

MANU/BH/0188/1937

Equivalent Citation: AIR1938Pat28

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

Decided On: 24.11.1937

Appellants: **Qurban Ali Khan**
Vs.
Respondent: **G, a Pleader**

Hon'ble Judges/Coram:

Courtney Terrell, C.J., James and Mohamad Noor, JJ.

JUDGMENT

Mohamad Noor, J.

1. This is a proceeding under the Legal Practitioners Act against a pleader practising at Gaya. It was started on an application of one Qurban Ali Khan, filed in this Court on 27th February 1934, alleging that the pleader concerned and another pleader practising at Gaya had been guilty of professional misconduct. He asked that action be taken against them under Section 13(b)(a) of the Act.

On 13th August 1934, he filed a second application amplifying what he had stated in the previous one. In the mean time, on 8th April 1935, the pleader concerned filed a counter-affidavit denying the allegations of Qurban Ali Khan, to which Qurban Ali Khan filed an answer on 23rd April 1935. On 29th July 1935 this Court ordered the District Judge of Gaya to hold an inquiry into the allegations of Qurban Ali Khan. The District Judge (Mr. Reuben) after examining some witnesses and documents reported that the pleader concerned had been guilty of professional misconduct but that no case was made out against the second pleader named by Qurban Ali Khan. On 23rd March 1936 notice was issued on the pleader and he was called upon to show cause. He appeared and on 3rd December 1936 a formal proceeding was drawn against him. He was called upon to meet the following charges:

3. That while working on behalf of Qurban. Ali Khan in (1) Sections 144 and 145, Criminal P.C., proceedings Qurban Ali Khan v. Wahab Khan, Abbas Ali Khan and Ors., in the Court of Babu Pradyumna Singh, Deputy Magistrate, Gaya, which was disposed of on 4th March 1932; in (2) Land Registration Case No. 559 .1931-32, Zahirul Haq v. Qurban Ali and Ors. (T. No. 9124) in the Court of the Land Registration Officer, Gaya: and in (3) Sections 144 and 145 proceedings (Case No. 51 of 1932) Abbas Ali y. Qurban Ali Khan in the Court of Babu Lachmi Narayan Singh, Deputy Magistrate, Gaya, which was disposed of on 9th June 1932: the pleader through his father or by joining, with him took a conveyance of the property claimed by Qurban on 23rd February 1932, from Mt. Imaman, who transferred on the basis of a claim which was adverse to his client whose interest he was advocating as lawyer.

4. That he appeared on behalf of his father in the following cases in which his father claimed the property against his former client, Qurban Ali Khan: (1) Land Registration Case No. 160 of 1932, T. No. 9124, Rambharosa Singh v. Qurban Ali, and (2) Land Registration Case No. 508 of 1932 Qurban All v. Ram Bharosa Singh

and Ors.

5. That he appeared against Qurban Ali in the following cases, without vakalatnama:

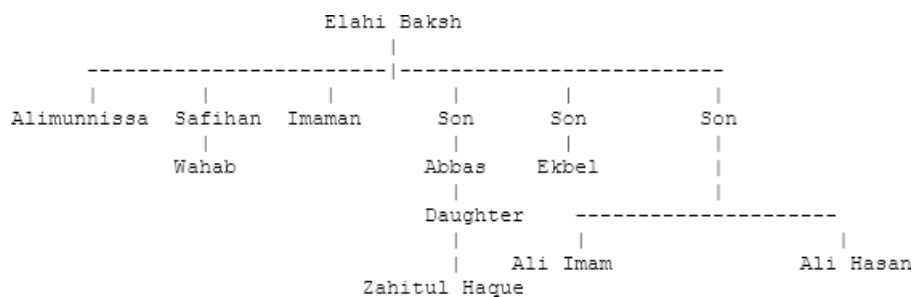
(a) Land Registration Case No. 160 of 1932,
 " " " No. 508 of " ,
 " " " No. 159 of " ,

(b) Sections 144 and 145 proceedings, Qurban Ali v. Abbas Ali and Ors.;

Section 145 proceedings, Abbas Ali v. Qurban Ali and Ors.

