(1880) 01 CAL CK 0001

Calcutta High Court

Case No: None

Kali Kumar Roy		APPELLANT
	Vs	
Nobin Chunder Chuckerbutty		RESPONDENT

Date of Decision: Jan. 13, 1880

Acts Referred:

- Pleaders and Mukhtars Act, 1865 - Section 11

Citation: (1881) ILR (Cal) 585

Hon'ble Judges: Richard Garth, C.J; White, J; Mitter, J

Bench: Full Bench

Judgement

White and Mitter, JJ.
The third point as stated by the Small Cause Court Judge virtually raises all the questions upon which the opinion of this Court is sought.

2. The third point is whether, upon the facts found, the plaintiff is entitled to recover.

3. The facts found are these:- The plaintiff, who has not been admitted and enrolled as a muktear, and consequently is not in possession of a certificate authorizing him to act as a muktear, was employed by the defendant for the purpose of looking after a regular appeal which has been preferred by the defendant and also for giving instructions to the pleaders in connection with that appeal. The remuneration for the services was fixed by agreement at Rs. 100. The services have been performed. The plaintiff sues for the Rs. 100. The defendant resists payment on the ground that, by virtue of Section 13 of Act XX of 1865, the plaintiff is incapable of maintaining a suit for the agreed reward. Section 13 of the Act cited enacts, amongst other things, that any parson who shall practise as a muktear in any Civil or Criminal Court without having previously obtained a certificate, shall be liable to fine, and shall also be incapable of maintaining any suit for any fee or reward for or in respect of anything done by him as such muktear.

4. The question then resolves itself into this, whether the looking after a regular appeal and the giving instructions to pleaders in connection with it are a practising as a muktear within the meaning of the section. There is no definition in the Act of what the Legislature meant by practising as a muktear. But I think the meaning may be gathered from Section 11 of the Act, which enacts that "muktears" duly admitted "and enrolled may, subject to the conditions of their certificates as to the class of Courts in which they are authorized to practise, appear and plead in any Civil Court, and may appear, plead, and act in any Criminal Court within the same limits." It may fairly be concluded from this that, by practising as a muktear in a Court, the Legislature meant, in the case of a Civil Court, appearing or acting in that Court; in the case of a Criminal Court, appearing, pleading, or acting in the latter Court.

5. It is not stated in the reference whether the regular appeal preferred by the defendant was a civil or criminal appeal, but this will not affect the decision, as upon the facts found the plaintiff was clearly not employed to plead for the defendant.

6. Did the plaintiff then appear or act in Court? I think not. These words have a well-defined and well-known meaning. To appear for a client in Court is to be present and to represent him in the various stages of the litigation at which it is necessary that the client should be present in Court by himself or some representative. To act for a client in Court is to take on his behalf in the Court, or in the offices of the Court, the necessary steps that must be taken in the course of the litigation in order that his case may be properly laid before the Court. What the plaintiff is found to have done in the present case was not appearing or acting for the defendant in the sense in which I think the words must be understood nor involved any such appearance or acting. It is true that, in rendering the stipulated services, he must have attended the Court and frequented the offices of the Court at certain times, but his presence there was not for the purpose of representing his client or taking any steps in the suit on his behalf, but to watch his case and see that others had taken the necessary steps and were fully informed as to the nature and facts of his employer''s case and as to the best mode of conducting it. It would, I think, be a straining of the language of the Act to hold that attendance at the Court and its offices for the latter purposes was a practising as a muktear.

7. The authorities cited in the reference are in favour of this view.

8. In the case of Gujraj Singh (10 W. R. 355), which was an appeal against an order of the Judge of Tirhoot restraining all persons from coming into his Court and instructing pleaders except muktears duly enrolled under Act XX of 1865, JACKSON, J., set aside the order saying, that "there is nothing in the provisions of that Act which restrains any person from coming into the presence of the Judge and supplying information to the vakils." In the case of Kali Charan Chund 9 B. L. R. Ap. 18; s.c. 18 W. R. C. R. 27, the Officiating Joint Magistrate had fined the petitioner u/s 13 of the Act for practising as a muktear without having a certificate. What the petitioner had done was to write out a petition of complaint for one Komiruddin,

which Komiruddin presented himself in the Officiating Joint Magistrate''s Court, Kemp and Glover, JJ., set aside the order and remitted the fine, remarking that "the mere writing of a petition for a party, who afterwards presents that petition himself," is not "acting in the sense of Section 11:-Pleaders duly admitted and enrolled under this Act may appear, plead, and act in any Criminal Court, or before any Board of Revenue, or in any Revenue Office within the limits of the general jurisdiction of the High Court in which they are enrolled. Muktears duly admitted and enrolled as aforesaid may, subject to the conditions of their certificates as to the class of Courts in which they are authorized to practise, appear and act in any Civil Court, and may appear, plead and act in any Criminal Court within the same limits 11 of Act XX of 1865." In the case of Fuzzle Ali (19 W. R. Cri. 8), Phear and Ainslie, JJ., set aside the order and remitted the fine inflicted upon the petitioner for practising as a muktear. The petitioner had, as appears from the judgment of the District Judge, "instructed the vakil, stood behind him during the trial, suggested questions, and taken an active part in the management of the defence." Phear, J., in giving judgment, says:---"I think the word act in Saction 5 of the Act means the doing something as the agent of the principal party which shall be recognized, or taken notice of, by the Court as the act of the principal. Such, for instance, as filing a document."

