

N.Jagannathan. Vs.

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Court : Chennai

Decided On : Jul-24-2012

Judge : P.Jyothimani; M.Duraiswamy, Jj.

Acts : Tamil Nadu Court of Wards Act, 1902 - Section 60; [Indian Succession Act, 1925](#) - Section 296; Madras High Court Original Side Rules - Order 25 Rule 65,; [Constitution of India](#) - Articles 215

Appeal No. : Suo Motu Contempt Petition No.1068 of 2012 in O.S.A.Nos.370 to 374 of 2008 and 197 of 2006

Appellant : N.Jagannathan

Advocate for Def. : Mr.C.Uma Shankar, Adv.

Advocate for Pet/Ap. : Mr.V.Chockalingam, Adv

Judgement :

ORDER

(Order of this Court is made by P.JYOTHIMANI,J.)

1. The Original Side Appeals, which we do not propose to take it now, arise from the orders passed by this Court in revoking the Letters of Administration already granted on 13.10.2004.

2. The appellant has filed O.P.No.380 of 2004 for the purpose of issuance of Letters of Administration based on a Will dated 16.5.1992 alleged to have been executed by one Varaguna Rama Pandiya Chinnathambiyar, who is stated to be one of the descendants of the legal heirs of the Pandian Dynasty. In the Will, which has been annexed to the original petition filed by the appellant, the appellant has chosen to include 12 items of properties, which are as follows:

1 Mayuranathasamy Koil at Rajapalayam, Properties, Aresiyarpatti Village, Rajapalayam, Kollankondan Vadakku Venganallur, Sompanthapuram, Alagapuri etc. under the control of above koil Trust run by Sivagiriyar

2 Vaithiyanathasamy Koil and Andal Koil properties under the control of Sivagiriyar.

3 Properties at Rameswaram, Madurai, Palani, Thiruvandudurai, MaduraiAthnam, Salem, Trichy, Tanjore, Nellai and Chingleput.

4 Properties at Ooty, Hosur, Bangalore, Madras, Hyderabad, Bombay, Calcutta, Baroda, Jabalpur, Vijayawada, Nellure, Visakapatnam, Delhi, Kashmir, Kasi Thiruppathi Temple.

5 Bangalow and vacant site properties outside Indian in London, Paris and other places.

6 All the Madams in Madras Presidency Temples and Temple properties, Chauldries, properties of Chauldries, Shandi, Market, Vandipettais, belonging to the Sivagiriyar Trust.

7 Properties vested with the court of wards, official assignees owned by me and shares in Harvey & B & C Mills and properties therein.

8 Security deposited by with the court, Board of Revenue, Bank deposit cash, Deed of titles, Shares and debentures, dividends, Estates, Forest, Hills, Horticulture, Jewels, diamonds and other shares in the companies, British Sarkar and at British Privy Council at London.

9 Places given to Military defense in Madras Presidency.

10 List of properties given O.S.No.1/1865, O.S.No.1/1848, District Court, Tirunelveli, O.S.No.10/1867, Sub Court Tirunelveli, O.S.No.684/73 Addl. District Munsif Madurai, O.S.No.726/74 District Munsif Court, Srivillputtur, O.S.No.4/1872, O.S.No.1/4867 and O.S.No.1867 District Court, Tirunelveli. O.S.No.1/1875 Sub-Court, Tirunelveli, O.S.No.10/1877 District Court, Tirunelveli.

11 All Properties vested with court of wards at Madras Provincy, Bangalows and vacant sites at Nungambakkam, Old Law College, Law College hostel Broadway, Bangalows named at witch craft, Cames Got, Varatha, Aswatha, Angles Hotels, Mound road, etc.

12 All properties mentioned in the decree passed in O.S.No.27/1914. Sub Court Turicorin.

3. A reference to the contents of the Will placed before this Court in the original petition shows that the testator intended to have the development of a trust called "Sivagiriyar Trust" including Temples, Madams, Burial Ground, Chatram, etc. However, neither in the body of the Will nor in the annexure attached to the Will there is a reference about any amount deposited in Credit Suisse Bank, Switzerland.

