

(1988) 09 PAT CK 0001
In the Patna High Court
Case No : C.R. No. 833 of 1988

Kamla Prasad Roy and Another

APPELLANT

Vs

Binod Kumar Roy

RESPONDENT

Date of Decision : 06-09-1988

Acts Referred:

Bar Council of India Rules, 1975 — Rule 9

Citation : (1988) PLJR 975

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

Bench : Single Bench

Judgement

S.C. Mookherji, J.—Before this application was taken up for hearing, an objection was raised by Mr. Ram Suresh Roy, Advocate appearing on behalf of the petitioners that if the opposite party Mr. Binod Kumar Roy, Advocate wanted to argue his case in person, the vakalatnama executed by him in favour of two learned Advocates should be cancelled. Mr. Roy, on this objection, in all fairness, submitted that for the purpose of this application, the vakalatnamas executed by him should be treated as cancelled. Thereafter, the hearing of the original application was taken up. On 12.8.88, an affidavit petition was filed by Mr. Binod Kumar Roy to debar Mr. Ram Suresh Roy, Advocate to appear for the petitioners on the ground that Rule 9 of the Bar Council of India Rules prohibits his appearance in the case as he is himself pecuniarily interested. In this petition various other facts have been mentioned to justify that Mr. Ram Suresh Roy has pecuniary interest in the properties, being one of the members of the branch of the common ancestor who are litigating in the original suit. The genealogical table of the family, references of various lands etc. have also been referred to at the time of argument.

2. A counter-affidavit has been filed on behalf of the petitioners by one Kamla Prasad Roy in which it has been stated "that it is not correct to say that Sri Ram Suresh Roy, Advocate has any pecuniary interest with the suit properties. He is not even party to the partition suit." Some other facts have also been mentioned,

but it would not be desirable to take notice of the same at this stage which may cause prejudice to either of the parties in the original suit. A rejoinder to this affidavit and a counter rejoinder to that have also been filed, As indicated, I do not think that in an objection of the present matter, this court should investigate about the source of acquisition of the properties, the nature of properties, the statement of some of the witnesses of the petitioners in the original suit, family arrangements, if any, allotment of takhta and any previous partition in order to find out in a mathematical way as to whether Mr. Ram Suresh Roy, Advocate has pecuniary interest of any kind direct or indirect for the purpose of debarring him to appear in this case.

3. The only point, thus falls for consideration is whether the appearance of Mr. Ram Suresh Roy on behalf of the petitioners is fit to be debarred under Rule 9 of the Bar Council of India Rules. The relevant statement in this regard in the counter affidavit filed on behalf of the petitioners has already been quoted.

4. Mr. Binod Kumar Roy has, however, tried to show that Mr. Ram Suresh Roy has pecuniary interest which he has purposely suppressed as it would be apparent from the statement of petitioners, witnesses in the suit. On the other hand, Mr. Ram Suresh Roy has submitted that he might have a fractional interest in the land acquired by the family long ago, being one of the descendants of Late Shri Prasad Roy but so far as the properties involved in the suit are concerned, he has neither any interest nor even a party to it. As a matter of fact, in course of argument he has also categorically stated that he has no pecuniary interest in the property (s) involved in the suit and in face of such statements of Mr. Roy, I do not think that he should be debarred from arguing the case for the petitioners simply on the ground that he being a member of the family might have some interest in some of the property or properties.

5. Mr. Ram Suresh Roy has also raised a point that the Rules framed under Chapter II of the Bar Council of India Rules deals with the duty of the Advocate to Court wherein upto Rules "8" the word "shall" has been used, meaning thereby, that those rules have clearly laid down as to what an Advocate shall or shall not do, but so far as Rule 9 is concerned, the word "should" has only been used which goes to show that no strict restriction has been imposed upon an Advocate to appear in a case in which he has pecuniary interest; only a direction has been given as to what should be the ordinary conduct/courtesy of an Advocate in a case in which he is himself pecuniarily interested. In other words, according to Mr. Ram Suresh Roy, this rule is directory and not mandatory. On the other hand, Mr. Binod Kumar Roy has submitted that the word "should" is more forceful and it has to be interpreted according to the facts and circumstances of the dispute between the parties.

6. On a plain reading of rules 1 to 8 it is manifest that strict restriction has been imposed upon the Advocate as to what he shall do but so far as rule 9 is concerned, it appears to be recommendatory as it is expected from Advocate that he will decline to appear in such case (s), in which "he is himself pecuniarily

interested". Further, it appears that Rule 9 of the Bar Council of India Rules merely lays down a code of conduct for a counsel. A responsible counsel is the best Judge as to what code of conduct he should adopt. If the learned counsel for the petitioners having considered the pros and cons of the matter, is of the opinion that he is not debarred from appearing in the case and insists to appear in the matter; his opinion with regard thereto should be treated as final and this Court should not sit in appeal over the same. Thus, in any event, the objection raised by Sri Binod Kumar Roy. Advocate cannot be sustained. It is accordingly rejected.

Let the original application be now taken up for further hearing.