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P.D. GUPTA

v.

RAM MURTI AND ANR.

JULY 8, 1997

B

[S.C. AGRAWAL AND D.P. WADHWA, JJ.]

Advocates Act, 1961:

C

Section 35—Professional misconduct—Where appellant- advocate buying disputed property which was not only under litigation but at a throw away price from his client whose title to the property was in doubt and selling the same to the third party for profit—Whether guilty of professional misconduct—Held, yes. Also held that such conduct unbecoming of an advocate bringing process of administration of justice into disrepute.

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Non framing of charges—Held, not fatal to the proceedings under Section 35 when charge was not complicated and the advocate having sufficiently long practice was fully aware of the allegations he was to meet.

Conduct of an Advocate—Held, should be fair not only to his client but also to the Bar as well as the opposite party.

E

Role of Advocates—Held, while conducting case he functions as an officer of the court and therefore it is his duty to keep the administration of justice unpolluted.

F

Professional misconduct—Punishment—Whether disproportionate to the misconduct—Held, by the purchase and the sale transaction he created complications in the pending litigation and thereby subverted the process of justice. Hence punishment of debarring him from practicing for a period of one year, awarded by Bar Council of India, not disproportionate to the misconduct.

G

Sections 38, 35, 36B—Appeal before the Supreme Court against the order of the Disciplinary Committee of the Bar Council of India—Interference—When called for—Held, when the Disciplinary Committee on consideration of all the relevant circumstances found the appellant-advocate guilty of misconduct, there was no reason for the Supreme Court to take a

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different view.

'Administration of justice'—Philosophy of—Held, administration of justice is stream which has to be kept pure and clean—It has to be kept unpolluted—Administration of justice is not something which concerns the Bench only—It concerns the Bar as well.

Words & Phrases: Administration of justice—Meaning of.

The appellant-advocate, who had been the counsel for one V in all the proceedings pending before the courts in Delhi with respect to the estate of one deceased S, for grant of probate/letter of administration, purchase property from her in his name and in the name of his son-in-law at a throw away price. The title of the property purchased by the appellant was in doubt. The main grievance of the Respondent-complainant before the Bar Council of Delhi was, how appellant, being an advocate, could purchase the property from his client which was the subject matter of dispute between the parties. Complaint filed against the appellant also alleged that there was doubt cast on the right of V inheriting the properties of S on account of various pending proceedings and further that the complainant and others had alleged that she was an imposter. Later on the same property was sold by the appellant to some third party for profits.

The Bar Council of Delhi could not dispose of the Complaint within one year as per the mandate of the Advocates Act, and the same was transferred to the Bar Council of India for disposal.

The Bar Council of India held the Appellant guilty of professional misconduct and debarred the appellant from practice for a period of one year. Appellant therefore filed appeal under section 38 of the Advocates Act, 1961 before the Supreme Court.

The main contention of the appellant was that the complaint was not filed by the aggrieved person. It was also submitted that no specific charge had been framed in the disciplinary proceedings which had prejudiced the appellant in the conduct of his defence. It was also contended that was no longer concerned with the property as he has sold away the same.

Dismissing the appeal, this Court

HELD : 1. Appellant was fully aware of the allegations he was to meet. It was not a complicated charge. He has been sufficiently long in practice. The argument that a charge had not been formulated appears to

A be more out of the discontentment of Appellant in being unable to meet the allegation. Now, Appellant says that he has washed off his hands of the property and thus he is not guilty of any misconduct. That is not the issue. It is his conduct in buying the property, the subject matter of litigation between the parties, from his client on which he could exercise undue influence especially when there was a doubt cast on his client's title to the property. [518-B-D]

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C 2. Had the appellant sold the property back to V and got the sale deed in his favour cancelled, something could have been said in his favour. But that is not so. He sold the property to a third person, made profit and created more complications in the pending suit. Appellant purchased the properties which were subject matter of dispute for himself and also for his son-in-law at almost throw away prices and thus he himself became a party to the litigation. Conduct of appellant cannot be said to be above board. It is not material that V or anyone claiming through here has not complained against him. This Court is concerned with the professional conduct of

D appellant as a lawyer conducting the case for his client. [518-C-F]

E 3. A lawyer owes duty to be fair not only to his client but to the court as well as to the opposite party in the conduct of the case. Administration of Justice is stream which has to be kept pure and clean. It has to be kept unpolluted. Administration of Justice is not something which concerns the Bench only. It concerns the Bar as well. Bar is the principle ground for recruiting Judges. No one should be able to raise a finger about the conduct of a lawyer. While conducting the case he functions as officer of the Court. [518-E-F]