4. It is on record that before filing of the Original Petition, which was on 21.1.2004, there has been some discussion between the counsel who appeared for the appellant and one Giuseppe Leopoldo Cassina, who is stated to be a resident of Switzerland, and it is he who has informed that huge amount of money belonging to the Pandian Dynasty is lying in Credit Suisse Bank. It is thereafter the original petition has been prepared and filed before this Court and Letters of Administration was obtained on 13.10.2004.

5. On the objections raised by certain third parties for the purpose of cancelling the Letters of Administration, this Court in the order dated 21.2.2006 has directed the cancellation of the order in the original petition and ordered a proper adjudication and decision on merits. It is not in dispute that after the said order dated 21.2.2006 revoking the Letters of Administration, neither the appellant nor his counsel, who has received the original Letters of Administration from this Court, have

surrendered the same before this Court. The excuse which is sought to be made by the learned counsel for the appellant now is that as against the order dated 21.2.2006, O.S.A.No.197 of 2006 has been filed and, therefore, there is no obligation on the part of the appellant or his counsel to return the original Letters of Administration.

6. It is admitted and is seen on record that the learned Single Judge on more than five occasions, namely on 21.2.2006, 18.8.2007, 7.9.2007, 26.10.2007 and 11.12.2007, as seen in Exx.C4 and C5, has directed the appellant as well as his counsel to produce the original Letters of Administration and in spite of such direction given on five occasions by the learned Single Judge, the original Letters of Administration has not been produced before this Court on the premise that O.S.A.No.197 of 2006 is pending.

7. In the meantime, some other persons who claim to belong to the family of Pandian Dynasty, claiming share over the property on the allegation that the Will has been obtained fraudulently, have filed applications for the purpose of revocation of Letters of Administration and ultimately, this Court in the order dated 24.6.2008 has passed another order holding that inasmuch as the persons who are interested over the property are making claim, the matter has to be adjudicated and accordingly, the order in the original petition stood again revoked and the case was directed to be numbered as Testamentary Original Suit in T.O.S.No.25 of 2008. It is against the said revocation order the further appeals have been filed in O.S.A.Nos.370 to 374 of 2008.

8. Even when the appeals are being heard by this Bench, we have specifically issued direction on 24.6.2008, 2.4.2012, 12.4.2012, 23.4.2012 and 26.4.2012 to the learned counsel for the appellant to produce the original Letters of Administration, as seen in Exx.C6 to C8, and in spite of it, even as on date, the original Letters of Administration has not been surrendered by the appellant or his counsel.

9. It is the case of the counsel for the appellant that on receipt of the original Letters of Administration issued by this Court dated 13.10.2004, he along with the appellant has sent the same to Swiss Embassy in Mumbai to be forwarded to the

Credit Suisse Bank, through Giuseppe Leopoldo Cassina. The evidence of the appellant, who was examined as R.W.1, and the counsel for the appellant, who was examined as R.W.2, are in this regard contradictory. While the appellant states that the original Letters of Administration was sent from the General Post Office, the learned counsel for the appellant would state that the same was sent from the Secretariat Post Office at the instance of some of the government officials.

10. As it is seen in the earlier order passed by this Court on 15.6.2012, one Vidya Patwardhan, who was present in the Court, has voluntarily stated that Giuseppe Leopoldo Cassina is her brother-in-law, having married her sister Maya, and the said Vidya Patwardhan has been at some point of time claiming herself to be the legal heir of the Pandian Dynasty and she was sent to Switzerland for the purpose of finding out the actual amount lying in the Credit Suisse Bank and she had contact with Mr.V.Chockalingam, learned counsel for the appellant. She has also stated that the Letters of Administration was handed over to her by Mr.V.Chockalingam. These are the startling contradictions in respect of the handing over of the Letters of Administration.

