**SUPREME COURT OF INDIA**

Kokkanda B.Poondacha

Vs.

K.D. Ganapathi

C.A.No.2015 of 2011

(G.S. Singhvi and Asok Kumar Ganguly,JJ.,)

22.02.2011

**JUDGEMENT**

**G.S.Singhvi,J.,**

1. Leave granted.

2. Whether the respondents (defendant Nos.5 and 6 in the suit filed by the appellants), could cite the advocate representing the appellants as a witness in the list filed under Order XVI Rule 1 (1) and (2) read with Section 151 of the Code of Civil Procedure (CPC) without giving an iota of indication about the purpose of summoning him in future is the question which arises for consideration in this appeal filed against order dated 24.02.2010 passed by the learned Single Judge of the Karnataka High Court whereby he set aside the order passed by the trial Court partly dismissing the application of the respondents. 2 Appellant Nos. 1 to 3 and one Parvathy filed suit, which came to be registered as O.S. No.75 of 1996, for partition and separate possession of 1/6th share each in the suit property and also for grant of a declaration that sale deed dated 10.7.1997 executed by defendant Nos.2 to 4, who were, later on, transposed as plaintiff Nos.5 to 7 (appellant Nos.4 to 6 herein), was not binding on them. Defendant Nos.5 to 7 (including respondent Nos.1 and 2 herein) filed written statement on 19.2.1998. Respondent Nos.1 and 2 filed additional written statement on 9.8.2002. After two years and seven months, they filed an application dated 11.3.2005 under Order XVI Rule 1 (1) and (2) read with Section 151 C.P.C. supported by an affidavit of respondent No.1 for permission to file the list of witnesses, which included the name of Shri N. Ravindranath Kamath, Advocate, who was representing the appellants in the suit from the very beginning.

3. The trial Court partly allowed the application of respondent Nos.1 and 2 and granted leave to them to file the list of witnesses but rejected their prayer for permission to cite Shri N. Ravindranath Kamath as witness No.1. The reasons assigned by the trial Court for partially declining the prayer of respondent Nos.1 and 2 are extracted below:

" While citing advocate of the opposite party as a witness, the defendants 3 and 4 ought to have given reason for what purpose they are citing him as a witness and examining him in their favour. Once the advocate for the opposite party is cited as a witness in the list, the opposite party losses precious service of his advocate. In that circumstances, the party will suffer. Under the circumstances, so as to know for what purpose the defendant no.2 and 3 are citing and examining the N.R. Kamath advocate for the plaintiff in their favour have to assign reason. The Court has to very cautious and careful while considering such an aspect of the matter of examining and citing the advocate for the opposite party in their favour. The Court has to determine as to whether the evidence of said advocate is material for the decision of the case or not? Unless defendant no.2 and 3 assigned reason in the application or in the affidavit as to why they are citing the advocate for the opposite party and examining in their favour, the application filed by defendant no.2 and 3 is not maintainable and the said application is not sustainable under law. In the above said Judgment, in para 2, it is clearly held that, "but appellants then filed a petition seeking permission to cite the advocate of the respondents as a witness". But herein this case, the defendant no.2 and 3 are not seeking permission to cite the advocate for the plaintiff as a witness. Defendant no.2 and 3 not only have to seek permission of this Court to cite the advocate for the Plaintiff as a witness, but also he has to give good reasons for what purpose he is citing him as a witness and examining in his favour. Without assigning any reasons and without seeking permission to cite the advocate for the Plaintiff as a witness in the witness list, application to that extent is not tenable and same is liable to be dismissed to that extent."

4. The respondents challenged the order of the trial Court by filing a petition under Articles 226 and 227 of the Constitution insofar as their prayer for citing Shri N. Ravindranath Kamath as a witness was rejected. The learned 4 Single Judge allowed the petition and set aside the order of the trial Court by simply observing that reasons are not required to be assigned to justify the summoning of a particular person as a witness.