The District Judge was again asked to take such further evidence as might be available and give, the pleader an opportunity of examining his own witnesses and then to submit a fresh report. The District Judge (Mr. Philip), therefore, held a fresh inquiry and has reported that the pleader had been guilty of professional misconduct.

6. In order to appreciate the points involved, it is necessary to mention some facts, and I take them from the first report of the District Judge (Mr. Reuben). They are up to a certain point undisputed. The entire village Singhpur belonged in proprietary interest to an old lady Mt. Alimunnissa. The genealogy of her relations is given below:



7. In 1903 Alimunnissa created a waqf of four annas of the village making one Amjad Ali the mutwalli, and a mukarrari in respect of the remaining 12 annas in favour of Abbas and Eqbal, her nephews, and Safiham her sister in equal shares. She reserved a nominal mukarrari rent for herself. It is not known whether the waqf or the mukarrari was given effect to. During the settlement operations in 1916, the Record of Bights was prepared ignoring these two deeds and Alimunnissa was recorded as the 16 annas proprietress of the village. On 26th July 1926 Alimunnissa, by a registered deed, transferred 72 bighas of bakasht land of the village to Usman Ali, son of Qurban Ali. The latter had married a daughter of her maid-servant. This 72 bighas was mentioned as equivalent to four annas share of the village. Qurban Ali further claimed that on 16th April 1931, some time before her death, Alimunnissa by an unregistered deed had made a waqf of the remaining portion (12 annas) of the village making him the mutwalli. His case was that the waqf was at first oral and later on a deed was executed but was not registered. Alimunnissa died on 21st April 1931.

8. Thereafter three persons claimed the village Singhpur. They were (1) those in whose favour the mukarrari of 1903 was executed; (2) Qurban Ali Khan who claimed 12 annas interest under the unregistered waqf (of course, his son was also claiming 72 bighas of bakasht land); and (3) the heirs at law of Alimunnissa who denied that Alimunnissa made any transfer whatsoever of the village in her life-time.

9. Litigation followed. The first case was one under Section 145, Criminal P.C., regarding the house of Alimunnissa in Singhpur. It was between Qurban Ali Khan on

the one side, and Abbas, nephew of Alimunnissa, and Wahab, son of Safihan, on the other. It is not clear from the record whether the latter were claiming the house as a part of the village on the basis of the mukarrari of 1903 or as heirs of Alimunnissa. Qurban Ali denied the mukarrari, alleged that 4 annas of the village represented by 72 bighas was sold by Alimunnissa to his son Usman Ali Khan, and that the remainder was made a waqf of which he was made the mutwalli. Regarding the house his case was that it was given to him by Alimunnissa in his capacity as the mutwalli. The case was decided on 3rd March 1932, in favour of Qurban Ali Khan. It is said that the pleader before us worked for him in this case. The record is not available. The pleader's statement "to the best of his recollection" is that he did not work; but there is evidence of Moulavi Rafiuddin that the pleader was in fact working for Qurban Ali Khan in the case. The learned District Judge has accepted this evidence and the fact of the pleader appearing for him in this case has not been disputed before us.

10. Now, on 23rd February 1932, during the pendency of the case, Mt. Imaman who, according to the genealogy set out above, claimed to be a sister of Alimunnissa executed a deed of sale in respect of one-half share of village Singhpur including the house, in favour of Rajkumar Singh and Rambharosa Singh (the latter is the father of the pleader). This sale is the subject matter of the first charge against the pleader. The case of Qurban Ali Khan in his petition to this Court is that the pleader acted fraudulently in getting a sale of the property from a lady who was claiming adversely to him at a time when he was working for him in the cases in respect of the same property. I shall deal with this point later. In the meantime I have to mention a few more proceedings which had taken place before the sale to Rajkumar Singh and Rambharosa Singh.

