



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.(MD)Nos.28 to 30, 42 to 46, 48, 50 to 57 and 98 of 2020

and

C.M.P.(MD)Nos.1822, 1825 and 3375 of 2020

A.S.(MD)No.28 of 2020:-

1. M.Thavamani S/o.Murugappan,
No.56, New Street,
Velipattinam Post,
Ramanathapuram Town and District.

...Appellant in all Appeal Suits

Vs.

1. Amsath W/o.Haja Mohideen,
Pampurani Road, Vellipattinam Post,
Ramanathapuram Town and District

...1st Respondent in A.S.(MD).No.28 of 2020

1. Sabiyath Nisha W/o.Haja Mohideen,
D/o.Ansari, D.R.O.Colony,
Madurai Town and District

...1st Respondent in A.S.(MD).No.29 of 2020

1. Saharbhan Begum W/o.B.K.Abdul Rahman,
D.No.1, Pasipattarai Street,
Vellipattinam Post,
Ramanathapuram Town and District

...1st Respondent in A.S.(MD).No.30 of 2020

1. S.K.Mohamed Saribu, S/o.Anisai Ravuthar,
Theruliveli Village and Po,
Mudukulathur Taluk,
Ramanathapuram District.

...1st Respondent in A.S.(MD).No.42 of 2020



1. Ashath Begam, W/o.Kalith Kushman,
Dr.Jahire Ushen Street,
Theriruvveli Village and Post,
Muthukulathur Taluk,
Ramanathapuram District.

...1st Respondent in A.S.(MD).No.43 of 2020

1. Noorul Heethaya, D/o.Jawahar Ali,
D.No.47, Patichivaraiyalkara St.,
Velipattinam Po,
Ramanathapuram Town and District.

...1st Respondent in A.S.(MD).No.44 of 2020

1. Subukunisha, W/o.Ansari,
Old Address Pasipavalakara St, Velipattinam Po,
Ramanathapuram Town and District.
Now Resi. at D.No.17, Pamburani Road,
Velipattinam Po,
Ramanathapuram

...1st Respondent in A.S.(MD).No.45 of 2020

1. Faritha Begam, W/o.Abdul Jalish Ravuthar,
Mellakottai Village and Post,
Ramanathapuram Taluk and District.

...1st Respondent in A.S.(MD).No.46 of 2020

1. Ansari S/o.Late.Mohamed Ibrahimsha,
Old Address. Pasipavalakara Street,
Velipattinam Post, Ramanathapuram Taluk and District,
Now Res At. D.No.17,
Pamburani

...1st Respondent in A.S.(MD).No.48 of 2020

1. Abusalman S/o.Abdul Ajis,
Dno.5, Kattiyakara Street,
Velipattinam Post,
Ramanathapuram Town and District

...1st Respondent in A.S.(MD).No.50 of 2020



1. Ansari S/o.Late.Mohamed Ibrahimsha,
Old Address Pasipavalakara Street,
Velipattinam Post,
Ramanathapuram Taluk and District,
Now Res At.D.No.17,
Pamburani

...1st Respondent in A.S.(MD).No.51 of 2020

1. Ahamed Musthaba S/o.S.M.Sulthan Seyadu Ibrahim,
West Steet, Devipattinam Village and Post,
Ramanathapuram Taluk and District

1st Respondent in A.S.(MD).No.52 of 2020

1. Asrab Nisha W/o.Thajeetheen,
D.No.3-A, Chelleperumal Pillai Streeet,
Vellipattinam Post,
Ramanathapuram Town and District.

...1st Respondent in A.S.(MD).No.53 of 2020

1. Maitheen Beevi (Died) The Revenue Divisional Officer,
Lathams Bungalow Road,
Ramanathapuram Town and District.

...1st Respondent in A.S.(MD).No.54 of 2020

5. Akbar Nisha W/o.Shahaputheen,
D/o.Rahamadhulla, D.No.9, Arupukara Street,
Velipattinam Post,
Ramanathapuram Town and District.

6. Ik Shanga Begam W/o.Shahaputheen,
D/o.Rahamadhulla, D.No.9,
Arupukara Street, Velipattinam Post,
Ramanathapuram Town and District.

1. Kathar Beevi W/o. Annamohamed,
Pamburani Road,
Vellipattinam Post,
Ramanathapuram Town and District.



1st Respondent in A.S.(MD).No.55 of 2020

1. Jeema Beevi, W/o. Late. Jainulabtheen,
D. No. 17, Arupukara Street,
Velipattinam Post,
Ramanathapuram Town and District.

