Coram:**

*S.C. Mishra, Tarkeshwar Nath and R.J. Bahadur, JJ.*

**Counsel:**

*For Appellant/Petitioner/Plaintiff: G.P. Sahai and Lala Kailash Bihari Prasad, Adv.*

*For Respondents/Defendant: Ashwini Kumar Sinha, Adv.*

**JUDGMENT**

**S.C. Mishra, J.**

**1.** This is a reference under Section 14 of the Legal Practitioners Act, 1879 by the learned District Judge of Darbhanga, forwarding the finding of the learned Additional Subordinate Judge of that place in respect of charges of professional impropriety levelled against Mr. Chandrika Prasad Verma, Pleader, Laheiasari.

The petitioner in the proceeding who filed a complaint against the pleader is one Bharath Sahu, one of the defendants first party in Partition Suit No. 207 of 1952 of the Court of the Subordinate Judge of Darbhanga. Mr. Chandrika Prasad Verma was engaged as a pleader by Bharath Sahu to appear for him along with another pleader. The suit was instituted on the 5th of November, 1952, and vakalatnama in favour of the pleader was executed on the 3rd December, 1952 and continued till the 6th of March, 1956, when it was cancelled by the learned Subordinate Judge. It is unnecessary to set out the several dates during the pendency of the suit in this period from the date of the engagement of the pleader by Bharath Sahu up to the date of the cancellation of the vakalatnama in his favour, excepting that on the 18th May, 1954 order on the dispute, between the parties referring it to arbitration, was rescinded. The award was however, given by the arbitrators, and three schedules of properties mentioned as 'ka', 'kha' and 'ga' were prepared. The schedules, however, were not filed in the Court. The suit was, thereafter, transferred to the Court of the Second Additional Subordinate Judge on the 9th August, 1954. On the 29th November, 1954, an application was filed by the plaintiffs to the Court to direct the Receiver to recommend and, certify for an agricultural loan which the plaintiffs sought to obtain from the Government for which an application was filed in the Darbhanga Collectorate. This was on the basis of the shares allotted to the parties under the award of the arbitrators mentioned in Schedules 'ka', 'kha' and 'ga'. On the 23rd April, 1955, a petition was filed by Bharath Sahu and others, defendants first party the complainant in the present proceeding, when another arbitrator was appointed being Shri Bhushan Prasad, Chairman, District Board, Saharsa. He filed his award in

due course.

**2.** An objection was taken to the above award by the plaintiffs by their application dated the 17th November, 1955. It is said that soon after there followed certain transactions of sale relating to portions of the suit properties. Mr. Chandrika Prasad Verma purchased 2 bighas 15 kathas and odd from the plaintiffs under six sale deeds dated the 15th December, 1955, 29th December, 1955, 6th January, 1956, 10th January, 1956, 18th January 1956 and 3rd March, 1956. It may also be stated here incidentally that the defendants first and second parties also entered into transactions transferring some of their properties on the basis of the award of the punches on foot of the reference prior to the 18th May, 1954, resulting in the preparation of schedules 'ka', 'kha' and 'ga'. On the 1st of March, 1958, a petition was filed by Mr. Chandrika Prasad Verma for cancellation of the power executed in his favour by Bharath Sah in the Court of the learned Additional Subordinate Judge and also for permission to appear for the plaintiffs. On the 6th March 1956, as I have said above, the learned Additional Subordinate Judge cancelled the vakalatnama in favour of Mr. Verma executed by Bharath Sah and others of the defendants first party and granted him permission to appear for the plaintiffs.

**3.** On the 9th April, 1956, it appears that a joint petition was filed by the defendants and the plaintiffs in the Court seeking permission to enter into possession of their respective shares in accordance with the compromise already filed in the suit. On the 5th of May, 1956, another petition of compromise was filed, signed by all the parties, and this was recorded on the 9th of May, 1956. On that very day, Mr. Chandrika Prasad Verma filed a petition in the Court to be made a party, and Bharath Sah, defendant No. 1, filed a fresh power in the name of another pleader, Mr. Damodar Prasad.