5. Mrs. Kiran Suri, learned counsel for the appellants relied upon the judgment of this Court in Shalini *Shyam Shetty vs. Rajendra Shankar Patil*[1] and argued that the order under challenge is liable to be set aside because the High Court committed serious error by interfering with the order of the trial Court without recording a finding that the said order is vitiated due to want of jurisdiction or any patent legal infirmity in the exercise of jurisdiction and that refusal of the trial Court to permit the respondents to cite Shri N. Ravindranath Kamath as a witness had prejudiced their cause. She further argued that the respondents are not entitled to cite and summon as a witness the advocate representing the appellants because in the application filed by them, no justification was offered for doing so. In support of this argument, Mrs. Suri relied upon the judgment of this Court in *Mange Ram vs. Brij Mohan*[2]. Shri S.N. Bhatt, learned counsel for the respondents argued that even though his clients had filed application belatedly, the trial Court was not justified in 5 declining their prayer for citing Shri N. Ravindranath Kamath as a witness merely because he was representing the appellants. Learned counsel submitted that at the stage of filing the list of witnesses, the plaintiffs or for that reason the defendants are not required to disclose the nature of the

evidence to be given by the particular witness or its relevance to the subject matter of the suit etc. and the trial Court had grossly erred in not granting leave to the respondents to cite Shri N. Ravindranath Kamath as one of their witnesses. Shri Bhatt relied upon the judgment in *Surya Dev Rai v. Ram Chander Rai and others*[3] and argued that even after amendment of Section 115, C.P.C., the High Court can, in exercise of supervisory power under Article 227, correct the error of jurisdiction committed by the Subordinate Court.

6. We have considered the respective submissions. We shall first consider the question whether the High Court could interfere with the order of the trial Court without considering the question whether the said order was vitiated due to want of jurisdiction or the trial Court had exceeded its jurisdiction in deciding the application of the respondents and the order passed by it has resulted in failure of justice. In Surya Dev Rai's case (supra), the two Judge Bench, after detailed analysis of the various 6 precedents on the scope of the High Court's powers under Articles 226 and 227 of the Constitution culled out nine propositions including the following:-

> "(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.
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> (3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure ofjustice.
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> (4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.
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> (5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (I) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of 7 law, and (ii) a grave injustice or gross failure ofjustice has occasioned thereby."

7. In Shalini Shyam Shetty vs. Rajendra Shankar Patil (supra), the Court again examined the scope of the High Court's power under Article 227 of the Constitution and laid down the following proposition:

> "Article 227 can be invoked by the High Court suo motu as a custodian of justice. An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality. The power is discretionary and has to be exercised very sparingly on equitable principle. This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration in the larger public interest whereas Article 226 is meant for protection of individual grievances. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline. The object of superintendence under Article 227, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under Article 227 is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court."

8. The learned Single Judge of the High Court totally ignored the principles and parameters laid down by this Court for exercise of power under Articles 226 and 227 of the Constitution qua an interlocutory order passed by the 8 Subordinate Court and set aside the order of the trial Court without assigning any tangible reason.

9. The next question which needs consideration is whether a litigant filing the list of witnesses is bound to indicate, howsoever briefly, the relevance of the witness to the subject matter of the suit etc., and, in any case, one party to the proceedings cannot cite the advocate representing the other side as a witness and thereby deprive the latter of the services of the advocate without disclosing as to how his testimony is relevant to the issues arising in the case. In Mange Ram vs. Brij Mohan (supra), this Court interpreted Order XVI Rule 1 (1),(2) and (3) CPC and observed:

> "If the requirements of these provisions are conjointly read and properly analysed, it clearly transpires that the obligation to supply the list as well as the gist of the evidence of each witness whose name is entered in the list has to be carried out in respect of those witnesses for procuring whose attendance the party needs the assistance of the court."

