MANU/BH/0226/1917

Equivalent Citation: 41Ind. Cas.328

IN THE HIGH COURT OF PATNA

References Nos. 2 to 15 of 1917

Decided On: 12.03.1917

Appellants:**In Re: Two Pleaders**

Hon'ble Judges/Coram:
Sir Edward Maynerd Des Champs Chamier, Kt., C.J., Saiyid Sharfuddin and Chapman, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Ali Imam, Hasan Imam, Kulvant Sahay, Purnendu Narayan Sinha, Rajendra Prasad, Baidyanath Narayan Sinha, Murari Prasad and Rai Tribhunnath Sahay

For Respondents/Defendant: Sultan Ahmad, Government Advocate

JUDGMENT

1. These cases came before us upon references made through the District Judge of Darbhanga under section 14 of the Legal Practitioners Act, 1879.

2. Two Pleaders practising at S. are involved. Numerous items of misconduct are charged against each. The proceedings were originally commenced in respect of the majority of the items by the Munsif of S. Upon the motion of one of the Pleaders the cases were transferred to the Subordinate Judge of Darbhanga and a report against the two Pleaders was eventually submitted by him to the District Judge. Thereafter proceedings were commenced in respect of a few supplementary items by the Munsif. A second enquiry was made and a report submitted by him to the District Judge. We are not concerned with the question whether the District Judge had jurisdiction to transfer the first set of proceedings as the learned Counsel who appeared for the Pleaders before us waived all questions of jurisdiction.

3. The Pleader against whom proceedings were first initiated is named Girwar Dhar. The charges against him fall under three heads. Under the first head fall two cases, a rent suit and a miscellaneous case in which he appeared without a vakalatnama. Under the second head fall a considerable number of oases in which the vakalatnama upon which he acted contained no written acceptance as required by the High Court rules. Under the third head fall five cases in which he is said to have acted for both parties.

4. In regard to the first head it is sufficient to say that in the miscellaneous case the Pleader rightly acted upon the vakalatnama which he had obtained in the principal suit, and in the rent suit the explanation that it was by an oversight that the Pleader omitted to obtain a vakalatnama in the suit which was one of several analogous suits may be accepted. He will no doubt be more careful in future.

5. In regard to the second head there have been a considerable number of instances in which the Pleader acted upon a vakalatnama which contained his name but upon

which there was no written acceptance as required by the High Court rules. Until the decision of the Calcutta High Court In the matter of Jogesh Chandra Gupta MANU/WB/0258/1913 : 33 Ind. Cas. 831 : 20 C.W.N. 283 : 17 Cr.L.J. 191 there was some difference of opinion as to whether a Pleader could appear upon a vakalatnama which he had not accepted in writing. That decision was published in the Calcutta Weekly Notes on the 24th of January 1916. The appearances charged all occurred prior to that date. We do not, therefore, think it necessary to do more than to express our displeasure at the systematic disregard of the rule of this Court which requires that the acceptance of a vakalatnama should be in writing. We concur with the judgment of Richardson, J., in the case to which we have referred and of Beachcroft, J., in the case of Mohesh Chandra Addy v. Panchu Mudali MANU/WB/0114/1915 : 32 Ind. Cas. 395 : 20 C.W.N. 287 : 23 C.L.J. 297 : 43 C. 884. We are of opinion that a Pleader who does not comply with the rule of this Court on the subject of the acceptance of vakalatnama should not be permitted by the Judge to be heard, or to act in any manner on behalf of the party.