On the 29th May, 1956, Bharath Sah, defendant No. 1, made an application in the Court of the learned Additional Subordinate Judge under Sections 13 and 14 of the Legal Practitioners' Act for action against Mr. Chandrika Prasad Verma charging him with professional misconduct. The pleader showed cause on the 5th January, 1957 denying the allegations levelled against him. On the 9th of June, 1959, the learned Additional Subordinate Judge after recording the evidence and hearing the parties found two of the charges levelled against Mr. Chandrika Prasad Verma by Bharath Sahu as groundless, but one of the charges as having been substantiated and recommended to the District Judge, Darbhanga, for making a reference to this Court. The learned District Judge agreed with the Additional Subordinate Judge and referred the matter to this Court by his letter dated the 9th July, 1959.

**4 .** The following charges were formulated against the pleader by the learned Additional Subordinate Judge. The first charge was with regard to the purchases made by the pleader of the properties referred to above under six sale deeds between the 15th of December, 1955 and the 3rd March, 1956, while he was engaged as a lawyer by Bharath Sahu to represent him in the partition suit, from the plaintiffs. He was fully aware of the fact that by the tentative award prepared by the arbitrator the lands fell in the share of the defendants first party. The second charge was that on the 6th March, 1956, he obtained an order for cancellation of the vakalatnama executed in his favour by the defendants first party and permission to appear for the plaintiffs. By thus changing sides, he utilised the instructions given to him by the defendants first party which were of confidential nature for cross-examining the arbitrator Shri Bhushan Prasad and also filed a bogus compromise petition embodying the terms in his own favour. Lastly, it was also said that he instigated

plaintiff Mahabir Prasad Sahu to file an objection petition to the compromise filed by him on behalf of the parties and always endeavoured to obstruct the compromise being effected between them.

The learned Additional Subordinate Judge recorded his conclusion in favour of the pleader, Mr. Chandrika Prasad Verma, in so far as the second and third charges were concerned, that is to say, he found that there was no evidence on record to show that Mr. Verma had instigated plaintiff Mahabir Prasad Sahu to file the objection petition to the compromise filed by him on behalf of the parties, as also with regard to his utilising the confidential instruction given by his client Bharath Sahu in favour of the plaintiff in cross-examining the arbitrator. The learned Additional Subordinate Judge, however, found against the pleader on the first ground relating to the sale deeds executed in his favour by the plaintiff in respect of a part of the land which was the subject-matter of the suit. According to the learned Additional Subordinate Judge, it was unprofessional on the part of the lawyer engaged by a party to enter into a transaction in the nature of a sale deed with the adversary of his client, that is, the plaintiffs in this case. The lawyer in this matter conducted himself in a manner not befitting the high moral standard of the profession to which he belonged. Since he departed from the high standard expected of a member of the legal profession, his conduct was blameworthy and hence the matter was to be referred to this Court for disciplinary action against him. The learned District Judge of Darbhanga, on a scrutiny of the findings recorded by the learned Additional Subordinate Judge, agreed with him in respect of the three charges, that is to say, that only one of the charges was proved relating to the purchase of the properties concerned from the plaintiffs, while the pleader was engaged to appear on behalf of the defendants first party and that the remaining two charges were not substantiated.

