

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.04.2019

Delivered on: 23.04.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHAC.R.P(PD).Nos.118 and 124 of 2016
and CMP.Nos.674 and 679 of 2016

M. Arumugam

...Petitioner in
C.R.P(PD)No.118 of 2016

Mahumaidoss

...Petitioner in
C.R.P(PD)No.124 of 2016

1. C. Kumar

...Respondent 1 is above

CRPs.

2. Mahumaidoss

...Respondent 2 in
C.R.P.(PD)No.118 of 2016

3. Maria Pushpam

... Respondent 3 in
C.R.P.(PD)No.118 of 2016
and Respondent 2 in
C.R.P.(PD)No.124 of 2016

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4. Paralaoga Mary

...Respondent 4 in
C.R.P.(PD)No.118 of 2016
and Respondent 3 in
C.R.P.(PD)No.124 of 2016

PRAYER in C.R.P.(PD)No.118 of 2016: Civil Revision Petition is filed under Article 227 of the Constitution of India praying to prefer this Memorandum of Civil Revision Petition against the order and decreetal order of the learned Additional Subordinate Judge, Chengalpattu, dated 04.06.2015 made in I.A.No.369 of 2011 in O.S.No.86 of 2010.

PRAYER in C.R.P.(PD)No.124 of 2016: Civil Revision Petition is filed under Article 227 of the Constitution of India praying to prefer this Memorandum of Civil Revision Petition against the order and decreetal order of the learned Additional Subordinate Judge, Chengalpattu, dated 04.06.2015 made in I.A.No.110 of 2013 in O.S.No.86 of 2010.

For Petitioner : Mr. K. Sridhar

For Respondents : Mr. Ravi Kumar, Senior Counsel
for Paul and Paul

COMMON ORDER

Since the issue involved in both the Civil Revision Petitions is one and the same, a common order is being pronounced in the

two Revisions. Both the Revisions emanate from the very same suit namely O.S.No.86 of 2010 pending on the file of the Additional Subordinate Judge, Chengalpattu.

2. It is necessary to briefly allude to the facts that have been narrated in the plaint in order to fully appreciate the issue on hand which revolves around the professional etiquette of a lawyer vis-a-vis his clients.

The plaintiff in the suit O.S.No.86 of 2010 is an advocate of considerable standing. It is his case that he had got professionally involved in the property disputes which the family of late Mr.Arokianathan had to face. The plaintiffs case is that the father, Mr.Arokianathan whose children are the first defendant and the 3rd defendant as well as the husband of the second defendant, owned extensive lands in the villages of Mahaballpuram and Palyanur. The lands at palyanur which were agricultural lands was being cultivated by Mr.Veeraraghavan and three others who were giving a pittance of the produce to the

family of Mr.Arokianathan. Apart from that, there were lands in Mamallapuram belonging to Mr.Arokianathan which were encroached and occupied by several persons. The plaintiff was particularly involved in the dispute relating to the properties on the southern side of the suit property as well as the properties on the west of the suit property. It appears that one Selvaraj and Anthonyraj had filed suit before the District Munsif's Court, Chenglapattu in the year 1994 which was subsequently transferred to the District Munsif's Thirukkalukundram and renumbered as O.S.No.247/96 against the first defendant and the husband of the second defendant claiming 0.02 cents in the occupation of Pastor Samidurai. The first defendant and the second defendant's husband had approached the plaintiff and sought his professional service for defending the suit property.

3. Around the said time, the plaintiff was inducted as a tenant in respect of the suit property and at the time of taking possession, the property was in a very bad condition, unsuitable for habitation. The plaintiff had undertaken to repair the said

premises with the consent of defendants 1 to 3. The plaintiff would submit that apart from the suit O.S.No.247/96 there was other suit namely O.S.No.256/96 on the file of the DMC, Thirukazhumkundram. That apart, there was the suit O.S.No.272/96 by the defendants 1 to 3 and they were represented by the plaintiff against the said Selvaraj and Anthonyraj and ultimately the suit was decreed in their favour. Yet another suit was filed by one Mr.Padman against the first defendant for a bare injunction in O.S.No.38 of 2000. The first defendant in turn had filed a suit in O.S.No.41 of 2001 for an injunction against the said Mr.Padman on the file of the District Munsif's Court, Thirukkalukundram. Therefore, it is the case of the plaintiff that he has been representing the defendants 1 to 3 as their counsel in proceedings at different fora.

