

the express provision in the Act which contemplates a payment for the use of such water even when it is taken without the landlord's permission. It does not seem to me right to assume that the Legislature contemplates only a contractual right. Cases which may even be regarded as claims for damages on the ground of unlawful use of water are equally within the terms of the section; the Legislature preferred that even such claims should be treated as claims for "rent" instead of as claims for damages, it being to the interest both of the landlord and of the tenant that such user should not be prohibited as tortious; (*cf.* section 45 of the Act of 1908 as to "rent" being payable even by a trespasser).

MOCKETT J.—I agree.

A.S.V.

VENKATARAJU
S.
MAHARAJA OF
PITHAPURAM.

VARADACHARIAR J.

APPELLATE CIVIL—FULL BENCH.

*Before the Hon'ble Mr. A. H. L. Leach, Chief Justice,
Mr. Justice Varadachariar and Mr. Justice Pandrang Row.*

IN THE MATTER OF A PLEADER, RAJAM. *

1937,
November 30.

Legal Practitioners Act (XVIII of 1879), sec. 13 (b)—Suit brought by a lady against her son—Appearance of a pleader for her—Decree passed in her favour—Pleader obtaining an assignment of the decree—Rule 16 of the rules framed under the Legal Practitioners Act—Contravention of—Executing the decree for a sum in excess of what the pleader knew was due under it—Professional misconduct, if.

Where a pleader, who had appeared for a lady in a suit brought by her against her son, obtained an assignment from her of the decree which was passed in her favour in that suit

* *In re* A Pleader, Rajam.

A PLEADER,
In re.

and executed the decree for a sum in excess of what he (the pleader) knew was due under it,

held, that the pleader was guilty of grave professional misconduct.

The execution of the decree for a sum in excess of what the pleader knew was really due under it and the recovery of that sum in execution in itself amounted to unprofessional conduct. When it was coupled with the fact that he executed the decree which he himself had bought in direct contravention of rule 16 of the rules framed under the Legal Practitioners Act, the offence became much more serious.

NOTICE under section 13 (b) of the Legal Practitioners Act dated 30th October 1937 having been issued to a Pleader, Rajam, calling upon the said pleader to show cause why he should not be dealt with under the disciplinary jurisdiction of the High Court for his grossly improper conduct in the discharge of his professional duty.

The Advocate-General (Sir A. Krishnaswami Ayyar) and N. Rajagopala Ayyangar for the Crown.—There was litigation between the petitioner and his mother Kondamma. The son filed Original Suit No. 657 of 1919 on the file of the District Munsif's Court, Rajam, against his mother for rendition of accounts during his minority and the suit was decreed. The mother filed Original Suit No. 834 of 1924 on the file of the District Munsif's Court, Rajam, against her son for maintenance and it was decreed. The respondent (pleader) appeared for her in the maintenance suit in 1924 and 1925. A first appeal and a second appeal were filed against the maintenance decree but they were dismissed. The suit was filed in *forma pauperis* and the High Court directed that half the court-fee should be paid by the son and the other half by the mother. The son paid his share but the mother did not do so. So the Government attached and executed the maintenance decree and Execution Petition No. 146 of 1933 was filed by the Government Pleader. On 14th December 1932, the son filed Execution Petition No. 189 of 1933 in Original Suit No. 657 of 1919 and obtained permission from the Court to enter satisfaction in both the decrees by way of set-off. In this proceeding, the respondent appeared for the son. Later, the mother filed Execution Petition No. 245 of 1934 in Original Suit No. 834 of 1924

A PLEADER
In re.

