

**In Re: a Pleader, Gudivada**

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**SooperKanoon Citation :** [sooperkanoon.com/774961](http://sooperkanoon.com/774961)

**Court :** Chennai

**Decided On :** Mar-25-1946

**Reported in :** AIR1946Mad538; (1946)2MLJ79

**Appellant :** In Re: a Pleader, Gudivada

**Judgement :**

Alfred Henry Lionel Leach, C.J.

1. The complainant and the respondent are pleaders practising at Gudivada. Last year the complainant was appointed by the District Munsiff of Gudivada to fulfil the duties of a Commissioner in giving to a client of the respondent delivery of land which she had purchased at a Court auction. She had previously attempted to get possession, but she had been obstructed. It is common ground that the complainant, the decree-holder and the respondent's clerk went to the property on the 13th February, 1945, in order that the complainant might deliver the land to the decree-ho'der. According to the respondent delivery was given by the complainant to the client and a receipt was signed by her in acknowledgment. On the 16th February, 1943, that is, three days later, the complainant reported to the District Munsiff that he could not give delivery of the property because the decree-holder was not able to point out the boundaries. On the 19th February 1945, the decree-holder swore an affidavit drafted by the respondent in which she alleged that delivery had in fact been given to her, but that the Commissioner had colluded with the judgment-debtor as the result of which he had suppressed the receipt given by her and had filed a false report. In the affidavit it was stated that the complainant

had filed a false report with the intention of obtaining wrongful gain, which meant that he had been paid by the judgment-debtor. The matter was inquired into by the District Munsiff who held that the charges against the complainant were false. This resulted in the following charges of professional misconduct being framed against the respondent:

(1) That you have filed a petition on behalf of the purchaser (decree-holder) in O.S No. 53 of 1935 on the file of Bandar District Munsiff's Court with the allegations that the petitioner herein made a false report that delivery was not effected when delivery in fact was effected, that delivery receipt was taken from the decree-holder-purchaser by the petitioner herein, that it was suppressed with a dishonest motive and that the petitioner was won over by the opposite party with a bribe.

(a) That you did so with the full knowledge that the above allegations are false, reckless, scandalous, defamatory and unprofessional.

(3) That you made the abovesaid allegations against the petitioner who was the Commissioner appointed by this Court and as such a public servant with the knowledge that if accepted as true by the Court, they would have debarred the petitioner from practising any longer as pleader and would have further made him criminally liable.

Considerable evidence was taken in the course of the inquiry which the District Munsiff conducted. He has reported that it has not been proved that the respondent had drafted the affidavit with the full knowledge that all the statements made therein were false, but he considered that the respondent had acted rashly and with 'credulousness.' Consequently he recommended that the respondent be warned. The District Judge in forwarding the report agreed with the findings, of the District Munsiff.

2. In *Thangavelu Mudaliar v. Chengalvaraya Gurukkal* : (1935)69MLJ250 , this Court pointed out that although an advocate has his duty towards his client, he has other duties and responsibilities as well. He should not on the instructions of his client make a charge of fraud without satisfying himself that there are reasonable grounds for the allegation. That principle is well settled.

3. Now, had the respondent in this case reason for accepting his client's instructions. We consider that he had. His clerk who was present on the 13th February, 1945, reported to him that delivery had been given to the decree-holder and that a receipt had been taken from her. These statements were in accord with the statements made by the decree-holder herself. It was said that the receipt which she gave was signed by one witness and this fact was mentioned in the affidavit. On the next day a discussion took place in the room of the Bar Association at Gudivada as to whether the signature of one witness to such a receipt was sufficient. The complainant was present at this conversation and in fact initiated the discussion. On this occasion the respondent paid to the complainant his fee for acting as the Commissioner. The complainant did not mention that he had not been able to give delivery to the respondent's client.

4. In these circumstances we think that the respondent was justified in drafting; and filing the affidavit complained of. He has not got to satisfy himself that the statements made by his client were absolutely true. All that was incumbent on him was to satisfy himself that there were reasonable grounds for believing them to be true. It follows from what we have said that we consider that there were reasonable grounds for this belief. In these circumstances we are unable to agree with the District Munsiff that the respondent acted recklessly or with undue credulity.

5. The complaint against him is dismissed.

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