

## **PRIVY COUNCIL**

A.A Pleader

Vs.

The Judges of the High Court of Madras

Privy Council Appeal No. 62 of 1929

(Viscount Sumner CJ. Lord Thankerton, Sir J. Lancelot Sanderson and Sir Binod Mitter JJ.)

10.02.1930

### **JUDGMENT**

#### **LORD THANKERTON J.**

1. This appeal is from an order of the High Court of Judicature at Madras, dated 3rd May 1928, by which the appellant, a vakil of 12 years' standing, was found guilty of professional misconduct and was struck off the roll of vakils.

2. Under Section 9, Letters Patent of the High Court of Judicature at Madras, dated 28th December 1865, the High Court is empowered to approve, admit and enrol vakils to plead and act according to the rules and directions of the Court, and under Section 10 of the High Court is empowered to make rules for their qualification and admission and to remove or suspend them from practice "on reasonable cause." Rule 8 of the Madras Court Appellate Side Rules provides :

"Every enquiry under Clause 10 of the Letters Patent of 1865 shall ordinarily be heard and determined by a Bench of three Judges."

3. On 17th August 1927, Srinivasa Ayyar, a retired Accountant-General, filed a petition in the High Court making complaints against the appellant's professional conduct in relation to one of the latter's client, R. Mahadeva Ayyar, who was the son-in-law of the petitioner. On the direction of the Chief Justice an inquiry was held by Waller, J., at which the Advocate-General appeared in support of the petition and the appellant was represented by counsel. Waller, J., submitted a report on 26th March 1928, in which he stated that all the charges had been made out and that the appellant "had been guilty of the grossest professional misconduct." On 14th April 1928 the High Court issued to the appellant a notice, in which four charges were-for the first

time-definitely formulated, and which he was called on to meet. Thereafter a Court of three Judges constituted under Rule 8, heard the case having the report of Waller, J. along with the oral and documentary evidence taken before him, submitted to them. On 3rd May 1928, the Court made the order presently appealed from. Though several objections to the procedure were taken by the appellant in the Courts below, these were not maintained before their Lordships, whose consideration was solely directed by the appellant's counsel to the merits of the four charges.

4. Subject to certain observations and criticisms which their Lordships have to make, it is not necessary to recapitulate the evidence as to the various charges, which is fully detailed in the report of Waller, J. and the judgment of the Court below. Before dealing with the charges it is right to state that, in their Lordships' opinion charges of professional misconduct must be clearly proved and should not be inferred from mere ground for suspicion, however, reasonable, or what may be mere error of judgment or indiscretion. An appropriate guide may be found in Section 13, Legal Practitioners Act, No. 18 of 1879, under which a pleader or muktar may be suspended or dismissed, who is guilty "of fraudulent or grossly improper conduct in the discharge of his professional duty."

5. All four charges impugn the appellant's conduct in relation to the same client, Mahadeva Ayyar, for whom he has acted on various occasions since the end of 1920. Mahadeva Ayyar was born in 1900, and while still a minor, inherited an estate said to have been worth three lakhs. Their Lordships are unable to accept all the conclusions of the Courts below as to the character and capacity of Mahadeva Ayyar, who was not a witness. It is clear on the evidence that according as in turn he resided with his wife and her father, the petitioner in the present case, or with his sister's husband, Natarajan Ayyar, his actings were of a differing and vacillating nature; further it seems clear enough that he was thriftless. But, while there may be substantial ground for suspicion their Lordships are unable to find evidence sufficient to establish that he was a mere tool in the hands of the appellant or that he was a weak-minded, dissolute, drunken young man; this latter suggestion appears to have been based on a charge, of which he was acquitted and an admission by the appellant in cross-examination that he had heard that Mahadeva Ayyar was a drunkard.

6. The first charge is that on 22nd November 1924, purporting to be acting under the instructions from Mahadeva Ayyar, the appellant sent a notice in respect of certain lands in the Tanjore District, referred to as the Sundarakottai lands, to Ramaswami Ayyar which was prejudicial to the interests of his client. These lands had belonged to

Natarajan and his sister and were sold by Court-auction in 1919 to Ramaswami, who had taken an assignment of a decree for debt against Natarajan and his sister. It is common ground that Ramaswami was supplied with funds for the purchase from Mahadeva's estate by his mother, and that Ramaswami purchased as benamidar either for Mahadeva or his brother-in-law Natarajan. This latter question was eventually the subject of a suit in the Tanjore Court, No. 2 of 1926, in which the Subordinate Judge by decree dated 29th February 1928, found that Ramaswami was benamidar for Mahadeva and ordered delivery of the property by Natarajan, who had apparently remained in possession up till that time. The gravamen of this charge is that the notice of 22nd November 1924, was prejudicial to the interests of the client, on whose behalf it was sent by the appellant. Their Lordships are of opinion that the absence of instructions from Mahadeva is not proved. The learned Judges below, in indicating an opinion to the contrary, appear to have relied on the view that Mahadeva was proved not to have been in Madras at the time when the appellant maintained that he had got personal instructions from Mahadeva in Madras, but counsel for the respondents admitted his inability to maintain that view on the evidence. Keeping in view the opinion of this Board as to a similar charge in *Re Labick* at p. 227 (of 32 IA) it must be shown, first, that the appellant knew the rights of parties and that his client did not know them or did not intelligently or deliberately realise them, and, secondly, that the notice was in fact prejudicial to the interests of his client.