11. Be that as it may, there is admittedly no order from this Court, in the absence of any contents in the Will itself about the amount stated to be lying in the Credit Suisse Bank, permitting either the appellant or his counsel to send the Letters of Administration to a foreign country. As submitted by Mr.Satish Parasaran, learned counsel appearing for one of the respondents in the appeals, under the [Indian Succession Act, 1925](#) there is absolutely no provision enabling a party to send the Letters of Administration obtained from India to any other country except of course with any specific permission or on production of the Letter of Administration to the competent court in that country and obtaining necessary orders. Therefore, at the first instance, it is clear that the stand of the learned counsel for the appellant that he has sent the original Letters of Administration to Credit Suisse Bank is totally unauthorized and the same has not been properly explained.

12. We have repeatedly directed the learned counsel to produce the original Letters of Administration and even as on date, as stated above, the original Letters

of Administration has not been deposited before this Court. On the other hand, the learned counsel for the appellant as well as the appellant have filed certain statement, even though they were directed to file the same in the form of affidavit, stating that the Letters of Administration has been sent to Credit Suisse Bank through Giuseppe Leopoldo Cassina, at the instance of the Government. It was in those circumstances, this Court felt that there has been a gross abuse of the process of law by the appellant as well as his counsel in collusion and accordingly, as per the provisions of Order XXV Rule 65 of the Madras High Court Original Side Rules, which is as follows:

"Order XXV Rule 65. A citation to bring in and deposit in the registry, probate or letters of administration or an alleged will or codicil or other testamentary document, shall appoint a day certain before which the same is to be brought in; and if the person cited alleges that he is unable to comply with the citation, he shall before the said day, file in Court, an affidavit of the cause of his alleged inability, and give notice thereof to the person issuing the citation. In case, of default or if the Court considers the said affidavit to be insufficient the person cited shall be considered in contempt of Court; and any party to the proceedings may apply that the person cited may be ordered to attend for the purpose of being cross examined on the affidavit or that he may be committed for contempt."

we have directed the appellant to be cross-examined by the various counsel who have opposed the issuance of Letters of Administration and at whose instance the Letters of Administration came to be cancelled. Accordingly, the appellant was examined as R.W.1 and he was cross-examined.

13. During the course of examination, the appellant has clearly stated that the original Letters of Administration was received from the High Court by Mr.V.Chockalingam and he has not handed over the same to him. He has also stated that a person working in Credit Suisse Bank by name Giuseppe Leopoldo Cassina was only known to his advocate, V.Chockalingam and he has only sent it to Credit Suisse Bank. Very curiously, R.W.1 has stated that even though he came to know about Giuseppe Leopoldo Cassina only through Mr.V.Chockalingam, the said person came to Chennai and informed that in Credit Suisse Bank amounts

belonging to Pandian Dynasty were available and he requested a commission of 5% for the purpose of searching the same and sending it to India. R.W.1 has also stated that in respect of the application filed before this Court for sale of one of the properties, the same was filed only at the instance of his counsel, Mr.V.Chockalingam.

14. At one point of time when R.W.1 was cross-examined by Mr.Ravi, learned counsel appearing for one of the parties, he has even gone to the extent of saying that he is unaware of the pendency of the appeal. When he was cross-examined by the learned Additional Advocate General on behalf of the State Government, he has admitted that he did not send any letter to the Government seeking permission to send the original Letters of Administration to Credit Suisse Bank and admittedly there is no such document which is available before this Court. He has also stated while he was cross-examined by Mr.C.Umashankar, counsel appearing for one of the parties, that even the statement which was filed before this Court marked as Ex.C1 and the contents therein was not known to him. He has also reiterated that the original Letters of Administration was retained by his counsel and never handed over to him and he also admits that while the Letters of Administration was sent to Swiss Bank, he accompanied his advocate to the post office in the Beach Road.

15. On the evidence of R.W.1 it is clear that he was totally under the control of his counsel Mr.V.Chockalingam, and in fact, when the appellant underwent brain surgery, he was living in the house belonging to Mr.V.Chockalingam at Shenoy Nagar. He has also stated that the Shenoy Nagar property claimed by the learned counsel for the appellant also belongs to the Court of Wards.

16. From the entire narration of evidence by R.W.1, namely the appellant before this Court, it is clear that the appellant is ignorant about the entire facts, but knowingly has chosen to become a party to the litigation.

