

KAUSHAL KISHORE AWASTHI

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v.

BALWANT SINGH THAKUR & ANR.

(Civil Appeal No. 15540 of 2017)

DECEMBER 11, 2017

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[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

Advocates Act, 1961 – s.35 – Professional misconduct – Suspension of licence to practice – A suit was filed by the complainant against his brothers in respect of ancestral property in which complainant had hired appellant-Advocate – Suit was decreed and complainant was declared to be owner of 0.03 acres of suit property – Complainant after sometime decided to sell the same – At the time of registration of sale deed, the appellant-Advocate filed objection before the Registrar that complainant had borrowed money from him and for repayment of said amount had offered half share in the said land as security and, therefore, complainant could not sell the land without clearing his debt – Complainant challenged the act on part of appellant-Advocate of appearing before the Registrar and objecting to registration of sale deed as professional misconduct – State Bar Council and Bar Council of India found the appellant-advocate guilty of misconduct and suspended his licence to practice – Held: Admittedly, in the instant case, the complainant was selling the property to the intending buyer which was an arrangement between them unconnected with any legal proceedings – The said property was not being sold in execution of any decree, in which proceedings the appellant was engaged – The suit of the complainant in which appellant was hired had already been decreed and the proceedings had concluded – It was much thereafter that the complainant intended to sell the property when he found himself in need of money – The appellant tried to interdict as according to him the complainant could not sell the property without repaying his debt – This act had nothing to do with the professional conduct of the appellant – Therefore, the very initiation of disciplinary proceedings against the appellant by the State Bar Council was improper and without jurisdiction – Impugned order of Bar Council of India is set aside – Standards of Professional Conduct and Etiquette – Chapter II; r.22 – Ethics – Professional ethics.

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A Allowing the appeal, the Court

HELD: 1. Section 35 of the Advocates Act states that punishment can be awarded to an Advocate if he is found guilty of professional or other misconduct. Rule 22 is the relevant Rule in the instant case which proscribes an Advocate from directly or indirectly making a bid for or purchase either in his own name or in other's name for his own benefit or for the benefit of any other person any property sold in the execution of a decree or order in any suit, appeal or other proceedings in which he was in any way professionally engaged. Admittedly, in the instant case, the complainant was selling the property to the intending buyer which was an arrangement between them unconnected with any legal proceedings. The said property was not being sold in execution of any decree, in which proceedings the appellant was engaged. Insofar as the filing of the suit by the appellant on behalf of the complainant is concerned, that had resulted into passing of decree and the proceedings had concluded. Even as per the complainant's own admission, it was much thereafter that the complainant intended to sell the property in question when he found himself in need of money. It is this sale which the appellant tried to interdict. He was not doing so in the capacity of an Advocate. As per him, the complainant was not authorised to sell the property without repaying his debt. Whether the appellant was right in this submission or not, is not relevant. What is relevant is that this act has nothing to do with the professional conduct of the appellant. Therefore, the very initiation of disciplinary proceedings against the appellant by the State Bar Council was improper and without jurisdiction.[Paras 6, 7][498-D-H; 499-A]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 15540 of 2017.

G From the Judgment and Order dated 15.07.2017 of the Disciplinary Committee of the Bar Council of India, Delhi in D. C. Appeal No. 68 of 2006.

Colin Gonsalves, Sr. Adv., Ms. Olivia Bang, Satya Mitra, Advs. for the Appellant.

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Kabir Dixit, Ardhendumauli Kumar Prasad, Namit Saxena, A
Ms. Tajinder Viridi, Ms. Taruna A. Prasad, Aishwarya Pathak, Advs. for
the Respondents.

The following Judgment of the Court was delivered:

JUDGMENT

1. Respondent No.1 herein (the complainant) had lodged a B
complaint with the Bar Council of Chhattisgarh (hereinafter referred to
as the 'State Bar Council') on 19.12.2003 against the appellant, who is
an Advocate by profession, alleging that the appellant had acted in a
manner which amounts to professional misconduct. On that basis, the C
complainant pleaded that disciplinary action be taken against the appellant.
Taking cognizance of the said complaint, a Disciplinary Committee was
constituted as the reply dated 03.02.2006 filed by the appellant was found
not to be satisfactory. After recording the evidence and hearing the
parties, the Disciplinary Committee passed final orders dated 09.12.2006 D
holding the appellant guilty of professional misconduct and, on that basis,
imposed punishment by suspending his license of practice for a period of
two years. The appellant preferred statutory appeal against the said
decision of the State Bar Council before the Bar Council of India (BCI).
Vide the impugned judgment, the BCI has affirmed the finding of the
State Bar Council as far as holding the appellant guilty of misconduct is E
concerned. However, it has reduced the term of suspension of license
from 2 years to one year along with cost of Rs.25,000/- to be paid to the
complainant. Against this order of the BCI, the present appeal is preferred
by the appellant.

2. A neat plea which is taken by the learned counsel for the F
appellant is that even if the allegations contained in the complaint are
taken to be correct on its face value, these do not amount to committing
any misconduct as per the provisions of the Advocates Act and Rules
framed thereunder. We are, therefore, confined to this aspect in the
present appeal.

