

PETITIONER:
P.D. GUPTA

Vs.

RESPONDENT:
RAM MURTI & ANR.

DATE OF JUDGMENT: 08/07/1997

BENCH:
S.C. AGRAWAL, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T
THE 8TH DAY OF JULY, 1997

Present:

Hon'ble Mr. Justice S.C. Agrawal
Hon'ble Mr. Justice D.P. Wadhwa

Yogesh K. Jain, Sr. Adv., Pravir K. Jain, M.A. Khan, B.K. Sharma, and Rajiv Dutta, Addvs. with him for the appellant
In-person for the Respondent in No.1

The following Judgment of the court was delivered :
D.P. WADHWA, J.

The appellant is an advocate practising in Delhi. He has filed this appeal under section 38 of the Advocates Act, 1961 (in short the Act,) against order dated May 4, 1996 of the Disciplinary Committee of Bar council of India holding him guilty of misconduct and suspending him from practice for a period of one Year. This order by the Bar council of India was passed as the Disciplinary committee of the Bar council of Delhi could not dispose of the complaint received by it within a period of one year and proceedings had thus been transferred to the Bar council of India under section 36 B of the Act. Section 36 B enjoins upon the Disciplinary committee of state Bar council to dispose of the complaint received by it under section 35 of the Act expeditiously and in any case to conclude the proceedings within one year from the date of the receipt of the complaint or the date of initiation of the proceedings if at the instance of the state Bar Council. Under Section 35 of the Act where on the receipt of a complaint or otherwise the state bar council has reason to believe that any advocate on its role has been guilty of professional or other misconduct, it shall refer the case for disposal to its Disciplinary Committee.

One Srikishan Dass died on January 5, 1980 leaving behind extensive properties, both movable and immovable. One Vidya wati claiming to be the sister and the only legal heir of Srikishan Dass filed a petition under Section 276 of the Indian Succession Act in the court of District Judge, Delhi for grant of probate/letters of administration to the estate of deceased Srikishan Dass. This she filed in February,

1980. It is not that there was any will. The complainant Ram Murti (who is now respondent before us) and two other persons also laid claim to the properties of Srikishan Dass claiming themselves to be his heirs and propounding three different wills. They also filed separate proceedings under section 276 of the Indian succession Act before the District Judge, Delhi. Since there was dispute regarding inheritance to the properties of Srikishan Dass, Vidya Wati also filed a civil suit in the Delhi High Court for declaration and injunction against various defendants numbering 23, including the complainant Ram Murti who is defendant No. 21. This suit was filed on February, 10 1982. Vidya Wati had prayed for a decree of injunction against the defendants restraining them from trespassing into property bearing No. 4852 Harbans Singh Street, 24 Daryaganj, New Delhi or from interfering with or disturbing peaceful possession and enjoyment of immovable properties detailed in Schedule-A to the plaint. She also sought a declaration that she was the absolute owner of the properties mentioned therein in the schedule. It is not necessary for us to detail the properties shown in schedule-A except to note two properties at 24 Daryaganj, New Delhi bearing No. 4852 and 4852-A. It is stated that this suit is still pending in the Delhi High Court and all the proceedings under section 276 of the Indian Succession Act filed by various persons relating to the estate of Srikishan Dass have also been transferred from the court of District Judge, Delhi to the High Court and are being tried along with the suit filed by Vidya Wati also filed various other proceedings respecting the properties left by deceased Srikishan Dass against occupants or otherwise. P.D. Gupta, advocate who is appellant before us had been her counsel throughout in all these proceedings. The complaint alleged against him is that though he knew that there was doubt cast on the right of Vidya Wati inheriting the properties of Srikishan Dass on account of pendency of various proceedings and further that the complainant and others had alleged that she was in fact an imposter and her claim to be sister of Srikishan Dass was false yet P.D. Gupta purchased ground floor of property bearing No. 4858-A, 24 Daryaganj from Vidya Wati by sale-deed dated December 30, 1982. The complainant also alleged that Vidya Wati had been describing herself either as the real sister, step sister or even halfblood sister of Srikishan Dass which fact was well known to P.D. Gupta, her counsel.

It is not for us to go into the merits or demerits of the controversy raised by the parties in various proceedings pending in the courts and still awaiting adjudication, the grievance of the complainant is as to how an advocate could purchase property from his client which property is the subject matter of dispute between the parties in a court of law. During the course of hearing of this appealing was also brought to our notice that second floor of the property bearing No. 4858-A, 24 Daryaganj was purchased by Suresh Kumar Gupta son-in-law of the advocate P.D. Gupta. So the property purchased by him in November, 1987 for a consideration of Rs. 3,40,000/- in December, 1982. It is pointed out that the facts relating to purchase of different portions of property No. 4858-A, 24 Daryaganj and subsequent sale by P.D. Gupta in buying the property from Vidya Wati in the circumstances aforesaid who had been describing herself some time as half blood sister, real sister or even step-sister of Srikishan Dass. The explanation given by P.D. Gupta is that though Vidya Wati was step-sister of Srikishan Dass but the later always

treated her like her real sister and that is how vidya Wati also at times described herself as real sister.