17. The learned counsel appearing for the appellant has offered himself to be examined as a witness to explain certain aspects, which we have permitted. Accordingly, he was examined as R.W.2. He has also filed a statement (Ex.C2) not in the form of affidavit in spite of the direction from this Court. He would

however state that the original petition and entire proceedings have been done by him starting from the time of his Senior Mr.Kuppusamy, advocate, only at the instance of the appellant and he acknowledges the various directions given by the learned Single Judge, as stated above, directing to return the original Letters of Administration as well as the various orders passed by this Court.

18. At the time of cross-examination, he has stated that when he got admission for his daughter in Kalashetra, while he was working in the Madras University as a Teacher, he came to develop contact with Giuseppe Leopoldo Cassina, who is stated to have told him that in the Credit Suisse Bank the British Government has invested amounts in the trust account of Varaguna Rama Pandian before 1947 and very huge amount is lying in the account and he has also stated that the said Giuseppe Leopoldo Cassina has agreed to retrieve the said amount and send to the Government of India on condition that he should be paid 5% commission.

19. R.W.2 relies upon an email dated 27.9.2007 addressed to him as Professor Chockalingam sent by Giuseppe Leopoldo Cassina marked as Ex.R1. The contents of the said letter show as if some Raja got all documents such as the administration letter, the Will because of the records kept in the Board of Revenue, that were verified and therefore the Madras High Court could issue all documents in favour of Raja. Of course, the email shows that the bank has stated that the properties of Raja are spread all over the world and the bank is also conscious that Indian politicians do not permit N.Jagannathan to accede the Board of Revenue. Inasmuch as the learned counsel for the appellant, who was examined as R.W.2, relies upon this email, it is relevant to extract the same:

"Dear Professor,

Just returning from Zurich, where I had a discussion with Credit Suisse.

Raja got all documents such as the Administration Letter, the Will, because of the records kept in the Board of Revenue that were verified and therefore the Madras High Court could issued all documents in favour of Raja.

N.Jagannathan's fore father's deposited the money with Credit Suisse bank under three trust with code numbers and within the Bank they are very well aware of it.

The Bank has stated that the properties of Raja are spread all over the world.

The bank is demanding photo copies of the records that are available with the Board of Revenue. The Bank is also very conscious that Indian politicians do not permit N.Jagannathan to accede the Board of Revenue.

The Bank question their position in releasing so big assets without any control by the Indian Government, that is managing the Board of Revenue. Today reality's is, that the entire economical world utilize N.Jagannathn's money.

Professor bring or send the Proper records (photocopies) and the matter will be closed forever.

With warm regard

Giuseppe."

On a perusal of the same, there is no difficulty to understand that the bank has never admitted or acknowledged the receipt of the original Letters of Administration. It is only the appellant as well as his counsel who are repeatedly reiterating that the same is with the Credit Suisse Bank. R.W.2, the learned counsel for the appellant, specifically stated in his evidence that the said Ex.R1 contains a statement that the Credit Suisse Bank is holding the Letters of Administration, whereas the email extracted above does not contain statement to that effect.

20. Again surprisingly, the learned counsel relies upon another email dated 4.9.2007, marked through him as Ex.R2, addressed to him as Professor Chokalingam, wherein Giuseppe has stated that the Credit Suisse Bank is in contact with the Government of India and he was instructed by the Government of India not to give out the documents to anyone since the matter is under their consideration. The relevant paragraph of Ex.R2 is as follows:

"On asking him to return me the letter of administration since needed in India, he said that the Bank is in contact with the Government of India and that he was instructed by the Indian Government not to given out the documents to anyone since the matter is under their consideration."

Even the said contents do not subscribe the stand of the learned counsel for the appellant that the Letters of Administration is with the Credit Suisse Bank. It is clear that it is a fraud played by the learned counsel for the appellant and a foreigner - Giuseppe Leopoldo Cassina for the reasons best known to them. He has specifically admitted during the cross-examination that there are no records to show that Government of India is taking steps to retrieve funds and he has only contact with Giuseppe Leopoldo Cassina.