1st Respondent in A.S.(MD).No.56 of 2020

1. Seithoon Beebi W/o. Samsun Puhari,
D. No. 8, Arupukara Street,
Velipattinam Post,
Ramanathapuram Town and District.

1st Respondent in A.S.(MD).No.57 of 2020

1. Sabanayagi Begum W/o.S.S.Abdul Kadhar,
Alagankulam Village and Post,
Ramanathapuram Taluk and District.

1st Respondent in A.S.(MD).No.98 of 2020

2. The Revenue Divisional Officer,
Lathams Bungalow Road,
Ramanathapuram Town and District

2nd respondent in AS(MD).Nos. 28 to
30,42 to 46,50,52,53,55 to 57 & 98/2020

3. The Executive Engineer and Administration Officer,
Tamilnadu Housing Unit,
K.T.M.Building 1st Floor,
Vandikaran Street,
Ramanathapuram Town and District.

3rd Respondent AS(MD).Nos. 28 to
30,42 to 46,50,52,53,55 to 57 & 98/2020

4. The District Collector
Sethupathi Nagar,
Ramanathapuram District

5. The Managing Director
Tamilnadu Housing Board, 493,
Annasalai, Nanthanam,
Chennai-35

4th & 5th Respondent AS(MD).No. 28 to
30,42 to 46,50,52,53,55 to 57 & 98/2020
& 3rd & 4th Respondent in AS(MD).No.54 of
2020

5th Respondent in AS(MD).No.54 of 2020

6th Respondent in AS(MD).No.54 of 2020

Akbar Nisha

Ik. Shanga Begam

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PRAYER in all suits As(MD).Nos 28 to 30, 42 to 46, 48,50 to 57 and 98/ 2020

This Appeal Suit is filed under Section 96 r/w. Order 41 Rule 1 of Code of Civil Procedure, to prefer this Memorandum Grounds of appeal suit as against the Judgement and decree dated 28/08/2019 made in O.S.Nos. 22, 20,18,24, 26,27,31,32,30,33,29,23,21,17,19,25,28, and 35 of 2017 respectively on the file of the Principal District Court, Ramanathapuram.

For Appellant : Mr.A.S.Narasimhan
for Mr.M.Thirunavukarasu
For R1 : Mr.H.Lakshmi Shankar
For R2 & R4 : Mr.J.Gunaseelan Muthiah
Additional Government Pleader
For R3 & R5 : Mr.R.Janarthnan, Standing Counsel

COMMON JUDGMENT

Since the facts are identical, this Court is inclined to dispose of all the appeals by this common judgment.

2. These appeals have been filed as against the decree and judgment of the trial Court dismissing the suits filed claiming legal fees at the rate of 10% said to have been agreed by the litigants in a land acquisition proceedings.

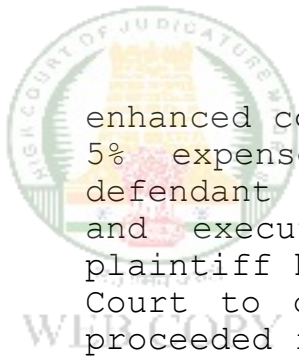
3. For the sake of convenience, the parties are referred to herein, as per their rank before the trial Court.

4. The brief facts, leading to the filing of this Appeal Suit, are as follows:-

(i) The plaintiff is a practicing Lawyer. An extent of 470.28 cents in Survey Nos.56/4, 56/5 and 56/6 were acquired for the purpose of Tamil Nadu Housing Board on 03.04.19927 from the first defendant/land owners in all the suits. As the land owners did not know about the proceedings of the Land Acquisition, the plaintiff contacted them either directly or through letter and impressed upon them to proceed further. Accordingly, he was engaged by the defendants. The plaintiff has also prepared objections as against the acquisition proceedings. Despite his objections, only 16 references were made under Section 18 of the Land Acquisition Act (for the sake of brevity hereinafter referred to as 'the Act'). One such reference is relating to one Ansari, who is the first respondent in A.S.(MD)No.51 of 2020. The above reference was numbered as L.A.O.P.No.3 of 1999.

(ii) The land owners have orally agreed to pay 10% fee of the

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enhanced compensation. Besides 5% of appeal expenses and also other 5% expenses for engaging Advocates. Accordingly, the first defendant in all the suits have agreed to pay the admitted amount and executed the document dated 12.09.2002 separately. The plaintiff has also taken steps to file writ petition before the High Court to complete the acquisition proceedings. Besides, he also proceeded further under Section 28(A) of the Act and ultimately, got the compensation to the parties at the rate of Rs.5,000/- per cent. After discharging his professional duty, the land owners /defendants have failed to act upon as per the document, dated 12.09.2002. Hence, the suits have been filed seeking fee and expenses with 11% interest and seeking permanent injunction as against the second and third respondents.

