
(1989) 11 OHC CK 0020
In the Orissa High Court
Case No : C.R. No. 59 of 1987

Ghanashyam Samal

APPELLANT

Vs

Udayanath Saranti and Others

RESPONDENT

Date of Decision : 30-11-1989

Acts Referred:

Advocates Act, 1961 — Section 29, 32

Citation : AIR 1990 Ori 143

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : V. Prithivraj and B. Das, for the Appellant; B.H. Mohanty, R.K. Nayak, R.N. Panda, J.K. Bastia, S. Mohapatra, G.P. Mohanty, B.K. Patnaik and R.C. Rout, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Mohapatra, J.—Alleging publication of defamatory item of news against the plaintiff, in an Oriya daily "The Samaj", he claimed damage of Rs. 50,000/- against the Publisher, Editor and the local correspondent in a suit. Local correspondent who is an Advocate is defendant No. 3.

2. Defendant No. 1 was set ex parte. Defendant No. 2 engaged defendant No. 3 as his Advocate. During trial of the suit, plaintiff filed an application on 25-8-1983 objecting to the appearance of defendant No. 3 in robes and on account of the fact that he cannot appear as an Advocate without wearing robes for defendant No. 2, his appearance and acts for defendant No. 2 is contrary to the provisions of Advocates Act and as such, should be treated as non est. Defendant No. 3 filed objection stating that he is contesting the suit for himself as defendant No. 3 and not as the Advocate. At the time of hearing of the petition several other objections were put forward. Decision of trial Court in respect of robes to be put on by defendant No. 3 is not seriously assailed in this Civil Revision and accordingly, the said dispute requires no discussion. His acting as an Advocate when he is likely to be a witness is the main point of attack of Mr.

Prithivraj, learned counsel for the plaintiff-petitioner although defendant No. 3 had filed objection in the trial Court that he is contesting the suit for himself as a defendant and not as an Advocate.

3. Entire exercise of the plaintiff in this case is based on misconception of fact and law. Defendants Nos. 2 and 3 filed a joint written statement. Whatever is the defence of defendant No. 3 is also the defence of defendant No. 1. In such cases, where there is joint defence, one individual can defend both the defendants. There is no provision that an Advocate is essential to be engaged in a suit. A party may prefer to defend himself personally or through his agent. When two defendants contest a suit together, one of them can defend both and take all steps in that regard. He cannot in such circumstances be treated as, an Advocate. His taking steps is not prohibited by any law. Merely because a person so defending happens to be an Advocate enrolled under the Advocates' Act, 1961 is not a circumstance to obstruct him to defend in the aforesaid premises.

4. In the present case defendant No. 3 who is an Advocate is a defendant who is jointly contesting the suit with defendant No. 2. There was no necessity for him to file a Vakalatnama for defendant No. 2. Having filed the Vakalatnama, he invited this Civil Revision. Trial Court ought to have given importance to the objection filed by defendant No. 3 that he is contesting as a party and not as an Advocate.

5. It is true that Legislature permits only one class of persons to practice the profession of law namely Advocates as is provided u/s 29 of the Act. Such practice would be subject to provisions of the Act and any rules made thereunder. Notwithstanding the same, any court may permit any person who is not an Advocate to appear before it in any particular case as provided u/s 32 obviously to discharge the functions in the Court what an Advocate discharges in a particular case. Where, however, a party defends himself and other defendants along with him neither Section 29 nor Section 32 of the Advocates Act would be attracted, Every individual has a right to defend the cause against him. In fact, the summons issued to a party also provides for the same. Merely because a person is an Advocate, he is not precluded from defending him and other having common or joint interest. He does not carry on the practice of the profession of law in that case.

6. Assuming that such person being an Advocate by profession, it would be held that he carries on the profession of law in the case where he defends his co-defendant filing a joint written statement with him, Court cannot regulate his conduct as the law stands now. For his misconduct, he may be suitably penalised by the Bar Council in which he has been enrolled.

7. In Binod Bihari Mishra Vs. State of Orissa and Others, , an application was filed not to treat an Advocate as a witness since the accused has engaged him as lawyer to appear as being named in the charge-sheet as a witness, he would be violating the conduct rules of an Advocate in accepting the brief for the accused.

I observed (at p. 2460 of Cri LJ) :

"No provision in law excepting the conduct rules for an advocate under the Advocates Act had come to my notice prohibiting an Advocate to appear where he is cited as a witness. Court has no power either to direct or deprive an Advocate to appear in a case."

This observation has full application to the present case.

8. In view of the aforesaid discussions, trial Court is justified in refusing the application of the petitioner to prohibit opposite party No. 3 from appearing as advocate for opposite parties Nos. 1 and 2. While expressing this, I may not be understood to approve the action of the advocate of opposite party No. 3 as an Advocate interfering with the exclusive jurisdiction of the Bar Council to consider the conduct of the Advocate.

9. In the result, there is no merit in this civil revision which is accordingly, dismissed. No costs.