7. As regards the first point, the appellant's counsel admitted that the appellant knew at that time that there was a question between Mahadeva and Natarajan as to the title to the Sundarakottai lands, but, in their Lordships' opinion, it is not proved that Mahadeva did not know his rights and realise them, so far as they could be realised before the subsequent litigation and decision of the Court. But their Lordships are further of opinion that the charge fails on the second point. The notice only states that which was 'true in fact, viz., that Natarajan was in possession of the land and did not recognise Ramaswami's rights to the lands. It may be said that it omitted to state that Mahadeva also claimed the lands, but that claim had already been prejudiced by the deed of sale referred to in the notice, in connexion with which the appellant had not been employed, and it would have been difficult to have pursued such a claim in Court in view of Section 66 (1), Civil Procedure Code, Act 5 of 1908. Accordingly the first charge fails, but their Lordships consider that the appellant, by accepting two clients with adverse interests, did not follow a proper practice and the fact that he took a vakalatnama from Mahadeva indicates his appreciation of some difficulty in this respect.

8. The second charge is that the appellant obtained an ex parte decree on 20th October 1926, in the High Court at Madras for Rs. 4,475 against Mahadeva, although the professional services rendered were negligible and the appellant's standing at the Bar could not justify a demand for fees of such magnitude.

9. That suit was founded on an agreement by Mahadeva to pay the fees in question, as confirmed by his signature of the account in the appellant's diary. The suit was at first defended by Mahadeva, but subsequent to the settlement of the issues, was allowed to go by default, in consequence of Mahadeva's altered instructions to his vakil. Waller, J., found this charge proved on the ground that the appellant:

"tricked a weak and drunken young fool into signing an acknowledgment for a large sum of money and then sued for unconscionable fees that he had done nothing or little to earn."

10. The learned Judges of the High Court also found the charge proved on the ground that:

"Mahadeva was evidently easily influenced, and it is clear that Mr. A took advantage of this fact to make him consent to pay exorbitant fees."

11. These findings hold the appellant guilty of fraudulent conduct, which is not mentioned in the charge, as it should have been, if it were intended to make such a case, so that the appellant should have notice of it. It may further be noted that no such defence was suggested, either in the written statement or the issues settled in the suit for fees. A careful scrutiny of the evidence in this case fails to disclose evidence sufficient, in their Lordships' opinion, to support such findings, nor was the respondents' counsel able to point to such evidence. The size of the fees in relation to the work done or the work undertaken may be open to criticism, but it cannot, in their Lordships' opinion, amount of itself to gross professional misconduct, and this appears to consist with the views of the learned Judges in the Courts below, who found the gravamen in the fraudulent conduct, which they held to have been established.

12. The third and fourth charges, which are inter-related, are as follows viz. :

"3. That you were a party to the getting up in October 1926 of a promissory note, dated 28th October 1924 that note was endorsed in blank by Subbaraya Kottadla with the intention that it should be handed over to Cunniah, that ultimately when it was endorsed to Ramachandra Ayyar, it was endorsed to him as your agent and that you were the principal whom he represented in C. S. No. 742 of 1926 on the file of the High Court.

"4. That you were a party to the collusive adjudication (as an insolvent) of Mahadeva Ayyar by Ramachandra Ayyar with the object of getting the settlements made by Mahadeva Ayyar on his wife cancelled."

13. The promissory note referred to was for Rs. 10,000 and was stated to be security for a balance owing by Mahadeva to Kottadia for jewellery bought from the latter by Mahadeva.

14. Two crucial questions arose on these charges. First, whether the debt to Kottadia was a genuine debt of Mahadeva. Waller, J., held that it was not a genuine debt, but the High Court took a contrary view, and their Lordships accept the finding of the High Court. The second, and even more crucial, question was whether Ramachandra was in fact the appellant's agent in the suit on the promissory note, referred to in the third charge, and the adjudication referred to in the fourth charge. On this question the findings of the Courts below were unanimously against the appellant, but counsel for the respondents found him-self unable to maintain before this Board that the evidence justified more than strong suspicion that Ramachandra was benamidar of the appellant in these matters. Their Lordships are therefore unable to hold these charges proved.

15. The result is that their Lordships hold that none of the charges has been proved. The course of procedure followed in the enquiry appears to have been different from that ordinarily contemplated by the rules framed under the Letters Patent, and to have unduly complicated the issues and the evidence. In their Lordships' opinion, the enquiry in a serious case of this kind should proceed on formulated charges, not only in fairness to the person charged with professional misconduct, but in order that the evidence may relevantly bear on the particular issues, and, further, their Lordships are of opinion that the evidence should be carefully taken and judged according to the ordinary standards of proof.

16. In accordance with their conclusions, their Lordships have humbly advised His Majesty that the appeal should be allowed and that the order of the High Court of 3rd May 1928 should be recalled.

Appeal allowed.

Cases Referred.

[1905] 33 cal 151=32 IA 317 (PC)