

(1946) 01 MAD CK 0015
In the Madras High Court

In Re: A Pleader

Date of Decision : 07-01-1946

Acts Referred:

Citation : AIR 1946 Mad 247 : (1946) ILR (Mad) 521 : (1946) 59 LW 161 :
(1946) 1 MLJ 218

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The respondent is a First Grade Pleader. Two charges of professional misconduct were framed against

him. The first charge was that he was guilty of fraudulent and grossly improper conduct in that contrary to specific instructions given to him by his

client he purchased in the name of his clerk property sold in execution of a decree obtained by his client and later had the property conveyed to his

wife. The second charge was that he had unlawfully retained a sum of Rs. 129-7-0 out of an amount drawn from Court by him on behalf of his

client. The charges were investigated by the District Munsiff of Conjeevaram whose report is now before us. The learned District Munsiff held that

the respondent was entitled to be acquitted on both the charges and we accept his findings. No comment is called for on the finding in respect of

the second charge, but we think it necessary to examine the law bearing on the first charge.

2. The respondent filed the application for execution of the decree obtained by his client, the complainant. In due course an order for attachment

and the sale of certain Immovable property was obtained. The property was subject to a mortgage for Rs. 400., On the 31st August, 1942, the

respondent wrote to his client informing him that the auction had been fixed for

the 2nd November and asked him if he wanted to purchase the property at the auction. He pointed out that if he did wish to bid, he must file a petition asking for permission to do so. As no reply was received to this letter, the respondent wrote to his client on the 5th October, 1942, tendering similar advice and adding:

If any one bids and takes the property on that date, I shall send you the sale proceeds thereof by money order.

3. The complainant ignored this letter also and at the auction, the highest bidder was the respondent's clerk. The reserve price was fixed at Rs.

100. The clerk's bid was Rs. 101. On the 7th March, 1943, the clerk conveyed the property to the respondent's wife, the ostensible

consideration being Rs. 1,000. The respondent alleged that the clerk had bought the property at the auction and that it was conveyed by the clerk

to the respondent's wife without his knowledge. The truth of these statements was not accepted by the District Munsiff and we are not prepared to

accept them. We will deal with the case on the basis that the respondent bought the property in the name of his clerk and subsequently had it

transferred to his wife, but with knowledge that his client did not wish to bid for it.

4. Rule 17 of the rules framed by this Court under the Legal Practitioners Act prohibits a practitioner from purchasing from his client or from any

other person any interest in a decree passed by the Court in which he practises, but there is no rule prohibiting a practitioner from bidding at an

auction held in execution proceedings instituted by him on behalf of his client.

5. In *Alagirisami v. Ramanathan* ILR (1886) Mad. 111, a Bench of this Court (Collins, C.J. and Brandt, J.) held that pleaders of parties to a suit

were not debarred by Section 292 of the CPC from purchasing property sold in execution of the decree. The section corresponds to Rule 73 of

Order 21 of the present Code, which reads as follows:

No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to

acquire any interest in the property sold.

Section 292 of the old Code did not contain the words "" or other person ""; but otherwise the wording was the same. In *Alagirisami v. Ramanathan*

ILR (1886) Mad. 111, the Court held that a vakil could not be said to have a duty

to perform in connection with the sale within the meaning of the section. If the Legislature had intended to prohibit vakils generally from purchasing it would have said so in plain language as it had done in the case of the Transfer of Property Act. Section 136 of the Transfer of Property Act prohibits a legal practitioner from buying or trafficking in an actionable claim.

6. We do not regard the addition of the words "" or other person "" as bringing within the purview of the rule a legal practitioner. The legal

practitioner has no duty to perform in connection with the sale. His duty is to obtain the order for sale; but he has no duty to perform at the auction.

The effect of the judgment in *Alagirisami v. Ramanathan* ILR (1886) Mad. 111 is that it is not professional misconduct for a pleader to bid at a

Court-sale, except where he has received instructions from his client to bid on his behalf.

7. In *Iyyanki Venkata Subbarayudu Vs. Koppula Kotaya Naidu and Others*, , the Court had to consider the position when the vakil had acted

contrary to his client's instructions. A mortgagee had obtained a decree on her mortgage and her vakil purchased the property at the Court sale.

He had not informed his client that he intended to bid nor had he obtained the sanction of the Court to do so. In fact, he had been instructed by his

client to bid on her behalf and had obtained the necessary permission from the Court. In contravention of his client's instructions, he bought the

property on his own behalf. *Wilkinson and Subramanya Ayyar, JJ.*, held that in the circumstances the sale was bad and they set it aside. The

question of professional misconduct was not raised, but clearly the vakil was guilty of professional misconduct as he acted contrary to his client's

specific directions and moreover he did so for his own benefit.

8. The Allahabad High Court in *Shiam Lai v. Girraj Kishore* ILR (1926) All. 292 held that the clerk of a pleader of a decree-holder was not

debarred by Rule 73 of Order 21 of the CPC from purchasing property sold in execution of the decree. The rule was merely intended to prohibit

all those who had anything to do with the machinery of the sale having any interest, direct or indirect, in the result of the sale. From what we have

already said, this is also our opinion of the effect of the rule.

9. In *In the matter of Har Prasad Singh, Vakil2*, the Allahabad High Court held

that if a pleader acting for the decree-holder, purchased the property sold in execution of his client's decree, he is guilty of professional misconduct, but the decision was based on a rule of that Court.

10. In view of the fact that there is at present no rule of the Madras High Court prohibiting a practitioner bidding at an auction held in pursuance of

a decree obtained by his client and having regard to the decision of this Court in *Alagirisami v. Ramanathan* ILR (1886) Mad. 111, the respondent

cannot be held guilty of professional misconduct. He was entitled to rely on the judgment in *Alagirisami v. Ramanathan* ILR (1886) Mad. 111, the

correctness of which has hitherto not been questioned. The respondent's conduct in buying the property surreptitiously in the name of his clerk and

in having it transferred to his wife's name is no doubt open to criticism, but in the circumstances we cannot hold it to be professional misconduct.

His client had refused to apply for leave to bid himself and was obviously content to take whatever price was realised at the court auction provided

the reserve price was reached.

11. At the same time we are firmly of the opinion that a legal practitioner should not be allowed to bid at a Court sale held in execution of a decree

obtained by his clients and that there should be a rule, as there is in Allahabad, prohibiting a practitioner from bidding either in his own name or in

the name of another person at a Court sale held in execution of a decree obtained by his client. His first duty is to his client and it might happen that

their interests would clash. Consequently we are of the opinion that steps should be taken to prohibit by rule a practitioner from bidding at such a

sale.

12. As we have found the respondent not guilty of the charges against him, the report is accepted and the complaint against him dismissed. We

make no order as to costs.