

Kaushal Kishore Awasthi v. Balwant Singh Thakur and Ors
AIR 2018 SC 199

A.K. Sikri and Ashok Bhushan, JJ

Facts/Background

- The complainant had lodged a complaint with the Bar Council of Chhattisgarh on 19.12.2003 against the Appellant (an Advocate) alleging that he had acted in a manner which amounts to professional misconduct. The Disciplinary Committee took cognizance vide order dated 09.12.2006 found the Appellant guilty of professional misconduct and, on that basis, imposed punishment by suspending his license of practice for a period of two years. On appeal to the BCI they affirmed the State Bar council's decision but reduced the term of suspension of license from 2 years to one year along with cost of Rs. 25,000/- to be paid to the complainant. Against this order of the BCI, the present appeal is preferred by the Appellant.
- A plea taken by the learned Counsel for the Appellant is that even if the allegations contained in the complaint are taken to be correct on its face value, these do not amount to committing any misconduct as per the provisions of the Advocates Act and Rules framed thereunder. This aspect is being examined in the present appeal.

Complaint before the State Bar Council

- In a family dispute between the complainant and his brothers, with respect to their father's property. On his death the said property was divided by the three brothers equally. However, it transpired that before his death, one of the brothers of the complainant influenced his father and got registered the said property in the name of the complainant's nephew, without the consent of other brothers vide sale deed dated 25.07.1989
- The complainant had approached the Appellant (Advocate), for filing the Suit for declaration to declare that the sale deed was null and void as it was prepared fraudulently. The Appellant acted as his Advocate and filed the Suit. In the said Suit, the parties settled the matter as they agreed for declaring the sale deed as ineffective and requested the Court for division of the property. This resulted in passing of decree dated 24.10.1994 by the Court in which the complainant was declared owner of 0.03 acres along with kutchha house out of the disputed property

Contd.

- However, the complainant suffered some financial crunch in April, 2003, and he decided to sell his share of land to Mr. Narsinghmal, for a sum of Rs. 30,000/- and for the purpose of registration of sale deed, he produced the earlier sale deed before the office of the Deputy Registrar, Dantewada.
- The Appellant produced objection letter against the proposed sale deed and objected for registration of the said sale deed on the ground that the complainant did not have full ownership of the proposed land and the market value was also shown less in the said sale deed. This act of the Appellant in appearing before the office of the Deputy Registrar and objecting to the registration of sale deed was labelled as professional misconduct by alleging that the Appellant had paid a sum of Rs. 20,000/- to the complainant in the year 1996 and another sum of Rs. 20,000/- to the son of the complainant in the year 1999 and for repayment of the said amount, the complainant had offered half share of the subject land as security. His justification for raising objection, therefore, was that since the land was being sold without clearing his debt, it could not be done.

Key aspects

- Rule 22 under Chapter II of the Standards of Professional Conduct and Etiquette framed by the BCI in exercise of its power Under Section 49(1)(c) of the Advocates Act, 1961.
- “An advocate shall not, directly or indirectly, bid for or purchases, either in his own name or in any other name, for his own benefit or for the benefit of any other person, any property sold in the execution of a decree or order in any suit, appeal or other proceeding in which he was in any way professionally engaged. This prohibition, however, does not prevent an advocate from bidding for or purchasing for his client any property which his client may himself legally bid for or purchase, provided the Advocate is expressly authorised in writing in this behalf”

Held

“In the instant case, the complainant was selling the property to the intending buyer which was an arrangement between them unconnected with any legal proceedings. The said property was not being sold in execution of any decree, in which proceedings the Appellant was engaged, as noted above. Insofar as the filing of the Suit by the Appellant on behalf of the complainant is concerned, that had resulted into passing of decree and the proceedings had concluded. Even as per the complainant's own admission, it is much thereafter that the complainant intended to sell the property in question when he found himself in need of money. It is this sale which the Appellant tried to interdict. He was not doing so in the capacity of an Advocate. As per him, the complainant was not authorised to sell the property without repaying his debt. Whether the Appellant was right in this submission or not, is not relevant. What is relevant is that this act has nothing to do with the professional conduct of the Appellant.

Therefore, the very initiation of disciplinary proceedings against the Appellant by the State Bar Council was improper and without jurisdiction.

We, accordingly, allow this appeal and set aside the impugned orders passed by the Bar Council of India"