

Atchutaramiah Vs. Secretary of State for India in Council Represented by the Collector of Kistna

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Court : Chennai

Decided On : Sep-22-1914

Reported in : AIR1915Mad552; 25Ind.Cas.712

Judge : Kumaraswami Sastri, J.

Appellant : Atchutaramiah

Respondent : Secretary of State for India in Council Represented by the Collector of Kistna

Judgement :

Kumaraswami Sastri, J.

1. These petitions are filed against the order of the Temporary Subordinate Judge of Rajahmundry sitting at Cocanada, refusing the petitioner, who is a first grade Pleader practising in Cocanada, leave to appear on behalf of the Rajah of Vizianagaram in a suit filed by the Rajah against the Government. The facts are shortly these: The petitioner, Mr. Atchutaramiah, who according to the Subordinate Judge is a first grade Pleader of long standing with a lucrative practice', was attending to Government work in the Subordinate, Judge's Court at Cocanada and was engaged by the Government to defend Original Suit No. 63 of 1912, which was filed by the Rajah of Vizianagaram in respect of certain lankas in Godavari.

He drafted a written statement and before anything further was done the suit was transferred from the file of the Subordinate Judge of Cocanada to that of the Subordinate Judge of Rajahmundry. When the suit was so transferred, the Collector did not engage Mr. Atchutaramiah to appear before the Subordinate Judge of Rajahmundry, but engaged the Government Pleader in Rajahmundry to appear for the Government, and so far as appears from the record, Mr. Atchutaramiah had nothing further to do with the case. Some time after the transfer of the suit to Rajahmundry Mr. Atchutaramiah resigned his Government pleadership and another gentleman (Mr. Perraya Sastri) was appointed. The Subordinate Judge's Court of Rajahmundry was ordered to hold the Court at Cocanada and the suit came back to Cocanada for trial before the Subordinate Judge. The Collector engaged Mr. Perraya Sastri to defend the suit and no engagement was offered to Mr. Atchutaramiah. The Vakil for the plaintiff died and the Vizianagaram Estate offered the brief to Mr. Atchutaramiah, the petitioner. As he had appeared for the Government, he applied for permission under Rule 277 of the Civil Rules of Practice to appear for the plaintiff. In his affidavit he states that all that he did was to draft the written statement, that when the suit was transferred to Rajahmundry the Collector did not ask him to appear there but engaged the Government Pleader at Rajah-ry, that he did not claim and was not paid any fees for the work he did for the Government in connection with the suit, that he was not in possession of any facts which would be useful to the plaintiff or detrimental to the Government and that when the suit came back to Cocanada the Collector did not offer to engage him. A counter-affidavit was filed by Mr. Venkatarow, the special Officer in connection with the suits, to the effect that Mr. Atchutaramiah when he drafted the written statement, did so with the aid of a memorandum which was so exhaustive and detailed that it placed him in possession of all the information available in the matter and that it would be prejudicial to the interests of Government should Mr. Atchutaramiah appear for the plaintiff. A reply affidavit was filed by Mr. Atchutaramiah wherein he states that although he resigned the office of Government Pleader, he was asked to continue in cases in which he had appeared before his resignation and that the Collector had at first given him oral permission to appear for the Vizianagaram Estate in the present suit but cancelled the same two days afterwards. The question, therefore, for determination is

whether a Pleader who has been retained for a party and who has drafted a written statement, is entitled to appear for the opposite side when the party originally retaining him does not seek to employ his services but has engaged other Pleaders in the case. A great deal of unnecessary matter and discussion have been introduced in the lower Court, presumably owing to the fact that the amendment to Rule 277 of the Civil Rules of Practice made on the 16th December 1909 was not brought to the notice of the Court and probably was not even known to the parties. Rule 277 as it originally stood ran as follows:

'Except when specially authorised by the Court or with the consent of his former client, a Pleader shall not, after the determination of his appointment, appear or act in the same suit, or appeal, or matter or in any proceedings connected therewith, for any person whose interest is opposed to that of his former client.'

