

APPELLATE CIVIL.

Before Mr. Abdur Rahim, Officiating Chief Justice, Mr. Justice Seshagiri Ayyar and Mr. Justice Phillips.

IN THE MATTER OF A VAKIL OF THE HIGH COURT.

1913.
April 26
and
August
14 and 28.

Professional misconduct—Letters Patent, cl. 10—Vakil—Improper advice to client—Obtaining from client a nominal sale deed for a low value—Misappropriation of client's property—Setting up false defence of ownership in a suit against him by the client for its recovery—Giving false evidence and suborning perjury.

A vakil was found guilty of :—(a) improperly suggesting to a client, seeking his advice as to how to recover his properties from his adversary, the execution, in his (vakil's) own favour, of a nominal sale-deed thereof for a low value, (b) setting up after the execution of such a sale-deed, a title in himself, contrary to the terms of the agreement with the client, (c) setting up a false defence of his ownership, in a suit against him by the client for a cancellation of the sale-deed, (d) supporting the false defence by his own false evidence and (e) suborning perjured evidence in support of the same.

Their Lordships held that the vakil was guilty of misconduct and suspended him under clause 10 of the Letters Patent, from practice for a period of two years.

CASE under clause 10 of the Letters Patent.

Owners of a certain property, who had usufructually mortgaged it to a stranger for about Rs. 40,000 and who were unable to get at the real state of accounts between themselves and the mortgagee, sought the advice of a vakil as to how to redeem the property. The property, which was situated in Madras, was worth a lakh of rupees and its monthly rental was Rs. 600. The clients also represented to the vakil that they were in very straitened circumstances and that they were even unable to maintain themselves. The vakil persuaded the clients to execute a nominal sale-deed in his favour for Rs. 5,000 suggesting that the mortgagee would come to favourable terms only if it was known that he (vakil) was the owner of the equity of redemption and promising at the same time to reconvey the properties after redemption, the understanding being that the vakil should be repaid all his expenses and his fees on redemption. The clients though at first unwilling to execute a sale-deed without a counter-agreement from the vakil for reconveyance, eventually yielded to the vakil's

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professions of fidelity and accordingly executed a sale-deed as demanded by the vakil, without insisting on any counter-agreement. After obtaining the sale-deed and settling with the mortgagee thereafter the amount due to him at Rs. 62,000, the vakil wanted to retain the property for himself and himself executed a usufructuary mortgage in favour of the mortgagee for the amount due to him. The clients' attempts to induce the vakil to reconvey the properties as agreed having failed they instituted a suit on the original side of the High Court against the vakil and the mortgagee for a declaration as to the nominal character of their sale-deed to the vakil and of their own title to the property and for cancellation of the mortgage by the vakil.

The vakil pleaded that the sale was real, that he paid consideration for the same and that he did not in any way cheat the clients and take any undue advantage over them. Finding the defence to be entirely false, the learned Judge decreed the clients' suit as prayed for. The Judge also found that the vakil had not only himself given false evidence in support of his defence but that he also suborned perjured testimony in support thereof. The vakil did not file any appeal from this decree. Thereupon the High Court issued a notice to the vakil to show cause why action should not be taken against him under section 10 of the Letters Patent.

V. Ramesam, the Acting Government Pleader (amicus curiae).
K. R. Subrahmanya Sastriyar for the vakil.

V. Ramesam.—The previous judgment is admissible as evidence of bad conduct, though not as conclusive evidence; see *Muni Reddy v. Venkata Row*(1). The judgment which has not been appealed against must be taken as accepted and final. If so all the charges must be taken as proved. The charges are all set out in the notice given to the vakil by the Court. They are principally (1) giving improper advice and getting a nominal sale-deed for a low value, (2) pleading a false defence and (3) giving false evidence and suborning perjury. There is an antedated receipt got by the vakil from the clients purporting that they received consideration for the sale, whereas the learned Judge found otherwise. Though it is headed "without

(1) (1914) I.L.R., 37 Mad., 238 at pp. 242, 260 and 266 (F.B.).

prejudice" it is admissible in punitive proceedings like this, even if it may not be admissible in the civil suit between the parties.

K. B. Subrahmunya Sastryar for the vakil argued on the evidence of the case to show that the sale was real and not nominal. Setting up a false defence by a vakil as a suitor is not professional misconduct: see *In re Wallace*(1).

[ABDUR RAHIM, OFFG. C.J., and PHILLIPS, J.—That case is distinguishable on its facts.]

[ABDUR RAHIM, OFFG. C.J.—If a pleader cheats his client and the client seeks redress in a Civil Court and the Civil Court finds him guilty of cheating, then do you say he cannot be brought under disciplinary jurisdiction?]