against her son and engaged Mr. P. Umamaheswara Rao as her Vakil. During his absence at the request of his clerk, the respondent appeared for the Vakil and he filed a memorandum of account, Exhibit C-3, showing the amount due to Kondamma which was not correct. Thus the respondent appeared for two clients who had conflicting interests. After appearing for them, he bought from Kondamma (his client) her maintenance decree which had to be executed against her son (also his client) in the Court of the District Munsif, Rajam, where he was practising. This is in contravention of rule 16 framed by this High Court under the Legal Practitioners Act. It is also opposed to the principle underlying section 136 of the Transfer of Property Act. That section of course refers only to actionable claims and not to decrees, but the principle underlying it applies to transfer of decrees also. Exhibit XIII is the transfer deed by which the respondent bought the decree. It shows that Rs. 376-10-0 was due by the son to the mother. In truth what was really due was the above amount less Rs. 169-4-8. The respondent ought to have known of it as he appeared for the son in the previous execution proceedings. After buying the decree, the respondent relentlessly executed it for the amount mentioned in the decree against the son. The petitioner's properties were brought to sale and they were actually sold. The petitioner then deposited the entire sale amount and the sale was set aside. Thus the petitioner paid and the respondent collected Rs. 169-4-8 in excess of the amount really due under the maintenance decree. The respondent is guilty of fraudulent or grossly improper professional misconduct.

B. Jagannadha Doss for respondent.—The suit by the mother and the suit by the son are two different proceedings. Though the respondent appeared for the mother in her maintenance suit, there is nothing to prevent him from appearing for the son in the execution proceedings of his accounts suit.

[THE CHIEF JUSTICE.—Perhaps it would have been good taste not to have done that, but it is not professional misconduct. What do you say about the second charge?]

The taking of the transfer by the respondent from Kondamma is no doubt improper and offends against the rules framed by the High Court. But there is no wilful violation of the rules and there is no dishonest intention in violating them. It was only an honest and *bona fide* mistake. The respondent was ignorant

A PLEADER,
In re.

of the rules framed by the High Court. Even the Court did not notice them. Neither the pleader for the opposite side nor the District Munsif objected to the transfer at the time of the execution proceedings. The transfer was taken openly and in the respondent's own name. There was no secrecy about it. He paid full consideration for it and he did not recover more than what he paid. Apart from the breach of the rule, there is no moral delinquency in the taking of the transfer. The breach of the rule does not entail punishment unless it is wilful or there is a dishonest intention in violating the rules. [*Shiva Narain Jafa v. Judges of the High Court of Judicature at Allahabad*(1) and *Nagendrabala Dasi v. Dinanath Mahish*(2) referred to.] After taking the transfer of the decree, the respondent executed it for the amount mentioned in the decree. [The Counsel after referring to the various adjustments made by way of set off in the two decrees proceeded :—] No doubt the amount shown as outstanding in the transfer deed is not correct. The calculation on which the amount in the decree was arrived at is based on a memorandum of accounts, Exhibit C-3, filed jointly by the petitioner's pleader and Kondamma's pleader in Execution Petition No. 245 of 1934. Owing to the absence of Kondamma's Vakil, the respondent appeared for him then. As there was some dispute with regard to the amount due under the decree, the Court asked both the pleaders to look into the suit register and file a joint memorandum. The suit register did not contain proper entries. That mistake entered into Exhibit C-3 and that again crept into the transfer deed. The respondent though he appeared for the petitioner in the previous execution proceedings did not remember to what extent the maintenance decree was satisfied.

[VARADACHARIAR J.—There is Exhibit B, the letter, written on the note paper of the pleader and written by the son-in-law of his clerk, which shows that the pleader knew to what extent the decree was satisfied.]

Exhibit B is a forgery. Assuming it to be genuine for the purposes of the argument, he did not remember its contents.

[THE CHIEF JUSTICE.—Your client ought to have known what was really due under the decree at least when he took the transfer.]

(1) (1936) I.L.R. 58 All. 307 (P.C.). (2) (1923) I.L.R. 51 Cal. 299 (P.C.).

He could not know, as the records in the case were taken away from him. He executed the decree for the amount mentioned in the deed of transfer. He came to know of the mistake only when the District Munsif made the report in these proceedings.

A PLEADER,
In re.

[THE CHIEF JUSTICE.—Having got more money, has your client paid back the excess amount to the petitioner?]

No. He is willing to pay it. As the petitioner was asking for more money than was due to him the respondent did not pay. The respondent never intended to commit a criminal breach of trust against the petitioner or a fraud on the Court.

Kasturi Seshagiri Rao for complainant.—An excess amount has been collected from my client in execution proceedings by the pleader. The right to receive it may or may not exist. So he should be directed to pay to my client without driving him to a Court of law.

