

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

1892.
August 17.
December 13.

ANANTAYYA AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

PADMAYYA AND OTHERS (DEFENDANTS), RESPONDENTS.*

Legal Practitioners' Act—Act XVIII of 1879, s. 28—Agreement between pleader and person retaining him—Promissory note not filed—"Quantum meruit."

The defendants' brother engaged a vakil (since deceased) to defend certain suits on their behalf and made and delivered to him a promissory note for an agreed sum in respect of his fee. The note was not filed in court and it exceeded in amount the vakil's regulation fee. The defendants subsequently made a promissory note in substitution for the above and the vakil's representatives now brought a suit upon the last-mentioned note :

Hold (1) that the agreement with the defendants' brother was invalid by reason of Legal Practitioners' Act, s. 28, and the plaintiffs were not entitled to recover the amount of the note ;

(2) that the plaintiffs were entitled to recover in this action the amount due to the vakil independently of that agreement.

SECOND APPEAL against the decree of W. J. Tate, District Judge of South Canara, in appeal suit No. 341 of 1889, confirming the decree of S. Raghunathayya, District Munsif of Karkal, in original suit No. 304 of 1888.

Suit on a promissory note. The note sued on was made in substitution for a note of which the maker was one Gummanna, the brother of the defendants. The holder of the note was a vakil (since deceased) who had been retained by Gummanna to defend certain suits on behalf of the defendants. The plaintiffs were the sons and widow of the deceased vakil.

It appeared that Gummanna's note had not been filed in Court, and that its amount exceeded the regulation fee ordinarily payable to the vakil.

The District Munsif dismissed the suit on the ground that the note had not been filed in Court in accordance with Legal Practitioners' Act, s. 28 ; and on appeal the District Judge affirmed his decree.

The plaintiffs preferred this second appeal.

* Second Appeal No. 1015 of 1891.

Pattabhiramu Ayyar for appellants.

Ramachandra Rau Sahib, Ranga Rau for respondents.

ANANTAYYA
v.
PADMAYYA.

ORDER :—The first contention on behalf of the appellants is that section 28 of the Legal Practitioners' Act is inapplicable to this case in that Gummanna Heggade by whom the original promissory note was executed was not a party to the suit in which plaintiffs' father acted as pleader on behalf of the defendants. The section is, however, too comprehensive to limit it to agreements entered into by pleaders with the parties themselves. The words include all agreements entered into by a pleader with "any person retaining or employing him in respect of business done or to be done by such pleader." The consideration for the plaint promissory note is merely the previous note, exhibit A, which was executed by Gummanna when employing plaintiffs' father as pleader for the defendants in the suits which they were defending. Such being the case, the Lower Courts are right in holding the agreement to be invalid under section 28 of the Act by reason of its not having been filed in Court.

The next contention is that, even if the agreement is invalid, plaintiffs are entitled to a decree for the legal fee, or at least for the amount admitted by defendants to be due; and in support of this contention reference is made to *Krishnasami v. Kesava*(1).

As was observed by *Straight, J.*, in *Bazi-ud-din v. Karim Bakhsh*(2), the object of section 28 is "to protect necessitous, improvident or careless litigants from being taken advantage of by unscrupulous legal advisers; and provision is, therefore, made for agreements for remuneration in excess of and apart from the amount allowable in taxation of the costs, whereas section 29 recognizes the right of a pleader to recover the amount due to him, independently of such agreement, for the costs, fees, charges and disbursements in respect of the business done."

The District Judge must, therefore, be asked to find what is the amount legally due to the late Kristna Poi, pleader for the defendants, independently of the promissory notes, exhibits A and B.

In compliance with the above order, the District Judge submitted his finding which was accepted when the case came on for final disposal and judgment was delivered accordingly.

(1) I.L.R., 14 Mad., 63.

(2) I.L.R., 12 All., 169.