It seems he cannot. See *In re a Second Grade Pleader*(2), and *In re a Pleader*(3).

[ABDUR RAHIM, OFFG. C.J.—Supposing a vakil brings a false suit for remuneration for work not really done, why is it not professional misconduct?]

[*Court*.—On the evidence, you have not proved that you paid anything for the sale.]

JUDGMENT.—This is a matter under clause 10 of the Letters Patent in which Mr. P. Gangadhara Ayyar, a vakil of this Court, stands charged as follows:—

He gave improper advice to the plaintiffs in Civil Suit No. 387 of 1914 (when they in 1911, sought his advice as his clients) that they should execute a nominal sale-deed to him in order that he might litigate in his own name but on their behalf with the plaintiffs' mortgagee.

He was guilty of improper conduct in obtaining a sale-deed (Exhibit G, November 1911) accordingly in his own name.

He took advantage of the ignorance and the needy position of his clients to obtain the conveyance (Exhibit G) for much less than the value of the equity of redemption and he afterwards fraudulently executed a fresh mortgage deed in favour of the plaintiffs' mortgagee in order to defraud his clients and to secure for himself the property in fraud of the understanding between himself and his clients and in order to create evidence against his clients in the matter of the said understanding.

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(1) (1866) 4 Moo., P.C.C. (N.S.), 140. (2) (1910) 20 M.L.J., 498.
(3) (1907) 18 M.L.J., 184.

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He did not do his duty by his clients even after they sent notice of suit through Mr. Govindaraghava Ayyar (Exhibit J), but exercised undue influence in obtaining Exhibits XI, XII and XVI from the second plaintiff.

He raised false defences as first defendant to the suit brought by his clients (the plaintiffs Nos. 1 and 2 in the suit of 1914) namely, in paragraphs 7 to 10 of his written statement, to the effect that the sale-deed to him was intended to be a real sale-deed, conveying the properties outright to him, and that Rs. 2,300 of the purchase money had been paid up before the registration of the sale-deed.

He gave perjured evidence in the suit especially in the matter of the alleged payment of Rs. 2,300 out of the Rs. 5,000 mentioned in the sale-deed (Exhibit G) as purchase money and he suborned perjury by asking two of his friends (namely, the defence witnesses Nos. 2 and 3 in the suit) to give false evidence in respect of the said Rs. 2,300.

The facts which gave rise to these proceedings were disclosed in the course of trial of a suit on the Original Side of this Court (Civil Suit No. 387 of 1914) in which P. Gangadhara Ayyar was the first and principal defendant. The object of the suit was to obtain a declaration that a deed of sale executed by the plaintiffs and the third defendant in favour of P. Gangadhara Ayyar was nominal and procured by him by means of fraud and undue influence, and to have it set aside and also for a declaration that a deed of mortgage executed by the first defendant in favour of the second defendant was not binding on the plaintiffs and the third defendant. Mr. Justice KUMARASWAMI SASTRIYAR who tried the suit gave a decree to the plaintiffs as prayed for and neither the first defendant nor the second defendant appealed against his judgment. The learned Judge held that the conduct of the first defendant throughout the transactions in question with the plaintiffs, who were his clients, was grossly fraudulent. Mr. Gangadhara Ayyar through his pleader Mr. Subrahmanya Sastri has however challenged in these proceedings the learned Judge's findings and we have heard his comments on the evidence that was adduced in the suit itself and canvassed once again at the preliminary enquiry before Mr. Justice SADASIVA AYYAR.

The second plaintiff, his son, the first plaintiff and the third defendant are owners of certain properties consisting of

bungalows and gardens in the town of Madras, yielding a monthly income of about Rs. 600. In 1903 they mortgaged the property by way of conditional sale to one Shaik Adam for Rs. 35,000. In 1905 they paid off Shaik Adam by raising Rs. 40,000 on a usufructuary mortgage (Exhibit A) to the second defendant, who was to pay out of the rents and profits Rs. 50 a month to the mortgagors for their maintenance. The second defendant whom Mr. Justice KUMARASWAMI SASTRIYAR describes as an usurer would not regularly pay the stipulated allowance to the mortgagors who were in extremely straitened circumstances, apparently in the hope of securing the property on easy terms. The value of the property is estimated at a lakh of rupees at the least, and this is the price which the owners wanted, but the second defendant would not pay more than Rs. 80,000. The plaintiffs on 19th July 1911 sent a notice through Mr. K. Ramachandra Ayyar, a High Court Vakil, to the second defendant asking for an account of the rents and profits, and the second defendant made out that Rs. 63,000 and odd were due to him and made a demand for the amount threatening legal proceedings in default of payment. Thereupon, with the aid of two brokers, Abdul Khadir and Khaja Mohideen who were examined in the case, the plaintiffs came to an arrangement with one Padmanabhayya. The properties were to be transferred to Padmanabhayya and a memorandum of agreement was drawn up according to which he was to pay the owners of the property Rs. 1,000, take the necessary steps to redeem the mortgage incurring expenses for that purpose up to Rs. 4,000 and after redemption to sell the property at the best available price. It was also a part of the arrangement that out of the sale-proceeds Padmanabhayya would recoup himself the Rs. 5,000 which he had agreed to disburse, pay two-fifths of the balance to the owners, one-fifth to the brokers and take the remaining two-fifths as his own remuneration. The arrangement ultimately fell through as Padmanabhayya refused to agree to the disputes arising between the parties being settled by the sole arbitration of Mr. K. Ramachandra Ayyar.

