APPELLATE CIVIL.

Before Mr. Justice Abdur Rahman.

1937, December 17.

ADIRAJU SOMANNA, PETITIONER.*

Legal Practitioners Act (XVIII of 1879), sec. 36—Decision, in proceedings under—Revision against—If lies—Government of India Act, 1935, sec. 224 (2)—Effect—Sec. 115, Civil Procedure Code.

The decision of a District Judge, in proceedings under section 36 of the Legal Practitioners Act, declaring a person to be a tout is not open to revision under section 224 of the Government of India Act, 1935, or under section 439 of the Code of Criminal Procedure. Such an order, however, falls within the scope of section 115 of the Code of Civil Procedure and is capable of being revised by the High Court under that section.

The petitioner had been stated to be acting as an agent on behalf of certain parties and going to Court in that connection. There was no evidence on the record to show that he came within the definition of "tout" in section 3 of the Legal Practitioners Act or that he had the reputation of a tout. The District Judge passed an order declaring the petitioner to be a tout. On a petition to the High Court to revise the said order,

held that the order passed by the District Judge should be quashed as he had acted illegally and in any case with material irregularity in the exercise of his jurisdiction.

PETITION under section 115 of Act V of 1908, praying the High Court to revise the order of the District Court of East Gōdāvari at Rajahmundry, dated 14th April 1937 and made in Interlocutory Application No. 144 of 1937 in Original Petition No. 77 of 1935.

P. Somasundaram for petitioner.

N. Srinivasa Ayyangar for *Government Pleader* (*K. S. Krishnaswami Ayyangar*) for the Crown.

Cur. adv. vult.

* Civil Revision Petition No. 648 of 1937.

JUDGMENT.

This is a petition for revision against the order passed by Mr. Mack, District Judge of East Gōdāvari at Rajahmundry, declaring the petitioner to be a tout under section 36 of the Legal Practitioners Act.

A preliminary objection has been raised by the Government Pleader to the effect that the order passed by the lower Court is not open to revision. The point is of considerable importance as it involves the question of valuable rights of a citizen and has therefore to be carefully examined.

The contention raised by the Government Pleader is based on the addition of sub-clause (2) to section 224 of the Government of India Act, 1935, which did not find a place in the corresponding section 107 of the prior Act of 1919. Sub-clause (2) of section 224 of the present Act reads as follows :—

"Nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior Court which is not otherwise subject to appeal or revision."

Basing his reliance on the amendment, the Government Pleader contends that the High Courts in India could revise orders, similar to the one in question now, either under section 15 of the High Courts Act or later under section 107 of the Government of India Act (1919) before the new Act came into force, but this power has been taken away by the above stated amendment. He further urges that the provisions contained in section 115 and section 439 of the Code of Civil and Criminal Procedure respectively have no application and the High Court is thus not

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entitled to revise the order although it is admitted by him that in a suitable case, a petition by way of a writ of *certiorari* might be competent.

The amendment contained in the new Government of India Act makes it clear that the High Court would not be entitled to revise the order in question under section 224 of the Act, if it is not capable of being revised under any other provision of law. I am also in agreement with the contention that section 439 of the Code of Criminal Procedure would have no application to the present case. A bare perusal of the section would show that it is inapplicable. The only question then is whether section 115 of the Code of Civil Procedure does not authorise the High Court to revise the order.

The learned Government Pleader has placed reliance in support of his contention on a number of decisions and on going through them I find that the rulings given in *In the matter of the petition of Kedar Nath*(1), *In the matter of the petition of Kashi Nath*(2) and *Maganbhai* v. *Dinkarrao*(3) have either merely followed *In the matter of the petition of Madho Ram*(4) or held that an order passed under section 36 of the Legal Practitioners Act was capable of being revised under section 15 of the High Courts Act or section 107 of the Government of India Act (1919). The last proposition is undoubtedly sound but, as already held by me, has been rendered useless for this purpose by the addition of the amendment to the present Government of India Act. As for *In the matter of the petition of*

(1) (1908) I.L.R. 31 All. 59.
(2) (1923) I.L.R. 45 All. 676.
(3) (1932) I.L.R. 56 Bom. 577.
(4) (1899) I.L.R. 21 All. 181.