4. The plaintiff after taking on lease the property of the defendants in the year 1994, had settled his family in the suit property, the plaintiff had spent over a sum of Rs.1,50,000/-

towards expenses for making the building habitable. It is the case of the plaintiff that there was an understanding that the property which is in the occupation of the plaintiff would be ultimately sold to him for a reasonable price as it was only the plaintiff who got the properties in Paiyanur village released from the custody of the Mr.Veeraraghavan and made it free from all encumbrances. The plaintiff defended several suits for the defendants and made all the properties involved therein free of all encumbrance. All these was on account of the plaintiff dedication and hard work .

5. In or about 2003-2004; the plaintiff came to know that the defendants were trying alienate their properties and therefore since he was in occupation of suit property, the plaintiff requested the defendant to sell the same to him and consequently an oral arrangement was entered into whereby the defendant had agreed to sell the suit property to the plaintiff for a sum of Rs.80,000/- per cent. It was also agreed that a sum of

Rs.1,50,000/- which the plaintiff had spent towards renovation of the suit property and a sum of Rs.50,000/- from out of the fees payable by the defendants to the plaintiff would be adjusted towards the advance sale consideration. Accordingly, the oral arrangement came to be given effect to.

6. The plaintiff would submit that the first defendant had approached him with a request to sell away the five acres of agricultural lands in Paiyanur. This the plaintiff was unwilling to accept. The plaintiff had expressed his reluctance to him on account of the fact that the property belonged to the others as well. It was also agreed that the sale deed would be executed by the defendants after the disposal of the O.S.Nos.38 of 2000 and 41 of 2001 which was in respect of other properties.

7. The first defendant, whose request was turned down by the plaintiff, had developed animosity towards the plaintiff. Therefore, the first defendant wriggled out of his assurance of

selling the suit property to the plaintiff. The plaintiff would further submit that thereafter despite several requests, the defendants were not coming forward to execute the sale deed. The first defendant has not shown any kind of interest in this regard. Therefore, the plaintiff had directly visited the defendants on 11.08.2007 and during the meeting, the 1st defendant came forward with a absolutely unworkable solution that the buyer should pay the sale consideration at the sum of Rs.1,50,000/- per cent and this was fixed for an extent of 61/4 Cents and not for 51/2 Cents. The plaintiff in the meanwhile expressed his willingness to pay the balance sale consideration and purchase the property at the sale originally fixed and he approached the defendants in person. In the meanwhile, the second defendant had also filed a criminal complaint against the first defendant stating that he was trying to appropriate the share of her husband as well. This complaint was lodged with the Commissioner of Police, Chennai. Meanwhile, the defendant sold the suit property to the 4th defendant. Thereafter the 4th

defendant started giving troubles and threatened to throw out the plaintiff from the suit property. In fact, the sale deed was executed by the 1st defendant in favour of the 4th defendant described the property as a vacant site though there was a house constructed upon the said land in which the plaintiff was residing. Thereafter this error was corrected by executing one more sale deed made only with reference to superstructure. The first and the fourth defendant are bent upon throwing out the plaintiff and also not giving the share of defendants 2 and 3.

8. Thereafter, the plaintiff had issued a legal notice dated 10.11.2007 to the defendants to accept the balance sale consideration of Rs.25,00,000/- and execute the sale deed in his favour, after cancelling the sale deed in favour of the 4th defendant. However, since they were not coming forward to execute the said sale deed, the suit was filed for specific performance and for a declaration that the sale deeds dated 22.10.2007 and 21.11.2007 executed by the first defendant in

favour of the 4th defendant were null and void and for a consequential injunction restraining them from disposing of the suit property.