It was in this position of affairs that the owners of the property sought the professional advice and help of Mr. Ganga-dhara Ayyar. They were introduced to him by the same brokers and he was told the entire story. He wanted and was

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given a vakalat; he then sent a notice to the second defendant (Exhibit F) on 10th October 1911, demanding on behalf of his clients Rs. 200 on account of arrears of maintenance for four months. The case of the plaintiffs in the suit was that Gangadhara Ayyar told them that he had received no reply to his notice but if they entered into an arrangement with himself similar to that with Padmanabhayya he would be able to settle the account with the mortgagee on favourable terms, otherwise the property could not be saved. His proposal was that they would execute a deed of absolute sale in his favour for Rs. 5,000 but that he would not execute a counter-agreement or pay any lump sum of money. He would file a suit for redemption, the cost of which was estimated at Rs. 3,500 and he agreed to pay Rs. 100 a month to the plaintiffs for two years, the time which the suit for redemption was likely to take. Gangadhara Ayyar was not only to be recouped the expenses but was to get his fees as vakil. At first the owners of the property were not willing to execute a deed of sale without an agreement to reconvey the property being executed by Gangadhara Ayyar. The vakil professed to be indignant that he could not be trusted and the brokers ultimately persuaded the owners to agree to his proposal. Thus a deed of sale (Exhibit G) was executed in favour of the vakil on 23rd November 1911. It recites that the consideration for the sale was Rs. 5,000 which was paid to the plaintiffs and that the mortgage amount due to the second defendant would be paid by the plaintiffs. On the strength of this document Mr. Gangadhara Ayyar negotiated with the mortgagee representing that he had purchased the property; and the amount due upon the mortgage on the taking of accounts being settled at Rs. 62,000, he executed a fresh usufructuary mortgage on the 5th January 1912 (Exhibit XXVII) to the second defendant for that amount. On the 19th February 1912 the plaintiffs having become apprehensive as to the real intentions of the first defendant sent a notice (Exhibit J) to him through Mr. L. A. Govindaraghava Ayyar demanding cancellation of the sale-deed (Exhibit G) and a reconveyance of the property. But far from complying with the demand he got a letter written to himself on 19th March 1912 (Exhibit XI) by the second plaintiff who is a feeble old man assuring him that he need not worry about the notice and asking for Rs. 100. On the same day Gangadhara

Ayyar paid the second plaintiff Rs. 67 and subsequently on the 3rd April 1912 he paid him Rs. 33 obtaining receipts (Exhibits XII and XVI).

It is admitted by Mr. Gangadhara Ayyar that the recital that Rs. 5,000 was paid in cash is not entirely correct. As for the statement in Exhibit G that the vendors themselves would pay off the mortgage, that of course was also not correct; it was evidently introduced for the purpose of evading a higher stamp duty and not with any intention of escaping liability for the mortgage of the second defendant. The case of Gangadhara Ayyar is that the sale under Exhibit G was real and *bonâ fide* and that the proper price of the equity of redemption was not more than Rs. 5,000. As regards the consideration, he says that he paid Rs. 2,300 in cash before registration and Rs. 300 on the date of registration and the balance, *i.e.*, Rs. 2,400 is the total of what he agreed to pay for the plaintiff's maintenance at the rate of Rs. 100 a month for two years. Though it has been strenuously argued before us by Mr. Subrahmanya Sastri that Gangadhara Ayyar in fact paid Rs. 2,300 and Rs. 300 as alleged, there can be no doubt whatever as found by the learned Judge who tried the original action that the story is not true. It is not possible to believe that Gangadhara Ayyar could not have taken a receipt for Rs. 2,300 at the time of payment and his statement that the payment was recited in the receipt which he says he took for Rs. 300 but which he subsequently lost is hardly credible. He admitted having made an attempt long afterwards to secure an antedated receipt and this he would hardly have done if he had originally obtained a receipt. Gangadhara Ayyar is not a man of any means and the evidence of his witnesses Gopala Ayyar and Krishnadoss Paramanandadoss from whom he says he obtained the money for paying the plaintiffs is not at all trustworthy. Both are interested witnesses, the former is his cousin and the latter, a petty sowcar, is a client of his. There can be little doubt that Gangadhara Ayyar's case so far at least as the payment of Rs. 2,300 is concerned is not true. We have no hesitation in holding that Exhibit G was never intended to operate as a sale. Having regard to the income of the property and its capabilities and the offers that were received at different dates, the estimate of its value at a lakh of rupees on the date of the alleged sale is by no means too high. It is not at all likely that the plaintiff