5. It is the contention of the land owners/first defendant that the plaintiff has not taken any steps to refer the matter under Section 18 of the Act and similarly, all the proceedings under Section 28 (A) of the Act were conducted by the land owners themselves. It is stated that the plaintiff was not engaged specifically to get enhanced compensation. Many lawyers have appeared in various land acquisition cases. The land owners/defendants agreed to receive a sum of Rs.5,000/- per cent in a mediation conducted by the defendants 2 to 5, in respect of which the plaintiff herein has no role to play. In fact the plaintiff acted against his profession and delayed the compensation. In fact the plaintiff was demanding 20% of the compensation amount from the land owners/defendants as fee. Hence, prayed for dismissal of the suit.

6. Based on the above pleadings, the trial Court has framed the following issues in all the suits:-

O.S.No.35 of 2013:-

1. Whether the agreement dated 12.09.2002 said to have been executed between the plaintiff and the first defendant is true and binds on the first defendant?

2. Whether the plaintiff is entitled to permanent injunction?

3. Whether the plaintiff has barred under Section 28 (A) of the Land Acquisition Act on behalf of the defendant?

4. Whether the plaintiff is entitled to claim legal fees as

5. To what other reliefs?

O.S.No.17 of 2017:-

1. Whether the plaintiff is entitled to receive a sum of Rs.22,960/- from the first defendant?

2. Whether the plaintiff is entitled to permanent injunction?

3. To what other reliefs?

O.S.No.18 of 2017:-

1. Whether the plaintiff is entitled to receive a sum



of Rs.26,005/- from the first defendant?

2. Whether the plaintiff is entitled to permanent injunction?

3. To what other reliefs?

O.S.No.19 of 2017:-

1. Whether the plaintiff is entitled to receive a sum of Rs.27,730/- from the first defendant?

2. Whether the plaintiff is entitled to permanent injunction?

3. To what other reliefs?

O.S.No.20 of 2017:-

1. Whether the plaintiff is entitled to receive a sum of Rs.9,869/- from the first defendant?

2. Whether the plaintiff is entitled to permanent injunction?

3. To what other reliefs?

O.S.No.21 of 2017:-

1. Whether the plaintiff is entitled to receive a sum of Rs.18,634/- from the first defendant?

2. Whether the plaintiff is entitled to permanent injunction?

3. To what other reliefs?

O.S.No.22 of 2017:-

1. Whether the plaintiff is entitled to receive a sum of Rs.7,694/- from the first defendant?

2. Whether the plaintiff is entitled to permanent injunction?

3. To what other reliefs?

O.S.No.23 of 2017:-

1. Whether the plaintiff is entitled to receive a sum of Rs.18,053/- from the first defendant?

2. Whether the plaintiff is entitled to permanent injunction?

3. To what other reliefs?

O.S.No.24 of 2017:-

1. Whether the plaintiff is entitled to receive a sum of Rs.40,294/- from the first defendant?

2. Whether the plaintiff is entitled to permanent injunction?

3. To what other reliefs?

O.S.No.25 of 2017:-

1. Whether the plaintiff is entitled to receive a sum of Rs.74,344/- from the first defendant?

2. Whether the plaintiff is entitled to permanent injunction?

3. To what other reliefs?

O.S.No.26 of 2017:-

1. Whether the plaintiff is entitled to receive a sum



of Rs.8,205/- from the first defendant?

2. Whether the plaintiff is entitled to permanent injunction?

3. To what other reliefs?

O.S.No.27 of 2017:-

1. Whether the plaintiff is entitled to receive a sum of Rs.8,722/- from the first defendant?

2. Whether the plaintiff is entitled to permanent injunction?

3. To what other reliefs?

O.S.No.28 of 2017:-

1. Whether the plaintiff is entitled to receive a sum of Rs.51,796/- from the first defendant?

2. Whether the plaintiff is entitled to permanent injunction?

3. To what other reliefs?

O.S.No.29 of 2017:-

1. Whether the plaintiff is entitled to receive a sum of Rs.3,03,892/- from the first defendant along with interest?

2. To what other reliefs?

O.S.No.30 of 2017:-

1. Whether the plaintiff is entitled to receive a sum of Rs.1,02,057/- from the first defendant along with interest?

2. Whether the plaintiff is entitled to permanent injunction?

3. To what other reliefs?

O.S.No.31 of 2017:-

1. Whether the plaintiff is entitled to receive a sum of Rs.1,02,058/- from the first defendant?

2. Whether the plaintiff is entitled to permanent injunction?

3. To what other reliefs?

O.S.No.32 of 2017:-

1. Whether the plaintiff is entitled to receive a sum of Rs.6,53,520/- from the first defendant?

2. Whether the plaintiff is entitled to interest for the said amount?

3. Whether the plaintiff is entitled to permanent injunction?

4. To what other reliefs?

O.S.No.33 of 2017:-

1. Whether the plaintiff is entitled to receive a sum of Rs.22,960/- from the first defendant?

2. Whether the plaintiff is entitled to permanent injunction?

3. To what other reliefs?

7. Since the issue in all the suits is common, the trial



Court has disposed of all the suits by a common judgment, dated 28.08.2019.