3. From the complaint which was lodged by the complainant before G
the State Bar Council it can be discerned that his allegation was that
there was a family dispute, i.e., between the complainant and his brothers,
in respect of a property which was in the name of their father and was
an ancestral property. It was stated that after the death of their father
on 11.10.1989, the said property was divided by the three brothers equally. H

A However, it transpired that before his death, one of the brothers of the complainant influenced his father and got registered the said property in the name of the complainant's nephew, i.e., son of that brother, without the consent of other brothers vide sale deed dated 25.07.1989. The complainant had approached the appellant, who is an Advocate, for filing the Suit for declaration to declare that the sale deed was null and void as it was prepared fraudulently. The appellant acted as his Advocate and filed the Suit. In the said Suit, the parties settled the matter as they agreed for declaring the sale deed as ineffective and requested the Court for division of the property. This resulted in passing of decree dated 24.10.1994 by the Court in which the complainant was declared owner of 0.03 acres along with kutchha house out of the disputed property. Till this stage, there is no quarrel and there is no allegation against the appellant as far as his conducting the said Suit is concerned. However, the complainant further alleged that owing to family crises, the complainant suffered some financial crunch in the month of April, 2003, and he decided to sell his share of land to one Mr. Narsinghmal, son of Surajmal, for a sum of Rs.30,000/- and for the purpose of registration of sale deed, he produced the earlier sale deed before the office of the Deputy Registrar, Dantewada. At that stage, the appellant produced objection letter against the proposed sale deed and objected for registration of the said sale deed on the ground that the complainant did not have full ownership of the proposed land and the market value was also shown less in the said sale deed. It was stated by the complainant that the appellant was neither an interested party in the said sale deed or in the proposed sale of the land nor was he authorised by any party to raise objections. This act of the appellant in appearing before the office of the Deputy Registrar and objecting to the registration of sale deed was labelled as professional misconduct by alleging that the appellant had paid a sum of Rs.20,000/- to the complainant in the year 1996 and another sum of Rs.20,000/- to the son of the complainant in the year 1999 and for repayment of the said amount, the complainant had offered half share of the subject land as security. His justification for raising objection, therefore, was that since the land was being sold without clearing his debt, it could not be done.

4. Without prejudice to his defence, the learned counsel for the appellant submitted that even if the aforesaid contents in the complaint are accepted as correct, the act of the appellant was not as an Advocate

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and, therefore, could not amount to committing misconduct. In order to appreciate this contention one may refer to Rule 22 under Chapter II of the Standards of Professional Conduct and Etiquette framed by the BCI in exercise of its power under Section 49(1)(c) of the Advocates Act, 1961. This Rule reads as under:

“22. An advocate shall not, directly or indirectly, bid for or purchase, either in his own name or in any other name, for his own benefit or for the benefit of any other person, any property sold in the execution of a decree or order in any suit, appeal or other proceeding in which he was in any way professionally engaged. This prohibition, however, does not prevent an advocate from bidding for or purchasing for his client any property which his client may himself legally bid for or purchase, provided the Advocate is expressly authorised in writing in this behalf.”

5. Section 35 of the Advocates Act, 1961, as per which punishment can be awarded to an Advocate for misconduct makes the following reading: -

35. Punishment of advocates for misconduct.—

(1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee.

(1A) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.

(2) The disciplinary committee of a State Bar Council 2[***] shall fix a date for the hearing of the case and shall cause a notice thereof to be given to the advocate concerned and to the Advocate-General of the State.

(3) The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate-General an opportunity of being heard, may make any of the following orders, namely:—

(a) dismiss the complaint or, where the proceedings were initiated

A at the instance of the State Bar Council, direct that the proceedings be filed;

(b) reprimand the advocate;

(c) suspend the advocate from practice for such period as it may deem fit;

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(d) remove the name of the advocate from the State roll of advocates.

(4) Where an advocate is suspended from practice under clause (c) of sub-section (3), he shall, during the period of suspension, be debarred from practising in any court or before any authority or person in India.

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(5) Where any notice is issued to the Advocate-General under sub-section (2), the Advocate-General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf.

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6. It is very clear from the provisions of Section 35 that punishment can be awarded to an Advocate if he is found guilty of professional or other misconduct. Rule 22 is the relevant Rule in the instant case which proscribes an Advocate from directly or indirectly making a bid for or purchase either in his own name or in other's name for his own benefit or for the benefit of any other person any property sold in the execution of a decree or order in any suit, appeal or other proceedings in which he was in any way professionally engaged.

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7. Admittedly, in the instant case, the complainant was selling the property to the intending buyer which was an arrangement between them unconnected with any legal proceedings. The said property was not being sold in execution of any decree, in which proceedings the appellant was engaged, as noted above. Insofar as the filing of the Suit by the appellant on behalf of the complainant is concerned, that had resulted into passing of decree and the proceedings had concluded. Even as per the complainant's own admission, it is much thereafter that the complainant intended to sell the property in question when he found himself in need of money. It is this sale which the appellant tried to interdict. He was not doing so in the capacity of an Advocate. As per him, the complainant was not authorised to sell the property without repaying his debt. Whether the appellant was right in this submission or

not, is not relevant. What is relevant is that this act has nothing to do with the professional conduct of the appellant. Therefore, the very initiation of disciplinary proceedings against the appellant by the State Bar Council was improper and without jurisdiction. A

8. We, accordingly, allow this appeal and set aside the impugned orders passed by the Bar Council of India. B.

Devika Gujral

Appeal allowed.