There are some more facts which could also be noted. Vidya Wati herself has died and she is stated to be survived by her only daughter Maya Devi who is also now dead. Before her death Vidya Wati allegedly executed a will in favour of her grandson Anand Prakash Bansal who is stated to be the son of Maya Devi bequeathing all her properties to him. Vidya Wati died on October 26, 1991 and Maya Devi on April 13, 1992. It is stated that P.P. Bansal has been acting as General Attorney of Vidya Wati and instructing P.D. Gupta.

In support of his case P.D. Gupta filed affidavit of Anand Prakash Bansal wherein it is claimed that sale deeds executed by Vidya Wati in favour of P.D. Gupta and his son-in-law Suresh Kumar Gupta were without any pressure from any one and were by free will of Vidya Wati. P.D. Gupta has claimed that complaint filed by Ram Murti is motivated and he himself had no title to the properties of Srikishan Dass being no relation of his and the will propounded by him had been found to be forged as opined by the CFSL/CBI laboratory. The fact that the will propounded by the court. In the affidavit filed by P.D. Gupta in answer to the complaint of Ram Murti he has stated that "Lala Srikishan Dass left behind his sister Smt. Vidya Wati who succeeded to the estate on death of Lala Srikishan Dass and took over the entire movable and immovable estate. Thereafter the complainant and two other persons propounded will of Lala Srikishan Dass". This statement of P.D. Gupta has been verified by him as true and correct to his knowledge. It does appear to us to be rather odd for a lawyer to verify such facts to his knowledge. It is claimed that when Srikishan Dass died, subject immovable property was plot bearing No.4858-A, 24 Daryaganj measuring 1500 sq. feet and the same was got mutated in the name of Vidya Wati in the records of the Municipal Corporation of Delhi and then she got plan sanctioned from the Municipal Corporation of Delhi for construction of the house on this plot and which she did construct and got completion certificate on August 28, 1981. It is peculiar, rather astounding, how could Vidya Wati get the property of Srikishan Dass mutated in her name when she is yet to be granted letters of administration or declaration to her title.

We examined the two sale deeds transferring this property, one executed in favour of P.D. Gupta and other in favour of his son-in-law Suresh Kumar Gupta and we complainant and the concerned parties."

In the sale deed which is dated December 30, 1982 executed in favour of P.D. Gupta recitals show that the agreement to sale was entered into on September 3, 1980. The completion certificate of the building was obtained on August 28, 1981. Payment of Rs. 1,50,000/- made before execution of the sale deed on various dates from 3.8.80 to 20.11.1981 by means of cheques except one payment of Rs. 10,000/- made by cash on September 3, 1980. Balance amount of consideration of Rs. 30,000/- was paid at the time of registration of the sale deed. There is no mention of any civil suit respecting this property pending in the High Court. Rather it is stated that vendor had constructed various floors and had assured/represented to the vendee that she had a good and marketable title to the property and the same was free from all sorts of liens, charges, encumbrances or others like burdens, and in case any defect in the title of the vendor was later on proved, the vendor undertook to compensate the vendee for all losses, damages and claims, which might be caused to him in this regard. In

the other sale deed dated December 2, 1982 executed in favour of son-in-law of P.D. Gupta. Which was filed during course of hearing of this appeal, it is mentioned that after obtaining completion certificate on August 28, 1981 Vidya Wati let out the second floor of the property comprising five rooms, kitchen, two bathrooms on monthly rent of rupees five hundred to Suraj Bhan Gupta. Recitals to this deed show that in order to fetch better price Vidya wati agreed to sell the property being second floor which according to her was not giving good return for consideration of Rs. 1,75,000/- to Suresh Kumar Gupta. Now this Suresh Kumar Gupta son-in-law of P.D. Gupta is no other person than the son of Suraj Bhan Gupta, the tenant. There is no mention of any agreement to sell in this sale-deed but what we find is that first payment of Rs. 20,000/- towards consideration was made on November 5, 1981, second payment of Rs. 25,000/- on February 20, 1982 and third of Rs. 30,000/- on April 26, 1982. Balance Payment has been made at the time of execution of the sale deed on December 2, 1982.

Bar Council of India has taken note of the following facts:

1. P.D. Gupta claims to know vidya wati since 1980 when Srikishan Dass was alive. He knew Vidya wati closely and yet contradictory stands were taken by Vidya wati when she varyingly described herself as half-blood sister, real sister or step-sister of Srikishan Dass. These contradictory stands in fact cast doubt on the very existence of Vidya wati herself. This also created doubt about bona fides of P.D. Gupta who seemed to be a family lawyer of vidya wati.
2. P.D. Gupta knew that the property purchased by him from Vidya wati was subject matter of litigation and title of vidya wati to that property was in doubt.
3. Hupe property situated in Daryaganj Ganj was purchased by P.D. Gupta for a mere sum of Rs. 1,80,000/- in 1982.
4. The agreement for sale of property was entered into as far back on September 3, 1980 and P.D. Gupta had advancing money Vidya Wati from time to time which went to show that as per version of P.D. Gupta knew Vidya Wati so closely how Vidya Wati could take contradictory stands vis-a-vis her relationship with Srikishan Dass.

