

KAUK510002442013



**IN THE COURT OF CIVIL JUDGE & JMFC, HALIYAL
AT: HALIYAL, UTTARA KANNADA**

DATED THIS THE 27th DAY OF FEBRUARY, 2025

**PRESENT:- DESHABHUSHAN KOUJALAGI,
B.A.,LL.B
Civil Judge and J.M.F.C., Haliyal**

O.S. No.64/2013

**BETWEEN : 01. SMT. SAVITRI W/O BASANNA
PATTEKAR.**

...PLAINTIFF

AND : 01. SRI. SUDHIR S/O MAHADEV MULE.

...DEFENDANT

PARTIES TO I.A NO.11

**BETWEEN : 01. SMT. SAVITRI W/O BASANNA
PATTEKAR.**

...APPLICANT/PLAINTIFF

(By: Sri. S.G.H/B.N.P., Advocates)

AND : 01. SRI. SUDHIR S/O MAHADEV MULE.

...OPPONENT/ DEFENDANT

(By: Sri. P.R.D/K.B.G/RJ., Advocates)

ORDER ON I.A. NO.11

When the matter was posted for filing of memo of instructions on the side of the defendants in respect of order passed on I.A No.9 dated

10.02.2021, the present application has been filed by the plaintiff under Section 151 of C.P.C to direct the defendant as to whether he has given any instructions to his advocate to use unparliamentary words before the Court such as “threat” and “dabballike” to the advocate of plaintiff.

2. An affidavit is annexed to the instant application wherein, the plaintiff has deposed that, she has filed the present suit on 24.04.2013 for cancellation of sale deed dated 11.06.2010 along with six documents with list. The document at serial number 2 i.e, acknowledgment/undertaking by the defendant on sale deed at page No.4 dated 11.06.2010 is in question and the same ought to be examined by the Court Commissioner. The defendant has filed the written statement and this Court has framed issues and in that regard, the plaintiff has got examined herself and marked several documents in support of her case. By filing I.A No.7 and 8, the plaintiff has sought permission of the Court to reopen the evidence of the plaintiff and to produce laminated document i.e., original handwritten portion at Page No.4. This Court has rejected I.A No.7 and 8 on 06.09.2019 by holding that, laminated document is photocopy and marking of photocopy is not permissible under law. But, the acknowledgment and undertaking at Page No.4 of the laminated

document is original and after reading and understanding the contents, the defendant has signed to the said acknowledgment.

3. It is further stated that, under the aforesaid factual aspects and in order to bring out the truth, the plaintiff has filed I.A No.10 under Order 26 Rule 10A R/w Section 151 of C.P.C for scientific investigation of the said laminated document by referring the same to the experts. The said I.A was allowed by this Court as per Order dated 10.02.2021 and pleased to permit the plaintiff to get the said laminated copy of the sale deed dated 11.06.2010 but not the receipt dated 06.08.2010 examined through FSL and further directed to deposit the fees and charges of examination of FSL fixed by the FSL Centre recognized by the Government. Thereafter, the plaintiff has consulted truth lab and she has also submitted a memo of instructions on 23.04.2021 as per order of this Court.

4. It is further stated in the affidavit that, on 02.01.2023, the suit was posted for filing of memo of instructions by the defendant but, on the said date, the memo of instructions filed by the defendant was not as per order of this Court dated 10.02.2021 and as such, this Court has rejected the memo filed by the defendant on 02.01.2023. It is further

deposed in the affidavit that, the dispute is between kith and kin and as such, the disputes may reach to sensitive position and situations. On 06.09.2019, the defendant and his counsel were under the impression that, they have escaped from danger of acknowledgment/undertaking on the photocopy of sale deed dated 11.06.2010 and they have celebrated victory. However, the order dated 10.02.2021 have puzzled them. As such, they have indulged and conspired together criminally and tried to cause disturbance in smooth functioning of the Court and also spoil the peace and harmony of the plaintiff's family. Under these circumstances, the advocates have to play a different role to bring out a normal situation in order to maintain peace and harmony.