9. I am of opinion, therefore, as well upon the authorities as upon the true construction of the Act, that the plaintiff, in rendering the services which he is found to have rendered, was not practising as a muktear within the meaning of the 13th section, and is therefore not debarred from maintaining this suit. If that be so, as the services have been performed, he is entitled to recover the agreed reward from the defendant.

Richard Garth, C.J.

10. My learned brothers, in deciding this question, have thought it right to deal with it in the same way as it has been dealt with in the Court below; that is to say, they have merely considered whether, having regard to the facts of this particular case, the plaintiff has done anything for the defendant which a person who is not a qualified muktear is prohibited by law from doing; and if I thought that this was the proper mode of dealing with the question, I should probably have arrived at the same conclusion as they have.

11. But I think that this is not the fair or proper mode of dealing with the question; and that, for the purpose of ascertaining the plaintiff''s right to succeed in this suit, or in other words, for the purpose of ascertaining whether the plaintiff, in what he did for the defendant, was acting as a muktear, it is necessary to enquire whether the plaintiff really acted in this instance as a private agent of the defendant, or as a muktear habitually practising in the Courts as such. If the plaintiff merely acted as the private agent of the defendant in giving instructions to the pleader, and abstained from doing any of those act which by law can only be done by a duly

qualified muktear, then I think Mr. Rampini is quite right in holding that the plaintiff is entitled to recover his promised remuneration. But if the plaintiff is in the habit of acting for clients generally in Courts of law, and holds himself out as ready to perform what is usually considered muktear''s work for reward, then I think that he was no less acting as a muktear in what he did for the defendant, because he may have abstained in this particular case from doing any of those acts which a duly qualified muktear is alone legally capable of performing. This seems to me constitute the difference between acting as a private agent and acting as a muktear. If a man holds himself out generally as ready to conduct cases for clients for reward, and makes this his public profession or calling in the same way as a pleader or an attorney, then he cannot with propriety be considered a private agent.

11. Unless this is the proper view of the law, the Legal Practitioners'' Act, whatever the intention of the Legislature may have been, must of necessity, so far as it relates to muktears, become a dead letter; and duly qualified muktears will be deprived of their legitimate profits and privileges by men who have no right to practise in the Courts as muktears at all. In that case it is clear that either fresh Legislation is necessary or this Court must pass rules to define more particularly what "acting as a muktear" is to mean.

12. I should add that it has occurred to my learned colleague, Mr. Justice Mitter, that Saction. 13 appears to apply to those persons only who are qualified and enrolled as muktears, but who have practised as muktears without obtaining their certificates. The language of Saction. 13 does certainly seem to afford some ground for this view; and yet it would seem an absurdity that a man, who is duly qualified and enrolled as a muktear, and who has only neglected to take out his certificate, should be subject to penalties, and disabled under that section from suing for his fees; whilst a man who is neither qualified nor enrolled as a muktear, nor certificated, should be enabled to recover his fees, and be subject to no penalties. It is difficult to conceive that this could have been the intention of the Legislature.

13. But whatever may be the meaning of Section 13, Section 5 of the same Act appears to me to remove all difficulty, and to debar the present plaintiff, if he has really acted as a muktear, from the right to enforce his present claim. Section 5 enacts that "no person shall appear or act as a muktear, etc., unless he shall have been admitted and enrolled, and otherwise duly qualified to practise as a muktear, etc." The plaintiff, therefore, if he practised as a muktear when acting for the defendant, did an act which is expressly forbidden by the Legislature; and I take it to be clear, as a matter of law, that he cannot recover his fees for doing such an act. See the case of a broker suing for his fees, without being licensed-Cope v. Rowlands (2 M. and W. 149), and of an appraiser suing for work done without being licensed-Palk v. Force (12 Q. B. 666).

14. I think, therefore (having regard to the foregoing observations), that in order to decide this case properly, the learned Judge in the Court below should be directed to

ascertain whether the plaintiff, when acting for the defendant, was a private agent of the defendant, or a person who practises generally for reward in Courts of law as a muktear. But as my learned brothers are disposed to take a different view of the matter, the judgment which has been passed for the plaintiff must stand.