6. Under the third head there are cases in which the Pleader has acted for both parties. The first case is Rent Suit No. 1690 of 1912. In this case the Pleader appeared for the defendant after the case came back on remand in June 1914. The clerk of the plaintiffs Pleader obtained his signature upon the list of the plaintiffs witnesses in attendance on the 9th June 1915. The Pleader when he discovered his mistake on the 21st September 1915 (the date of bearing) retired with the permission of the Court. The second case is Title Suit No. 517 of 1914. In this case he was Pleader for the plaintiff. He signed a written statement on behalf of the defendants Nos. 1 to 4 who were formal defendants. He did not, however, take any part in the preparation of the written statement and the defendant's case was in fact in the hands of a Mukhtar. The third case is Title Suit No. 55 of 1915. In this case be was the Pleader for the plaintiff, yet on the 16th July 1915 he signed the list of witnesses in attendance on behalf of the defendants Nos. 1 to 3 the defendants' Pleader being absent on that day on account of illness. He took no other part in the case on behalf of the defendants. The next case is Miscellaneous Case No. 50 of 1915. In this case he was one of the Pleaders for the decree-holder. On the 5th June 1915 in the absence of the Pleader for the judgment-debtor he signed a petition for time in the latter's behalf, no other work was done by him on behalf of the judgment-debtor. The last case is Title Suit No. 252 of 1915. He was the Pleader for the plaintiff and signed the plaint. Subsequently he withdrew from the plaintiffs side with the consent of the plaintiff and the plaintiff scored through his signature in the plaint. Thereafter he appeared for the defendant.

7. We accept the findings of the Court that on none of these occasions was there any improper motive but we are of opinion that there was very serious carelessness which merits our censure and which, if it continues, will bring the Pleader into serious trouble.

8. In this connection we desire to advert to sub-rule 2 of rule 4, Order III of the First Schedule of the Code of Civil Procedure which requires that after a Pleader has been once appointed by a party his employment cannot be determined except (1) by a writing signed by the client or the pleader and filed in Court with the leave of the Court, or (2) by the termination of the proceedings in the suit. He appears to have thought it sufficient on one occasion to obtain the verbal permission of the Court and upon another to act upon the consent of the party without any reference to the Court whatever. We desire that the rule should be strictly observed in future.

9. So far as Girwar Dhur is concerned we are of opinion that the Court was quite right in bringing the laxity, which prevails in these matters to our notice. But, while it has been abundantly shown that the Pleader has been very reprehensively careless and has systematically disregarded the rules of this Court and of the Code of Civil Procedure, we do not think it necessary to do more than to express our displeasure and to convey a warning that on the next occasion it will not be possible to take such a lenient view as we propose to do in the present case. We are of opinion that what we have said will operate as a sufficient deterrent and that no order of suspension or other specific penalty is required.

10. We come now to the case of the second Pleader. The first group of charges against him consists of cases in which he appeared for both parties. The first is Miscellaneous Case No. 9 of 1902 in which he was Pleader for the defendant and yet he initialed a petition for time on behalf of the plaintiff. The next is an Execution Case No. 354 of 1914 in which, after appearing for the mortgagee on the date of the mortgage decree, he appeared for the judgment-debtor in a proceeding for the setting aside the sale two years after the decree. We accept the finding that this was done with the consent of the decree-holder, but we observe that the leave of the Court to retire from the employment of the decree-holder was not obtained under sub rule 2 of rule 4 above referred to.

11. The next charge relates to four analogous rent suits in which the Pleader accepted a vakalatnama on behalf of the plaintiffs and some months later accepted a vakalatnama on behalf of the defendants. He did not, however, do any act for the defendants except the signing of a list of witnesses in attendance and the signing of a petition for time. He received no instructions to conduct the case for the plaintiffs. It appears to be true that these mistakes were made at a time when thousands of rent suits were being filed, and it was a case of carelessness and not impropriety of motive.

12. The next case is Rent Suit No. 1345 of 1914 in which the Pleader had been engaged by the defendants and on one day initialed a list of witnesses in attendance filed by the plaintiff. As soon as he discovered his mistake he retired and presented a petition in Court for leave to do so. There is also a mortgage suit in which the Pleader made an application for the deposit of the mortgage money on behalf of the mortgagor and about a year after was engaged by the mortgagee to defend a suit brought by the mortgagor for recovery of possession of the mortgaged properties but on discovering his mistake he retired from the case. There is also a Small Cause Court Suit No. 526 of 1914 in which the Pleader accepted a vakalatnama from the plaintiff and thereafter acted for the defendant with the consent of the plaintiff and after scoring through his signature to the plaintiff's vakalatnama.