5. It is further stated in the affidavit that, on 03.01.2023, the learned counsel for the defendant i.e., Sri. KBG, advocate has filed advancement application with memo of facts by contending in Paragraph No.2 of the memo of facts that, he is seeking some urgent orders and also some clarifications are necessary. As such, this Court has called for the file and permitted both the advocates to put forth their respective arguments. The advocate for defendant instead of submitting arguments on advancement application has alleged that, the advocate for the plaintiff

has threatened one proxy counsel for the defendant i.e., Sri. BNR. Such false and baseless arguments and use of unparliamentary arguments in the Court of law was opposed by the plaintiff.

6. It is further stated in the affidavit that, the advocate for the plaintiff having experience of 42 years of advocacy from Revenue Courts to the Hon'ble High Court of Karnataka and gained sufficient experience and he never threatened anybody including advocates, litigants and also judges and he has maintained very discipline and decorum of the Court and assisted the Courts to decide the cases on merits. As such, the advocate for the plaintiff did not tolerate the allegations of threat to Sri. BNR, advocate outside the Court. Such false, baseless and unparliamentary language used only with an intention to defame the advocate for the plaintiff. Sri. BNR, advocate has developed unwanted character in order to defame the advocate for the plaintiff for his selfish motive and he has displayed his such character in respect of advocate for plaintiff in some other occasions also.

7. It is further deposed by the plaintiff in the affidavit that, as per knowledge of the plaintiff, Sri. BNR, advocate is permanent resident of Haliyal and after becoming an advocate, he spent most of his time in

Dharwad Bar Association. However, few years back, he came back to Haliyal and changed his name as B.N. Ramesh and it is learnt that, in legal profession, Sri. BNR, advocate has no base at all. Moreover, Sri. BNR, advocate has no guts to face legal proceedings before the advocate for the plaintiff in any Courts. In furtherance of such dishonest motive on 03.01.2023, he brought Sri. K.B.G, advocate in this case for the first time and misdirected. But, said K.B.G advocate ought to have realized that, who is an advocate and who is an officer of the Court and he should not have used baseless, false and unparliamentary language to defame the advocate for the plaintiff. Both Sri. BNR and Sri. KBG, advocates have caused unwanted and glumly atmosphere in the Court of law and spoiled the decorum of the Court. By considering the same, this Court was requested both the counsels to maintain Court decorum on 03.01.2023 and granted opportunity to file objections to advancement application on next day i.e., 04.01.2023.

8. It is further stated in the affidavit that, advocate for the plaintiff has filed written arguments on 04.01.2023 and he was ready to submit his arguments. But, by considering the absence of Sri. KBG, advocate, this Court was pleased to direct to put forth arguments at 3.00

P.M. Accordingly, while arguing on advancement application, Sri. KBG, advocate for defendant has again resorted to baseless and false allegations against the advocate for the plaintiff that, he is using “dabbalike” and as such, the same was resisted by the advocate for the plaintiff and he has requested this Court to direct Sri. KBG, advocate to not to use unparliamentary words like “dabbalike” in his arguments.

9. It is further deposed that, even though the advocate for the defendant has repeatedly used the word “dabbalike” in respect of advocate for the plaintiff but, the advocate for the plaintiff has recollected the request of this Court on 03.01.2023 to maintain the decorum of the Court. Therefore, with an intention to not to prejudice this Court, the advocate for the plaintiff has tolerated all such false, baseless and unparliamentary words of Sri. KBG, advocate. Advocate for the plaintiff has understood and realized that, Sri. KBG, advocate cultivated such brutal and unwanted habits to blame other side advocates for fulfillment of his own grudge. Sri. KBG, advocate should not have used such words as “threaten” and “dabbalike” without any foundation to defame other side advocates. Such attitude is also against the provisions of the Advocates Act and BCI Rules and amounts to contempt of Court and

totally against to professional ethics. The illegal action of advocates is not permissible and the act of the advocate of defendant has caused injury to the advocate for the plaintiff and defendant is also part and parcel of said brutality.

