

Harish Chander Singh

Vs

S. N. Tripathi

Civil Appeal No. 198 of 1976

(B. P. Jeevan Reddy, S. B. Majmudar JJ)

27.01.1997

JUDGMENT

S. B. MAJMUDAR J.

1. The appellant, Harish Chander Singh, has brought in challenge the order passed by the members of the Disciplinary Committee of the Bar Council of India holding him guilty of professional misconduct and suspending him from practice for a period of two years from the date of the communication of the order. The said appeal is filed under Section 38 of the Advocates Act, 1961 read with Order 5 of the Supreme Court, Rules, 1966. This appeal was admitted for final hearing and in the meantime the operation of the order under appeal was stayed. Earlier in addition to respondent S. N. Tripathi, President of the Bar Association, Akbarpur, one Syed Husain Ahmad was also joined as Respondent 2. He was the codelinquent along with the appellant. He was also held guilty of professional misconduct on the complaint of the original complainant and was ordered to be reprimanded. His involvement along with the appellant was in connection with the very same transaction brought in challenge by the complainant against both these delinquents. However, the said Syed Husain Ahmad did not challenge the finding of the Disciplinary Committee against him and the sentence imposed against him. At the request of the appellant. Therefore, he was permitted to be deleted as second respondent in this appeal. Consequently the sole respondent who has remained in the arena of the contest is the President of the Bar Association who filed the complaint before the State Bar Council on behalf of the original complainant.

2. In order to appreciate the grievance of the appellant it is necessary to note a few introductory facts.

3. One Daya Ram, the original complainant before the State Bar Council, filed a complaint against the appellant as well as the aforesaid codelinquent Syed Husain Ahmad, both of whom at the relevant time were practising advocates at Akbarpur in Ferozabad District of Uttar Pradesh. In the complaint it was alleged against the delinquents that he had engaged the appellant as his counsel in a case pending before Consolidation Officer, Akbarpur between the complainant and one Bisai. Subsequently he had engaged one Tarakant Tripathi as his counsel. According to the complainant the said case was fixed before the Consolidation Officer for 17-1-1972 and thereafter it was adjourned to 7-2-1972. The appellant who was engaged as his counsel is the resident of Village Jamnipur. The land, in Connection with which consolidation proceedings were pending wherein the appellant was engaged by the complainant to represent him, was situated in the same village. The consolidation proceedings then were further adjourned to 21-2-1972. In the meanwhile, in the evening of 17-1-1972 the appellant V asked him to appoint some Mukhtar so that he may be spared of the necessity of coming to attend the consolidation case every day. The complainant alleged that

at the instance of the appellant Syed Husain Ahmad, Original Respondent 2, the junior of the appellant, was appointed as Mukhtar and a Mukhtarnama was got registered. That the contents of the 3 Mukhtarnama were not read over to him but he proceeded on the word of the appellant and having faith in him executed the Mukhtarnama in favour of his junior. Thereafter, however, the appellant entertained suspicion and on 29-1-1972 he executed the deed cancelling the abovesaid Mukhtarnama and got it registered. It thereafter transpired that the appellant had obtained a sale deed in respect of the property in question in favour of his father from Syed Husain Ahmad, Original Respondent 2, who had acted as Mukhtar of the complainant and as such had purported to sell the said land on behalf of the complainant in favour of the appellant's father. The complainant alleged that it was never his intention to authorise the appellant's junior Syed Husain Ahmad to execute any such deed of transfer in respect of the suit property much less in favour of appellant's father. All that he intended to do was to execute the Mukhtarnama to enable Original Respondent 2 to do pairwi in the consolidation case. It was, therefore, his complaint before the State Bar Council that he was duped and deceived by both these advocates, namely, Harish Chander Singh and Syed Husain Ahmad, his junior, and that the Mukhtarnama was a fraudulent deed which enabled the appellant to get the land transferred in the name of his father. This complaint was supported by an affidavit. The complaint was registered before the Disciplinary Committee of the Bar Council of Uttar Pradesh. The complaint was sponsored by S. N. Tripathi, President of the Bar Association, Akbarpur, who forwarded the complaint of Daya Ram to the Secretary, Bar Council, Uttar Pradesh, Allahabad and that is how the present respondent was shown as the complainant in the disciplinary proceedings.

4. The appellant resisted the proceedings by filing a written statement. His submission was that he was engaged by the complainant as an advocate in the consolidation case which had originated on an objection made by one Bisai who had alleged that complainant Daya Ram had obtained the sale deed in respect of the disputed property fraudulently and under deception. That the complainant was a literate person and he executed the power of attorney in favour of Syed Husain Ahmad of his own accord and it was duly registered in the Office of Sub-Registrar, Akbarpur, Ferozabad. That thereafter on 25-1-1972 a sale deed was executed by Syed Husain Ahmad in favour of Nand Kishore Singh with full knowledge and participation of the complainant. That he was staying separate from his father and he had no knowledge about the said transaction. That Syed Husain Ahmad was not his junior.

5. So far as Original Respondent 2 Syed Husain Ahmad is concerned, he also filed a written statement through his counsel denying the allegations made in the complaint. However, ultimately during the proceedings Respondent 2 relented and submitted that if he is found guilty of professional misconduct he may be pardoned and that he had acted due to inexperience and on the basis of faith in his senior advocate, the present appellant. Thus Respondent 2 practically admitted the case of the complainant. As the complaint could not be disposed of by the Disciplinary Committee of the State Bar Council within one year it stood transferred to the Bar Council of India. Thereafter the Disciplinary Committee of the Bar Council of India heard the parties, recorded their evidence and ultimately passed the aforesaid order against the appellant and Syed Husain Ahmad, the co- delinquent who is no longer in the arena of contest in the present proceedings as seen above.