**5.** Mr. Ashwini Kumar Sinha, appearing for Mr. Chandrika Prasad Verma, has urged in the first place that the facts and circumstances of the present case do not support the finding of the learned Additional Subordinate Judge that in the present case there was any laches on the part of Mr. Verma in maintaining the standard to be expected of a member of the legal profession in the discharge of his professional duties. The learned Additional Subordinate Judge as also the learned District Judge have not carefully scrutinised the circumstances in which the six sale deeds in question were executed by the plaintiff in favour of his client. It is true, no doubt, that the sale deeds obtained by a lawyer from his clients in relation, to the suit property give rise to a suspicion of unfair play, and it has rightly been discouraged by the Courts, of which there are several instances in reported decisions of the various High Courts. He accepts the proposition that such transactions must be avoided. A client reposes confidence in his lawyer in approaching him, and the lawyer must not take advantage of his position of trust reposed in him by his client and start a dealing with respect to the property, the subject-matter of the suit itself. He also concedes that such a transaction entered into by a lawyer engaged by any of the parties to a suit with the adversary of his client relating to the suit property may give rise to stronger suspicion in the mind of the person or persons engaging a lawyer that he cannot expect from him disinterested advice or assistance, in conducting the case on his behalf. In the instant case, if Mr. Verma purchased the property comprised in the suit from the plaintiffs Bharath Sahu may have a pardonable feeling in his mind that his lawyer could not be relied upon to conduct the case on his behalf in an impartial manner. His interest in or softness for his vendor may tamper with his sense of duty. It may bring-about a clash between the two, and, as such, although there is no clear decision on which he can. lay his finger covering the present case exactly with regard to the purchase of the suit property by the lawyer for one of the parties not from his

client but from his adversary, but the principle governing the position will be the same as in the case of a purchase of any interest in the suit property by a lawyer from his own client. When a lawyer purchases any interest from his client -- at least from the person engaging him, nothing may have to be said against such a deal unless there is an allegation of lack of fair play. The position, however, is worse when a lawyer appearing for one party obtains any interest by transfer in regard to the subject-matter of the suit from one who is litigating with his own client.

But, in the present case, the facts are somewhat peculiar. Accordingly, he has drawn our attention to the relevant dates, namely, the dates on which the sale deeds were executed and the arbitration proceeding between the parties resulting in the preparation of schedules 'ka', 'kha' and 'ga' according to the shares of the plaintiffs, defendants first party and defendants second party ripened into an award of the arbitrators. It is clear that this award was given sometime prior to the 18th of May, 1954 when the reference to the arbitrators resulting in the aforesaid award was rescinded, but it is the admitted position that for all practical purposes this award was being acted upon between the parties, although it was not accepted by the Court. For this purpose, he has drawn our attention to the evidence of Bharath Sahu, which is as follows :

"It is not a fact that during the last compromise in the partition suit, the lands sold by me were given in share of Mababir and the lands sold by Mahabir were given in my share in order to defeat the interest of the purchasers. We had sold some lands under several kebalas in respect of our own shares, for which schedules had been prepared by the Panches, during the pendency of the partition suit No. 207 of 1952."

Obviously, the reference to the word "we" is to all the parties to the litigation, being the plaintiffs, defendants first party as also the defendants second party. It is clear, therefore, that when Mr. Verma purchased the properties in question from the plaintiffs, he did so in the bona fide belief that there was no likelihood of any objection thereafter to the award recorded by the punches resulting in the preparation of the three schedules. If that was so, although he continued to represent the defendants first party in the suit, the pleader was under the belief that nothing further was to be done in the matter and that no occasion would arise even in future to do anything in his professional capacity in favour of Bharath Sahu and against the plaintiffs and the defendants second party. In view of the statement made by Bharath Sahu in course of his examination in the proceeding, quoted above, it is clear that the conduct of the pleader could not be said to be in any way mala fide or morally blameworthy. It is not a case where the suit was still pending. The pleader held power on behalf of a certain party and yet he entered into a transaction with his adversary. In the circumstances of the present case, it can be distinguished from a case where undue advantage has been taken of his position by a lawyer on account of his engagement by a party in a case and, in such circumstances, his conduct gives rise to a reasonable apprehension in the mind of a person who has reposed confidence in him and has engaged him in the case. It is true, no doubt, that in spite of acting upon the award, an objection was filed by the plaintiffs to the award so much so that on the 1st of March, 1956, a petition was filed by Mr. Verma to the Court for cancellation of his power granted to him by Bharath Sahu and for permission to appear for the plaintiffs; and, as I have pointed out above, such cancellation and consequent permission were also granted by the Court on the 6th of March, 1956. That, however, does not alter the nature of the transactions referred to above, nor does that affect the conduct of Mr. Verma at the time the sale deeds were

executed who can well be credited with a bona fide belief that the parties would have no occasion to carry on the litigation any further, because all of them acted upon the award of the arbitrators. In that view of the matter, the Conduct of Mr. Verma cannot be arraigned for condemnation, and the finding recorded by the learned Additional, Subordinate Judge cannot be sustained as it stands.