21. He has also admitted that the Court has on six occasions directed him to surrender the original Letters of Administration. Even though he has chosen to state during the cross-examination that he has informed the order passed by this Court to surrender the Letters of Administration to his client, it remains a fact that the appellant has deposed otherwise, as stated above. It is again admitted by R.W.2 that the foreigner Giuseppe Leopoldo Cassina has filed a writ petition in W.P.No.7654 of 2005 as a power agent of the appellant for a direction against the Government to give information about the various properties relating to Sivagiri Estate, including the amounts in the Swiss Bank. He also specifically admits that Vidya Patwardhan used to come to his house along with her father, even though he would say that he has no connection with her. Though it is the case of R.W.2 that Giuseppe Leopoldo Cassina is connected with Credit Suisse Bank, there is no record to show the same.

22. R.W.2 also admits that he was aware that the Letters of Administration cannot be sent to a foreign country except with the permission of the Home Ministry. He has even gone to the extent of saying that in the affidavit filed in W.P.No.7654 of 2005 by Giuseppe Leopoldo Cassina, as a power agent of the appellant, in which R.W2 as a counsel has appeared, it was wrongly stated that the original Letters of Administration was received from Jagannathan and it was personally and physically delivered to Mr.Conrad Fritzsche, Director-Legal and Compliance

Department of the Credit Suisse Bank, even though such statement is available in the affidavit. Admittedly, that writ petition came to be withdrawn by R.W.2.

23. Even though R.W.2 would state in his evidence that the Credit Suisse Bank insisted him to produce the Letters of Administration for transferring the funds to India, there is no record to substantiate the said claim, especially when the Government of Tamil Nadu as well as the Central Government denied such statement.

24. Even though R.W.2 has chosen to state that immediately after obtaining the Letters of Administration he has sent it to Credit Suisse Bank, in the cross-examination, R.W.2 has specifically admitted that at the time of filing Application No.2697 of 2005 in the Original Petition seeking permission to sell a property in Karaikudi to one Ramachandran, he was holding the original Letters of Administration with him.

25. Ultimately, it is clear on a reference of the evidence of both R.W.1 and R.W.2 that it is R.W.2 the counsel who has been doing everything on behalf of R.W.1 and R.W.1 has been used as a stooge for the purpose of obtaining Letters of Administration and all the subsequent acts, the reason for which are best known only to R.W.1 and R.W.2.

26. The contention of the learned counsel for the appellant as if the appellant, being the beneficiary under the Will, is to be treated as a person who surrendered the property under the Tamil Nadu Court of Wards Act, 1902 has absolutely no meaning. On a bare reference to Section 60 of the Tamil Nadu Court of Wards Act, 1902, which is claimed to be a provision under which the appellant got exemption from payment of probate duty, which is as follows:

"Section 60. Recovery of expense after release.- Any expense incurred by the Court on account of any property under its charge, and not defrayed from such property during the Court's superintendence may, after the release of such property, be recovered as if it were an arrear of land revenue from any person into whose possession such property or any part thereof may have passed:

Provided that the sum so recovered from any such person shall not be greater than the value of any such property, which so passed into the possession of such person.",

it is clear that the said provision is not applicable to the appellant at all. The Court of Wards is a Court governed by the Collector belonging to the Revenue Department and if at all the said Section 60 is to be utilized for the purpose of getting any exemption, it is the Court of Wards, namely the Collector, who has to approach this Court and that Section is not intended for the benefit of the appellant, who has illegally obtained an order for non payment of the probate duty. This amounts to suppression of material facts. In this regard, it is also useful to refer to the term "Court of Wards", as defined under Section 5 of the Tamil Nadu Court of Wards Act, 1902, which is as follows:

"Section 5. Court of Wards.- The Board of Revenue shall be the Court of Wards for the territories to which this Act extends, and for the purposes of this Act, Collectors shall be subject to the control of the Court."

27. Ergo, it is clear that a fraud on the Court has been played not only by the appellant, but also by the learned counsel appearing for the appellant. In spite of repeated directions by this Court, the learned counsel for the appellant would only say that he is taking earnest steps for the purpose of procuring the said Letters of Administration from the foreign country. First of all, no Court has granted permission to him to send it to Credit Suisse Bank. Even otherwise, there is no record to show that either the appellant or his counsel has taken any steps for the purpose of bringing back the document to this Court. As stated in Order XXV Rule 65 of the Madras High Court Original Side Rules, the non production of the Letters of Administration in spite of the repeated direction by this Court amounts to contempt of court.