8. Before the trial Court on the side of the plaintiff, P.W.1 was examined and Exs.A1 to A79 were marked and on the side of the defendants D.W.1 and D.W.2 were examined and Exs.B1 to B11 were marked.

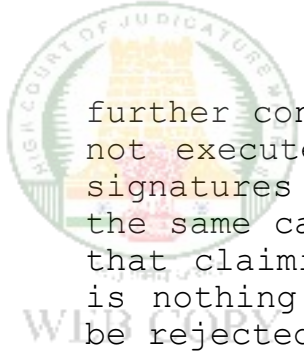
9. It is the contention of the learned counsel for the plaintiff/appellant that he was engaged by the land owners / defendants for the purpose of getting higher compensation for the lands acquired from the land owners/defendants in a Land Acquisition Proceedings. The land owners had executed agreements in Exs.A1, A6 to A15 and A18 to A21 dated 12.09.2002 authorizing the plaintiff to appear on their behalf before the Land Acquisition Authorities and the Land Acquisition Tribunal for enhancement of compensation. Besides, they also agreed to pay the fees at the rate of 10% of the total compensation apart from that, expenses at another rate of 10%. In all the cases, the land owners/defendants have admitted that they have engaged the plaintiff. That itself clearly indicates that they also agreed to pay the fees as per Ex.A1 and other documents as referred above. As long as there is no plea of fraud, the document dated 12.09.2002 has to be given weight and it cannot be ignored altogether.

10. It is the further contention of the plaintiff that all the documents, particularly Ex.B7 makes it very clear that in a reference under Section 28(A) of the Act, the plaintiff has appeared on behalf of the defendants. That apart, even during the mediation proceedings, he has appeared on behalf of the land owners/defendants and he obtained consent from the parties. Hence, the matter has been settled agreeing to receive compensation at the rate of Rs.5,000/- per cent. Having received the amount and agreed to pay the specified fee, now the land owners/defendants had turned to deny the legal fee payable to the plaintiff. Hence, prayed for allowing the appeals.

11. In respect of his submission, he relied upon the following judgement:-

(1) M.Dhilipkumar vs. R.Govindaraj and others [2009 (5) CTC 524]

12. The learned counsel appearing for the respondents submitted that the very pleadings in the plaint itself indicate that when the lands were acquired and acquisition order has been passed, the plaintiff has approached the land owners/defendants, who are illiterates, and obtained vakalat. However, except the case, which is the subject matter of A.S.(MD)No.51 of 2020, no other matters have been ever referred to the Tribunal under Section 18(A) of the Act. Therefore, the very pleading that he was engaged to get higher compensation from the very beginning is falsified. It is the



further contention that the so called agreement dated 12.09.2020 was not executed voluntarily and it is only the cyclostyle letter and signatures have been obtained from the illiterate litigants. Hence, the same cannot be given any importance. Hence, it is the contention that claiming such huge amount of fee on the value of compensation is nothing but a champertous contract. Therefore, it is liable to be rejected.

13. It is his further contention that the so called contract is vitiated in view of the active confidence of the plaintiff. The poor litigants, who lost the lands, were taken on ride by the plaintiff. It is stated that in A.S.(MD)No.51 of 2020 a sum of Rs.26 lakhs was received by the plaintiff by way of cheque, which is not whispered in his pleading. Out of the above amount, only Rs.18 lakhs have been paid back to the first defendant / first respondent in A.S.(MD)No.51 of 2020. Even in written statement, the plaint was not specifically denied. Hence, the contract cannot be enforced.

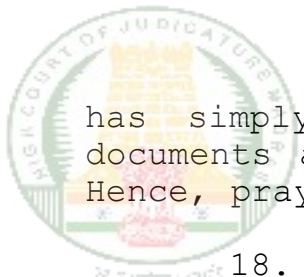
14. In respect of the his submission, he relied upon the following judgements:-

- (1) B.Sunitha vs. Sate of Telengana and another [Criminal Appeal no.2068 of 2017]**
- (2) Angayarkanni and another vs. N.Ponnuswami and others [(2018) 0 Supreme (Mad) 2861]**
- (3) Dr.V.A.Babu (died) legal vs. State of Kerala and others [CRP No.933 of 2002(E)]**
- (4) G.a Senior Advocate of the Supreme Court [AIR 1954 SC 557]**

15. Except sending some notices, no professional duty whatsoever was not done by the plaintiff. Hence, it is submitted that the appeal suits are liable to be dismissed. However, the learned counsel for the respondents submitted in fairness that the claimants are ready to pay the fees at the rate of 1.5%, which comes around Rs.4.5 lakhs to the plaintiff. Hence, the prayed for dismissal of the appeal.