The JUDGMENT of the Court was delivered by LEACH C.J.—We are called upon to consider the report of the District Judge of Vizagapatam on charges of professional misconduct made against a pleader (respondent) practising in the District Munsif's Court at Rajam. The petitioner is the son of one Mantripragada Kondamma, and in Original Suit No. 657 of 1919 of the Court of the District Munsif of Rajam he sued his mother for an account of the management of his estate during his minority, and on 15th December 1920 obtained a money decree against her. In Original Suit No. 834 of 1924 of the same Court, the mother sued the son for the recovery of maintenance due to her and for future maintenance. The suit was decreed, but the petitioner appealed first to the District Court and then to the High Court. The appeals were dismissed. Kondamma had sued in *forma pauperis* and in dismissing the second appeal this Court directed that half the court-fee should be paid by her and half by her son. The petitioner paid his

LEACH C.J.

A PLEADER,
In re.
 LEACH C.J.

half of the court-fee, but his mother failed to pay her half and Government attached the decree which she had obtained against her son. The respondent acted for the mother in the suit against the son and was in fact her legal adviser during the years 1924 and 1925. In 1925 he agreed to act for the son, and on 14th December 1932 he filed an application in execution proceedings arising out of the decree obtained by the son against the mother in Original Suit No. 657 of 1919. This application was filed the day before the twelve years' period of limitation expired.

The fact that the respondent was acting for the son against the mother did not prevent him from acting for the mother against the son in matters connected with her suit for maintenance. On 18th January 1935 he filed in Original Suit No. 834 of 1924 a memorandum which purported to show what payments had been made by the son towards the decree obtained by the mother. The payments mentioned in the memorandum were Rs. 373-5-0 on 28th June 1928 ; Rs. 83-12-0 on 20th August 1928 ; Rs. 469-13-6 on 21st December 1932 ; and Rs. 94-1-2 on 1st November 1933. The memorandum concluded with a statement to the effect that after giving credit for these payments the amount due to the decree-holder, that is, to the mother, was Rs. 282-9-8. This was not correct because the figure Rs. 469-13-6 against the date 21st December 1932 should have been Rs. 639-2-2. In other words there was an under-statement of the position by Rs. 169-4-8. There was not due by the son the sum of Rs. 282-9-8 but only the sum of Rs. 113-5-0.

On 21st July 1935 the respondent bought the mother's decree against her son. The deed of transfer is Exhibit XIII. It stated that there was due Rs. 376-10-0 by the son to the mother under her decree and the decree was transferred to the respondent for this amount. Having got the mother's decree transferred to him, the respondent then proceeded to execute it against the son. He attached a house belonging to the son and bought the property at the Court auction. The sale, however, was set aside on the son paying into the Court the amount due under the decree. In the execution proceedings the respondent did not make the adjustment in respect of the Rs. 169-4-8, but treated it as being owing by the petitioner, which, of course, was not the case.

A PLEADER
In re.
LEACH C.J.

As a result of these execution proceedings the petitioner preferred the complaint in respect of which the charges were framed by the District Munsif of Rajam. There were two charges which may be summarised as follows:—(i) The respondent had been guilty of professional misconduct in acting for the petitioner when he had acted for the petitioner's mother against the petitioner. (ii) He had with dishonest intent obtained an assignment of the mother's decree and in executing it had suppressed payments made in reduction, thereby committing a breach of trust against the petitioner and a fraud on the Court. The District Munsif held that the charges had not been proved and consequently found for the respondent. The record and the report of the District Munsif were then submitted to the District Judge who made his own report thereon. The District Judge

A PLEADER,
In re.
 LEACH C.J.

considered that the respondent had been guilty of unprofessional conduct in acting for the son in the circumstances of the case and that he had also been guilty of unprofessional conduct in purchasing the mother's decree and executing it for a sum in excess of what was due. These are the findings which we have to consider.

We consider that the respondent was not guilty of professional misconduct in filing the petition in execution of the petitioner's decree. The petitioner's suit had nothing to do with the mother's suit. It would have shown a spirit more in keeping with the traditions of the profession if the respondent had not acted for the petitioner, but we cannot say that there was anything professionally wrong in so doing. There was no necessity for him to obtain the consent of the petitioner's mother, and there was no likelihood of having to make use of anything obtained by him when acting for the mother.

