SPECIAL BENCH.

Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, Mr. Justice Mya Bu, and Mr. Justice Mosely.

1939

Jan. 9.

T. C. DHAR AND OTHERS

v.

T. L. GHOSH AND OTHERS.*

Advocate or pleader, acting for one party—Appearance for the other party—Improper conduct—Court's order disallowing practitioner to appear—High Court's power to revise order—Capricious order—Bona-fide *order on ample material—Restriction of High Court's power—Case of Advocate and pleader, no distinction—Order a "judgment"—General superintendence of High Court—Government of India Act, s. 107—Government of Burma Act, s. 85 (1) and (2)—Civil Procedure Code, ss. 2 (9), 115.*

It is improper for a legal practitioner who has acted for one party in a dispute to act for the other party in subsequent litigation between them relating to or arising out of that dispute. An advocate or pleader who has appeared on behalf of one party in a suit ought not to allow himself to be placed in the position in which there might be some suspicion, whether well or ill founded, that his knowledge of his client's case would be used by him on a subsequent occasion in appearing for another party and against his original client.

Mary Hira Devi v. *Digbijai Singh*, 21 C.W.N. 1137, followed.

Maung Scin Gyi v. *Maneckjee*, I.L.R. 8 Ran. 47 ; *U Ko Ko Gyi* v. *U San Mya*, I.L.R. 8 Ran. 447, referred to.

Where a judge or magistrate makes an order disallowing a practitioner from appearing for a party which upon the face of it is clearly capricious and unreasonable the High Court has jurisdiction to intervene in revision. But where there is upon the record proof of ample material before him upon which he could make such an order and no suggestion that whether he was right or wrong he did not do so *bona fide*, then it is not a case for the High Court to intervene. The powers of interference given to the High Court by s. 85 of the Government of Burma Act are more restricted than those given under s. 107 of the Government of India Act.

Maung Tha Tun v. *Waddader*, [1939] Ran. 14, approved.

There is no distinction in principle between the case of advocates and higher or lower grade pleaders, their duties as representing their clients being similar.

Per MOSELY, J.—The order in question is a "judgment" as defined in s. 2 (9) of the Civil Procedure Code, and therefore the powers of the Court are restricted as laid down in s. 85 (2) of the Government of Burma Act ; and the question cannot be agitated in addition as one of general superintendence over the Courts as provided in s. 85 (1) of the Act.

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* Civil Revision No. 223 of 1938 from the order of the District Court of Akyab in Civil Regular No. 2/m of 1938.

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K. C. Bose for the applicant. After the passing of the Bar Council Act the lower Courts have no power to pass orders like the one in question. S. 14 of that Act said that advocates have a right to practice in all Courts. Such a right can only be taken away by the method prescribed in that Act. If the conduct of an advocate is open to question the proper procedure is to open an inquiry under the Act. The decision in *Maung Tha Tun* v. *Waddader* (1) is distinguishable because that case dealt with a pleader. The methods of appointing pleaders are different, and the discipline by which they are controlled arises from different sources.

Ba Han (with him *Zakaria*) for the respondents. The case is governed by the ruling in *Maung Tha Tun* v. *Waddader* (1). The lower Court must be deemed to have power to pass the order in question. Such an order could also be made under s. 151 of the Civil Procedure Code. An advocate should not be allowed to appear for one party when his appearance will be embarrassing to the other party by reason of his having acted for him in a connected proceeding. See *Maung Sein Gyi* v. *Manieckjee* (2) ; *U Ko Ko Gyi* v. *U San Mya* (3).

The High Court cannot interfere in the case under s. 85 of the Government of Burma Act because its scope has now become limited. Further the order in the case had no relation to the main case and is therefore not a "case decided" within s. 115 of the Civil Procedure Code.

Thein Maung (Advocate General) *amicus curiæ*. The High Court has no jurisdiction to interfere under s. 85 of the Government of Burma Act. But interlocutory orders are open to revision in suitable

(1) [1939] Ran. 14. (2) I.L.R. 8 Ran. 47.
(3) I.L.R. 8 Ran. 447.

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cases and the High Court should certainly have powers to interfere in revision where the case calls for interference. Without going into the merits of the case, the position is that an advocate's right to appear in the case has been taken away. In the circumstances the High Court will see whether the case falls within s. 115 of the Civil Procedure Code so as to call for the exercise of its revisional powers. The applicant has to show that the case is within s. 115, and the decision in *Maung Tha Tun* v. *Waddader* supports this view.