9. On receiving the summons in the above suit, the 4th and 1st defendants have come forward to file applications under Order VII Rule 11 of the Civil Procedure Code to reject the Plaint in I.A.No369 of 2011 and I.A.No.110 of 2013 respectively. The contentions in both Petitions are more or less identical and the grounds for seeking the rejection are as follows:

- a) The oral agreement in the month of June 2004 is false;
- b) The advance for the purchase being adjusted from out of the professional charges payable by the defendants to the plaintiff, the suit was hit by professional misconduct;
- c) The suit is a speculative one and was barred by limitation.

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10. The plaintiff had filed a detailed counter denying the allegations and contending that he is not guilty of any

professional misconduct. The plaintiff had further submitted that he has made out a cause of action for the suit and the Petition for rejection does not make out any case for rejecting the Plaint. The Additional Sub Judge, Chengalpattu by her Order dated 4.06.2015 was pleased to dismiss of both the interlocutory Applications. The learned Judge has proceeded on the following basis:

- a) That the reading of the plaint clearly establishes a bundle of facts on cause of action the veracity of which can be tested only at the time of trial.
- b) The issue of limitation is an issue of fact as well as law which has to be decided upon full.

Challenging the said order, the first and fourth defendants are before this Court in Civil Revision Petition Nos. 118 of 2016 and 124 of 2016 respectively.

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11. Heard Mr. K.Sridhar, learned counsel appearing for the revision petitioner/first defendant/4th defendant. The learned

counsel would argue that the plaintiff had committed a breach of professional conduct and etiquette and he would rely upon rules 22A and 23 of the Rules Governing Advocates which read as hereunder:

"22A. An advocate shall not directly or indirectly bid in court auction or acquire by way of sale, gift, exchange or any other mode of transfer either in his own name or in any other name for his own benefit or for the benefit of any other person any property which is subject matter of any suit appeal or other proceedings in which he is in any way professionally engaged."

"23. An advocate shall not adjust fee payable to him by his client against his own personal liability to the client, which liability does not arise in the course of his employment as an advocate."

12. He would contend that by adjusting the fees towards a portion of the sale consideration, the plaintiff has clearly violated Rule 23 and further he has also entered into an agreement for

sale with reference to a property in which he was professionally engaged which squarely falls within the ambit of Rule 22A. This is the only ground on which the learned counsel had advanced arguments. He would rely on the Judgment:-

[reported in 1954 CriLJ 1531: In re K.L.Gauba Vs. The State of Bombay]

13. He also relied upon the Judgment ***[reported in (2018) 1 SCC page 638, B.Sunitha Vs. State of Telangana and Another]***, which was a case where the counsel had demanded a share of the compensation received under Motor Accident Claim. The learned counsel also relied upon the Judgment of this Court ***[reported in 2004 Cri LJ 4436, C.Manohar Vs. B.R.Poornima Kuchil Kumar Nandi]*** wherein the Bench had held that the learned counsel concerned committed a serious professional misconduct and had relegated the issue of misconduct to the appropriate forum. However, the proceedings that were initiated against him were quashed but it was left open

to the Bar council to deal with the complaint. The learned Judge had also deprecated the increasing element of commercialization in the profession and the decreasing element of service. He had also relied on the Judgment [**reported in V.C. Rangadurai Vs. D.Gopalan, (1979) 1 SCC page 308**] where the Court had observed that the confidence of public in the legal profession was integral to the confidence of the public in the legal system. The Court had also observed that not only did the Advocate owe a responsibility to his clients but also to the Court in the discharge of his professional duties. He would therefore argue that by entering into an agreement of sale with the defendants while he was conducting their case including property in which he was professionally interested, the plaintiff had committed a serious misconduct and therefore the Paint ought to be rejected.