16. When this Court posed a question to the learned counsel appearing on behalf of the plaintiff as to whether he is ready to receive a sum of Rs.4.5 lakhs as fee, the learned counsel appearing for the plaintiff submitted that his client is not willing to receive that amount and he is only entitled to the amount as per the agreement. Such view of the matter, now this Court has no other option except to decide the issue on merits.

17. Additional documents are also sought to be marked in C.M.P.(MD)No.3375 of 2020 by the plaintiff on the ground that the documents, which are sought to be marked now, are necessary documents to show that the plaintiff had participated in all the proceedings initiated on behalf of the land owners. The trial Court



has simply rejected those documents on the ground that those documents are not relevant to decide the issue of payment of fee. Hence, prayed for allowing the said application.

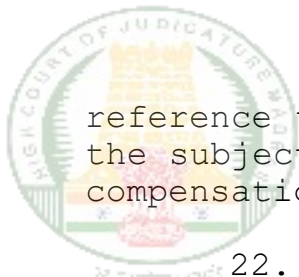
18. The documents sought to be marked as additional documents filed before this Court are the certified copies of the Xerox copies, which were sought to be marked before the trial Court, but the trial Court has rejected mainly on the ground that since the issue involved in all the suits is with regard to payment of fee, those documents are not relevant. It is to be noted that the only ground on which, these documents sought to be filed are to show that the plaintiff has taken various steps to get higher compensation for the defendants. The documents sought to be marked are the certified copies of Xerox copies. The trial Court ought not to have granted certified copies of unmarked Xerox copies. Merely because those documents were certified, that will not assume the character of primary evidence. Even assuming that those documents are relevant, that are sought be marked only for the purpose of proving the professional duties of the plaintiff. This Court is of the view that the additional documents are not relevant to prove the fact, since Ex.B7, an admitted document, clearly indicates that the plaintiff in fact appeared on behalf of the respondents before the authority. Accordingly, the application filed to receive additional document is rejected.

19. In view of the above facts, now the points arise for consideration in this in these appeals are:-

- 1. Whether be documents dated 12.09.2002 are voluntarily executed and a result of free consent of the litigants?**
- 2. Whether the claim of fee at the value of the compensation is champertous and impermissible**
- 3. To what other reliefs the plaintiff is entitled?**

20. I have heard the learned counsel appearing on either side and perused the entire materials available on record.

21. The suits have been filed claiming fee as per the agreements said to have been executed on 12.09.2002 by the litigants. The very facts leading to filling of the suits indicate that many of the litigants appeared to be in ignorance of the procedures, thereafter plaintiff contacted them. The very pleadings in the plaint indicate that the land owners/defendants, whose lands have been acquired, have not approached the plaintiff voluntarily. On the other hand, it is only the plaintiff, who had approached the land owners voluntarily after the acquisition proceedings that took place on 03.04.1997. The pleadings further indicate that the plaintiff approached the poor litigants and assured them for higher compensation and obtained signatures for carrying out such exercise. Though Ex.B7 makes it very clear that the plaintiff has appeared on behalf of the land owners before the Revenue Divisional Officer in a



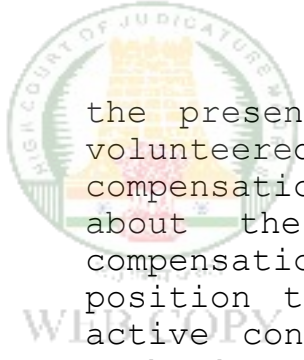
reference under section 28(A) of the Act, except one case, which is the subject matter of A.S.(MD)No.51 of 2020, in all other suits, low compensation was fixed by the acquisition officer.

22. Despite the fact that the plaintiff has obtained vakalat and obtained signatures from the claimants in other documents, no objections whatsoever have been filed to refer the matter under Section 18 of the Act. The documents filed on record indicate that the plaintiff has mainly appeared under Section 28(A) of the Act before the Revenue Divisional Officer and not before that. Thereafter, it appears that in a reference under Section 18 of the Act in one of the cases i.e., in A.S.(MD)No.51 of 2020, compensation at the rate of Rs.6,480/- per cent was fixed. As no other references were made with regard to other cases under Section 18 of the Act, with the help of the official respondents, the land owners decided to go for mediation. It appears that the appellant was present in that mediation. Thereafter, the Officials after obtaining consent from the respective land holders, settled the compensation at the rate of Rs.5,000/- per cent and the matter had reached finality.