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who had refused the second defendant's offer of Rs. 80,000 sometime previously should have agreed to sell the equity of redemption to the first defendant for Rs. 5,000. The amount due to the mortgagee was settled shortly afterwards by Mr. Gangadhara Ayyar himself at Rs. 62,000. Besides if it was a case of sale it is difficult to understand why Rs. 2,400 part of the purchase money should have been made payable in monthly instalments of Rs. 100 extending over a period of two years. The truth is undoubtedly on the side of the plaintiffs' case that Exhibit G was intended to be merely nominal and was executed for the purpose of enabling Gangadhara Ayyar to secure a favourable settlement from the second defendant and, if necessary, to sue for redemption of the property in his own name. The cost of the suit for redemption and accounts was estimated at Rs. 2,500 and as it was expected that it might take two years for the matter to be finally settled, provision was made for the maintenance of the owners of the property in the meantime by fixing for them an allowance of Rs. 100 a month. This was also the nature of the arrangement with Padmanabhayya which ultimately fell through but of which Gangadhara Ayyar was fully informed when the plaintiffs sought his professional advice and help.

Soon after the execution of Exhibit G however it became evident to the plaintiffs that Gangadhara Ayyar did not mean to abide by the real arrangement between the parties and was setting himself up as the owner of the property. It is abundantly clear that from the very beginning his intentions were anything but honest and he has persisted in carrying out his fraudulent design to the very last. It was boldly argued by his learned pleader Mr. Subrahmanya Sastri that however culpable the conduct of his client might have been in setting up a false defence to the suit instituted by the plaintiffs and in supporting it by means of false evidence of himself and his friends, he has not been guilty of misconduct in the discharge of his profession so as to make him liable to be dealt with under section 10 of the Letters Patent. But it was in his capacity as a vakil that his advice was sought by the plaintiffs and he obtained all information about their property and their affairs generally. Intending all the time to cheat them he succeeded in inducing the plaintiffs who were in an extremely helpless condition to convey the property to

him, relying on his word as a gentleman belonging to an honourable profession to carry out the real arrangement between them faithfully and honestly. Immediately after the document was executed he deliberately and steadily set himself to defraud the clients who had reposed so much confidence in him. If acts such as Gangadhara Ayyar's do not amount to misconduct in the discharge of a pleader's profession, it is difficult to conceive what would. We hold that all the charges have been proved except perhaps the fourth charge as to which the evidence of undue influence is not clear or adequate.

We direct that P. Gangadhara Ayyar be suspended from practice for a period of two years.

N.R.

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Before Mr. Justice Coutts Trotter and Mr. Justice Srinivasa Ayyangar.

CHINNU PILLAI AND OTHERS (LEGAL REPRESENTATIVES OF THE
DECEASED SECOND DEFENDANT), APPELLANT,

1915.
December
6 and 21.

v.

VENKATASAMY CHETTIAR AND TWO OTHERS (PLAINTIFFS AND
FIRST DEFENDANT), RESPONDENTS.*

Transfer of Property Act (IV of 1882), sec. 67—Right of puisne mortgagee to sue for sale subject to prior mortgages—Suit for sale by first mortgagee, without impleading subsequent mortgagee—Purchaser in execution, rights of—Right of puisne mortgagee to sue for sale against purchaser—Purchaser in puisne mortgagee's suit, right of.

Where a prior mortgagee sued for sale on his mortgage without making a puisne mortgagee a party to his suit and obtained a decree, and in execution of the decree the property was sold and purchased by a third person, the puisne mortgagee is entitled to sue for sale on his mortgage subject to the prior mortgage after making the purchaser a party to his suit.

Mulla Vittil Scethi v. Achuthan Nair (1911) 21 M.L.J., 13 (F.B.), followed.

Venkatagiri v. Sadagopa Chariar (1912) 22 M.L.J., 129 and *Venkatanasammah v. Ramiah* (1879) I.L.R., 2 Mad., 108, dissented from.

* Appeal No. 235 of 1914.