SHANMUGA MUDALI *v.* KUMARASWAMI MUDALI.

VENKATASUBBA RAO, J.

bench that decided *Nagappa Pillai* v. *Arunachalam Chetty*(1).

In my opinion, therefore, the transaction is not a lottery and the plaintiff is entitled to judgment.

In the view I have taken, it is unnecessary to deal with the contention based on the distinction between void and illegal transactions, or to discuss the group of cases of which *Johnson* v. *Lansley*(2), *Beeston* v. *Beeston*(3) and *Shibho Mal* v. *Lachman Das*(4), are examples.

I agree with my learned brother in the order proposed by him.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Devadoss and Mr. Justice Wallace.

1925, January 26.

VEERAPPA CHETTIAR AND 4 OTHERS (LEGAL REPRESENTATIVES OF THE DECEASED COUNTER-PETITIONER, DEFENDANT), PETITIONERS

v.

SUNDARESA SASTRIGAL (PETITIONER-PLAINTIFF), RESPONDENT.*

Civil Procedure Code (V of 1908)—O. III, r. 4—R. 277 of Civil Rules of Practice, construction of—Right of legal practitioner to appear for his former client's opponent—Section 115 Civil Procedure Code.

If a legal practitioner has been deprived by a Subordinate Court of his right to appear for a party by a wrong interpretation of rule 277 of the Civil Rules of Practice, the order is one liable to be revised by the High Court under section 115, Civil Procedure Code. Rule 277 is enacted not only in the interests of clients who might find themselves aggrieved by

(1) (1924) 47 M.L.J., 876.
(2) (1852) 12 C.B., 468; 138 E.R., 989.
(3) (1875) I. Ex., 13.
(4) (1901) I.L.R., 28 All., 165.

* Civil Revision Petition No. 547 of 1924.

practitioners wrongly allowing themselves to be engaged by their former client's opponent but also in the interests of practitioners who might be unjustly deprived of engagements by unscrupulous litigants. The prohibition on a practitioner contained in rule 277 ordinarily applies only to cases of further proceedings arising from one and the same suit or matter. It cannot be applied to a subsequent suit arising out of a prior suit unless the right or title and the causes of action and reliefs claimed in both are the same. Order III, rule 4, Civil Procedure Code, does not give an absolute right to any practitioner to appear in any Court in any matter he chooses. It is subject to the rules governing the admission of different classes of practitioners in different Courts and to rules framed by the High Court such as rule 277 which invest Courts with power to regulate the conduct of practitioners.

PETITION under section 115 of Act V of 1908 and under section 107 of the Government of India Act, praying the High Court to revise the order of K. S. V. ROWJE, District Munsif of Srīrangam, in C.M.P. No. 315 of 1924 in Original Suit No. 103 of 1924.

The facts and arguments are given in the judgment. Rule 277 of the Civil Rules of Practice is fully set out in the judgment.

K. V. Krishnaswami Ayyar and *R. Kesava Ayyangar* for petitioners.

T. M. Krishnaswami Ayyar (with *K. G. Srinivasa Ayyar*) for respondents.

JUDGMENT.

This is an application to revise the order of the District Munsif of Srīrangam who directed two pleaders not to appear for the defendants in two suits pending in his Court as the plaintiff objected to their appearance inasmuch as they had appeared for him in previous suits against the defendant in which the subject matter was the same as in the suits now pending. The first contention of Mr. K. V. Krishnaswami Ayyar is that the District Munsif had no jurisdiction to pass such an

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order. It is argued that the pleaders are not parties to the suits and that they have no right of appeal against such an order and therefore the order is without jurisdiction and is not covered by rule 277 of the Civil Rules of Practice.

The District Munsif purported to act under rule 277 which is in these terms:

"Except when specially authorized by the Court, or by consent of the party, a pleader who has advised in connexion with the institution of a suit, appeal or other proceeding, or has drawn pleadings in connexion with any such matter, or has, during the progress of any such suit, appeal or other proceedings, acted for a party, shall not, unless he first gives the party for whom he has advised, drawn pleadings or acted, an opportunity of engaging his services, appear in such suit, appeal or other proceeding, or in any appeal, or application for revision arising therefrom or any matter connected therewith, for any person, whose interest is opposed to that of his former client, provided that the consent of the party shall be presumed if he engages another pleader to appear for him in such suit, appeal or other proceeding without offering an engagement to the pleader whose services he originally engaged."

It is conceded by Mr. K. V. Krishnaswami Ayyar that the Court has jurisdiction either to grant or to refuse such authority when a pleader applies for the same under the rule. But it is urged that when he does not make an application for special authority the Court has no jurisdiction to pass an order against him and that the only course open against a pleader who violates the rule is by a proceeding under the Legal Practitioners Act for unprofessional conduct.