Bar Council of India was thus of view that conduct of P.D. Gupta in circumstances was unbecoming of professional ethics and conduct.

Bar Council of India also observed :

" It is acknowledged fact that a lawyer conducting the case of his client has commanding status and can exert influence of his client. As a member of the Bar it is our common knowledge that lawyers have lawyers have started contracting with the clients and enter into bargains that in case of success he will share the result. Number of instances of Motor Accident Claims. No doubt there is no bar for instances to purchase property but on account of common prudence specially law knowing person will never prefer to purchase the property, the title of which is under doubt."

Finally it said:

" But for the purpose of the

present complaint, having regard to all the facts and circumstances of the case, the committee is of the opinion that the conduct of the respondent is patently unbecoming of a lawyer and against professional ethics. Consequently, we feel that as an exemplary punishment, Shri P.D. Gupta should be suspended from practice for a period of one year so that other erring lawyers should learn a lesson and refrain themselves from indulging in such practice."

The question which rises for consideration is:

In view of the aforementioned facts is P.D. Gupta guilty of professional or other misconduct and if so is the punishment awarded to him disproportionate to the professional or other misconduct of which he has been found guilty?

Mr. Y.K. Jain, learned counsel appearing for the appellant P.D. Gupta submitted that if in a case like this it held that a lawyer was guilty of professional misconduct particularly on complaint filed by an interested person like Ram Murti no lawyer would be able to conduct henceforth the case of his client fearlessly. Mr. Jain said that the aggrieved person, if any, in this case would have been either Vidya Wati. Her daughter Maya Devi or her grand-son Anand Prakash Bansal and neither of them had complained. It was also submitted that though the property was purchased by P.D. Gupta in late 1982 the complaint by Ram Murti was filed only on December 16, 1992. Mr. Jain explained that as to how Vidya Wati had been variously described in various litigations was on account of instruction from her or her Attorney and it was no fault of P.D. Gupta on that account. Then it was submitted that no specific charges had been framed in the disciplinary proceedings which had caused prejudice to P.D. Gupta in the conduct of his defence. Lastly, it was contended that P.D. Gupta was no longer concerned with the property as he had sold away the same.

There appears to be no substance in the substance of Mr. Jain. P.D. Gupta was fully aware of the allegations he was to meet. It was not a complicated charge. He has been sufficiently long in practice. The arguments that a charge had not been formulated appears to be more out of the discontentment of P.D. Gupta in being unable to meet the allegation. Now, P.D. Gupta says that he has washed off his hands of the property and thus he is not guilty of any misconduct. That is not the issue. It is his conduct in buying the property, the subject matter of litigation between the parties, from his client on which he could exercise undue influence especially when there was a doubt cast on his client's title to the property. Had P.D. Gupta sold the property back to Vidya Wati and got the sale deed in his favour cancelled something could have been said in his favour. But that is not so. He sold the property to a third person, made property to a third person, made profit and created more complications in the pending suit. P.D. Gupta purchased the properties which were subject matter of dispute for himself and also for his son-in-law at almost throw away prices and thus he himself became a party to the litigation. Conduct of P.D. Gupta cannot be said to be above board. It is not material that Vidya Wati or anyone claiming through her has not complained against him.

We are concerned with the professional conduct of P.D. Gupta as a lawyer conducting the case for his client. a lawyer owes duty to be fair not only to his client but to the court as well as to the opposite party in the conduct of the case. Administration of Justice is stream which has to be kept pure and clean. It has to be kept unpolluted. Administration of Justice is not something which concerns the Bench only. It concerns the Bar as well, Bar is the principal ground for recruiting Judges. No one should be able to raise a finger about the conduct of a lawyer. While conducting the case he functions as officer of the court. Here, P.D. Gupta in buying the property as in effect subverted the process of justice. His action has raised serious questions about his fairness in the conduct of the trial touching his professional conduct of the trial touching his professional conduct as an advocate. By his action he has brought the process of administration of justice in disrepute.

Bar council of India and state Bar councils are statutory bodies under the Act. These bodies perform varying functions under the Act and the rules framed thereunder. Bar council of India has laid standards of professional conduct for the members. Code of conduct in the circumstances can never be exhaustive. Bar council of India and state Bar councils are representative bodies of the Advocates on their rolls and are charged with responsibility of maintaining discipline amongst members and punish those who go astray from the path of rectitude set out for them. In the present case the Bar council of India, through its disciplinary committee, has considered all the relevant circumstances and has come to the conclusion that P.D. Gupta, advocate is guilty of misconduct and we see no reason to take a different view. We also find no ground to interfere with the punishment awarded to P.D. Gupta in the circumstances of the case.

The charge of professional or other misconduct by an advocate is a serious matter and has to be considered and disposed of by the Disciplinary committee of a state Bar council expeditiously and within a period of one year. We are unable to comprehend as to why the Disciplinary Committee of the Delhi Bar council could not dispose of the matter within the prescribed time frame and it was left to the apex body to deal with it.

The appeal is dismissed. No order as to costs.