Aiyangar for the Bar Council. The High Court will interfere only if a case is made out within s. 115 of the Code. *M.R. Srinivasa Rau* v. *Pichai Pillai* (1) ; *Veerappa Chettiar* v. *Sundaresa Sastrigal* (2).

Reading sections 84 and 85 (2) of the Government of Burma Act together it is seen that the High Court retains to itself all the powers which were vested in it prior to the passing of the Act.

ROBERTS, C.J.—This is an application for revision in connection with an order passed by the District Court of Akyab in which the respondents and eight others by their agent sought to obtain a mortgage decree. During the progress of the suit the learned District Judge heard an objection to the appearance of Mr. Guha, an advocate of the High Court residing at Akyab, on behalf of one of the parties. Affidavits were before him to the effect that Mr. Guha could not with propriety appear by reason of the fact of his having been interested on behalf of the other side in matters which were collateral to the suit in question, and Mr. Guha put in a counter affidavit ; and the learned District Judge upon the materials before him decided that it would be improper to hear Mr. Guha and that accordingly he

(1) I.L.R. 38 Mad. 650. (2) I.L.R. 48 Mad. 676.

could not be heard as an advocate in this particular suit.

It is quite clear on reference to section 115 of the Civil Procedure Code in what manner the High Court will exercise its powers in revision ; and what the applicants must show here, if they are to succeed, is that the District Judge exercised a jurisdiction not vested in him by law or alternatively failed to do so, or acted in the exercise of his jurisdiction illegally or with material irregularity. Where a judge or magistrate makes an order of this kind which upon the face of it is clearly capricious and unreasonable, no doubt the High Court might have jurisdiction to intervene in revision. But where there is upon the record proof of ample material before him upon which he could make such an order and no suggestion that whether he was right or wrong he did not do so *bona fide*, then in our opinion it is not a case for the High Court to intervene. Not very long ago the case of *Maung Tha Tun* v. *Waddader* (1) was decided by a Bench of this Court to the same effect, and it was pointed out that the powers of interference given to the High Court by section 85 of the Government of Burma Act are even more restricted than those given under section 107 of the Government of India Act.

It is suggested that there is some distinction in principle between the case of advocates and higher or lower grade pleaders, but though it is clear that the methods of their appointment are different and the discipline by which they are controlled arises from different sources, their duties as representing their clients are similar and that the principles applying in one class of legal advisers ought to be applied in the case of another.

(1) [1939] Rang. 14.

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It is clear from two decided authorities—*Maung Sein Gyi* v. *Maneckjee* (1) and *U Ko Ko Gyi* v. *U San Mya* (2)—that an advocate or pleader who has appeared on behalf of one party in a suit ought not to allow himself to be placed in the position in which there might be some suspicion, whether well or ill founded, that his knowledge of his client's case would be used by him on a subsequent occasion in appearing for another party and against his original client ; and in both cases a quotation was made from the judgment of their Lordships of the Privy Council in *Mary Lilian Hira Devi* v. *Kunwar Digbijai Singh* (3) which it is perhaps desirable to repeat here :

> " Their Lordships must express their complete assent to the observations of the learned Judges of the High Court on the impropriety of a legal practitioner who has acted for one party in a dispute, such as there was in this case, acting for the other party in subsequent litigation between them relating to or arising out of that dispute. Such conduct is, to say the least of it, open to misconception, and is likely to raise suspicion in the mind of the original client and to embitter the subsequent litigation."

That was the position before the learned District Judge and we are satisfied that in the exercise of his discretion, although it is not for us to say whether we should have arrived at the same conclusion,—speaking for myself I think I might very well have done so—it was open for him to say that it was undesirable for Mr. Guha to continue to represent the party whom he claimed to represent ; and having arrived at this conclusion *bona fide* and given effect to it, we consider upon the authorities already cited that there are no grounds to interfere in revision.

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(1) (1929) I.L.R. 8 Ran. 44. (2) (1930) I.L.R. 8 Ran. 447.
(3) 21 C.W.N. 1137, 1142.

This application must accordingly be dismissed with costs ten gold mohurs.

MYA BU, J.—I agree.

MOSELY, J.—I agree. I only wish to add that the order in question here is admittedly a "judgment" as defined in section 2 (*9*) of the Code, that is to say, a statement given by the Judge of the grounds of a decree or order, and therefore here the powers of the Court are restricted as laid down in section 85 (*2*) of the Government of Burma Act; and the question cannot be agitated in addition as one of general superintendence over the Courts as provided in section 85 (*1*) of that Act.