WICKRAMARATNE
v.
CHANDRADEVA

SUPREME COURT.
FERNANDO, J.,
DHEERARATNE, J. AND
WIJETUNGE, J.
S.C. RULE 2/93 D.
FEBRUARY 5 AND 28, 1996.

Judicature Act, No. 2 of 1978, section 42(2) – Supreme Court Rules – Respondent has ceased to be an Attorney-at-Law – Jurisdiction of the Supreme Court to hold an inquiry – Notaries Ordinance, section 31(26) (a) – Transmission of duplicates of deeds to Registrar of Lands – Deceitful conduct – Rule absolute – Struck off the Roll proforma.

One W complained to the Bar Association (BASL) on 30.08.91 that he entrusted the execution of a Deed of Partition to the Respondent C on 16.3.91 and paid Rs. 2000/-. It was after much delay and inconvenience that he was able to obtain the original from C. He applied to the Land Registry for a certified copy for the purpose of obtaining a Bank loan and was informed on 30.2.91 that the Duplicate had not been sent to the Land Registry.

BASL fixed the matter for inquiry on 20.6.92, C by letter of 18.6.92 informed the BASL that the Deed had been misplaced and had recently been tendered to the Land Registry. W then made a further application to the Land Registry for a certified copy and was informed on 28.8.92 that the Land Registry had not received the duplicate copy of the Deed.

The BASL in its report to the Supreme Court stated that the Respondent had committed acts of deceit and malpractice.

At the Rule inquiry a preliminary objection was taken, that the Court had no jurisdiction to proceed as the respondent had already been removed from the office of Attorney-at-Law in S.C. Rule 1/93 on 23.11.94.

Held:

(1) Section 40(1) of the Judicature Act empowers the Supreme Court in accordance with rules for the time being in force to admit and enroll as Attorney-at-Law persons of good repute and of competent knowledge and ability. Under section 42(2) Court can suspend such a person from practice or remove him from office where such person has been found guilty of any deceit, malpractice, crime

or offence. In the present case it became necessary to take proceedings against this Attorney-at-Law in respect of several complaints of deceit, malpractice, crime and offence committed as an Attorney-at-Law. The jurisdiction of the Court in that regard is referable to section 40(1) under which the Court admits and enrolls a person as an Attorney-at-Law. Irrespective of the result of each such inquiry, the Court's power to inquire into and determine every such matter continues unabated by reason of the Court having admitted and enrolled such person as an Attorney-at-Law, who at the time of admission was considered by the Court *inter alia* to be a person of good repute and the conduct being investigated by the Court is *qua* Attorney-at-Law.

(2) In the matter of readmission, a practitioner's conduct as an Attorney-at-Law which resulted in removal from the Roll is of absolute relevance. No doubt an Attorney-at-Law already removed from the Roll cannot be removed from such office several times over for other acts of misconduct warranting removal. But the Court is duty bound to investigate each such matter which has necessitated the issuance of a Rule, both in the interests of the legal profession and of the Attorney-at-Law himself, and simply because the Rule is made absolute in respect of one matter the Court does not lack jurisdiction in respect of the rest.

(3) As regards the nature of the order that the Court may make in respect of an Attorney-at-Law who has already been struck off the Roll – the Court may in such a situation make the Rule absolute and direct that his name be struck off the Roll proforma.

***Per* Wijetunge, J.**

"What is of prime importance is the determination of the Court as regards the transgression and the consequential decision as to whether the conduct complained of makes the attorney unfit to be on the Roll".

The respondent had deceived the complainant by stating that the duplicate of the Deed had been sent by her to the Land Registry when in fact she had not done so, and had persisted in such deceitful conduct. The Attorney-at-Law had also attempted to mislead the BASL by stating on 18.6.92 that the duplicate had recently been forwarded to the Land Registry.

In the matter of a Rule under section 42(2) of the Judicature Act, No. 2 of 1978.

Cases referred to:

1. *In Re Weare* (1893) 2 QB 439.
2. *In Re Wilbert* [1989] 2 Sri L.R. 18 at 28.
3. *Solicitor General v. Ariyaratne* 1 CLW 400.
4. *Bhandari v. Advocates Committee* 1956 3 All ER 742.
5. *In re an Advocate* 52 NLR 559 at 560.

L. W. A. De Vaas Goonewardane for the Bar Association.
A. S. M. Perera ASG with *P. A. Ratnayake SSC* as *amicus curiae.*
Sanath Jayatilaka for Respondent.

Cur. adv. vult.