11. On 9th December 1931, while the Section 145 proceedings, mentioned above, were pending, one Zahirul Haque applied for registration of his name in respect of 2 annas share of village Singhpur before the Land Registration Deputy Collector. He claimed his title on the basis of a sale deed from Abbas and others who in their turn claimed as heirs of Alimunnissa (L.R. case No. 559 of 1931-32). Qurban Ali filed objection to this petition of Zahirul Haque putting forward his claim as the mutwalli of the waqf said to have been created by Alimunnissa by an unregistered deed dated 16th April 1931, already referred to. The case was referred to the Civil Court under Section 55, Land Registration Act, on 21st April 1932, and was compromised on 5th November 1932. I shall mention the terms of the compromise later.

12. There was a second Section 145 case between Abbas Ali and Qurban Ali Khan, which was started on 23rd February 1932, on the very day when Rajkumar and Rambharosa (father of the pleader) took a sale deed from Mt. Imaman, the alleged sister of Alimunnissa. Abbas Ali and others claimed on the basis of the mukarrari of 1903 as well as heirs of Alimunnissa; while Qurban Ali claimed on the basis of a gift in favour of his son in 1926 and the waqf of 1931. The proceeding was dropped on 9th June 1932 on compromise.

13. The terms of the compromise, as gathered from the two petitions of compromise, one filed in the 145 case and the other in the Land Registration case mentioned above, were that the 72 bighas of land said to have been gifted by Alimunnissa to Usman, son of Qurban, would remain with Usman, and that of the remainder of the village 4 annas was to be taken by Qurban, and 12 annas (out of which 3 annas was to go to Zahirul Haque) would go to Abbas and others. In the 145 case, Qurban Ali Khan had reserved his rights to seek remedy in the Civil Court, but he says that he was quite satisfied and had no intention of litigating further. It is to be noted that in

this compromise Qurban abandoned the alleged waqf of 1931 and fell back on the waqf and mukarrari of 1903.

14. In both these cases the pleader before us admittedly worked for Qurban Ali Khan. It will, therefore, be apparent that when Rajkumar and Rambharosa (father of the pleader) took a sale deed from Imaman, two proceedings were pending in Courts, namely the first 145 case for the house and the Land Registration case of Zahirul Haque, and a third case was started on that very day.

15. In every one of them the pleader was acting for Qurban Ali. He has been proved to have acted in the first 145 case and admittedly he worked for him in the Land Registration Case of Zahirul Haque, and in the second 145 case, and in every one of these cases Qurban Ali Khan was pressing his claim as the mutwalli of 12 annas share in the village on the basis of the alleged wakf created by Alimunnissa in 1931. It is obvious therefore that those who obtained the sale from Imaman, who claimed to be heiress of Alimunnissa and repudiated the claim of Qurban Ali, did so against the interest of Qurban Ali Khan. If, as alleged by Qurban Ali Khan, Alimunnissa had in her life-time created a wakf of 12 annas interest in the village, and given away the remaining 4 annas interest, represented by the 72 bighas of bakasht land to Usman, there was nothing left for the heirs to succeed to, and nothing for Imaman to sell to Rajkumar and Rambharosa.

16. It is to be noticed that the sale deed includes the house which was the subject matter of the first case under Section 145, Criminal P.C., which was then pending and in which the pleader was working for Qurban Ali Khan, and which was later on decided in his favour.

17. Now the question is whether it was the pleader who took the sale in the name of his father, Rambharosa. The pleader denies it and says that he came to know of the sale deed after it was completed. He also says that a few days before Rajkumar had told him that he was likely to borrow money from his father or take him as a partner as Rajkumar himself had not sufficient money to pay to Imaman. I am not prepared to accept the statement of the pleader that he had nothing to do with this sale deed of which the scribe is his own clerk. His father states that he was not on cordial terms with his son (the pleader) who keeps to himself all his professional earnings. This cannot possibly be true. It is in evidence that he puts up with his only son, the pleader, whenever he comes to Gaya, and that the two are members of a joint Hindu family. In any interest acquired by Rambharosa, the pleader was a sharer under the Hindu law.