F 4. Appellant, in buying the property has in effect subverted the process of justice. His action has raised serious question about his fairness in the conduct of the trial touching his professional conduct as an advocate. By his action he has brought the process of administration of justice in disrepute. [518-F-G]

G 5. Bar Council of India and the State Bar Councils are statutory bodies under the Act. These bodies perform varying functions under the Act and the rules framed thereunder. Bar Council of India has laid standards of professional conduct for the members. Code of conduct in the circumstances can never be exhaustive. Bar Council of India and State Bar Councils are the

H representative bodies for the Advocates on their rolls and are charged with

the responsibility of maintaining discipline amongst members and punish those who go astray from the path of rectitude set out for them. In the present case the Bar Council of India, through its Disciplinary Committee, has considered all the relevant circumstances and has come to the conclusion that appellant is guilty of misconduct and there is no reason to take a different view. There is no ground to interfere with the punishment awarded to the appellant in the circumstances of the case.

[518-H; 519-A-C]

6. The charge of professional or other misconduct by an advocate is a serious matter and has to be considered and disposed of by the Disciplinary Committee of a State Bar Council expeditiously and within a period of one year. It is beyond comprehension as to why the Disciplinary Committee of the Delhi Bar Council could not dispose of the matter within the prescribed time frame and it was left to the apex body to deal with it. [519-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 15496 of 1996.

From the Judgment and Order dated 4.5.96 of the Disciplinary Committee of the Bar Council of India, New Delhi in T.C. No. 39 of 1994.

Yogesh K. Jain, Pravir K. Jain, M.A. Khan, B.K. Sharma and Rajiv Dutta, for the Appellant.

In-person for the Respondent in No. 1.

The Judgement of the Court was delivered by

D. P. WADHWA, J. The appellant is an advocate practising in Delhi. He has filed this appeal under Section 38 of the Advocates Act, 1961 (in short the Act) against order dated may 4, 1996 of the Disciplinary Committee of Bar Council of India holding him guilty of misconduct and suspending him from practice for a period of one year. This order by the Bar Council of India was passed as the Disciplinary Committee of the Bar Council of Delhi could not dispose of the complaint received by it within a period of one year and proceedings had thus been transferred to the Bar Council of India under Section 36B of the Act. Section 36B enjoins upon the Disciplinary Committee of State Bar Council to dispose of the complaint received by it under Section 35 of the Act expeditiously and in any case to conclude the proceedings within one year from the date of the receipt of the complaint or the date of initiation of the proceedings if at

- A** the instance of the State Bar Council. Under Section 35 of the Act where on the receipt of a complaint or otherwise the State Bar Council has reason to believe that any advocate on its role has been guilty of professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee.
- B** One Srikishan Dass died on January 5, 1980 leaving behind extensive properties, both movable and immovable. One Vidya Wati claiming to be the sister and the only legal heir of Srikishan Dass filed a petition under Section 276 of the Indian Succession Act in the Court of District Judge, Delhi for grant of probate/letters of administration to the estate of
- C** deceased Srikishan Dass. This she filed in February, 1980. It is not that there was any will. The complainant Ram Murti (who is now respondent before us) and two other persons also laid claim to the properties of Srikishan Dass claiming themselves to be his heirs and propounding three different wills. They also filed separate proceedings under Section 276 of
- D** the Indian Succession Act before the District Judge, Delhi. Since there was dispute regarding inheritance to the properties of Srikishan Dass, Vidya Wati also filed a civil suit in the Delhi High Court for declaration and injunction against various defendants numbering 23, including the complainant Ram Murti who is defendant No. 21. This suit was filed on February 10, 1982, Vidya Wati had prayed for a decree of injunction
- E** against the defendants restraining them from trespassing into property bearing No. 4852, Harbans Singh Street, 24 Daryaganj, New Delhi or from interfering with or disturbing peaceful possession and enjoyment of immovable properties detailed in Schedule-A to the plaint. She also sought a declaration that she was the absolute owner of the properties mentioned therein in the Schedule. It is not necessary for us to detail the properties
- F** shown in Schedule-A except to note two properties at 24 Daryaganj, New Delhi bearing No. 4852 and 4858-A. It is stated that this suit is still pending in the Delhi High Court and all the proceedings under Section 276 of the Indian Succession Act filed by various persons relating to the estate of Srikishan Dass have also been transferred from the Court of District Judge,
- G** Delhi to the High Court and the being tried alongwith the suit filed by Vidya Wati as aforesaid.