The second charge, however, stands on an entirely different footing. Rule 16 of the rules of this Court framed under the Legal Practitioners Act, 1879, states that practitioners of Courts subordinate to the High Court are strictly prohibited from purchasing from their clients or from any other person, any interest in any decree passed by the Court in which they practise. The rules were published on 10th December 1934, but as long ago as 9th June 1870 the High Court had issued a circular to the same effect. Section 136 of the Transfer of Property Act prohibits legal practitioners from purchasing or trafficking in any actionable claim and states that no Court of justice shall enforce at the instance of the legal

practitioner any such actionable claim. A decree does not come within the category of actionable claims, but the principle involved is the same. The respondent, therefore, knew or must be deemed to have known that he was acting contrary to the directions of this Court when he purchased the mother's decree against her son. The learned District Judge expresses the opinion that a Vakil with sound professional ideas would have revolted instinctively at the idea of taking such a transfer, and I am in agreement with this statement. Not only did the respondent purchase this decree from Kondamma, but he executed it knowing that there was a mistake in the suit register, and that he was not entitled to the sum of Rs. 376-10-0, but that sum less Rs. 169-4-8. That he knew the true position is shown by Exhibit B, a letter written on 11th October 1933 at the instance of the respondent to the petitioner. In this letter he specifically refers to the sum of Rs. 639-2-2 which was the amount which should have been recorded on 18th January 1935, instead of the sum of Rs. 469-13-6. In this letter it is stated: "If you pay the said amount (Rs. 123-9-9) accordingly, your decree in full, as well as Rs. 762-11-11 due by you to her up to date, will be satisfied." This shows that he knew the exact position on 11th October 1933 and that the petitioner had only to pay Rs. 123-9-9 to clear off his liability under the mother's decree at that date. That sum of Rs. 123-9-9 was admittedly paid on 30th October 1933.

A PLEADER,
In re.
LEACH C.J.

The respondent has denied the genuineness of Exhibit B, and it has been suggested in the course of the arguments that it was forged for the

A PLEADER,
In re.
LEACH C.J.

purposes of these proceedings. The respondent denied all knowledge of the document, but he called his clerk who said that it was in the handwriting of his (the clerk's) son-in-law. The son-in-law was then called and he admitted having written the letter and said that he did so on the instructions of the petitioner. If the petitioner were wishing to forge a letter for the purposes of these proceedings (which would in itself be an extraordinary thing to do), I do not consider that he would cause a letter of the nature of Exhibit B to be fabricated. Moreover, Exhibit B sets out in great detail information which could only have been in the possession of the respondent or of his clerk. The letter is a very lengthy one and was written for the purpose of obtaining payment of fees due by the petitioner to the respondent. It was referred to in the complaint itself and I consider that the suggestion that the petitioner induced the son-in-law of the respondent's clerk to fabricate it is too grotesque for serious consideration. We have no hesitation in regarding Exhibit B as a genuine document, which means that the respondent instituted execution proceedings against his own client with full knowledge of the real position and obtained from him a larger sum than was in fact due by him. This in itself amounts to unprofessional conduct. But when it is coupled with the fact that he was executing the decree which he himself had bought in direct contravention of the rules framed by this Court under the Legal Practitioners Act, the offence grows in seriousness. The respondent is guilty of grave professional misconduct, and we are unable to accept the

recommendation of the District Judge that he should be suspended merely for a period of one month and twenty-two days, the period during which he was actually prevented from practising by the administrative orders of this Court. We consider that the offence is one which should be punished by suspension from practice for a much longer period than this and we direct that the respondent be suspended from practice from now until the end of the next summer vacation of the District Munsif's Court of Rajam. We also direct that the respondent should pay to the petitioner the sum of Rs. 180, representing the amount of Rs. 169-4-8 which he recovered from the petitioner in excess of the true amount and interest thereon. The respondent's sanad will not in any event be issued to him until he has paid this amount.

A PLEADER,
In re.
LEACH C.J.

V.V.C.