18. I am of opinion therefore that the pleader at any rate knew that his father was taking an interest adversely to that of his client in respect of the very property for which he was working for him at the time at least in two cases which were then pending. It must have been obvious to him that there was bound to be a litigation between his father and his client as his father was taking a sale from an alleged heiress of Alimunnissa, and Qurban's case in those two cases was that Alimunnissa left nothing for the heirs to take. Even if his father was taking the sale with the knowledge and consent of Qurban, as is now suggested, there was still a chance of litigation as in fact it took place. It was, in my opinion, his obvious duty either to dissuade his father not to mix himself in an affair which would embarrass his position vis-a-vis his client he was working for, or, if that was not possible, or, if the temptation of taking a share in the village was too great for him to resist, he should have withdrawn himself from the case with the permission of the Court and formally

informed Qurban Ali of it. He did neither. In my view the first charge against the pleader is substantially borne out as far as the facts go.

19. The second charge against the pleader is of appearing against Qurban Ali in the Land Registration cases in which his father and Rajkumar were applicants. These two cases were started on 27th June 1932. By that date the two cases under Section 145 had already been disposed of that in respect of the house, in favour of Qurban Ali Khan, while the other was dropped on compromise. The Land Registration case of Zahirul Hague was then pending in the Civil Court.

20. In these two Land Registration cases the pleader appeared for his father (Rambharosa) and Rajkumar. Qurban Ali Khan filed objections denying that Mt. Imaman was a sister of Alimunnissa. He put forward his claim on the basis of the compromise arrived, at between him and Abbas and others. He had no objection to the heirs of Alimunnissa being recorded in respect of 12 annas share of the village subject to the mukarrari interest created in 1903. I have said that although Qurban Ali was litigating on the basis of the wakf said to have been created in 1931, and also advocating the cause of his son in respect of the 72 bighas of land gifted by Alimunnissa in 1926, after the compromise he having got 4 annas for wakf, supported the earlier mukarrari of 1903.

21. Sir Manmatha Nath Mukharji, appearing on behalf of the pleader, has urged that the appearance of the pleader in the two Land Registration cases was not against the interest of Qurban Ali. Obviously it was. Qurban claimed 4 annas on the basis of inter vivos transfers by Alimunnissa and, if they were to hold good, there was nothing for the heirs to succeed to. It is futile to urge that Rajkumar and Rambharosa were claiming the proprietary interest only and were not touching the mukarrari. The proprietary interest, as I have said, was a nominal rent and it cannot be said that they paid or purported to pay to Imaman. Rs. 4,000 for this nominal right. Then assuming that Imaman was a sister of Alimunnissa, her share according to the Mahomedan law in the inheritance was one-half. If 4 annas of the village (strictly speaking 3 annas, because this 4 annas was to come out of the 12 annas of the village) was to go to Qurban Ali Khan, Imaman could not possibly have half of the village as her inheritance. Therefore when Rajkumar and Rambharosa applied for the registration of their names in respect of the 8 annas share in the village, they were claiming adversely to Qurban Ali Khan. In the sale deed the share of Rajkumar and Rambharosa was half and half; but before the Land Registration Deputy Collector Rajkumar claimed 5 annas and Rambharosa 3 annas in consequence of some arrangement between them.

22. The application for registration of the names of Rajkumar and Rambharosa was granted on 1st December 1932, and the claim of Qurban to have his name registered in respect of what he got under the compromise was rejected. It is clear from the judgments of the Land Registration Deputy Collector and of the Court of Appeal that the case was fought on the basis of whether or not Alimunnissa had made any effective transfer in her life, time. If she did, Imaman and her vendees, Rajkumar and Rambharosa, could not possibly succeed. The Court held against there being an effective transfer by Ali munnissa in her lifetime and it was therefore that Qurban lost the cases. In these circumstances, I am of opinion that the second charge against the pleader has also been established, and he obviously worked against the interest which he had been advocating on behalf of Qurban Ali Khan in the three cases already referred to.

