

1968 Present: H. N. G. Fernando, C. J., Samerawickrame, J.,  
and Weeramantry, J.

*In re* S. DHARMALINGAM

S. C. Rule No. 20—In the matter of a Rule under Section 17 of the Courts Ordinance on S. Dharmalingam of Kurunegala, a Proctor of the Supreme Court

*Legal practitioners—Proctor guilty of malpractice—Liability to be suspended from practice or removed from office—Courts Ordinance, s. 17.*

The respondent, a Proctor, misappropriated and failed to deposit in Court a sum of Rs. 75 given to him by his client for the purpose of being so deposited as survey fees in a partition action. The action was dismissed because of the failure to deposit the survey fees.

*Held*, that the respondent was guilty of malpractice and liable to be punished under section 17 of the Courts Ordinance.

**R**ULE under section 17 of the Courts Ordinance.

*H. Deheragoda*, Senior Crown Counsel, as *amicus curiae*.

*V. Arulambalam*, for the respondent.

*Cur. adv. vult.*

August 28, 1968. H. N. G. FERNANDO, C.J.—

The respondent in this case, a Proctor, was noticed by this Court to show cause why he should not be suspended from practice or removed from office on account of malpractice or deceit.

The notice issued from Court subsequent to an inquiry held by the Disciplinary Committee of the Law Society. The Committee duly gave notice to the respondent of the date fixed

for inquiry, and adjourned the inquiry on two occasions at the request of the respondent. Nevertheless he failed to appear before the Committee even on subsequent dates of inquiry of which he had been given due notice.

We did not find acceptable the explanations offered by the respondent for his failure to attend before the disciplinary Committee and to furnish promptly to the Committee the explanations of his conduct which he later offered in this Court.

Upon the evidence given before us by the respondent himself, and having regard to the Journal entries in a partition action the record of which was before us, the following facts are clearly established :—

- (1) The respondent filed action No. 1855/P on 4th March 1963 in the District Court of Kurunegala on behalf of his client, and on that date the Court made order for the deposit of Rs. 75 as survey fees on or before 29.5.63.
- (2) On or about 23.3.63 the client brought to the respondent a sum of Rs. 75 for the purpose of the survey fees, a sum of Rs. 11 for the search of the register, and a sum of Rs. 50 as payment or part payment of the respondent's personal fee as proctor.
- (3) The respondent did not deposit in Court the Rs. 75 which his client had given him for the survey fees. Instead he informed the Court on 28th May 1963 that his client had not been able to find the money for the survey fees and moved for an extension of the date for the deposit. One month's extension was then allowed, but again on the same ground the respondent moved for one month's further time. Further time was again allowed until 26.7.63, on which date the action was dismissed because of the failure to deposit the survey fee.

On these facts it is apparent that, although the Rs. 75 intended for survey fees was in the respondent's pocket on 23.3.63, he failed to carry out his professional duty to deposit that amount in Court in order that his client's action might duly proceed.

The explanation which the respondent has now offered is that, before 23rd March, he informed the client that what she had paid him as his personal fee was inadequate, and that she should bring another Rs. 100 together with the survey fee of Rs. 75. The respondent's version is that when the client brought the Rs. 75 on 23rd March, he again asked for the further Rs. 100, and that the client thereupon agreed that he should keep the Rs. 75 for himself and that she would bring later the money for the survey fee.

This explanation of the respondent is directly in conflict with the receipt P2 which the respondent handed to his client on 23rd March. The receipt explicitly acknowledges that the respondent on that day received Rs. 75 as the survey fees in the action. This receipt in our opinion sufficiently establishes the falsity of the respondent's explanation.

Moreover, we are not disposed to believe that the respondent did in fact consider that the Rs. 50 which he had been paid already was an insufficient fee for the search which he had made. There is only his bare word that the search involved a great deal of labour. His evidence on this point if true could have been confirmed by production before us of the relevant registers.

We are satisfied that the respondent has been proved to be guilty of malpractice in that he misappropriated and failed to deposit in Court the sum of Rs. 75 given to him by his client for the purpose of being so deposited as survey fees in a partition action. We understand that at the relevant time the respondent was troubled by domestic difficulties, and on this account, we propose to deal leniently with him. We order that he be suspended from practice as a Proctor from date until 31st December 1969.

SAMERAWICKRAME, J.—I agree.

WEERAMANTRY, J.—I agree.

*Rule made absolute.*