The rule, as amended, runs as follows: Except when specially authorised by the Court or by consent of the party, a Pleader who has advised in connection with the institution of a suit, appeal or other proceeding, or has drawn pleadings in connection with any such matter or has during the progress of any such suit, appeal or other proceeding acted for a party, shall not, unless he first gives the party for whom he has advised, drawn pleadings or acted, an opportunity of engaging his services, appear in such suit, appeal or other proceeding, or in any appeal or application for revision arising therefrom, or in any matter connected therewith for any person whose interest is opposed to that of his former client:

'Provided that the consent of the party shall be presumed if he engages another Pleader to appear for him in such suit, appeal or other proceeding without offering an engagement to the Pleader whose services he originally engaged.

2. There can be little doubt from the facts, as appearing from the affidavits, that the engagement of Mr. Atchutaramiah in the Subordinate Judge's Court at Cocanada was treated as at an end when the suit was transferred to Rajahmundry and though he could have been engaged to appear at Rajahmundry and asked to proceed with the suit on behalf of the Government, this was not done. When the suit was transferred from the file of the Subordinate Judge at Cocanada to that of the Subordinate Judge of Rajahmundry the suit ended so far as the Court at

Cocanada was concerned and as the engagement of Mr. Atchutaramiah was to appear in the Court of the Subordinate Judge of Cocanada, the proceeding's in that suit must be taken to have ended so far as the Pleader was concerned. The transfer terminated all proceedings so far as the Cocanada Sub-Court was concerned just as effectively as if the suit had been decided. It was only an accident that the suit came to be tried again at Cocanada before the Sub-Judge of Rajahmundry. It was open to the Collector to have engaged his services and to have asked him to appear in the Court at Rajahmundry, but admittedly he did not do so and it is not suggested that subsequent to the transfer Mr. Atchutaramiah was either consulted in connection with the suit or had anything to do with its further conduct. As his vahalat had terminated before he resigned his appointment of Government Pleader in the Subordinate Judge's Court at Cocanada and as nobody could have anticipated at the time of the resignation that the suit would come back to be tried at Cocanada, it is unnecessary to consider whether his resignation disentitled him to be re-appointed. It is not suggested that his resignation was due to any cause that would render it inexpedient that he should be given any brief by the Government. This is certainly not a case where the Pleader without any justifiable cause throws up the brief of his former client and seeks to appear for the opposite party. On the contrary Mr. Atchutaramiah was all along willing to appear for the Government if he was engaged. I ' adjourned the case to enable Mr. Grant to communicate with the Collector and ascertain if the Collector is willing to engage him even at this stage of the proceedings, and Mr. Grant stated that the Collector was not going to engage him in the suit. It is difficult to see how, under these circumstances and having regard to the express terms of Rule 277 as it now stands, permission could be refused to Mr. Atchutaramiah to appear for the Estate. It is clear that Mr. Atchutaramiah gave full opportunity to the Collector to engage his services and that the Collector not only did not engage him but at one stage of the proceedings permitted him to appear for the opposite side. Apart from any question of permission, the proviso to Rule 277 throws the onus on the other side, because the engagement of another Pleader when the case came back to be tried at Cocanada, raises the presumption that Mr. Atchutaramiah's services were not required and that he was free to appear for the opposite side.

3. I am unable to see any hardship or unfairness in allowing Mr. Atchutaramiah to appear for the Estate. It is not suggested that the Government are bound to engage Mr. Perraya Sastri even though he was Government Pleader at Cocanada. It was perfectly open to the Government to send the brief back to Mr. Atchutaramiah as it is not the case for the Government that Mr. Atchutaramiah did anything in connection with the suit which would have made it impossible for the Government to have engaged his services. I am of opinion that Rule 277 clearly entitles Mr. Atchutaramiah to appear for the Estate. I set aside the order of the Subordinate Judge and allow the petitions. I make no order as to costs.

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