6. The learned counsel for the appellant vehemently contended that the order under appeal is not sustainable by evidence on record and is required to be set aside and the appellant is required to be exonerated of the charges levelled against him.

7. We have gone through the evidence on record, both oral and documentary, to which our attention

was invited. Having carefully considered the same we are not able to accept any of the contentions canvassed by the learned counsel for the appellant. The tell-tale circumstances which have emerged on record clearly indicate that the appellant was guilty of professional misconduct. These circumstances run as under :

1. The appellant was admittedly engaged as a counsel of the complainant to represent him in the consolidation proceedings which were pending against him wherein the dispute regarding the very same suit land was on the anvil between the complainant Daya Ram on the one hand and complainant's father's sister's husband Shri Bisai.
2. It is also well established that the appellant persuaded the complainant to execute a Mukhtarnama in favour of Respondent 2 whose evidence showed that he was the appellant's junior and was well known to him and accordingly Mukhtarnama was executed by complainant Daya Ram in favour of Respondent 2.
3. That Respondent 2 executed sale deed in respect of the property in favour of Shri Nand Kishore Singh.
4. Shri Nand Kishore Singh was the father of the appellant.
5. The copy of the Mukhtarnama dated 18-1-1972 shows that the complainant had allegedly given full power to Respondent 2 to dispose of his property.
6. The copy of the sale deed dated 25-1-1972 was executed by Respondent 2 as an agent of complainant in favour of Nand Kishore Singh, father of the appellant.
7. The copy of the Kutumb Register showed that Shri Nand Kishore Singh and the appellant being father and son were living in the same house.
8. All these circumstances well established on record clearly point out an accusing finger to the appellant. The appellant's vain attempt to show that he did not know about the transaction of the sale deed in favour of his father had remained abortive for the simple reason that nothing was brought out on record by him to show that he was in any way having strained relations with his father. Equally a vain attempt was made by the appellant to show that Respondent 2 was not known to him or he was not his junior. There is no reason as to why we should not accept the clear-cut evidence on this aspect as led by Respondent 2 who stated that he was the appellant's junior and he was misguided by him and accordingly he was made to execute the sale deed dated 25-1-1972 acting as Mukhtar of the complainant and by which he tried to sell complainant's land to the appellant's father. All these circumstances well established on record leave no room for doubt that the appellant was clearly guilty of professional misconduct. The Disciplinary Committee was, therefore, right in taking the view that the complainant was duped by his advocate, namely, the appellant who had misused the confidence reposed by the complainant in him and had tried to dispose of the complainant's property in favour of his own father. Under these circumstances the findings of professional misconduct as recorded in the impugned judgment against the appellant must be held to be well made out on the record of the case and cannot be found fault with from any angle. So far as the sentence of suspension from practice for two years is concerned that also cannot be treated to be

too harsh or grossly disproportionate in the light of the professional misconduct. After the matter was fully heard, we tried to get information from the appellant by our order dated 27-2-1996 on the following :

"Hearing of this appeal is concluded. But before we pronounce our judgment it is necessary to have the following information for making appropriate orders :

1. Whether the appellant's father Shri Nand Kishore is alive and whether Daya Ram is alive today ? If Daya Ram is dead, who are his legal representatives ?
2. Whether the property which was conveyed by Daya Ram through his power of attorney, Shri Syed Husain Ahmad, advocate in favour of the appellant's father Shri Nand Kishore has been cancelled and the property conveyed back to Daya Ram or his heirs, as the case may be, or not ?
3. What has happened to the consolidation proceedings which were pending with respect to the land which was sold in favour of the appellant's father ?

The appellant shall file an affidavit stating the information with respect to the above points.

List the matter after six weeks for judgment."

However, the learned counsel for the appellant was not in a position to file any such affidavit or to give any such information. Consequently by our further order dated 16-4-1996 we made it clear that we had no option but to deliver the judgment.

9. However, on further consideration by our order dated 24-4-1996 we directed that notices be issued to - (1) Complainant-Daya Ram; and (2) Nand Kishore Singh calling upon them to show cause as to why we should not pass appropriate orders for setting aside the sale deed dated 25-1-1972 purported to have been executed by Original Respondent 2 Syed Husain Ahmad, power-of-attorney-holder of complainant Daya Ram in favour of the transferee Nand Kishore Singh.

10. Pursuant to the notices issued to them it has transpired that said Nand Kishore Singh as well as Daya Ram are dead since long. In IA No. 1 filed in these proceedings it has been averred that even the impugned sale deed was held to be fictitious and not binding on Daya Ram by authorities entrusted with the task of consolidation of holdings and Daya Ram himself in his lifetime had agreed to sell this very property to third parties who have already obtained a decree for specific performance against Daya Ram and have got the decree executed against the estate of Daya Ram. In view of these latter developments brought to our notice, by our order dated 20-1-1997 we have discharged the notices issued by us earlier on 24-4-1996. Consequently now remains no occasion to pass any order in connection with the impugned sale deed dated 25-1-1972. In the light of our earlier order dated 16-4-1996, therefore, judgment in this appeal has now to be delivered.

11. In view of our findings recorded hereinabove this appeal is liable to fail and is accordingly dismissed with costs. Interim relief granted during the pendency of this appeal will stand vacated.