Considerable stress was laid on Order III, rule 4, of the Civil Procedure Code, in support of the argument that a pleader's engagement lasts till the termination of the proceedings and therefore the Court cannot prevent the pleader from appearing for a party after he has filed his vakalat in Court. Order III, rule 4, does not give an absolute right to a pleader to appear in a Court till

the termination of the proceedings, but only provides in what manner should a pleader be appointed and till what time the appointment will be in force. It assumes that a pleader is competent to appear, plead and act in the Court in which he wishes to plead and act. If he is not competent to appear, plead and act in any Court under the rules governing the procedure in that Court, he cannot claim right of audience by virtue of Order III, rule 4. Is it open to a second-grade pleader to claim a right of audience in the District Court by filing a vakalat or for a first-grade pleader to claim a right of audience in the High Court by filing a vakalat in Court for a party? The District Court and the High Court will refuse to receive the vakalat of a pleader not entitled to appear before them and will refuse to allow him to act in that Court by reason of the rules governing their procedure. In *Re the Pleaders of the High Court*(1) it was held that sections 2 and 36 of the Code of Civil Procedure, Act XIV of 1882, did not give the pleaders of the Bombay High Court the right to appear in the Presidency Small Cause Court of Bombay wherein only barristers and attorneys had a right to practise. Rule 277 is intended to regulate the proceedings in Courts and a practitioner of the Court has to conform to the rules governing its procedure. If he does not conform to the rules governing the procedure, he cannot claim a right of audience in that Court. A pleader can appear for a party whose interest is opposed to that of the party for whom he had acted, drawn up pleadings or appeared in the same proceedings either with the latter's consent or when specially authorized by the Court. The rule contains a prohibition against the pleader's appearance unless the conditions therein laid down are satisfied.

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(1) (1884) I.L.R., 8 Bom., 105 (F.B.).

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Supposing a pleader is disbarred or struck off the rolls, can he insist upon his right to appear in a Court in which he had filed his vakalat before he was disbarred or struck off the rolls by reason of Order III, rule 4. Rule 4 is only an enabling provision by which a pleader when he accepts an engagement and files his vakalat in Court is entitled to conduct the proceedings till he or his client dies or the termination of the proceedings But this rule does not override the rules governing the qualifications of various classes of pleaders or the rules governing the procedure of the Courts. If the contention of Mr. K. V. Krishnaswami Ayyar is pushed to its logical conclusion it would mean that a pleader could appear for both the plaintiff and the defendant if the contending parties are foolish enough to engage the same pleader, and the Court would be powerless to prevent the pleader from appearing for both the plaintiff and the contesting defendant in the same suit. It is to prevent such conduct on the part of the pleaders and unreasonable conduct on the part of the clients that rule 277 of the Civil Rules of Practice has been enacted. In *Ramlall Agarwallah* v. *Moonia Bibee*(1), WILSON, J., held, following the principle of law laid down in the case of *Earl Cholmondeley* v. *Lord Clinton*(2), that an attorney who has acted for a party to a suit and has discharged himself cannot afterwards act for the opposite party and that the Court had power to restrain him from doing so on an application made for that purpose. The High Court of Madras in their proceedings, dated 8th April 1869, ruled that when a suit is remitted by order of an Appellate Court for rehearing or finding on an issue, the proceedings on such order must be regarded as further proceedings in the trial of the suit and, consequently,

(1) (1881) I.L.R., 6 Calc., 79. (2) (1815) 19 Ves., 261; 34 E.R., 515.

under section 22 of Regulation XIV of 1816 a vakil cannot change sides and hold a vakalatnamah for the party opponent to the one for whom he appeared at the first hearing. See 4 M.H.C. Reports, Appendix, page 43. The Court has therefore power to refuse to hear practitioners who violate the rules regulating the procedure in Courts.

It is next contended that the special authority required under rule 277 is only for the protection of the pleader against an action for damages by the party for whom he had acted and not for enabling the pleader to appear in Court for his opponent. The rule is no doubt intended both for the protection of the pleader as well as the client but not in the sense in which the appellant wants it to be understood. The object of the rule is not to save the pleader from a suit for damages by the party for whom he acted and against whom he subsequently acted but to prevent an unreasonable conduct on the part of a party who engaged the pleader's services and afterwards gave him up without proper grounds. If a party who gets advice from a pleader does not choose to engage his service for the conduct of the suit but engages another, the pleader is not altogether debarred from accepting an engagement from the opposite party but he could do so by giving the former an opportunity to engage his services and if he refuses to engage his services and unreasonably withholds his consent he may appear for the latter with the special authority of the Court. It is to prevent unfair dealing by the parties that the Court is invested with the power to grant special authority to a pleader to appear against the party for whom he gave advice or acted or appeared at an early stage of the proceedings. But for such power any rich party or an unscrupulous client might prevent all leading pleaders from appearing for his opponent by seeking

their advice by paying a nominal fee and then engaging the services of one or more of them to conduct the proceedings in Court.