September 20, 1996.
WIJETUNGA, J.

Don Ranjith Wickramaratne of 45/5, Temple Road, Kalubowila, Dehiwala, complained to the Bar Association on 30.8.91 that he entrusted the execution of a deed of partition to the respondent on 16.3.91 and paid her a sum of Rs. 2000/-; it was after much delay and inconvenience that he was able to obtain the original of the said deed No. 683 from the respondent. He applied to the Land Registry for a certified copy of the deed for the purpose of obtaining a bank loan and was informed by letter dated 30.8.91 that the duplicate had not been sent to the Land Registry.

The Bar Association fixed the matter for inquiry on 20.6.92. The respondent, by letter dated 18.6.92, informed the Bar Association that the deed had been misplaced by her and had recently been tendered to the Land Registry. Wickramaratne then made a further application to the Land Registry for a certified copy and was informed by letter dated 28.8.92 that the Land Registry had not received the duplicate copy of the said deed.

The Professional Purposes Committee of the Bar Association which inquired into this matter submitted its report which disclosed that the respondent had committed acts of deceit and malpractice. This Court accordingly decided to take proceedings against the respondent for suspension or removal from the office of Attorney-at-Law under section 42(2) of the Judicature Act, No. 2 of 1978, read with the Supreme Court Rules, 1978. On 28.6.95 the respondent stated to Court that she had cause to show and the matter was therefore fixed for inquiry.

On 5.2.96 when the matter was taken up for inquiry, learned counsel for the respondent took a preliminary objection (in respect of

this Rule as well as Rule 1/94 (D) against the respondent) that the Court had no jurisdiction to proceed with these matters as the respondent had already been removed from the office of Attorney-at-Law in S.C. Rule 1/93 (D) on 23.11.94.

Counsel for the parties having been heard, the Court overruled the objection and indicated that the reasons therefore would be given in the final order.

When the inquiry was concluded on 28.2.96, the Court made order that written submissions of the Attorney-General and the Bar Association be filed on 15.3.96 and those of the respondent by 1.4.96.

On the application of the State Attorney, further time was granted for the written submissions of the parties. The written submissions of the Attorney-General were ultimately filed on 4.6.96, but those of the respondent have not been filed up to date, though the Court granted a final opportunity to the respondent on 23.7.96 to file such submissions immediately.

Section 42(2) of the Judicature Act provides that "every person admitted and enrolled as an Attorney-at-Law who shall be guilty of any deceit, malpractice, crime or offence may be suspended from practice or removed from office by any three Judges of the Supreme Court sitting together."

Learned counsel for the respondent pointed to the fact that the Court had already removed the respondent from the office of Attorney-at-Law on 23.11.94 and contended that the respondent was therefore no longer subject to the jurisdiction of this Court under section 42 of the Judicature Act, as she had ceased to be an Attorney-at-Law. He further submitted that in the event of the present Rule being made absolute, the Court cannot make an order for suspension or removal of the respondent as she had already been removed from the Roll. It would therefore be an academic exercise, he said, to hold an inquiry in respect of the present Rule or the other pending Rule No. 1/94 (D).

Section 40(1) of the Judicature Act empowers the Supreme Court, in accordance with rules for the time being in force, to admit and enroll as Attorney-at-Law persons of good repute and of competent knowledge and ability. Under section 42(2), the Court can suspend such a person from practice or remove him from office where such person has been found guilty of any deceit, malpractice, crime or offence. In the present case, it became necessary to take proceedings against this Attorney-at-Law in respect of several complaints of deceit, malpractice, crime or offence committed as an Attorney-at-Law. The jurisdiction of the Court in that regard is referable to section 40(1) under which the Court admits and enrolls a person as an Attorney-at-Law. Irrespective of the result of each such inquiry, the Court's power to inquire into and determine every such matter continues unabated by reason of the Court having admitted and enrolled such person as an Attorney-at-Law, who at the time of admission was considered by the Court *inter alia* to be a person of good repute; and the conduct being investigated by the Court is *qua* Attorney-at-Law.

Counsel's submission also loses sight of the all important question of re-enrolment. As Dr. Amerasinghe in his "Professional Ethics and Responsibilities of Lawyers" states at page 163 "where an attorney has been struck off the roll, all is not lost. He may apply for the restoration of his name to the Roll. As Lord Esher observed in *Re Weare*[1], if he continues a career of honourable life for so long as to convince the Court that there has been a complete repentance and a determination to persevere in honourable conduct, he may be considered for readmission, provided the Court should be able to say with confidence that he can be safely entrusted with the affairs of clients and readmitted to an honourable profession without that profession suffering degradation."