28. This Court is also aware of Section 296 of the [Indian Succession Act, 1925](#), which is as follows:

"Section 296. Surrender of revoked probate or letters of administration.-

(1)When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

(2)If such person wilfully and without reasonable cause omits so to deliver up the probate or letters, he shall be punishable with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to three months, or with both."

The said provision, in our view, has to be read along with Order XXV Rule 65 of the Madras High Court Original Side Rules. While Section 296 is a penal provision for not surrendering the revoked probate or Letters of Administration, Order XXV Rule 65 of the Madras High Court Original Side Rules contemplates the commission of contempt, which read with Article 215 of the [Constitution of India](#), empowers this Court of record, as a Court entitled to initiate jurisdiction under the contempt proceedings and by virtue of the said power, we hold that both the appellant as well as his counsel committed contempt of court.

29. After this Court has come to a conclusion for the reasons stated above that the appellant as well as his counsel committed contempt of court order, we have specifically asked the appellant as well as his counsel about the sentence. The appellant would state that he is not well and he is not aware of the anything. The learned counsel for the appellant would reiterate that he has not committed any contempt and he has taken all steps for the purpose of getting back the amount. On the factual matrix, which we have discussed above, we have no hesitation to reiterate that the counsel is equally responsible for the unfortunate conduct.

30. As submitted by Mr.Satish Parasaran, learned counsel for one of the parties, the conduct of a counsel appearing in a case has been very aptly explained by Lord Justice Lindley as well as Lord Justice Rigby in the Chancery Division decision in Harbin v. Masterman, (1896) 1 Ch.D. 351. In that case, which is almost like the present case, a lady was entitled to annuity and the House of Lords ultimately gave a direction that an amount of 8000 Pounds is to be deposited and she shall be paid 150 Pounds as annuity per year and certain cost has been imposed. When the matter was taken up for appeal to Chancery Division, the

Chancery Division found that there was no reason for filing of such appeal inasmuch the party was not a sufferer, since an order beneficial to the party has been passed. Ultimately, the Chancery Division has come to a conclusion on fact that the counsel was responsible for the filing of the appeal. The narration given by Lord Justice A.L.Smith shows the facts very clearly as follows:

"The question which the Court has to determine now is whether it does appear to the Court that costs have been "improperly or without any reasonable cause incurred"; because, if the Court comes to that opinion, power is given to the Court under Order LXV., r.11, to call upon the solicitor of the client to show cause why the costs should not be disallowed, or why he should not pay the costs which have been incurred by the client. I wish shortly to state how the matter appears to me. The testator made a will, and controversy arose as to the construction of that will. My brother Stirling J. put a construction upon it. This Court afterwards put the same construction upon it; and the House of Lords has held that the construction put upon it by my brother Stirling and this Court was right. I do not for a moment say that that litigation, which as I understand was undertaken on behalf of the next of kin, who were the appellants all through in this Court and in the House of Lords, was not a proper litigation for Mr.Hood Barrs to undertake. I do not say that in any shape or way up to the judgment in the House of Lords, which was given in March, 1895, any complaint can be made of Mr.Hood Barrs in the matter. What we have to determine is as to what took place after March, 1895, when the judgment of the House of Lords was given. Now what happened? The judgment of the House of Lords affirmed that certain charities, five in number, were entitled to the corpus of the property I am putting it shortly subject to certain annuities, and the House of Lords gave judgment for the respondent with costs against the appellants there, who were Mr.Hood Barrs' clients. It seems to me that Mr.Hood Barrs, after the judgment had been given against his clients, did all he could to get these charities to forego their costs. That seems to me to be all right. But he could not get them to agree to that; and they were within their rights in saying, "We will not forego our costs." Then what happened? The charities wanted to get the property to which the House of Lords had said they were entitled. That property was invested at that time in Consols in Court in the administration of the testator's estate. What the charities did was this. They took out a summons before my brother Stirling to get