10. It is further stated in the affidavit that, advocates for defendant, the defendant and also alleged proxy advocate are liable for criminal and civil actions to be taken by the advocate for the plaintiff for harm, damage, injury and defamation caused to his personality. Therefore, it is necessary to direct the defendant as to whether he has instructed his advocate to behave and act in such a brutal way. The role of Sri. BNR, advocate in the guise of proxy counsel itself is totally misguiding the Courts of law and spoiling healthy atmosphere and decorum of the Court by instigating by Sri. KBG, advocate to use words such as “threat” and “dabbalike”. The words “threat” and “dabbalike” are totally false as the defendant and his family members have benefited under the shelter of family of plaintiff. Each and every problems of family of defendant have been solved by the family members of the plaintiff at their own cost. Though the defendant has grabbed furniture, gold, cash,

clothes, utensils but all such acts were tolerated by the plaintiff and her family members.

11. It is further stated in the affidavit that, to seek remedy from this Court, the plaintiff has filed the suit about 10 years back. After filing of the suit, neither the plaintiff nor member of her family have seen faces of family members of defendant except previous year when they had come for marriage invitation and at that time also, the defendant has demanded Rs.3 Lakhs to end this suit. However, the plaintiff was not in a position to fulfill their demand. Though the defendant has availed Rs.25,000/- to meet the marriage expenses of his daughter but, he has not returned the same. Hence, under the above circumstances, using the words such as “threat” and “dabballike” do not arise at all. Due to such illegal and unwanted conduct of advocates Sri. BNR and Sri. KBG and the defendant, Senior Advocate Sri. Arun Joshi come in trouble. Hence, he ought to have explained for the conduct of the above said advocates and the defendant. In the guise of proxy, nobody can behave improperly and spoil the decorum of the Court. With this, the plaintiff prays this Court to enquire after following due procedure in order to protect dignity of the Courts.

12. On the other hand, the defendant has filed objections to the instant application and denied entire contents of the affidavit filed by the plaintiff in support of instant application.

13. It is contended by the defendant in his objections that, every advocate is having his own personal and professional problems and under such circumstances, it is necessary to represent the cases through another advocate. Accordingly, on 02.01.2023, the daughter of advocate for defendant was not feeling well and as such, Sri. BNR, advocate has appeared before the Court on the said date on behalf of the defendant. On 02.01.2023, the plaintiff was absent and as such, she has no personal knowledge of the events of said date and filed false affidavit.

14. It is further stated in the objections that, the plaintiff has already executed sale deed in favour of the defendant but, to get additional amount, he has filed the present false suit and dragged the defendant to the Court of law. Though it is true that, the defendant has invited the plaintiff to the marriage of his daughter but, the defendant has not taken any amount from the plaintiff. To ruin the relationship of the advocates in the Court, the plaintiff has filed the present false application which is liable to be rejected.

15. It is further contended in the objections that, the matter was posted on 02.01.2023 to file memo of instructions by the defendant. On the said date, the daughter of advocate of defendant Sri. KBG was admitted to the Hospital and later, she was discharged and as such, Sri. KBG, advocate was attending his daughter. Due to the ill-health of daughter of Sri. KBG, advocate, he could not come on the said date to this Court to file memo of instructions and he has instructed Sri. BNR, advocate to appear in this case to file memo of instructions. Accordingly, Sri. BNR, advocate has filed memo of instructions. Later, it was came to the knowledge of advocate for the defendant with regard to the statement made to Sri. BNR, advocate by the advocate for the plaintiff i.e., Sri. BNP. Moreover, on the very same day, this Court has rejected the memo of instructions filed by the defendant. As such, the defendant has filed advancement application on 03.01.2023 to reconsider the memo of instructions filed by the defendant through proxy counsel Sri. BNR advocate. On 03.01.2023, the learned counsel for the defendant has brought to the knowledge of the Court with regard to the statement made by Sri. BNP, advocate to Sri. BNR, advocate who has appeared for defendant on 02.01.2023. At that time, the learned counsel for the