Madho Ram(1), one would have to examine the pronouncement with the respect and care that it deserves as it comes from an eminent CHIEF JUSTICE like STRACHEY C.J., before one respectfully agrees with his conclusion or begs to differ from it. On an examination of this decision I find that, although it has been stated in general terms that the provisions of section 622 of the Code of Civil Procedure (1882) do not apply, the learned CHIEF JUSTICE has given no reason for this opinion. This was probably considered to be unnecessary as it was found that the High Courts had very wide powers of superintendence under section 15 of the High Courts Act, and could in a suitable case interfere with an order passed by a subordinate Court. Moreover, the ground taken in that decision was that the finding was against the weight of evidence. This ground was not available in revision and the petition was dismissed for that reason. It was unnecessary to decide any further. In the circumstances, any expression of opinion by the learned CHIEF JUSTICE on the point that the provisions of the Code of Civil Procedure are inapplicable must be held to be *obiter*. In view of the situation which has now come into existence on account of the addition of sub-clause (2) to section 224 of the Government of India Act and in the absence of any reasons having been specified in *In the matter of the petition of Madho Ram*(1) or in view of the fact that the finding on this point was not essential, one would have to examine the terms of section 115 of the Code of Civil Procedure carefully before one could arrive at a conclusion one way or the other.

(1) (1899) I.L.R. 21 All. 181.

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Before I examine this section, I must say a few words in regard to a Madras case, *Varadachariar* v. *Kalyanasundaram Aiyar*(1), which was decided by an eminent Judge of this Court. A study of that decision however shows that the point which I have been called upon to decide in this case was neither raised before nor considered by him. He had merely laid down that inasmuch as no procedure was provided for an enquiry under section 36 of the Legal Practitioners Act, the Court should adopt a procedure which does substantial justice to the parties and the provisions of Order VII, Rule 11, Civil Procedure Code, would not apply to the proceedings. This is surely no authority for the contention raised by the learned Government Pleader.

The Government Pleader has also cited *Chatur Bhuj* v. *The Crown*(2) in support of his contention. There is an observation in that case by JAI LAL J. that the proceedings under section 36 of the Legal Practitioners Act are of a *quasi* criminal nature but this was made in order to hold that the consent of the person complained against would not validate the otherwise invalid proceedings. It may be that, according to the practice of that Court, revisions from the order passed under section 36 of the Legal Practitioners Act are entertained as criminal revisions but in view of what I have stated above, I am of opinion that section 439 of the Code of Criminal Procedure would not apply to a case of this kind and the proceedings would not be open to revision under the provisions of the Code of Criminal Procedure.

(1) (1922) 44 M.L.J. 437. (2) (1930) I.L.R. 12 Lah. 385.

As for the authorities cited by Mr. Somasundaram on behalf of the petitioner, I find that the learned Judges merely assumed jurisdiction in the decisions cited, viz., *In re Somayajulu Ramamurthi*(1), *In re Jounalagedda Sambayye*(2) and *Keramat Ali* v. *Emperor*(3), without any discussion on the question of jurisdiction which they undoubtedly had in any case before the new Government of India Act (1935) came into force and these cases are therefore of no assistance to me in deciding this point. There are some pertinent observations by an eminent Judge of the Calcutta Court in *Hari Charan Sircar* v. *District Judge of Dacca*(4) but even this decision affords no help to me. In the absence of any reference in that ruling to section 622 of the Code of Civil Procedure (1882) I must presume that the provisions of that section were not examined by the learned Judge in that case. The other case which was relied on by the Counsel for the petitioner is *Bavu Sahib* v. *The District Judge of Madura*(5), where a portion of the proceedings were ordered to be cancelled under section 622 of the Code of Civil Procedure by a Bench of this Court consisting of no less eminent a Judge than BHASHYAM AYYANGAR J. and another Judge. This case was followed by WALSH J. in *In the matter of the petitions of Kalka Prasad and others*(6) where in spite of the fact that the two cases of the Allahabad Court [viz., *In the matter of the petition of Madho Ram*(7) and *In the matter of the petition of Kedar Nath*(8)] were brought to his notice, he decided to prefer the

(1) 1912 M.W.N. 959.
(2) (1915) 28 I.C. 918.
(3) (1921) 62 I.C. 829.
(4) (1910) 11 C.L.J. 513.
(5) (1903) I.L.R. 26 Mad. 596.
(6) (1917) I.L.R. 40 All. 153.
(7) (1899) I.L.R. 21 All. 181.
(8) (1908) I.L.R. 31 All. 59.