23. Except the proceedings under Section 28 (A) of the Act, there are no other materials to show that the plaintiff was actively proceeded from the very inception. If really, the plaintiff had an intention to safeguard the interest of his clients, he should have proceeded the matter under Section 18 of the Act. If all the cases were referred under Section 18 of the Act, the claimants would have got more compensation. The reference Court in one of the cases has fixed the compensation at the rate of Rs.6,480/- per cent. In the present case, since the payment was delayed, ultimately, the sufferers, who are land owners since have agreed to settle the matter at the rate of Rs.5,000/- per cent at later point of time.

24. Be that as it may, as already indicated, the parties never approached the plaintiff voluntarily, in fact, the plaintiff has solicited the clients. He has voluntarily solicited the clients considering the nature of the land acquisition proceedings, wherein several people have involved and several lands were acquired. Therefore, soliciting the clients voluntarily, without the clients approaching the Advocate, is against the profession. Such conduct is highly deprecated. It goes against the Rules governing Advocates' act.

25. Much reliance was placed on Exs.A1, A6, A7, A19, dated 12.09.2002, agreement signed by the land owners in all these cases agreeing to pay 10% of total compensation as fee to the plaintiff. Absolutely, all these documents are typed cyclostyle documents and only the names of the parties have been filled in by handwriting and in each of the documents, signatures of the defendants were



the present plaintiff, who is none other than the Advocate, who volunteered himself to offer help assuring the land owners on higher compensation. When the persons, who lost the lands have no idea about the further proceedings, were assured of the higher compensation by the Counsel, the Counsel normally is in dominant position to dominate the will of the client. In fact he is in active confidence and in fiduciary relationship. Therefore, any such documents relied upon by the person, who was in dominant position, it is for him to show that the document is as a result of good faith and honest transaction.

26. The recitals in Ex.A10 referred to above, clearly indicate as if the defendants have heard, read the contents of the document and then signed the same. The manner, in which the cyclostyle papers have been obtained from various defendants, makes it very clear that these documents are not as a result of free consent and will of the defendants, who agreed to pay such huge amount, i.e., 10% from the total compensation. If the person, who relies the agreement, is an ordinary citizen, there will be a different scenario. When the person is in dominant position, particularly when the person is acting as an Advocate and assured the other side to get huge compensation, the documents relied upon by him cannot be taken as a result of free consent and came into effect in good faith and there was a free will on the part of the defendants.

27. During submissions, it is also brought to the notice of this Court, the plaintiff was originally enrolled in the year 1994. Thereafter, in the year 2015, his name has been struck off from the role of the Bar Counsel. The reason for that is, he is alleged to have obtained two years corresponding B.G.L., degree and obtained one year B.L., degree. Further all these degrees were obtained while he was in service. That was the reason to stick off his name from the roles of Bar Council. When the person is not qualified to be an Advocate at the relevant point of time, claiming huge fee as a matter of right at the rate of 10% from the total compensation, is highly impermissible and deprecated.

28. In the judgment reported in 2009 (5) CTC 524 [M.Dhilipkumar vs. R.Govindaraj and others], this Court has held that the Court cannot order more fees than what has been agreed by the parties. In the above case, the Advocate claimed 20% of award amount as fees, whereas the claimant himself admitted that he has agreed to pay the fee only at 10%. Only in such scenario, this Court has held that having agreed to pay the fee at 10%, he cannot go beyond what had been agreed. The said judgment is not applicable to the facts of the present case.

29. In the case reported in AIR 1954 SC 557 [Mr.G.A Senior Advocate vs. unknown], in para Nos.14 and 17, this Hon'ble Supreme

<https://hccservices.mca.gov.in/hccservices> follows:-



".....14. The learned Judges in the Punjab Record case collected all the available authorities up to the year of their decision and they show that this kind of agreement was condemned in Calcutta in 1874 and 1900 : In the matter of Moungh Htoon Oung (21 W.R. 297) and In the matter of an Advocate of the Calcutta High Court (4 Cal L.J. 259); in Bombay in 1901 : In re N. F. Bhandara (3 Bom. L.R. 102 at 113); and in Madras in 1881 and again in 1939 : Achamparambath Cheria Kunhammu v. William Sydenham Ganty (I.L.R. 3 Mad. 138) and In re an Advocate of the Madras High Court (I.L.R. 1940 Mad. 17). As the Bombay High Court is the one in which Mr. G normally practices and as the engagement was entered into in Bombay, we think it proper to quote the following passage at page 113 from the judgment in the Bombay case (In re. N. F. Bhandara) :

"I consider that for an Advocate of this Court to stipulate for, or receive, a remuneration proportioned to the results of litigation or a claim whether in the form of a share in the subject-matter, a percentage, or otherwise, is highly reprehensible, and I think it should be clearly understood that whether his practice be here or in the mofussil he will by so acting offend the rules of his profession and so render himself liable to the disciplinary jurisdiction of this Court."