an order that the corpus should be paid out to them in the shares to which they had been adjudged entitled under the judgment of the House of Lords, but of Course subject (I do not forget what Mr.Hood Barrs said about making provision for the annuities) to such part of the corpus being set aside so as to fully secure the annuitants having a charge upon the corpus. What did my brother Stirling do? He took into consideration the circumstances as regards Mrs.Venables, and no doubt as regards the other annuitants none of whom appeal against Stirling J.'s order except Mrs.Venables and he said, "If 8000l. Is set apart and kept in court for the purpose of satisfying your annuity. I am perfectly certain you will have your annuity of 150l a year as long as your live." I myself am perfectly satisfied that my brother Stirling was right in that, and nobody can hear what I am saying without being satisfied that the order of my brother Stirling was a just order to make as between the annuitants on the one part, and the charities who were entitled to the residue of the corpus on the other. But now comes the difficulty with regard to Mr.Hood Barrs. He could not get the charities, as I have before said, to agree to forego their costs; so he went to Mrs.Venables, who is a lady certainly not in affluent circumstances, and got her name for the purpose of appealing against that order of Stirling J.'s; and it certainly did appear to me, when Mr.Graham Hastings was arguing this case on behalf of the appellant, that it was as senseless an appeal as ever I heard, and one which nobody could have brought unless he or she had been ill advised, or was perverse or obstinate, and that in truth it was not really Mrs.Venables' appeal. Now what was the Court to do? It struck me as cruel and no other word will properly describe it that in dismissing the appeal that we should have to make this unfortunate lady pay the costs. She has only a small annuity of 150l. a year, and the costs of the appeal could not be otherwise than heavy. What were we to do? We have an officer of this Court who is called the Official Solicitor. In my judgment, that officer is appointed Official Solicitor to the Court in order that a judge, when he sees before him certain matters which he wants investigated, and as regards the absolute accuracy of which counsel is not instructed, and has no knowledge whatever, may communicate with that official in order that the judge may be informed as to where the real truth of the case lies. In this case, and I say it emphatically, although Mr.Hood Barrs chooses to apply the term "dirty work" to Mr.Winterbotham, that term ought not to be applied, because

Mr. Winterbotham has faithfully carried out our orders which orders, considering the position in which we were placed by the acts of Mr. Hood Barrs, we were bound to give. Then we find out it was not Mrs. Venables' appeal. It is all very well to say that she had given instructions to Mr. Hood Barrs; but what interest had Mrs. Venables in appealing to this Court? She had her 8000l. Consols set apart for her for the rest of her life, which sum was more than sufficient to pay, whatever might happen, the annuity of 150l. a year. Now Mr. Hood Barrs comes and tells us and I have no doubt accurately the attempts he had made to settle after he was defeated in the House of Lords. He could not get a settlement; and, as has been pointed out by my brother Lindley, this appeal is not brought in the interest of Mrs. Venables at all. It is perfectly immaterial to her, except as regards costs, which was it went; but it was brought for the purpose of coercing, if Mr. Hood Barrs could, these charities to come to his terms, and as in his letter of November 9, 1895, he says, "I hope ultimately to get a settlement of the appeal which will be a benefit to me." If there ever was a case in which this order should be applied it appears to me to be this one; and I think the order which my brother Lindley has sketched out ought to be made."

Ultimately, having found that the counsel who has utilized the advantageous position against the unfortunate lady was totally responsible for misleading the litigant, Lord Justice Rigby has crisply stated the duty of a lawyer. It is worthy to reproduce the the same hereunder:

"That being the position of things, and that being, as we have from Mr. Hood Barrs' own lips, his own appreciation of the case, namely, that Mrs. Venables was sufficiently secured, and that she had no interest, he approached her, and suggested and a more improper suggestion I venture to say was never made that she should lend her name to him (coming here to the Court as though she were the bona fide appellant) on the terms that he should indemnify her against costs, and that he personally should take the benefit of the appeal. It startles one to find that a solicitor, an officer of this Court, can come into court and openly avow a transaction of that kind and yet apparently remain unconscious of the absolute impropriety of it. It appears to me that that unconsciousness, if it were not assumed, is a very grave feature of the case."