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decision in *Bavu Sahib* v. *The District Judge of Madura*(1) and held that the High Court could interfere in a revision under section 115 of the Code of Civil Procedure and did not consider that it was necessary to invoke the aid of the superintendence section in the Government of India Act.

In this state of divergence of opinion amongst the learned Judges of different High Courts, it becomes all the more necessary to examine the provisions of the Code of Civil Procedure more closely.

A reference to section 115 would show that the High Court is competent to make such order as it thinks fit, if it finds that a *case* has been *decided* by any Court subordinate thereto, and in which no appeal lies, if such subordinate Court has either acted beyond or failed to exercise a jurisdiction or has acted in the exercise of its jurisdiction illegally or with material irregularity. It cannot be denied that the District Judge was acting in this case as a Court and not in an administrative capacity. The question then is whether the finding given by him against the petitioner and declaring him to be a tout would amount to a decision of the case pending before him. It has been held by their Lordships of the Privy Council in *Balakrishna Udayar* v. *Vasudeva Ayyar*(2) that the term "case" used in section 115 of the Code is wider than the word "suit" in which a plaintiff seeks to obtain a particular relief. Their Lordships have recorded their finding in the following words :—

"It was next contended that the matter of the four petitions in which the order of the 19th July 1913 was made

(1) (1903) I.L.R. 26 Mad. 596. (2) (1917) I.L.R. 40 Mad. 793 (P.C.)

did not constitute a 'case' within the meaning of the 115th section of the Code of Civil Procedure. No definition is to be found in the Code of the word 'case'. It cannot, in their Lordships' view, be confined to a litigation in which there is a plaintiff who seeks to obtain particular relief in damages or otherwise against a defendant who is before the Court. It must, they think, include an *ex parte* application, such as that made in this case, praying that persons in the position of trustees or officials should perform their trust or discharge their official duties. Their Lordships concur, therefore, with the High Court in thinking that the matter adjudicated upon was a case within the meaning of the 115th section of the Code."

Applying the above-mentioned principle enunciated by their Lordships, I see no justification in rejecting the contention that the decision by the District Judge of the proceedings pending before him in which the petitioner was declared to be a tout would fall within the scope of section 115 of the Code of Civil Procedure. In a number of cases arising under other enactments, like the Guardians and Wards Act, Succession Certificate Act, Indian Arbitration Act, Provincial Insolvency Act, etc., it has been held by various High Courts that the orders passed by subordinate Courts, if not declared to be appealable under the Special Acts, would none the less be capable of being revised under section 115, Civil Procedure Code. There is no reason to hold why the Legal Practitioners Act should not be treated in *pari materia* with other special enactments.

Section 36 of the Legal Practitioners Act confers a special jurisdiction on subordinate Courts and, inasmuch as the attendance in Court is an important valuable civil right of a citizen, it cannot be taken away from him by a Court if its jurisdiction has been exercised either illegally or

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with material irregularity. I would therefore hold that the decision of the District Judge is capable of being revised by me under section 115, Civil Procedure Code.

The revisional jurisdiction which I am now invited to exercise is necessarily of an exceptional character and cannot be invoked except in furtherance of justice. I am consequently competent to scrutinise an order which seriously affects the petitioner's character and prospects with the object of satisfying myself if there has been a compliance by the lower Court with the provisions of the law. If I find that the order passed by the Court is justified by the evidence on the record I would decline to interfere with it. If, on the other hand, I find that there is no legal evidence on the record to justify the conclusion arrived at by the learned District Judge I would be constrained to interfere with his order. I might state here that as a Court of revision I cannot be expected to weigh the evidence which was led before the District Judge but if I find that there was no evidence at all from which the inference as drawn by the learned District Judge could be deduced I would have no alternative but to interfere.