Indeed, it is hardly necessary to stress that in the matter of readmission, a practitioner's conduct as an Attorney-at-Law which resulted in removal from the Roll is of absolute relevance. No doubt an Attorney-at-Law already removed from the Roll cannot be removed from such office several times over for other acts of

misconduct warranting removal. But, the Court is duty bound to investigate each such matter which has necessitated the issuance of a Rule, both in the interests of the legal profession as well as of the Attorney-at-Law himself; and simply because the Rule is made absolute in respect of one matter the Court does not lose jurisdiction to respect of the rest. It may well be that though the material before the Court was *prima facie* sufficient to issue a Rule, the Court after inquiry may decide that the Rule be discharged. Such an order would certainly ensure to the benefit of the Attorney-at-Law concerned, if at a future date he seeks to be readmitted. On the other hand, if after such inquiry the Court makes the Rule absolute, that would equally have a bearing on the question of re-enrolment; the Court would naturally be more cautious in restoring such a person to the Roll than another against whom there had been only one complaint which resulted in his removal from office. I am, therefore, unable to agree with learned counsel for the respondent that this is a mere academic exercise.

As Fernando, J. in *Re. Wilbert*[2], observes: "these proceedings are not criminal or penal in nature, but are intended to protect the public, litigants, and the legal profession itself. Over half a century ago, it was observed in *Solicitor General v. Ariyaratne*[3], that these proceedings involve not the question of punishing a man, but quite a different question, ought a person against whom such offences are proved, remain on the Roll of an honourable profession?".

Even as regards the nature of the order that the Court may make in respect of an Attorney-at-Law who has already been struck off the Roll, I see no impediment to the Court making an appropriate order if the facts and circumstances of the case warrant an order for removal. The Court may in such a situation make the Rule absolute and direct that his name be struck off the Roll proforma. What is of prime importance is the determination of the Court as regards the transgression and the consequential decision as to whether the conduct complained of makes the attorney unfit to be on the Roll.

It is for these reasons that the preliminary objection of the respondent was overruled on 5.2.96.

The complainant Wickramaratne stated in evidence that he engaged the services of the respondent to execute a deed of partition in March, 1991. He made a payment of Rs. 2000/- to her at her residence for this purpose. The deed was signed by the parties but he was unable to recall the date. He obtained the original of the said deed from the respondent with great difficulty. The original of the deed, he said, was presently with the Bank of Ceylon. He produced marked C1 a copy of deed No. 683 dated 16.3.91 attested by the respondent. He identified the signatures of the parties to the said deed of partition as well as that of the respondent who was the attesting Notary.

After the execution of the deed, he requested the respondent several times to give him the original deed. Even after visiting her about 5 or 6 times in this connection, he was unable to obtain the original of the deed. He then made a complaint to the Kohuwala Police against the respondent. It was thereafter that he was able to obtain the original deed from the respondent in or about June, 1991, which was about 3 months after the execution of the deed.

He met the respondent once again as the Bank required a copy of the duplicate of the deed for the purpose of sanctioning a loan. That was in or about July, 1991. The respondent told him that the duplicate had been sent to the Land Registry. He therefore made an attempt to obtain a copy from the Land Registry by making the appropriate application but he was informed that the duplicate had not been sent to the Land Registry. He thereupon went to the respondent's residence once again and informed her that the duplicate was not available at the Land Registry; but the respondent insisted that it had been sent. He made further inquiries at the Land Registry and learnt that the duplicate had in fact not been sent.

The complainant then made a complaint to the Bar Association by letter dated 30.8.91 (C2). He also obtained an official intimation from the Land Registry by letter dated 30.8.91 (C3) which stated that according to the records maintained by that office, the duplicate of deed No. 683 attested by the respondent had not been received. He

was thereafter informed by the Bar Association by letter dated 13.9.91 (C4) that his complaint had been referred to the Professional Purposes Committee. He also produced another letter dated 22.9.91 (C5) addressed to the Bar Association by him in this connection. He received a letter from the Bar Association dated 29.5.92 (C6) summoning him for an inquiry. He attended the inquiry on 20.6.92 but the respondent was not present. The members of the Panel instructed him to obtain a certificate from the Land Registry to the effect that the duplicate had not been sent. He again made inquiries in that connection but was informed that the duplicate had not been received by the Land Registry. He produced marked C7 a letter sent to him by the Registrar of Lands dated 28.8.92 stating that the duplicate had not been received at his office. Even subsequently he was unable to obtain a copy of the duplicate and gave up his attempts at obtaining the same, four or five months thereafter.