Mr. T. M. Krishnaswami Ayyar for the respondent urges that there is a finding of fact that the suits now pending are connected with previous suits and the High Court should not interfere with the order of the lower Court under section 115 of the Civil Procedure Code. The facts are: The plaintiff filed O.S. No. 525 of 1912 afterwards numbered as 400 of 1914 against the defendant in which he asked for possession of a plot to the west of his house and prayed for a permanent injunction restraining the defendant from interfering with his right to the common lane to the north of the plot. In O.S. No. 860 of 1920 the plaintiff prayed for a mandatory injunction for the removal of a cross-wall put up by the defendant in a portion of the lane. The plaintiff has now brought two suits against the defendant, viz., O.S. No. 103 of 1924, for a mandatory injunction for removal of the balcony wrongly put up by the defendant over a portion of the common lane and for the removal of a portion of the defendant's drain encroaching on the common lane and O.S. No. 104 of 1924 for a mandatory injunction for removal of the arch of the verandah erected by the defendant on the ground that it has interfered with the free access of light and air to his house and for incidental reliefs. The District Munsif finds that the four suits are closely connected with one another. It is difficult to see the connexion. If the same questions are in dispute now as were in dispute in the previous suits, the decision of the previous suits would be *res judicata* in the present case. The connexion contemplated by rule 277 is not the connexion of the parties or of the subject matter. The wording in rule 277 is

"In such suit, appeal or other proceeding, or in any appeal or application for revision arising therefrom, or in any matter connected therewith."

The words "in any matter connected therewith" mean connected with the suit or appeal or other proceeding in which the pleader gave the advice and does not refer to a subsequent suit, appeal or proceeding after the termination of the former suit, appeal or proceeding. If a vakil appears for a party in a suit or proceeding, he cannot appear for the opposite party in subsequent proceedings in the same suit or proceeding, but that does not prevent a pleader who appeared for a party from appearing in a subsequent suit for the opposite party when the causes of action in the two are different. The subsequent suit or proceeding or matter can be said to be connected with the previous suit or proceeding or matter only if the former flows from or in consequence of the previous suit or proceeding. Otherwise there is no connexion at all. If a plaintiff sues the defendant for possession of land on his title and succeeds and sometime after brings a suit upon a fresh cause of action against the same defendant, there is no connexion between the two suits though the defendant may raise the question of title of the plaintiff, but that would not be sufficient to establish a connexion between the two. The question involved in the two suits in the District Munsif's Court are the right of the plaintiff to object to the defendant putting up certain structures and that right was not in dispute in the former suits. The causes of action are different, and the reliefs claimed are not the same. The District Munsif's exercise of jurisdiction was owing to a wrong interpretation of the rule and this Court has power to interfere with the order of the District Munsif as he exercised a jurisdiction not given to him by rule 277 of the Civil Rules of Practice.

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The two cases *Ramakrishna Pillai* v. *Balakrishna Ayyar and another*(1) and *Srinivasa Rau* v. *Pichai Pillai*(2) relied upon by Mr. T. M. Krishnaswami Ayyar as supporting his contention are distinguishable from the present. In *Ramakrishna Pillai* v. *Balakrishna Ayyar and another*(1) the petitioner was plaintiff in O.S. No. 8 of 1917 and defendant in O.S. No. 56 of 1920 on the file of the Subordinate Judge's Court of Māyavaram. The respondents were two vakils of the Māyavaram Sub-Court who appeared for him in the former suit and for the plaintiff in the latter suit. The petitioner's application that audience should be refused to the vakil respondents who had filed O.S. No. 56 of 1920 for the plaintiff was rejected by the Subordinate Judge as he was not satisfied that there would be any conflict between their duty in representing the plaintiff in O.S. No. 8 of 1917 and in representing his opponent in O.S. No. 56 of 1920. Both the learned Judges who heard the Civil Rivision against the order of the Subordinate Judge were of opinion that the suits were connected with one another. SPENCER, J., observed at page 62 :

"In both suits questions arise as to the validity and binding character upon the petitioner of the indenture and whether he is estopped by reason of it from questioning the title of the defendant in the former suit and the title of the plaintiff in the second suit."