With these remarks, I shall first consider as to what is required by law to be proved against the petitioner before he can be declared to be a tout and then proceed to consider whether these requirements of law have been proved in this case. A tout has been defined by section 3 of the Legal Practitioners Act to be

"a person (*a*) who procures, in consideration of any remuneration moving from any legal practitioner, the employ-

ment of the legal practitioner in any legal business ; or who proposes to any legal practitioner or to any person interested in any legal business to procure, in consideration of any remuneration moving from either of them, the employment of the legal practitioner in such business ; or (*b*) who for the purpose of such procurement frequents the precincts of civil or criminal courts or of revenue offices, or railway stations, landing stages, lodging places or other places of public resort".

Before a person can be declared to be a tout, it must be found as a fact that he has acted in a manner which will bring him within this definition. This necessitates an examination of the evidence on which the District Judge has acted in this case in order to ascertain whether there was any material on the record on which he was entitled to act and arrive at the decision that the petitioner was a tout.

Bearing the principles laid down by me in this judgment and the definition of a tout in mind, I shall address myself to the task of examining the facts and evidence in this case. It appears that a petition, Original Petition No. 77 of 1935, was filed by one Venkataratnam under section 84 of the Hindu Religious Endowments Act. He had also instituted a suit, Original Suit No. 41 of 1935, for a declaration that he was a hereditary trustee and could not therefore be divested of the properties under his charge. The newly appointed trustee had filed Original Petition No. 52 of 1935 for delivery of the trust properties which were in the possession of the said Venkataratnam. In the natural course of events the learned District Judge took up Original Petition No. 77 of 1935 first and examined Venkataratnam on 4th March 1937 as P.W. 1. On 5th March 1937 the petitioner before me, Somanna, was examined as a witness

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(P.W. 2). On that day it appears that some unpleasantness occurred between the pleader appearing in that petition and the Court and Venkataratnam had to apply to the Court to discharge the pleader from that case. This request was granted but the prayer for an adjournment of Original Petition No. 77 of 1935 was refused and the Court fixed 9th March 1937 for orders. In the meantime Venkataratnam came over to Madras to move for a transfer of the case (Original Suit No. 41 of 1935) from the Court of the District Judge and swore to an affidavit on 8th March 1937 before an Honorary Presidency Magistrate here (original of Exhibit D). The petition for transfer appears to have been filed on the same day. A letter was then delivered by Mr. Balaparameswari Rao who had presented the petition on behalf of Venkataratnam to his client which is Exhibit C in this case. The name of the addressee is not mentioned in this letter, but it was probably meant to be shown to the lawyer at Rajahmundry with the object of informing him that an application for transfer had been made to the High Court. This letter was evidently produced by Venkataratnam before the District Judge on 9th March 1937 when the case was taken up by him and an adjournment was asked for to await the result of the transfer application. The case was consequently adjourned to 17th March 1937. In the meantime Mr. Balaparameswari Rao wrote another letter and addressed it to Somanna, the petitioner in this case, on 11th March 1937 There is no assertion on the record, much less any proof, that Somanna was known to Mr. Balaparameswari Rao and I must, in view of

Somanna's statement on the record and in the absence of any allegation or evidence to the contrary, assume that his name must have been given to the Counsel here by Venkataratnam when he left for Rajahmundry. The fact that a demand was made by the pleader for the balance of his fees which was due from Venkataratnam leads me to no conclusion against the petitioner. The petition for transfer was dismissed *in limine* by my learned brother KING J. on 16th March 1937 and that fact was communicated in the ordinary course to the District Judge. This probably reached him on 18th March 1937. The case does not appear to have been taken up on 17th March 1937 by the District Judge but was adjourned to a later date. He, however, decided to initiate proceedings under section 36 of the Legal Practitioners Act against the present petitioner on 23rd March 1937 and directed him to appear before him on 31st March 1937 when a charge was framed against him. In the meantime the other petition filed by the trustees, Original Petition No. 52 of 1935, was proceeded with and one Reddiah was examined as a witness on their behalf. While he was in the witness box certain questions were put to him by the District Judge about Somanna's character to which serious exception has been taken before me by the Counsel for the petitioner. I do not, however, agree with the contention that the learned District Judge was not justified in putting those questions although it is fairly obvious that he must have been led to put them on account of his decision on 23rd March 1937 to proceed against Somanna under section 36 of the Legal Practitioners Act. On 31st March 1937 Somanna was examined by the Court