14. Per contra, Mr. Ravi Kumar, learned Senior Counsel, who appeared on behalf of M/s. Paul & Paul, counsel for the respondent would argue that when the plaintiff was engaged by

the defendants there was no discussion or arrangement for the purchasing of the property belonging to the defendants. It was only in the year 2004 when he came to know that the defendants were interested in selling the property in which he was a tenant that he had expressed his desire to purchase and that was only because the defendants had themselves expressed their desire to sell their property to the plaintiffs for a price lesser than the market value. It was only a small amount that was adjusted from out of the fees due to him. It is the further contention that for all the litigation that the plaintiff had undertaken for the defendants from the year 1994 he had not charged any fees and it was the defendants themselves who had undertaken to sell the property to him for a lesser price considering his service and in fact the execution of sale was also subject to the disposal of the suits which were pending in which the plaintiff was not engaged. He would further argue that the sale agreement was not with reference to the property in respect of which he was conducting the suit neither was it when the case was still underway. He

would rely on the Judgment of Hon'ble Supreme Court [**reported in 2010 (4) Mh.L.J. Page 34, Western Coalfields Ltd. and others Vs. Chandraprakash**]

15. Heard the learned counsels, perused the papers, records as well as the Judgments.

16. The defendants 1 and 4 have sought to have the Plaint rejected on the ground that the plaintiff had committed a professional misconduct and it was contrary to the Rules governing Advocates. The arguments were not advanced with reference to other issues.

17. The consequence of a breach of the Rule would entail against the erring lawyer proceedings before the body governing them, namely, the Bar Council. Contravention of a rule of a professional body does not come within the ambit of Order VII Rule 11 of the Civil Procedure Code as the suit is not hit by any of

the grounds enumerated therein namely it does not suffer from any failure to disclose a cause of action or it is not barred by any law. Breach of the Rules will not amount to the suit being barred by a law. Even in the Judgment that was referred to by the learned counsel for the petitioner namely **[reported in (2018) 1 SCC page 638, B.Sunitha Vs. State of Telangana and Another]**, where the Supreme Court had dealt with a criminal complaint lodged by an advocate against his client under Section 138 of the Negotiable Instruments Act, the Hon'ble Supreme Court had held that the respondent/advocate was guilty of professional misconduct since he has stipulated fees commensurate to the compensation received which was a clear act of misconduct and therefore the subsequent complaint filed by him against his client was nothing short of abuse of process of law and therefore Hon'ble Supreme Court had quashed the Criminal complaint against the client and had only directed the misconduct to be tried by the professional body governing advocates namely the Bar Council. In the instant case, it is seen

that the plaintiff had undertaken several cases on behalf of the defendants and at that point of time there was no understanding that the plaintiff would purchase the property in lieu of his fees. The question of purchase arose in the year 2004 when the plaintiff came to know that the defendant was arranging to sell the property and therefore being in possession of the property, the plaintiff had requested the defendant to sell the property to him. The sum constituting the advance was a sum of Rs. 1,50,000/- which the plaintiff had spent on the property to bring it to a habitable condition and which was payable to him by the defendants and a sum of Rs.50,000/- was the amount from out of his professional charges that he had asked the defendants to adjust and the balance sale consideration was payable after the disposal of the suit that had been filed. Except the defendants 1 and 4, the other defendants have not contested the claim of the plaintiff. It cannot be stated that plaintiff had committed professional misconduct.

18. In the Judgment reported in **[CDJ 2018 SC page 55, Kaushal Kishore Awasthi Vs. Balwant Singh Thakur & Another]**, the Hon'ble Supreme Court had observed as follows:

"Admittedly, in the instant case, the complainant was selling the property to the intending buyer which was an arrangement between them unconnected with any legal proceedings. The said property was not being sold in execution of any decree, in which proceedings the appellant was engaged, as noted above. Insofar as the filing of the Suit by the appellant on behalf of the complainant is concerned, that had resulted into passing of decree and the proceedings had concluded. Even as per the complainant's own admission, it is much thereafter that the complainant intended to sell the property in question when he found himself in need of money. It is this sale which the appellant tried to interdict. He was not doing so in the capacity of an Advocate. As per him, the complainant was not authorised to sell the property without repaying his debt. Whether the appellant was

right in this submission or not, is not relevant. What is relevant is that this act has nothing to do with the professional conduct of the appellant. Therefore, the very initiation of disciplinary proceedings against the appellant by the State Bar Council was improper and without jurisdiction."

