

THE
INDIAN LAW REPORTS

(MADRAS SERIES)

APPELLATE CIVIL—FULL BENCH.

*Before Sir Lionel Leach, Chief Justice, Mr. Justice Mockett
and Mr. Justice Abdur Rahman.*

IN RE AN ADVOCATE.*

1938,
September 12.

*Legal Practitioner—Memorandum of appeal—Filing on the
last day of limitation with deficient court-fee—Propriety
of such practice.*

*Held by the Full Bench :—*The filing of a memorandum of appeal on the last day of limitation with the full knowledge that it was under-stamped and in the hope that the Court would be persuaded to accept the deficiency later is not in accordance with the high traditions of the profession of Advocates. An Advocate should refuse to file an appeal unless the full amount of the court-fee is first paid.

NOTICE issued under section 12 (3) of the Indian Bar Councils Act to an Advocate, Madras, calling upon him to show cause why he should not be dealt with under the disciplinary jurisdiction of the High Court.

Advocate-General (Sir A. Krishnaswami Ayyar) for the Crown.—The complainant paid a sum of Rs. 175 to the respondent Advocate for filing an appeal in the High Court against the decree in Original Suit No. 11 of 1929 on the file of the Court of the Subordinate Judge of Cuddalore. According to him the arrangement was that the full court-fee should be paid out of the money given to the respondent and that the fee due to the respondent would be fixed and paid later on. The case of the respondent is that out of the money given of

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AN ADVOCATE, *In re.* him, Rs. 100 was to be kept towards his fees, Rs. 50 to be spent on court-fee and the balance to be utilized for other expenses. The complainant promised to send the balance of court-fee required for the appeal afterwards. So the respondent filed the appeal with a deficient court-fee as per the instructions of his client.

[THE CHIEF JUSTICE:—The Advocate knowingly under-stamped the appeal and presented it to the Court. This is most improper.]

The respondent wrote several letters later on to the complainant to furnish him with the necessary funds, but no money was sent to him. Exhibit I evidences that fact. The Bar Council Tribunal accepted the version of the respondent, relying on the evidence of Mr. V. S. Ramanujachari, an Advocate practising at Cuddalore, and held that the charges against the respondent were not made out.

V. V. Srinivasa Ayyangar (with him, *S. Panchapagesa Sastri*) for respondent.—The respondent filed the appeal with a deficient court-fee.

[THE CHIEF JUSTICE.—Did your client know about it? If he knew, do you say that such conduct is proper?]

He knew about it but he acted under the instructions of his client. He had no intention to defraud the Court thereby, but intended to pay the full court-fee later when the complainant furnished him with the necessary funds.

T. S. Venkatesa Ayyar for the Bar Council.

JUDGMENT.

LEACH C.J.

LEACH C.J.—The respondent who is an Advocate of this Court was charged with professional misconduct on a complaint by one Palaniswami Chetty, who is now dead. There were three separate charges. The first charge was that the respondent was engaged in or about July 1934 by the complainant to file an appeal in this Court and was put in sufficient funds for filing it, but that he presented the memorandum of appeal with a court-fee stamp of only Rs. 50 whereas it should have been stamped with a court-fee of Rs. 142. The second charge was that having filed the appeal

with a deficient court-fee the respondent made the complainant believe that the full court-fee had been paid. The third charge was that when the memorandum of appeal was returned by this Court for re-presentation with the proper court-fee the respondent did not re-present it in time, as he ought to have done. The Bar Council Tribunal heard the evidence on behalf of the complainant and the respondent and has presented a report in which it accepts the respondent's version of the arrangement between him and the complainant, and finds that there has been no professional misconduct.

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The complainant's case is this. On or about 26th July 1934 he saw the respondent with a view to filing an appeal from a decision of the Subordinate Judge of Cuddalore, and on 30th July, the respondent having accepted his instructions, he paid to the respondent a sum of Rs. 175 on account of costs of the appeal. It is common ground that the stamp and the process fees required Rs. 169-9-0. The complainant says that the arrangement was that the court-fee was to be paid out of the Rs. 175. The respondent's case is that out of the Rs. 175, Rs. 100 was to be kept by him on account of his fees, Rs. 50 to be spent on court-fee stamps and the balance utilized for other expenses. He says that as the complainant was not in a position to pay all that was required for court-fees and his fees it was arranged that the respondent should file the appeal, stamped to the extent of Rs. 50 only, and the complainant should pay the balance when the Court discovered the deficiency in the court-fee.

In this Court a memorandum of appeal is received by what is known as the Receiving Section. The officials in this department merely enter in a register the date of filing. The memorandum is then passed

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on to another department where the stamping is checked. If it is discovered that there is a deficiency in the stamping the matter is placed before the Deputy Registrar, who causes the memorandum to be returned to the Advocate who filed it. The arrangement in this case was that the memorandum should be filed with a stamp of less than the proper value and that, when the deficiency was discovered, the complainant should put the respondent in further funds so that the deficiency in the stamping could be rectified. This scheme depended for its success on the Court not discovering the true position. The memorandum of appeal was not returned to the respondent until 26th September 1934, that is nearly two months after it had been filed.

