

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **04.04.2017**

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

C.R.P.(PD) No.3630 of 2013
and M.P.No.1 of 2013

1 D.Jagannathan
2 S.Gopinath .. Petitioners/Defendants 1 & 3

Vs.

1 V.Duraisamy
2 V.Somu .. Respondents/Plaintiffs

This Civil revision is filed under Article 227 of Constitution of India to set aside the order and decreetal order passed by the District Munsif, Tiruppur in I.A.No.1906 of 2012 in O.S.No.484 of 2012 dated 18.06.2013.

For Petitioner : Mr.P.Kannankumar

For Respondents : Mr. K.S.Kaviarasu

ORDER

This revision is at the instance of the defendants 1 & 3 in O.S.No. 484 of 2012 on file of the learned District Munsif, Tiruppur.

2 Plaintiffs have instituted the suit for declaration and consequential injunction with respect to two items of suit properties

situate in Pongalur in Tiruppur District. Defendants filed their written statement resisting the suit.

3 In the said suit, the plaintiffs have filed I.A.No.1906 of 2012 for appointment of an Advocate/Commissioner to inspect the suit property with the help of a Surveyor.

4 When the said application was heard, the learned counsel for the said defendants endorsed no objection. In the circumstances, the trial Court appointed an Advocate/Commissioner to inspect and measure the suit property with the assistance of a Surveyor and file his report.

5 The defendants have filed this revision, chiefly, that they have not instructed their counsel to endorse no objection in the petition for appointment of an Advocate/Commissioner.

6 The learned counsel for the revision petitioners reiterated the said contention.

7 The learned counsel for the respondents contended that

it is a cheap defence, tending to question the very integrity of an Advocate. Plaintiffs in their zeal to steal a march over the defendants, have indulged in witch hunting, stabbing on the back of their own counsel.

8 The learned counsel for the respondents also contends that the revision petitioners attacks the professional duty of a lawyer. They did not plead deceit, an unholistic alliance between their Advocate and the other side. The ground taken in this revision is unpalatable and unacceptable.

9 I have anxiously considered the rival submissions, perused the impugned order and the materials on record.

10 Engagement of an Advocate in a civil case comes into play by means of a vakalat. It is also a form of power of attorney. It has the semblance of 'agency principle'. The client is stated to be the principal and his lawyer is stated to be his agent. One of the basic principle of law of agency is that the agent cannot go beyond the scope of the authority given to him. But this principle will not be made applicable to lawyers. It is because of certain privileges and special status accorded to lawyers. (Also see Article 22(1), 39-A,

Constitution of India and Section 303, 304 Cr.P.C.) It came into being when a lawyer is came into being. It is also to protect and strengthen an 'independent and fearless bar'.

11 Conducting of a case, taking a defence in a case is a basic professional duty of a lawyer. He cannot mortgage his professional duty or personality to anyone including his client. No client, no accused, no prosecuting agency, no Executive or no Legislature can command or dictate a lawyer as to his manner of discharging his professional duty. A lawyer can never be hauled up for his rendering professional duty.

12 It requires a profound knowledge in law. He must have robust common sense. He is expected to know each and everything in life. He must have the knowledge of medicine, forensic medicine, various branches of Science, Engineering and Technology even principles of psychiatric, literature, current affairs. He must be a 'megalomaniac'.

13 Conducting a case itself is a professional skill of a lawyer. It is a most delicate, dedicated task because the very future, life of a person is involved in it. If he slips in a criminal case, his

client will sleep in jail. If he misses a civil case, his client will miss his valuable property, money, honour, family honour and he will also strand in the street. Ultimately, the blame will be on the head of the lawyer.

14 While in the course of discharging his professional duty depending upon the facts and circumstances of the case, a lawyer takes a defence, opposes an application. Sometimes, in order to prevent the other side to prolong the matter, a lawyer makes no objection. It is in the interest of his client. For taking such a decision he cannot be blamed.

15 Although a client pays his professional fees he is not his Master. A lawyer is not a servant of anyone. He is servant of his conscious, law and God, if he is a believer. Even his senior is not his Master, of course, he is his Guru.

16 If we read a vakalat, the scope of authority given to a lawyer is very well delineated. While conducting a case, while discharging his professional duty for each and every incidental act or step he has implied power to take a spot decision.

17 Every lawyer is an officer of the Court. It is a special status given to them. He owes a duty to the Court. It is primary in nature. Lawyers are indispensable part of independence of judiciary. A lawyer should be independent and should not be interdependent.

18 However, under the pretext of discharging his professional duty he cannot do any wrong doing or commit professional misconduct, deceit, mischief, share the common intention of undesirable elements or a conspirator or an abettor. He will not have the protection of law for these misdeeds because such wrong doing is not professional duty and it is not a part of a lawyer's duty.

19 Now, in the case before us, taking into account the pros and cons of the I.A.No. 1906 of 2012 which has been filed by the plaintiff for the appointment of an Advocate/Commissioner, the learned counsel for the defendants adopted a strategy and said no objection in the said application. His client is bound by his professional decision. A client is expected to lend his ears to the genuine legal advice of his lawyer/ legal advisor.

20 In this case, no foul play or any secret agenda or any motive has been attributed as against the learned counsel for the defendants. In such circumstances, the defendants cannot be allowed

to stab him on his back. If this kind of defence is allowed then there will be no safety for the lawyers.

21 In the light of the above, this Court has no hesitation to hold that absolutely there is no merit in the stand taken by the revision petitioners.

22 In view of the foregoings, ordered as under:

(i) This revision fails and it is dismissed.

Dr.P.DEVADASS, J.

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(ii) Actually, this Court wanted to impose heavy cost on the revision petitioners, however, they are saved because of the request of another professional viz., the learned counsel for the revision petitioners. So, no order as to costs.

(iii) Consequently, connected miscellaneous petition is closed.

4.4.2017

Speaking/Non Speaking order

Index : Yes / No

Internet : Yes / No

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To

1 The Principal District Judge,
Tiruppur.

2 The Principal District Munsif,
Tiruppur.

Copy to
The Director,
Tamilnadu State Judicial Academy,
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