.....17.Mr. G relied on the practice in some of the American States where an agreement by an attorney to purchase part of the subject-matter of the litigation is upheld. The class of cases to which he refers are summarised in a footnote to McMicken v. Perin (15 Law. Edn. 504 & 505). He relied on this to show that contracts of this kind cannot be dismissed as reprehensible or morally wrong. We do not propose to enter into this because what may be harmless in one country may not be so in another.

We will however pause to observe that Rattigan J. collected a large volume of American authority at pages 318-321 of his opinion in Ganga Ram Devi Das (61 P.R. (of 1907), p. 280), to show that even in those States where this is permitted it is regretted and forward upon. For historical reasons obtaining there, the practice may have come to stay however much it is regretted; but in 1937 the American Bar Association adopted the following canon of Professional Ethics :

"The lawyer should not purchase any interest in the subject-matter of the litigation which he is conducting."

In India history tells the converse tale. We see no reason why we should import what many feel is a mistake, even in the country of its origin, from another country and seek to perpetuate their error here when a sound and healthy



tradition to the contrary already exists in our Bar. The reasons for exacting these high standards in this country, where ignorance and illiteracy are the rule, are even more important than they are in England where the general level of education is so much higher. We hold that the conduct of Mr. G amounts to professional misconduct and as it was committed in the face of the Bombay view expressed by Sir Lawrence Jenkins in 1901 disciplinary action is called for.

30. In the case of DR.V.A.Babu (died) vs. The State of Kerala and others [CRP No.933 of 2002(E), the High Court of Kerala, held as follows:-

".....At the same time, if it is revealed that the object of the agreement is illegal or if the conditions of the agreement are violative of the principles of equity, justice and good conscience or the agreement discloses an unconscionable bargain, then, the courts in India will certainly find the champertous agreement to be illegal and refuse to enforce the same."

31. In the case of Angayarkanni and another vs. N.Ponnuswami and others [(2018) 0 Supreme (Mad) 2861], this Court has held as follows, in paragraph No.32:-

"32.It is also seen from the plaint that the value of the revision petitioners 2/3rd share is Rs.2,82,66,000/-. Even assuming that the fee was fixed at 10%, the fees works out only to a sum of Rs.28,26,200/- and not Rs.42,71,250/- as claimed. Even if the same is calculated at 12.5% it only works out to a sum of Rs.35,33,250/-. It is therefore evident that the 1 st respondent is trying to establish a speculative claim. The 1st respondent has reduced the status of the noble profession to that of a commercial venture. A lawyer discharging his profession and assignment has a duty to his client, a duty to the opponent, a duty to the Court, a duty to the Society at large and a duty to himself. It needs a degree of probity and poise. This Court is therefore left with no other alternative except to exercise its Jurisdiction under Article 227 of the Constitution of India to strike of the petition in I.A.No.532 of 2008 in O.S.NO.43 of 2004 on the file of the III Additional District Session Judge, Coimbatore."

32. In the case of B.Sunitha vs. State of Telengana and another [AIR (SC) 5727], the Hon'ble Supreme Court in paragraph Nos.13, 16, 18, 19, 23 and 28, has held as follows:-

"....13. One of the issues was dealt with by a single Bench Judgment of the Madras High Court in C. Manohar versus B.R. Poornima⁵. R. Banumathi, J (as her Lordship then was) held that no presumption could arise



merely by issuance of a cheque that amount stipulated in the cheque was payable towards fee. In absence of independent proof, issuance of cheque could not furnish cause of action under Section 138 of the Act in the context of *J.S. Vasu versus State of Punjab* (1994) 1 SCC 184, para 20 and *5 (2004) Crl.L.J 443* of an advocate or client. The observations relevant in the context are as follows :

The case in hand is an example of the present day trend of the legal profession. Legal profession is essentially service oriented. Ancestor of today's lawyers was no more than a spokesperson, who rendered his services to the needy members of the society, by putting forth their case before the authorities. Their services were rendered without regard to remuneration received or to be received. With the growth of litigation, legal profession became a full time occupation. The trend of the legal profession has changed ... profession has almost become a trade. There is no more service orientation.

12. The relationship between the lawyer and the client is one of trust and confidence. The client engages a lawyer for personal reasons and is at liberty to leave him for the same reasons. Considering the relationship between the lawyer and the client and the present day trend in the profession, it has to be carefully seen whether the complainant has proved that the amount due of Rs. 43,600/- is being payable towards him.

16. In *VC Rangadurai versus D. Gopalan* 8, it was observed that relation between a lawyer and his client is highly fiduciary in nature. The advocate is in the position of trust.