The learned Judges allowed the petition and directed the Subordinate Judge to refuse to allow the respondents to conduct O.S. No. 56 of 1920 for the plaintiff. That case has no application to the present, as in that both the suits were then pending in the Māyavaram Court and as found by the learned Judges they were connected and some of the important questions arising in the suits were common to both suits. It is not the identity of the

(1) (1921) 41 M.L.J., 60. (2) (1915) I.L.R., 38 Mad., 850.

subject matter that establishes the connexion between the two suits or the identity of the parties, but the identity of the right or title that is asserted or denied and the relief claimed.

In *Srinivasa Rau* v. *Pichai Pillai*(1), MILLER, J., approved of the order of the District Munsif who prohibited a second-grade pleader from appearing for the plaintiffs in O.S. No. 32 of 1913 on his file. The pleader appeared for the defendant in proceedings under section 145, Criminal Procedure Code, and obtained an order in favour of the defendant and he filed O.S .No. 32 of 1913 for the defeated party. The District Munsif relied on rule 277 of the Civil Rules of Practice prohibiting the pleader from appearing for the plaintiff. In proceedings under section 145, Criminal Procedure Code, the Magistrate decides only the question of possession and his order is to maintain the possession of the party found to be in possession at the time the proceedings are adopted. His order is subject to the result of a civil suit and is good only till the civil court decides which party is entitled to the property in dispute. The civil suit therefore in almost all cases follows the order of the Magistrate and the proceedings in the civil suit are in a sense a continuation of the proceedings before the Magistrate. Though the Magistrate inquires only into the question of possession, yet documents are relied upon by the parties for the purpose of proving their possession and the pleader who appears for a party necessarily acquaints himself with the title to the property and invariably peruses the documents produced by his client. With the knowledge of the strength and weakness of his client's title, if he appears in the civil suit for a party whose interests are opposed to his client's in the proceedings before the Magistrate

(1) (1915) I.L.R., 38 Mad., 650.

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there is a danger of his using for his client in the civil suit the knowledge gained by him from his client in the proceedings in the Magistrate's Court. There is an intimate connexion between the proceedings under section 145, Criminal Procedure Code, in the Magistrate's Court and the civil suit filed in consequence of the order of the Magistrate.

If a pleader appears for a party in the proceedings in execution, he cannot appear in the suit filed by reason of the order in claim proceedings for a party whose interests are opposed to that of the party for whom he acted in the claim proceedings without his consent or without the authority of the Court in which the suit is pending. The suits now pending in the District Munsif's Court are not the necessary consequence of the previous suits. There is no connexion between the present ones and the former suits. As observed by SPENCER, J., in *Ramakrishna Pillai* v. *Balakrishna Aiyer and another*(1), the two suits will ordinarily be considered connected if they have any issue in common or involve substantially a determination of the same question of fact or the same mixed question of law and fact.

A few observations as to the duty of pleaders would not be out of place here. The legal profession is a very noble one, and no pleader should by his conduct consciously or unconsciously do anything to lower its high standard of morality, probity and honesty. The pleaders would do well to avoid any conduct on their part which is reasonably capable of being misunderstood. If a pleader advises or acts for a client he should not appear against him in any subsequent proceeding if he feels that he might in such proceeding even unconsciously use the

(1) (1921) 41 M.L.J., 60.

information gained from his former client against him. Clients should have the fullest confidence in their legal advisers and should not be deterred or hampered in disclosing the strength and weakness of their cases by the fear that their instructions might at some future time be used against them by their legal advisers. It is the duty of legal practitioners to avoid even the suspicion that they might possibly use the information which they received in their professional capacity against the clients from whom they received them. There is no rule, etiquette or code of ethics to govern the conduct of clients. On the other hand, the pleaders who are guided and governed by the etiquette of the profession are not likely to do anything which would incur the censure of the profession, and, in order to prevent an unscrupulous or cantankerous client from depriving his opponent of the services of pleaders, rule 277 of the Civil Rules of Practice gives a discretion to the Court to specially authorize a pleader to appear and act for a party whose interests are opposed to those of the party for whom he at one time acted or appeared or gave advice.

We have no hesitation in holding that the plaintiff has no reason to complain of the conduct of the pleaders. He has only to thank himself if he lost the services of the two prominent pleaders. He could have retained them if he had cared. He engaged other vakils to appear for him and his petition to the District Munsif is evidently not to protect his own interests for they require no protection but to annoy the defendants and pleaders whom he did not care to retain. Perhaps there is some motive at the bottom of the plaintiff's petition. We set aside the order of the District Munsif and allow the petition with costs throughout.

N.R.