plaintiff has denied the allegation that, he has objected Sri. BNR, advocate on 02.01.2023 to appear as proxy counsel. To know the real truth, this Court immediately called Sri. BNR, advocate in open Court and enquired the same. Accordingly, Sri. BNR, advocate has informed the Court in detail with regard to statements made by Sri. BNP, advocate for him and the same was also came in the order-sheet. By suppressing all these true facts, the plaintiff has filed the present application with an intention to drag on the matter. Even the plaintiff has not stated anything in her affidavit as to what has been taken in the order-sheet by this Court on 03.01.2023. By considering all these aspects, the intention of the plaintiff could be gathered. It is further contended in the objections that, the advocate for the plaintiff is law abiding person and follow the order of the Court and he respect the advocate's fraternity. However, the plaintiff has filed the present false application by harming the image and reputation of advocate for the defendant. With these contentions, the defendant prays to reject the application.

16. Heard on both side.

17. The learned counsel for the plaintiff has relied upon citations of *(2024) 2 SCC 577* between *Brihan Karan Sugar Syndicate*

Private Limited vs Yashwantrao Mohite Krushna Sahakari Sakhar Karkhana, (2019) 6 SCC 441 between Lal Bahadur Gautam vs State Of Uttar Pradesh and (2023) 7 SCC 756 between Bar Council of India vs Bonnie Foi Law College and Others.

18. Having heard and perusal of the records, the following points arise for consideration of the Court:

POINT NO.1: Whether the plaintiff has made out good grounds to allow the application?

POINT NO.2: What Order?

19. Findings of the Court on the above points are as under:

POINT NO.1: In the **Negative**.

POINT NO.2: As per final order for the following:

REASONS:

20. **POINT NO.1:** When the matter was posted for filing of memo of instructions on the side of the defendant in respect of order passed on I.A No.9 dated 10.02.2021, the present application has been filed by the plaintiff under Section 151 of C.P.C to direct the defendant as to whether he has given instructions to his advocate to use

unparliamentary words before the Court such as “threat” and “dabbalike” to the advocate of the plaintiff.

21. At this stage, it is necessary to state few facts. On 02.01.2023, the memo of instructions filed by the defendant’s advocate Sri. AJ through proxy counsel Sri. BNR in respect of order on I.A No.9 was not considered by this Court by holding that, said memo of instructions of the defendant is not concerned to order on I.A No.9. It was further ordered and directed the office to send xerox copy of sale deed dated 11.06.2012 to the Court Commissioner for his opinion and matter was posted to 08.02.2023 for report of Court Commissioner.

22. Thereafter, on 03.01.2023, the learned counsel for the defendant has moved an advancement application under Section 151 of C.P.C to take the case on board on that day i.e., on 03.01.2023 for reconsideration of memo of instructions filed by the defendant on 02-01-2023. When the case was called out on 03.01.2023 in the result of filing of advancement application, the learned counsel for defendant Sri. KBG, advocate has submitted to the Court that, the learned counsel for the plaintiff Sri. BNP, advocate has threatened proxy counsel of defendant i.e, Sri. BNR, advocate outside the Court hall. The same was denied by

Sri. BNP, advocate appearing for the plaintiff. When this case was called out on 03.01.2023, proxy counsel Sri. BNR, advocate was also present in the Court hall and he has submitted to the Court that, on 02.01.2023, the learned counsel for the plaintiff Sri. BNP, advocate has stated to him that, “proxy counsel has no authority to submit before the Court and you will be targeted”. At that time, the Court has requested the learned counsels appearing on both side to maintain decorum of the Court and the case was adjourned. In this background, on 18.01.2023, the learned counsel for the plaintiff has filed the present application.

23. Admittedly, the alleged incident of threatening of proxy counsel for defendant Sri. BNR, advocate by the counsel for the plaintiff Sri. BNP, advocate has stated to be taken place on 02.01.2023 outside the Court. In respect of said alleged incident, the learned counsel for the defendant Sri. KBG advocate has made submission before the Court on 03.01.2023 that, the advocate for the plaintiff Sri. BNP has threatened Sri. BNR, advocate, a proxy counsel for the defendant. Now the question before the Court is whether this Court can direct the defendant to disclose as to whether he has given any instructions to his counsel i.e., Sri. KBG, advocate to use the words such as “threaten” and “dabbalike” to opposite

side counsel. In this regard, Court inclines to state that, the relationship between an advocate and his counsel is a fiduciary relationship. In other words, communication taken place between an advocate and his client cannot be compelled to be disclosed. Therefore, Court cannot compel the defendant as to what instruction he has given to his advocate. The communications which are taken place between the defendant and his advocate are privileged communications which cannot be compelled to be disclosed. Hence, this Court cannot compel the defendant to disclose the communications which are taken place between himself and his advocate.