...18. Thus, mere issuance of cheque by the client may not debar him from contesting the liability. If liability is disputed, the advocate has to independently prove the contract. Claim based on *7 (1955) 1 SCR 490* and *8 (1979) 1 SCC 308*, para 31 percentage of subject matter in litigation cannot be the basis of a complaint under Section 138 of the Act.

19. In view of the above, the claim of the respondent advocate being against public policy and being an act of professional misconduct, proceedings in the complaint filed by him have to be held to be abuse of the process of law and have to be quashed.

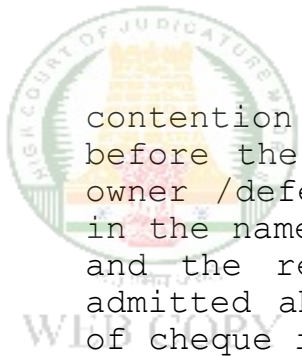
...23. Undoubtedly, the legal profession is the major component of the justice delivery system and has a significant role to play in upholding the rule of law. Significance of the profession is on account of its role in providing access to justice and assisting the citizens in securing their fundamental and other rights. Can justice be secured with the legal professionals failing to uphold the



professional ethics? This Court has even earlier expressed the concern on the falling professional norms in the legal profession 9. In *Tahil Ram Issardas Sadarangani versus Ramchand Issardas Sadarangani*¹⁰, this Court noted the trend of increasing element of commercialization and decreasing element of service. In *VC Rangadurai (supra)*¹¹, this Court observed that confidence of the public in the legal profession was integral to the confidence of the public in the legal system. Commercialization to the extent of exploiting the litigant and misbehavior to the extent of browbeating the Court, breach of professional duties to the court and the litigant on the part of some members of the legal profession, affecting the right of the litigants to speedy and inexpensive justice, need to be checked. This has also been observed earlier in the decisions of this Court [*O.P.Sharma vs. State of Punjab* (2011) 6 SCC 86, paras 18-23; *R.D. Saxena vs. Balram Prasad Sharma* (2000) 7 SCC 264, paras 14, 28, 41, 42.28.

...28. Though the 131st Report was submitted in the year 1988, no effective law appears to have enacted to regularize the fee or for providing the public sector services to utmost needy litigants without any fee or at standardized fee. Mechanism to deal with violation of professional ethics also does not appear to have been strengthened. Success of administration of justice to a great extent depends on successful regulation of legal profession in the light of mandate under Article 39A for access to justice. Deficiency in the working of the present regulatory mechanism has been acknowledged by this Court in several decisions 23. Mandate for the Bench and the bar is to provide speedy and inexpensive justice to the victim of justice and to protect their rights. The legal system must continue to serve the victims of injustice."

33. Having regard to the above settled legal position, claiming huge amount from the compensation is nothing but a champertous contract and such nature of contract cannot be enforced. Further, as already indicated the very contract to pay such amount has not been established. Such agreement is not the result of free consent and voluntariness. The entire agreement has been typed by the plaintiff, only the signatures from the defendants have been obtained. When the person in active confidence and able to canvas others to get such signature got the contract from the illiterates, such contract cannot be enforced easily, particularly, when the relationship is such that he was in dominant position to dominate the will of executant, who was longing for compensation. Such view of the matter, the claim made by the appellant cannot be entertained in the eye of law.



contention that he is entitled to some fee since, he had appeared before the reference Court. It is the specific stand of the land owner /defendant that a cheque for a sum of Rs.22 lakhs was issued in the name of the Advocate/plaintiff and Rs.18 lakhs have been paid and the remaining amount has not been paid. The plaintiff has admitted about the retaining of certain amount. Further, issuance of cheque in his name for such huge amount has not been whispered in anywhere in the plaint. It is also one of the conduct, which goes against the plaintiff. Such view of the matter, I do not find any merit in these appeals. Accordingly, all these appeal suits are dismissed and the judgment and decree made in the Original suits is hereby confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: The Additional Government Pleader is permitted to claim fee in each of the cases, in which he has entered appearance.

To

1.The Principal District Judge,
Ramanathapuram.

2.The Section Officer, (2C)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+18 CC to M/s.M.THIRUNAVUKKARASU, Advocate (SR-8602[F],
8600,8598,8594,8591,8590,8586,8885,8587,8584,8588,8595,8601,8597,
8599,8592,8589,8596 dated 04/03/2021)

+1 CC to M/s.SPL GP (SR-8762[F] dated 04/03/2021)

+1 CC to M/s.R.JANARTHANAN, Advocate (SR-8828[F] dated 04/03/2021)

+13 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-8831[F],
8832,8833,8834,8835,8837,8838,8841,8842,8839,8840,8836,8843 dated
04/03/2021)

A.S. (MD) Nos.28 to 30, 42 to 46, 48,
50 to 57 and 98 of 2020
03.03.2021

KB(10.06.2021) 18P 36C

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