It would appear that Vidya Wati also filed various other proceedings respecting the properties left by deceased Srikishan Dass against occupants

H or otherwise. P.D. Gupta, advocate who is appellant before us had been

her counsel throughout in all these proceedings. The complaint alleged against him is that though he knew that there was doubt cast on the right of Vidya Wati inheriting the properties of Srikishan Dass on account of pendency of various proceedings and further that the complainant and others had alleged that she was in fact an imposter and her claim to be sister of Srikishan Dass was false yet P.D. Gupta purchased ground floor of property bearing No. 4858-A, 24 Daryaganj from Vidya Wati by sale-deed dated December 30, 1982. The complainant also alleged that Vidya Wati had been describing herself either as the real sister, step sister or even half-blood sister of Srikishan Dass which fact was well known to P.D. Gupta, her counsel.

It is not for us to go into the merits or demerits of the controversy raised by the parties in various proceedings pending in the Courts and still awaiting adjudication, the grievance of the complainant is as to how an advocate could purchase property from his client which property is the subject matter of dispute between the parties in a court of law. During the course of hearing of this appeal it was also brought to our notice that second floor of the property bearing No. 4858-A, 24 Daryaganj was purchased by Suresh Kumar Gupta son-in-law of the advocate P.D. Gupta from Vidya Wati. Then again it was brought to our notice that advocate P.D. Gupta sold the property purchased by him in November, 1987 for a consideration of Rs. 3,40,000/- when he himself had purchased the property for Rs. 1,80,000/- in December, 1982. It is pointed out that the facts relating to purchase of different portions of property No. 4858-A, 24 Daryaganj and subsequent sale by P.D. Gupta were not brought on record of the said suit filed by Vidya Wati.

Be that as it may, the Bar Council of India has commented upon the conduct of P.D. Gupta in buying the property from Vidya Wati in the circumstances aforesaid who had been describing herself some time as a half-blood sister, real sister or even step-sister of Srikishan Dass. The explanation given by P.D. Gupta is that though Vidya Wati was step-sister of Srikishan Dass but the latter always treated her like her real sister and that is how Vidya Wati also at times described herself as real sister.

There are some more facts which could also be noted. Vidya Wati herself has died and she is stated to be survived by her only daughter Maya Devi who is also now dead. Before her death Vidya Wati allegedly executed a will in favour of her grandson Anand Prakash Bansal who is stated to be

A the son of Maya Devi bequeathing all her properties to him. Vidya Wati died on October 26, 1991 and Maya Devi on April 13, 1992. It is stated that P.P. Bansal husband of Maya Devi and father of Anand Prakash Bansal has been acting as General Attorney of Vidya Wati and instructing P.D. Gupta.

B In support of his case P.D. Gupta filed affidavit of Anand Prakash Bansal wherein it is claimed that sale-deeds executed by Vidya Wati in favour of P.D. Gupta and his son-in-law Suresh Kumar Gupta were without any pressure from any one and were by free will of Vidya Wati. P.D. Gupta has claimed that complaint filed by Ram Murti is motivated and he himself

C had no title to the properties of Srikishan Dass being no relation of his and the Will propounded by him had been found to be forged as opined by the CFSL/CBI laboratory. The fact that the will propounded by Ram Murti is forged or not is still to be decided by the Court. In the affidavit filed by

D P.D. Gupta in answer to the complaint of Ram Murti he has stated that "Lala Srikishan Dass left behind his sister Smt. Vidya Wati who succeeded to the estate on death of Lala Srikishan Dass and took over the entire movable and immovable estate. Thereafter the complainant and two other persons propounded Will of Lala Srikishan Dass". This statement of P.D. Gupta has been verified by him as true and correct to his knowledge. It does appear to us to be rather odd for a lawyer to verify such facts to his

E knowledge. It is claimed that when Srikishan Dass died, *subject immovable* property was plot bearing No. 4858-A, 24 Daryaganj measuring 1500 Sq. feet and the same was got mutated in the name of Vidya Wati in the records of the Municipal Corporation of Delhi and then she got plans sanctioned from the Municipal Corporation of Delhi for construction of

F the house on this plot and which she did construct and got completion certificate on August 28, 1981. It is peculiar, rather astounding, how could Vidya Wati get the property of Srikishan Dass mutated in her name when she is yet to be granted letters of administration or declaration to her title.