24. Section 134 of the Bharatiya Sakshya Adhiniyam, 2023 (corresponding Section in the Indian Evidence Act is Section 129) states that, no one shall be compelled to disclose the Court any confidential communication which has taken place between him and his legal adviser. Hence, there is an embargo on the Court to compel the defendant to disclose the communication which has taken place between himself and his pleader. Moreover, an advocate is an agent of his client and it is nothing but an agreement between the advocate and his client to prosecute a case or to defend a case. In this regard, Court cannot interfere to know

as to what all communications have taken place between an advocate and his client.

25. The alleged incident which was stated to be taken place outside the Court hall is not within the knowledge of this Court. It is the allegation of the advocate for defendant Sri. KBG that, the advocate for the plaintiff Sri. BNP has threatened Sri. BNR, advocate, a proxy counsel for the defendant on 02.01.2023. Therefore, what is submitted by the learned counsel for the defendant Sri. KBG on 03.01.2023 was with regard to the incident which has taken place on 02.01.2023 outside the Court. Hence, this Court cannot direct the defendant as to whether he has given any instructions to his advocate Sri. KBG to use the words such as “threaten” and “dabballike”.

26. The learned counsel for the plaintiff has relied upon decision of the *Hon’ble Apex Court* rendered in *Brihan Karan Sugar Syndicate Private Limited vs Yeshwantrao Mohite Krushna Sahakari Sakhar Karkhana*, reported in (2024)2 SCC 577 in support of his arguments. Court has gone through the same. In the said decision, the Hon’ble Apex Court has observed that, if the members of the bar do not co-operate with trial course, it will be difficult to deal with huge number

of cases. This Court is of full agreement with the said observation. However, the facts of the present case and facts involved in the aforesaid case are totally different.

27. The learned counsel for the plaintiff has relied upon another decision of the *Hon'ble Apex Court* rendered in *Lal Bahadur Goutam vs State of Uttar Pradesh and Others* reported in *(2019)6 SCC 441* and in the said decision, the Hon'ble Apex Court has elaborately discussed with regard to duty of parties and their counsels in conducting the cases and duty of counsels before making any submissions before the Courts. In the background of relying upon a judgment based on a repealed Act and relying upon an overruled judgment, the Hon'ble Apex Court has observed in the aforesaid decision that, the relationship of an advocate and his client is of trust and confidence and a lawyer also owes a duty to the Court as well as to the opposite side. This Court is not disagreement with the said observation of the Hon'ble Apex Court.

28. The learned counsel for the plaintiff has relied upon another decision of the *Hon'ble Apex Court* rendered in *Bar Council of India vs Bonnie Foi Law College and Others*, reported in *(2023)7 SCC 556* and in the said decision also the Hon'ble Apex Court has discussed

with regard to quality of lawyers in the administration of justice. This Court is of full agreement with the said observation. However, the facts of the present case and facts involved in the aforesaid case are totally different. Therefore, having regard to the aforesaid discussion, Court opines that, the defendant cannot be directed to disclose the communications which have taken place between himself and his advocate under Section 151 of C.P.C. Accordingly, the Point No.1 is answered in the **NEGATIVE**.

29. POINT NO.2: In view of the findings on Point No.1, Court proceeds to pass the following:

ORDER

I.A.11 filed by the plaintiff under Section
151 of C.P.C is hereby rejected.

No order as to costs.

(Computerized to my dictation by the stenographer, printout then revised, corrected, signed and then pronounced in the Open Court on this the **27th Day of February, 2025**)

(DESHABHUSHAN KOUJALAGI)
Civil Judge and J.M.F.C., Haliyal