23. Now the question is whether any disciplinary action should be taken against the pleader which, if taken, according to the nature of the charges, must be of the severest kind. I am of opinion that under the circumstances, which I shall just mention, no action is called for. The circumstances under which Rajkumar and Rambharosa took the sale deed from Mt. Imaman are shrouded in mystery. The pleader has not given us any fact about it. He pleads ignorance and simply says that he knew of it later, and some time before the sale deed was executed, Rajkumar had told him something in this connexion, and that his father acted independently. He says that he continued to work for Qurban Ali Khan even after the sale as he requested him to do so. He does not explain why Qurban Ali Khan continued to trust him. The father does not seem to know much about it and says that he took it because Rajkumar asked him to do so and left the matter to be dealt with by him. Rajkumar has not been examined and is apparently kept back by the pleader. Qurban Ali Khan says that he did not know anything about it till the Land Registration cases were filed. This has been found to be false. Some light is thrown on the matter by the pleader, Maulavi Rafiuddin, who has been believed by the District Judge. His evidence is that Qurban Ali all along knew about it. In fact the first arrangement was that the sale would be in favour of Rajkumar and Qurban Ali. Then somehow it was taken in the name of Rajkumar and Rambharosa. Qurban Ali had no grievance of it till he compromised the second 145 case.

24. There is a good deal of force in the contention of Sir Manmatha Nath Mukharji that the sale deed was taken with the knowledge and perhaps with the consent of Qurban Ali Khan. It is probable that realizing that his claim on the basis of the alleged oral wakf subsequently embodied in an unregistered document was not likely to succeed and the property would devolve upon the heirs of Alimunnissa, Qurban Ali liked the idea of Rajkumar and Rambharosa taking a sale deed from one of the alleged heirs, viz. Mt. Imaman, hoping that later on if he did not succeed in his claim of the wakf, he would take some shares from those two persons, one of whom (Rajkumar) was financing him in the litigation, and the other (Rambharosa) was the father of his trusted pleader.

25. When Qurban Ali compromised with some of the heirs who were also mukarraridars under the deed of 1903, he appears to have fallen back upon the mukarrari and wakf of 1903 and abandoned the idea of taking anything from Rajkumar and Rambharosa and objected to their application for registration of their names and sided with the mukarraridars. That he knew of the sale cannot be doubted on the evidence of Moulavi Rafiuddin. There is no explanation then of the fact that in spite of this knowledge he allowed the pleader to work for him in the Land Registration case and in the Section 115 case. Furthermore, when the pleader appeared against him in the Land Registration cases of Rambharosa and Rajkumar, he did not raise any objection before the Court and did not file his application in this Court against the conduct of the pleader till 27th February 1931, i.e. more than 18 months after the filing of the petitions by Rajkumar and Rambharosa.

26. It is therefore not possible to hold on the materials before us that the conduct of the pleader in mixing himself up in the sale from Alimunnissa was necessarily dishonest, or that it was against the wish of his client, Qurban Ali Khan. He did not object to the pleader appearing in the Land Registration cases fearing perhaps that any inquiry would bring to light his own part in the execution of the sale deed. If he exposed the pleader he would be exposing himself and the case would be prejudiced.

27. Though therefore I must hold that the pleader did not act up to that standard of

propriety which is expected from a member of the legal profession who must enjoy the complete confidence of the litigant public and of the Court, and that he mixed himself up in transactions which were not straightforward, and that technically his appearing in the Land Registration cases against Qurban Ali Khan was improper, it is clear at the same time that he did not act without the knowledge, consent or at least acquiescence of Qurban Ali Khan. Though neither the pleader nor his father has admitted this or has offered any explanation, it seems to me to be the real fact. Under the circumstances no disciplinary action will be justified. The proceeding has been pending against the pleader for about three years and during this period his conduct has been under a cloud and in my opinion that will be sufficient warning to him. I hope he will act more discreetly in future.

28. The third charge against the pleader is that he appeared for Qurban Ali Khan in the aforesaid cases without any vakalatnama, in contravention of the rules of this Court. The charge is admitted. The rule has been framed for the protection of both the public and the profession. The charge was framed as it was thought that the pleader was trying to conceal his appearance. This is not so. There are applications, etc. signed by him on the record. As no action is being taken on the main charges, only a warning will be sufficient for this charge.

29. 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.

30. With these observations I would discharge the notice issued against the pleader.

Courtney Terrell, C.J.

I agree.

James, J.

I agree.

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