10. At this stage, we may also advert to the nature of relationship between a lawyer and his client, which is solely founded on trust and confidence. A lawyer cannot pass on the confidential information to anyone else. This is so because he is a fiduciary of his client, who reposes trust and confidence in the lawyer. Therefore, he has a duty to fulfill all his obligations towards his client with care 9 and act in good faith. Since the client entrusts the

whole obligation of handling legal proceedings to an advocate, he has to act according to the principles of uberrima fides, i.e., the utmost good faith, integrity, fairness and loyalty. The duties of an advocate to the Court, the client, opponent and colleagues are enumerated in Chapter II of Part IV of the Bar Council of India Rules, 1975 (for short, "the Rules"). Rules 12, 13, 14 and 15 of Section II, Chapter II of Part IV of the Rules, which regulate the duty of an advocate to the client, read as under:

> "12. An advocate shall not ordinarily withdraw from engagements, once accepted, without sufficient cause and unless reasonable and sufficient notice is given to the client. Upon his withdrawal from a case, he shall refund such part of the fee as has not been earned.
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> 13. An advocate should not accept a brief or appear in a case in which he has reason to believe that he will be a witness, and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear as an advocate if he can retire without jeopardising his client's interests.
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> 14. An advocate shall, at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosures to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client's judgment in either engaging him or continuing the engagement.
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> 15. It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means without regard to 10 any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence."

An analysis of the above reproduced Rules show that one of the most important duty imposed upon an advocate is to uphold the interest of the client fearlessly by all fair and honourable means. An advocate cannot ordinarily withdraw from engagement without sufficient cause and without giving reasonable and sufficient notice to the client. If he has reason to believe that he will be a witness in the case, the advocate should not accept a brief or appear in the case. In V. C. Rangadurai v. D. Gopalan (1979) 1 SCC 308, A.P.Sen, J. outlined the importance of the relationship of an advocate with his client in the following words:

> "Nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession. Lord Brougham, then aged eighty- six, said in a speech, in 1864, that the first great quality of an advocate was 'to reckon everything subordinate to the interests of his client'. What he said in 1864 about 'the paramountcy of the client's interest', is equally true today. The relation between a lawyer and his client is highly fiduciary in its nature and of a very delicate, exacting, and confidential character requiring a high degree of fidelity and good faith. It is purely a personal relationship,

involving the highest personal trust and confidence which cannot be delegated without consent. A lawyer when 11 entrusted with a brief, is expected to follow the norms of professional ethics and try to protect the interests of his clients, in relation to whom he occupies a position of trust. The appellant completely betrayed the trust reposed in him by the complainants." If the prayer made by the respondents for being allowed to cite Shri N. Ravindranath Kamath as a witness is critically scrutinised in the backdrop of the above noted statement on the duties of an advocate towards his client, we have no hesitation to hold that the same was not only misconceived but was mischievous ex-facie. Neither in the written statement nor the additional written statement filed by them before the trial Court, the respondents had attributed any role to Shri N. Ravindranath Kamath in relation to the subject matter of the suit. The concerned advocate was engaged by the plaintiffs-appellants in 1996 i.e. almost 11 years prior to the filing of application by the respondents under Order XVI Rule 1(1) and (2) read with Section 151 CPC. During this long interregnum, the respondents never objected to the appearance of Shri N. Ravindranath Kamath as an advocate of the appellants by pointing out that he was interested in the subject matter of the suit. Notwithstanding this, the respondents cited him as a witness in the list filed along with the application. The sole purpose of doing this was to create a situation in which the advocate would have been forced to withdraw from 12 the case. Luckily for the appellants, the trial Court could see the game plan of the respondents and frustrated their design by partly dismissing the application. The learned Single Judge ignored that the respondents had included the name of Shri N. Ravindranath Kamath in the list of witnesses proposed to be summoned by them with an oblique motive of boarding him out of the case and passed the impugned order by recording one line observation that the respondents were not required to give reasons for summoning the particular person as a witness.

11. We may add that if the parties to the litigation are allowed to file list of witnesses without indicating the purpose for summoning the particular person(s) as witness(es), the unscrupulous litigants may create a situation where the cases may be prolonged for years together. Such litigants may include the name of the advocate representing the other side as a witness and if the Court casually accepts the list of witnesses, the other side will be deprived of the services of the advocate. Therefore, it would be a prudent exercise of discretion by the Court to insists that the party filing the list of witnesses should briefly indicate the purpose of summoning the particular person as a witness. In the result, the appeal is allowed, the impugned 13 order is set aside and the one passed by the trial Court is restored. The respondents shall pay cost of Rs.50,000/- to the appellants.

***[1](2010) 8 SCC 0329***
***[2](1983) 4 SCC 0036***
***[3](2003) 6 SCC 0675***