19. It is also seen that the Allahabad High in a case **[reported in CDJ 2000 All HC 524, Abhinandan Singh Vs. Mahesh Kumar Mishra]** has held that the Rules framed under the Advocates Act do not have the force of law and cannot be enforced in a Court of law and have observed as follows:

"LASTLY the rules, no doubt, have been framed under the Advocate Act, 1961. However, these rules do not have the force of law and cannot be enforced in the court of law. On the basis of these rules, The Bar Council of India may initiate proceedings for misconduct, in case the breach of any rule is committed by any Advocate. However, these rules do not

have the force of law and cannot be enforced in the Court.”

20. As already held the breach of the Rules framed under the Advocates Act will not amount to the suit being barred by any law and will not attract the provisions of Order VII Rule 11 of the Civil Procedure Code. Accordingly, the Civil Revision Petitions stand dismissed. No costs. Consequently, Connected Miscellaneous Petitions are closed.

23.04.2019

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Index : Yes/No
Speaking order/non-speaking order

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P.T.ASHA, J.,

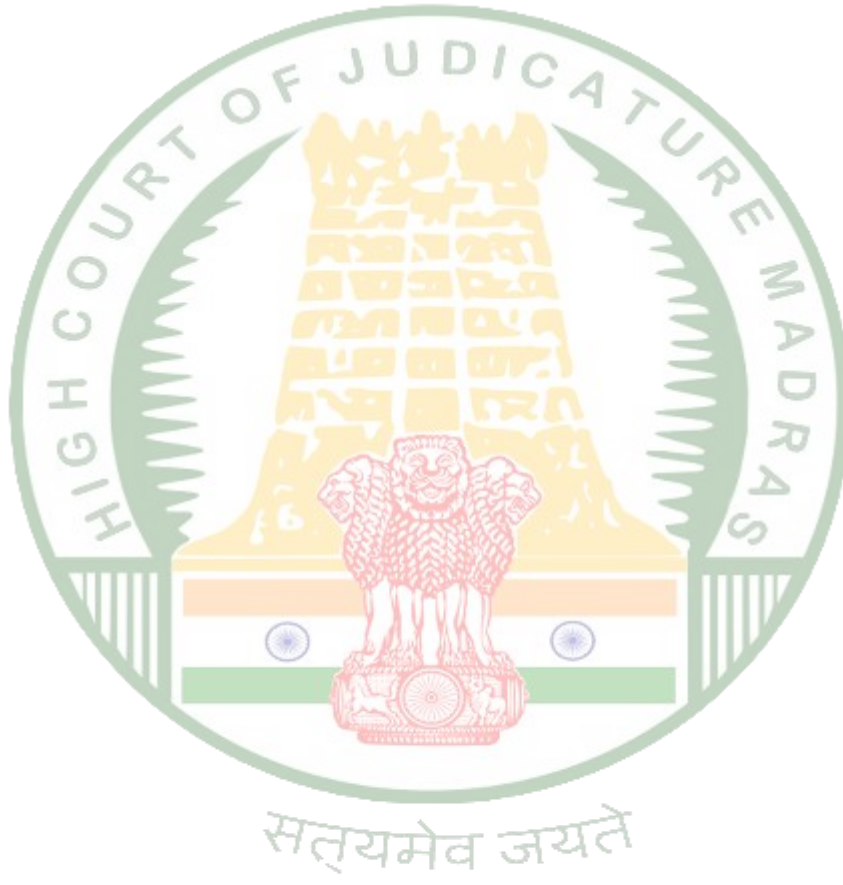
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To,
The Additional Subordinate Judge,
Chengalpattu.



Pre-Delivery order in
C.R.P(PD).Nos.118 and 124 of 2016
and CMP.Nos.674 and 679 of 2016

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