

In Re: Sri K.R.

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Court : Chennai

Decided On : Jul-13-1942

Reported in : (1942)2MLJ196

Appellant : In Re: Sri K.R.

Judgement :

Alfred Henry Lionel Leach, C.J.

1. Three charges of professional misconduct were framed against the respondent who is a pleader practising in the Trichinopoly District. The first two charges were to the effect that he financed litigation in which he had appeared in his professional capacity. The third charge was that he had filed a false fees certificate. It is obvious that there is no foundation for the third charge and no further reference to it is necessary.

2. The respondent filed a suit on behalf of a childless widow, one Mahamu Animal, for declaration of her title to certain properties and for partition. The petitioner in this case was the defendant, and there can be no doubt that in instituting these proceedings against the respondent he has been actuated by malice. After the institution of the suit the respondent advanced to his client the sum of Rs. 300 on a promissory note. Out of this money the client paid to the respondent Rs. 200 for the expenses of the suit. More monies were required nine months later and the respondent advanced a further sum of Rs. 432. There was then due to him on the promissory note Rs. 318 which with the fresh advance made a total indebtedness

of Rs. 750. As security for this Rs. 750 the client executed in his favour a mortgage of her interest in some of the properties in suit. The respondent made no attempt to hide what he was doing; in fact the deed of mortgage sets out the facts in full. We are satisfied that in making these advances the respondent was actuated entirely by a desire to help his client who had no one else to turn to for help. He was also satisfied with the righteousness of her case. He was justified in this view because the suit resulted in a decree in his client's favour.

3. The question which the Court is called upon to decide is whether in advancing the moneys to his client for the purpose of the litigation the respondent was doing something which is improper. In this country a pleader, like the advocate combines the functions of the solicitor and the barrister in England. He does the solicitor's part of the work and he pleads in Court. As he fulfils both roles he must be subject to the disabilities of both. There would be nothing improper for a solicitor in the circumstances of this case to advance moneys to his client, but it would be improper for a barrister briefed by a solicitor to do so and the higher standard must be applied. By helping his client in this way the respondent had a personal interest in the litigation; in fact an actual interest in the subject-matter of the suit. This is surely not in keeping with the standard of conduct which his profession demands of him. It would be manifestly improper for a practitioner fulfilling the two roles to advance money to a person for the purpose of the institution of a suit, and it is difficult to see what difference there can be when money is advanced for the purpose of continuing the litigation. The only safe rule to lay down is that a pleader or an advocate should not lend money to his client at any time for the purposes of an action in which he is engaged.

4. As we have indicated we fully accept the statement that the respondent acted in good faith and in these circumstances we do not consider that any action is called for. It will be sufficient in this case to draw attention to the rule which we have stated and leave the matter there.