Witness T. D. Samarasekera, the Administrative Secretary of the Bar Association produced the letters marked C2, C4 and C5 and a copy of the letter dated 14.2.92 (C8) addressed to the respondent requesting her to send her observations before 29.2.92; but her observations (C9) had been submitted only on 18.6.92. By letter dated 29.5.92 (C10) the respondent was informed that an inquiry would be held at 10 a.m. on 20.6.92 at the office of the Bar Association.

The Courts Officer of the Land Registry, P. L. A. Gomez, referred in his evidence to the procedure followed by a Notary in respect of a deed attested by him. The Notary was required to deliver to the Land Registry a list, in duplicate, of the deeds attested by him during the previous month, before the 15th day of the following month. The respondent had submitted such a list for the month of March, 1991 and had sent only deed No. 698 in respect of that month on 18.5.92. Deed No. 683 (to which the complaint relates) had been sent on 19.6.92 under registered cover, but it had not been submitted with a list either in the year 1991 or 1992. He produced the said deed, with a Rs. 10/- stamp affixed, marked C11, which had been received without any corresponding list; the respondent had not included that

deed in the list of deeds executed in March, 1991 or in any list submitted up to date. He stated under cross-examination that the said deed had been treated as the original.

Learned counsel for the respondent stated to Court that he was not leading any evidence on behalf of the respondent.

The respondent had deceived the complainant by stating that the duplicate of the deed in question had been sent by her to the Land Registry when in fact she had not done so, and had persisted in such deceitful conduct.

The respondent had sent this deed to the Land Registry only on 19.6.92, about 15 months after she attested the same. The duplicate should have been sent together with the monthly list for March, 1991, but even the copy sent to the Land Registry in June, 1992 was not accompanied by the relevant monthly list. As the deed had a Rs. 10/- stamp affixed, it had been referred to the Registration Branch of the Land Registry, presumably on the assumption that it was the original deed.

Section 31(26) (a) of the Notaries Ordinance relating to the transmission of duplicates of deeds to the Registrar of Lands provides that a Notary "shall deliver or transmit to the Registrar of Lands of the district in which he resides the following documents, so that they shall reach the Registrar on or before the fifteenth day of every month, namely, the duplicate of every deed or instrument (except wills and codicils) executed or acknowledged before or attested by him during the preceding month, together with a list in duplicate, signed by him, which list shall be substantially in the form F in the Second Schedule."

There is thus no doubt that the respondent has violated the statutory requirements relating to the attestation of deeds and instruments by a Notary. But what is even worse is that she has persisted in deceiving the complainant by repeatedly stating that the duplicate had been sent to the Land Registry, whereas in truth and in fact she had failed to do so, contrary to her duty under Rule 18 of the Supreme Court (Conduct and Etiquette for Attorney-at-Law) Rules,

1988 which requires an Attorney-at-Law to act with complete frankness and honesty in all dealings with clients. She had also attempted to mislead the Bar Association by stating on 18.6.92 that the duplicate had 'recently' been forwarded to the Land Registry.

The respondent chose not to give evidence before this Court. So, we do not have for our consideration any explanation from her as to her conduct or as to any mitigating circumstances.

In *Bhandari v. Advocates Committee*[4], the Privy Council endorsed the following statement of the law in regard to the degree of proof necessary in matters of this nature:

> "We agree that in every allegation of professional misconduct involving an element of deceit or moral turpitude a high standard of proof is called for, and we cannot envisage any body of professional men sitting in judgment on a colleague who would be content to condemn on mere balance of probabilities."

Bearing that high standard of proof in mind and being equally conscious that "this Court, in dealing with these applications, must not be influenced either by punitive or sympathetic considerations" – (per Gratiaen, J. *In re. an Advocate*[5]), I am amply satisfied that the allegations against the respondent have been established to that high standard.

For the reasons aforesaid, I find the respondent guilty of deceit and malpractice under section 42 of the Judicature Act.

The Rule is, therefore, made absolute and though the respondent has already been removed on 23.11.94 from the office of Attorney-at-Law in Rule 1/93 (D), I order that she be suspended from practice for a period of three years proforma.

The Registrar of this Court is directed to forward a certified copy of this judgment to the Registrar-General for appropriate action.

FERNANDO, J. – I agree.

DHEERARATNE, J. – I agree.