Subraya Chetti gave evidence in support of the allegation that the Rs. 175 was paid to the respondent for the purpose of filing the appeal and that the arrangement was that he should pay the court-fee out of this money. This evidence was not accepted and in rejecting it the Tribunal relied on the evidence of Mr. V. S. Ramanujachari, an Advocate practising at Cuddalore. According to Mr. Ramanujachari the complainant told him after his interview with the respondent that only some portion of the court-fee had been paid and some portion of the Advocate's fee. On hearing this he informed the complainant that there would be difficulty in obtaining an extension of time and advised the complainant to send the balance as soon as possible. The respondent states that when the complainant failed to send the money to make up the deficiency in the court-fee he wrote to him several times but the complainant took no notice of the letters. The complainant denies that he received any letter but it is quite clear that the respondent wrote

to him. Exhibit I is a post card which the respondent wrote to the complainant on 15th November 1934 and in it he referred to the fact that he had written to him on 21st October 1934 and on 31st October 1934 asking him to meet him at Tirupapuliyur on 2nd November 1934 to attend to the matter of re-presenting the appeal in Court. This post card, as the endorsement by the postal authorities shows, was refused by the complainant.

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We see no reason to take a different view of the evidence of Mr. Ramanujachari, especially as the respondent's case is strongly supported by Exhibit I. We agree with the Tribunal that the charges against the respondent have not been substantiated and that the arrangement between him and the complainant was as stated by the respondent. At the same time it is obvious from the respondent's own evidence that the filing of the memorandum of appeal on the last day of limitation knowing full well that it was under-stamped and hoping that the Court would be persuaded to accept the deficiency later is certainly not in accordance with the high traditions of the profession to which he belongs. If the real facts did become known to the Court it is obvious that the Court would not allow the deficiency to be paid. Another Advocate who had been approached to file the appeal on terms similar to the arrangement accepted by the respondent refused to file it and the respondent also should have refused to file it unless the full amount of the court-fee was first paid. We are not now considering whether this action of the respondent amounts to professional misconduct. That question is not before us. But this Court will not tolerate practices of this nature.

Before I conclude, I will refer to another matter, and that is the delay which has taken place in the

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presentation of the report. The order constituting the Tribunal was passed on 25th April 1936. The report was presented on 27th July 1938. Including the complainant and the respondent the total number of witnesses examined was seven and the examinations were not of a lengthy nature. The complainant was examined on 10th December 1936, Subraya Chetty on 5th February 1937 and another witness called by the complainant on 23rd February 1937. There was no further examination till 19th August 1937 when Mr. Ramanujachari was examined, and the last witness was not examined until 6th April of this year. There is no explanation of the delay. The Court trusts that in future these matters will be dealt with much more speedily. In fairness to the respondent a charge of this nature should not be hanging over his head for more than two years, as has been the case here. I hope that these remarks will have the effect they are intended to have.

MOCKETT J.

MOCKETT J.—I agree. I only wish to add a word with regard to one matter. My Lord the CHIEF JUSTICE has pointed out the undesirability of practitioners lending themselves to the practice of deliberately filing appeals under-stamped. I wish to emphasize one evil which must inevitably arise out of that practice and it is this. On the facts in this case there was no reason whatever why the appeal should not have been filed in time and with the correct court-fee. The result probably would have been that the Advocate would have been asked to draft an affidavit setting out wholly false grounds known to him to be untrue for not putting the proper stamp fee, and experience unfortunately shows that statements are included in his class of affidavits which have no basis whatever. If the proper practice is followed, as I have no doubt

it is, by many members of the Bar (one Advocate AN ADVOCATE.
clearly would have nothing to do with the arrangement In re.
in this case) this danger of the Bar being asked deli-
berately to draft false affidavits will not arise.

ABDUR RAHMAN J.—I agree.

V.V.C.

APPELLATE CIVIL—FULL BENCH.

*Before Sir Lionel Leach, Chief Justice, Mr. Justice
Madhavan Nair and Mr. Justice Varadachariar.*

PATELKHANA VENKATARAMASWAMI AND ANOTHER
(DEFENDANTS 3 AND 4), APPELLANTS,

1938,
April 1.

v.

THE IMPERIAL BANK OF INDIA AT RAJAHMUNDRY
AND THREE OTHERS (PLAINTIFF AND DEFENDANTS 1, 2
AND 5), RESPONDENTS.*

*Hindu law—Antecedent debt—Father—Money advanced to,
in pursuance of an agreement to execute a mortgage if and
when called upon—Agreement genuine and not a device to
evade law—Subsequently mortgage called for and same
executed by father—If agreement and mortgage part of
the same transaction—Original debt, “antecedant debt”,
if.*

If money is advanced to the father in a joint Hindu family in pursuance of an agreement merely to execute a mortgage if and when called upon, the fact that subsequently a mortgage is called for and executed will not make the debt and the mortgage part of the same transaction within the meaning of *Armugham Chetty v. Muthu Koundan*(1), but the debt will constitute an “antecedent debt” within the meaning of Hindu law. The agreement must be a genuine agreement and not a device to evade the law.

Case-law reviewed and discussed.

* Appeal No. 251 of 1933.

(1) (1919) I.L.R. 42 Mad. 711 (F.B.).