13. The next case is Title Suit No. 190 of 1915 in which the defendant anticipating the institution of a suit, had before the institution of the suit obtained the Pleader's acceptance on the back of a vakalatnama, Twenty days later the Pleader accepted a vakalatnama from the plaintiff and signed the plaint. Thereafter with the consent of the defendant he erased his signature of acceptance on the defendant's vakalatnama.

14. The next case is Small Cause Court Suit No. 52 of 1915 in which the Pleader appeared for the defendants Nos. 3 to 9 and then subsequently withdrew from their case and appeared for the defendants Nos. 1 and 2. The finding, however, is that he never did any actual work for the defendants Nos. 1 and 2 and obtained no instructions from them.

15. In Small Cause Court Suit No. 701 of 1915 the Pleader signed a plaint and vakalatnama with a list of documents and thereafter a vakalatnama on behalf of the defendant and a petition for time to file the written statement. The written statement and list of witnesses were all signed also by the same Pleader. The Pleader's explanation is that he signed the plaintiff's papers by a mistake but there is no suggestion of impropriety of motive. The instances to which we have referred indicate gross carelessness which is deserving of very severe reprobation. His offence is aggravated by the fact that he had received a warning from the Court in 1913. His carelessness was likely to prejudice the interests of his clients and to bring himself into serious trouble and this has actually resulted in the case against him to which I propose now to refer.

16. The facts of the case are as follows:--

> Leku Singh obtained a mortgage decree against Shib Sahai. The mortgaged property had been sold in execution of a rent decree obtained by a third party against Shib Sahai--before the decree was executed. After the sale in execution of this rent decree there remained in deposit, to the credit of Shib Sahai, the surplus sale proceeds. Leku Singh instituted a Title Suit No. 134 of 1915 for the purpose of enforcing his charge against these surplus sale proceeds. The Pleader was engaged. He was instructed to move for an attachment before judgment but did not carry out his client's instructions. The suit for declaration of a charge on the surplus sale proceeds was decreed ex parte on the 15th June 1915. On the 11th June 1915, only four days before the decree, the Pleader accepted a vakalatnama from Shib Sahai for the purpose of obtaining a payment-order in respect of the sale proceeds. And, under this vakalatnama, on the very date on which his client Leku Singh obtained a decree, the Pleader took out the payment-order for the surplus sale proceeds standing to the credit of Shib Sahai and cashed the payment-order at the treasury. On the 30th June 1915, the Pleader on behalf of Leku Singh applied for execution of his decree praying for the issue of a payment order. It was then discovered that it had already been withdrawn by the Pleader himself on behalf of the defendant Shib Sahai. Thereafter Leku Singh instituted a suit against Shib Sahai to which the Pleader was also made a defendant alleging fraud and collusion. This suit was settled by an arbitration. The Pleader himself took a conspicuous part as an arbitrator and the arbitration took place in his house. It is significant that at the conclusion of the Pleader's examination upon this matter in the course of these proceedings he put in a petition tendering his resignation from practice which resignation he subsequently withdrew. It is possible that the Pleader throughout these discreditable proceedings was not actuated by improper motives but the carelessness and disregard of the rules of the profession were so gross that it cannot be overlooked. It was grossly careless to permit himself to withdraw on behalf of the defendant Shib Sahai money which he must have known was rightly payable to his client Leku Singh. It is also clear that no person who was not content with a very low standard of principle would consent as he did to take a conspicuous part as an arbitrator in a matter in which he was seriously and personally concerned.

17. We are of opinion that his misconduct cannot be condoned. We direct that he be suspended for a period of one year, the period to commence from the 1st January 1917.