It may, however be observed that although the argument of Mr. Ashwini Kumar Sinha is consistent with the evidence of Bharath Sahu and is not refuted on fact by the learned Additional Government Pleader for the State, the case set up by Mr. Varma in paragraphs 20 to 24 of his show cause petition appears to me slightly different as therein he has mentioned that he purchased the properties in khas possession of the plaintiffs as other parties also were selling the properties in their khas possession as admitted by Bharath Sahu. It is, however, unnecessary to pursue the matter as my conclusion in either view would be the same.

**6.** Reference may be made in support of this view to a case in re Qurban Ali Khan v. G, a pleader, Gaya MANU/BH/0188/1937 : AIR 1938 Pat 28, wherein also a Special Bench of this Court which pointed out the necessity of the observance of the highest standard of propriety by a member of the legal profession in regard to a transaction entered into by him or any close relation of his in which he may be taken to have a personal interest and when such transaction ought to be eschewed in order to avoid giving rise to a suspicion. Still, no punishment was considered necessary in the circumstances of the case. That was a proceeding in which a pleader against whom it was started purchased a property from a person who claimed to be an heiress of one Alimunnissa, whereas Qurban Ali Khan, the client of the pleader in that case, pleaded that Alimunnissa left nothing for her heirs to take. The property was purchased in the name of the father of the pleader. Their Lordships still did not think it necessary to take any serious view of the matter inasmuch as they found that Qurban Ali Khan, the client of the pleader, was a consenting party for one reason or another to the transaction inasmuch as he was fully aware of it. In that view of the matter, the bona fides of the lawyer could not be questioned. All the same, their Lordships expressed the opinion that it was improper on the part of the pleader to allow such a transaction to take place as between his father and Alimunnissa's heir. It might give rise to a grievance against him at a subsequent stage which ultimately did happen when Qurban Ali, his own client, thought fit to proceed against him. Mohammad Noor, J., delivering the judgment of the Special Bench, observed on this point as follows:

"In the end I must point out that when a pleader finds that he or any member of his family living jointly with him is likely to be mixed up in an affair which is adverse to the claim of his client which he has been advocating on his behalf in a Court of justice, or when a pleader intends appearing against a man in a case which is directly against the case which he was advocating for him before, it is desirable that he should give a formal notice to his late client and bring the matter to the notice of the Court, if for no other reason at least to save himself from being charged by the client in future. The position of the members of the legal profession is very high but at the same time delicate. They must take scrupulous care that nothing is done by them which leaves room for any accusation being made against them."

In my opinion, the same course appears to be appropriate in the present case as well. In view of the conclusion arrived at in regard to the conduct of Mr. Verma, I think it is not necessary to take any step against him in particular except to bring to his notice the fact that, as a lawyer of experience, he having joined the profession in the

year 1926 he should have known that so long as the award of the arbitrator was not made a rule of the Court, there was possibility of some kind of objection from some side and it could not be altogether precluded. In that event, he would have had to plead the cause of Bharath Sahu, defendant No. 1, and there could have occurred an obvious clash between his interest as a vendee from the plaintiffs and his professional duties as a person engaged by Bharath Sahu to represent him in that litigation. The same difficulty would appear in his way even if the property transferred by the parties were in their khas possession and might have to be reshuffled under the decree of the Court.

**7.** In the result, therefore, the reference is discharged, but it is expected that Mr. Chandrika Prasad Verma, whose conduct has been under a shadow now for nearly five years, will not allow himself to lapse into any action which may mean reflection upon his integrity as a member of the legal profession.

**Tarkeshwar Nath, J.**

**8.** I agree.

**R.J. Bahadur, J.**

**9.** I agree.

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