G We examined the two sale-deeds transferring this property, one executed in favour of P.D. Gupta and other in favour of his son- in-law Suresh Kumar Gupta and we have also examined the proceedings on the basis of which Bar Council of India came to the conclusion that P.D. Gupta was guilty of misconduct and he be debarred from practising for the period of one year. When Ram Murti complained that P.D. Gupta had fraudulent-

H ly purchased the property of deceased Srikishan Dass being the entire

ground floor property bearing No. 4858-A, 24 Daryaganj, Delhi as per sale-deed executed on December 30, 1982 from Vidya Wati as also in the name of his son-in-law Suresh Kumar son of Suraj Bhan knowing fully well that Vidya Wati was not the owner of the property, the reply given by P.D. Gupta is as under:

"5. Para 5 as stated is false, misleading and ill-motivated, in view of the above submissions. This respondent did purchase the ground floor portion from Smt. Vidya Wati by a registered sale deed and sold the same by a registered sale deed in November, 1987, and has no longer any concern with any of the properties of Smt. Vidya Wati. (As per) the information of the Respondent, no proceedings disputing the title of Smt. Vidya Wati or cancellation of sale deed in favour of any of the buyers from Smt. Vidya Wati who are more than 20 in number, has been filed so far. One of such buyers is Sh. P.P. Sharma, the ex-Registrar of the Delhi High Court. This Respondent believed Smt. Vidya Wati as the right owner according to the facts and law and sold it as aforesaid. The applicant is in no way concerned with the rights of the Respondent and the matter pending for adjudication is between the complainant and the concerned parties."

In the sale deed which is dated December 30, 1982 executed in favour of P.D. Gupta recitals show that the agreement to sale was entered into on September 3, 1980. The completion certificate of the building was obtained on August 28, 1981, payment of Rs. 1,50,000 made before execution of the sale deed on various dates from 3.8.80 to 20.11.1981 by means of cheques except one payment of Rs. 10,000 made by cash on September 3, 1980. Balance amount of consideration of Rs. 30,000 was paid at the time of registration of the sale deed. In the sale deed there is no mention of any civil suit respecting this property pending in the High Court. Rather it is stated that vendor had constructed various floors and had assured/represented to the vendee that she had a good and marketable title to the property and the same was free from all sorts of liens, charges, encumbrances or other like burdens, and in case any defect in the title of the vendor was later on proved, the vendor undertook to compensate the vendee for all losses, damages and claims, which might be caused to him in this regard. In the other sale deed dated December 2, 1982 executed in favour of son-in-law of P.D. Gupta, which was filed during course of hearing of this appeal, it is mentioned that after obtaining completion

- A certificate on August 28, 1981 Vidya Wati let out the second floor of the property comprising five rooms, kitchen, two bathrooms on a monthly rent of rupees five hundred to Suraj Bhan Gupta. Recitals to this deed show that in order to fetch better price Vidya Wati agreed to sell the property being second floor which according to her was not giving good return for consideration of Rs. 1,75,000/- to Suresh Kumar Gupta. Now this Suresh Kumar Gupta son-in-law of P.D. Gupta is no other person than the son of Suraj Bhan Gupta, the tenant. There is no mention of any agreement to sell in this sale-deed but what we find is that first payment of Rs. 20,000 towards consideration was made on November 5, 1981, second payment of Rs. 25,000 on February 20, 1982 and third of Rs. 30,000 on April 26, 1982. Balance payment has been made at the time of execution of the sale deed on December 2, 1982.

Bar Council of India has taken note of the following facts :

- D 1. P.D. Gupta claims to know Vidya Wati since 1980 when Srikishan Dass was alive. He knew vidya Wati closely and yet contradictory stands were taken by Vidya Wati when she varyingly described herself as half-blood sister, real sister or step-sister of Srikishan Dass. These contradictory stands in fact cast doubt on the very existence of Vidya Wati herself. This also created doubt about *bona fides* of P.D. Gupta who seemed to be a family lawyer of Vidya Wati.
- E
2. P.D. Gupta knew that the property purchased by him from Vidya Wati was subject matter of litigation and title of Vidya Wati to that property was in doubt.
- F 3. Huge property situated in Daryaganj Ganj was purchased by P.D. Gupta for a mere sum of Rs. 1,80,000 in 1982.
- G 4. The agreement for sale of property was entered into as far back on September 3, 1980 and P.D. Gupta had advancing money to Vidya Wati from time to time which went to show that as per version of P.D. Gupta he knew Vidya Wati quite well, When P.D. Gupta knew Vidya Wati so closely how vidya Wati could take contradictory stands *vis-a-vis* her relationship with Srikishan Dass.

H Bar Council of India was thus of view that conduct of P.D. Gupta in circumstances was unbecoming of professional ethics and conduct .