31. The reference made by the Chancery Division squarely applies to the facts of the present case. The conduct of the learned counsel, as it is exposed in the evidence of R.W.1 and R.W.2, is unbecoming of an advocate and totally opposed to the concept of morality and ethics and, therefore, we have to necessarily impose punishment on both the appellant as well as his counsel.

Accordingly, by taking into account the totality of the situation, we pass the following order:

(i)The appellant N.Jagannathan is imposed with punishment of simple imprisonment for a period of three months and a fine of Rs.50,000/-, which shall be paid within a period of one week from today, and in case of default in payment of the said fine amount, he shall undergo simple imprisonment for a further period of one month.

(ii)The learned counsel for the appellant Mr.V.Chockalingam is imposed with a fine of Rs.50,000/-, which shall be paid within a period of one week from today, and in case of default in payment, he shall undergo simple imprisonment for a period of one month;

(iii)Till the Original Side Appeals are disposed of, proceedings in the Testamentary Original Suit shall not be conducted.

(iv)The Central Government and the State Government are directed to produce the records, including the government order containing the list of properties, and the report of the CBCID as ordered earlier.

(v)The Registry is directed to post the original side appeals for final disposal on 2.8.2012.

(vi)The Registry is directed to mark a copy of this order to the Bar Council of Tamil Nadu and we leave it to the Bar Council to take appropriate action at its discretion.

With the above directions, this suo motu contempt petition stands closed.

Note to Registry:

Issue free copies of the order to the contemnors.

sasi

Suo Motu Cont. Petition No.1068 of 2012

in O.S.A.Nos.370 to 374 of 2008

and 197 of 2006

P.JYOTHIMANI,J.

AND

M.DURAISWAMY,J.

(Order of this Court was made by P.JYOTHIMANI,J.)

The learned counsel for the appellant submits that the appellant is unwell now, therefore, seeks for suspension of sentence. Hence, the sentence of imprisonment alone is suspended for a period of one week. It is made clear that there is no suspension with regard to the payment of fine imposed on both the contemnors.

(P.J.M.J.) (M.D.J.)

24.7.2012

sasi

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P.JYOTHIMANI, J.

AND

M.DURAISWAMY, J.

(ORDER OF THE COURT WAS MADE BY P.JYOTHIMANI, J.)

1. This matter is listed today under the caption For Clarification .

2. It is clarified that the operative portion of the order as found in pages-25 & 26 of the order dated 24th July, 2012 are modified as under :-

Accordingly, by taking into account the totality of the situation, we pass the following order :-

i)The appellant N.Jagannathan is imposed with punishment of simple imprisonment for a period of three months and payment of Rs.50,000/-, of which Rs.2,000/= will be towards penalty for contempt and the balance of Rs.48,000/= shall be paid as cost to the Chief Justice Relief Fund. The above amount shall be paid within a period of one week from today, and in case of default in payment of the said fine amount, he shall undergo simple imprisonment for a further period of one month.

ii)The learned counsel for the appellant Mr.V.Chockalingam shall pay an amount of Rs.50,000/-, of which Rs.2,000/= will be towards penalty for contempt and the balance of Rs.48,000/= shall be paid as cost to the Chief Justice Relief Fund. The above amount shall be paid within a period of one week from today, and in case of default in payment of the said fine amount, he shall undergo simple imprisonment for a period of one month.

iii)Till the Original Side Appeals are disposed of, proceedings in the Testamentary Original Suit shall not be conducted.

iv)The Central Government and the State Government are directed to produce the records, including the government order containing the list of properties, and the report of the CBCID as ordered earlier.

v)The Registry is directed to post the original side appeals for final disposal on 2.8.2012.

vi)The Registry is directed to mark a copy of this order to the Bar Council of Tamil Nadu and we leave it to the Bar Council to take appropriate action at its discretion.

3. Further, consequent to the order passed by way of clarification today, as per the order dated 24th July, 2012 by which this Court had suspended the order of sentence alone for a period of one week is modified and we make it clear that the suspension of the order of sentence will be in operation upto 6th August, 2012.

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