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He filed two written statements, one at the beginning and one at the end of the proceedings. The case was first adjourned to 1st April 1937 and then to 5th April 1937 for orders. Instead of passing orders on 5th April 1937 the District Judge adjourned the case for Reddiah's examination. This course appears to have been adopted by the District Judge, as he must have considered that, in view of the replies given by Reddiah about Somanna's character, his evidence might be material. The Counsel for the petitioner has taken strong exception to this as well particularly when the case was closed, but I have not been impressed by this objection either. The District Judge was fully justified in summoning any witness with the object of satisfying himself whether an action under section 36 of the Legal Practitioners Act was necessary. Reddiah was then examined on 9th April 1937 when Somanna was also examined. The two letters written by Mr. Balaparameswari Rao and referred to above do not show that Somanna has been guilty of any act which could have justified the Court in declaring him to be a tout. I am thus left with Reddiah's statement who on the District Judge's own showing was inimically disposed towards the petitioner. Whatever Reddiah's attitude may be towards the petitioner, I have to find whether his statement, even if believed, as has been done by the learned District Judge, would satisfy the requirements of section 3 of the Legal Practitioners Act. The three sentences from his deposition on which reliance was placed by the Government Pleader in this connection do not show that the petitioner in this case procured, in consideration of any remuneration moving from any legal practitioner,

the employment of any legal practitioner in any legal business, or proposed to any legal practitioner, or to any person interested in any legal business to procure, in consideration of any remuneration moving from either of them, the employment of the legal practitioner in such business; or that he frequented for the purpose of such procurement the precincts of Civil or Criminal Courts or revenue offices or railway stations, landing stages, lodging places or other places of public resort. In the absence of any such evidence on the record it is impossible to raise an adverse presumption against the petitioner simply because he had been stated to be acting as an agent on behalf of certain parties and going to Court in that connection. I might here add that there is no evidence on the record of the petitioner having the reputation of a tout.

The learned Government Pleader had to admit, when a question was put to him by me, that it was impossible to deduce any adverse inference against the petitioner from this statement. He however contended that Exhibit A, i.e., the letter written by Mr. Balaparameswari Rao on 11th March 1937, may lend some support to the suspicion that the petitioner was acting on behalf of Venkataratnam. This again in my opinion is not enough. Nobody is prohibited from acting on behalf of a party. The petitioner was apparently taking interest in those proceedings and had actually appeared as a witness in the case himself on behalf of Venkataratnam. In the absence of any evidence, oral or documentary, that any consideration was either received by the petitioner or demanded by him I am constrained to find that

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there is no evidence in this case from which the learned District Judge could have possibly drawn the conclusion against the petitioner. I am afraid the learned District Judge had no clear conception of the law on the subject and even if he had, he has certainly failed to apply it to the facts of this case. If he had taken the trouble of reading section 3 of the Legal Practitioners Act and not relied on his own previous decisions which appear to have had nothing in common with the facts of this case, he would have, I am sure, come to a different conclusion. I may add that it is impossible to arrive at a finding on mere suspicions or conjectures. They can never be substitutes for evidence.

I must therefore hold that the learned District Judge has acted illegally and in any case with material irregularity in the exercise of his jurisdiction. The revision petition must therefore be allowed and the order passed by the District Judge quashed.

I cannot part with this case without adverting to the manner in which the lower Court has written its judgment. I should expect experienced officers to be more dignified and restrained in the expression of their opinion. They should try and avoid expressions which may attract a comment that the Judge had either made up his mind even before he had initiated proceedings or had identified himself with a case to an extent that he was unable to appreciate the case or weigh the evidence before him impartially and without any bias. It is usually unnecessary and in any case unsafe to indulge in generalisations.

V.V.C.