Bar Council of India also observed:

“It is acknowledged fact that a lawyer conducting the case of his client has a commanding status and can exert influence of his client. As a member of the Bar it is in our common knowledge that lawyers have started contracting with the clients and enter into bargains that in case of success he will shore the result. Number of instances have been found in the cases of Motor Accident Claims. No doubt there is no bar for a lawyer to purchase property but on account of common prudence specially law knowing person will never prefer to purchase the property, the title of which is under doubt,”

Finally it said:

“But for the purpose of the present complaint, having regard to all the facts and circumstances of the case, the Committee is of the opinion that the conduct of the respondent is patently unbecoming of a lawyer and against professional ethics. Consequently, we feel that as an exemplary punishment, shri P.D. Gupta should be suspended from practice for a period of one year so that other erring lawyer should learn a lesson and refrain themselves from indulging in such practice.”

The question which arise for consideration is: In view of the aforementioned facts is P.D. Gupta guilty of professional or other misconduct and if so is the punishment awarded to him disproportionate to the professional or other misconduct of which he has been found guilty?

Mr. Y.K. Jain learned counsel appearing for the appellant P.D. Gupta submitted that if in a case like this it was held that a lawyer was guilty of professional misconduct particularly on a complaint filed by an interested person like Ram Murti no lawyer would be able to conduct henceforth the case of his client fearlessly. Mr. Jain said that the aggrieved person, if any, in this case would have been either Vidya Wati, her daughter Maya Devi or her grand-son Anand Prakash Bansal and neither of them had complained. It was also submitted that though the property was purchased by P.D. Gupta in late 1982 the complaint by Ram Murti was filed only on December 16, 1992. Mr. Jain explained that as to how Vidya Wati had been varyingly described in various litigation was on account of

A instruction from her or her Attorney and it was no fault of P.D. Gupta on that account. It was submitted that no specific charges had been framed in the disciplinary proceedings which had caused prejudice to P.D. Gupta in the conduct of his defence. Lastly, it was contended that P.D. Gupta was no longer concerned with the property as he had sold away the same.

B There appears to be no substance in the submissions of Mr. Jain. P.D. Gupta was fully aware of the allegations he was to meet. It was not a complicated charge. He has been sufficiently long in practice. The arguments that a charge had not been formulated appears to be more out of the dis-contentment of P.D. Gupta in being unable to meet the allegation.

C Now P.D. Gupta says that he has washed off his hands of the property and thus is not guilty of any misconduct. That is not the issue. It is his conduct in buying the property, the subject matter of litigation between the parties, from his client on which he could exercise undue influence especially when there was a doubt cast on his client's title to the property. Had P.D. Gupta sold the property back to Vidya Wati and got the sale deed in his favour cancelled something could have been said in his favour. But that is not so. He sold the property to a third person, made profit and created more complication in the pending suit. P.D. Gupta purchased the properties which were subject matter of dispute for himself and also for his son-in-law at almost throw away prices and thus he himself became a party to the litigation, Conduct of P.D. Gupta cannot be said to be above board. It is not material that Vidya Wati or anyone claiming through her has not complained against him. We are concerned with the professional conduct of P.D. Gupta as a lawyer conducting the case for his client. A lawyer owes duty to be fair not only to his client but to the court as well as to the opposite party in the conduct of the case. Administration of Justice is stream which has to be kept pure and clean. It has to be kept unpolluted.

F Administration of Justice is not something which concern the Bench only. It concerns the Bar as well. Bar is the principal ground for recruiting Judges. No one should be able to raise a finger about the conduct of a lawyer. While conducting the case he functions as officer of the court. Here, P.D. Gupta in buying the property as in effect subverted the process of justice. His action has raised serious questions about his fairness in the conduct of the trial touching his professional conduct as an advocate. By his action he has brought the process of administration of justice in disrepute.

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under the Act. These bodies perform varying functions under the Act and the rules framed thereunder. Bar Council of India has laid standards of professional conduct for the members. Code of conduct in the circumstances can never be exhaustive. Bar Council of India and State Bar Councils are representative bodies of the Advocates on their rolls and are charged with responsibility of maintaining discipline amongst members and punish those who go astray from the path of rectitude set out for them. In the present case the Bar Council of India, through its disciplinary committee, had considered all the relevant circumstances and has come to the conclusion that P.D. Gupta, advocate is guilty of misconduct and we see no reason to take a different view. We also find no ground to interfere with the punishment awarded to P.D. Gupta in the circumstances of the case.

The charge of professional or other misconduct by an advocate is a serious matter and has to be considered and disposed of by the Disciplinary Committee of a State Bar Council expeditiously and within a period of one year. We are unable to comprehend as to why the Disciplinary Committee of the Delhi Bar Council could not dispose of the matter within the prescribed time framed and it was left the apex body to deal with it.

The appeal is dismissed. No order as to costs.

R.K.S.

Appeal dismissed