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VISHNU PRASAD

v.

GOVIND SINGH AND OTHERS

[SUPREME COURT, 1966 (Hammett P.J.) 17th June, 23rd September]

B

Appellate Jurisdiction

Evidence and proof—evidence—privilege—solicitor and client—privilege is that of the client.

Practice and procedure—appeal—evidence by solicitor—privilege not claimed in the court below—cannot be relied upon on appeal.

C

Communications between a solicitor and his client are in certain circumstances privileged but it is well established that the privilege is that of the client and not the solicitor. A solicitor who had acted in a matter of contract for both parties thereto, was later called by one party as a witness in an action against the other. Counsel for the latter took no objection and cross-examined the solicitor, seeking to elicit further information from him. It was too late on appeal

D

to enter into the question whether privilege could properly have been claimed at the trial.

Appeal against judgment of the Magistrate's Court in an action for payment for services rendered. The appeal was dismissed and is reported only on the question of privilege between solicitor and client.

E

S. M. Koya for the appellant.

F. M. K. Sherani for the respondent.

Third party (Munsamy Reddy) in person.

HAMMETT P.J. : (in part).

F

[23rd September, 1966]—

G

One of the witnesses for the Plaintiff firm was a Mr. C. D. Singh, a Solicitor who acted for both the Plaintiff firm and the Defendant. He was most insistent that there were two different contracts, the first an oral agreement between the Plaintiff firm and the Defendant and the second, a written contract dated 18th July, 1964, which he himself prepared, between the Plaintiff firm and Munsamy Reddy the Third Party. He gave testimony of speaking with the Defendant about both contracts and how the Defendant himself told him that the first oral contract was between the Plaintiff firm and himself personally and was quite separate from the second contract which was between the Plaintiff firm and Munsamy Reddy and that in that contract he was merely the agent for Munsamy Reddy.

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This was apparently a difficult, complicated and involved case which upon close examination depended entirely upon simple issues of fact and the credibility of the witnesses. Once the learned trial magistrate reached the conclusion that Mr. C. D. Singh, the Solicitor who acted for both the Plaintiff firm and the Defendant and the Third Party was telling the truth I do not see how he could have properly arrived at any different decision in the case which is now appealed against. A

It was finally submitted on behalf of the Defendant-Appellant at the hearing of the appeal that the evidence of Mr. C. D. Singh should not have been admitted at the trial because it was "privileged". B
Communications between a solicitor and his client are indeed in certain circumstances privileged but it is well established that the privilege is that of the client and not the solicitor. In this case Mr. Singh was called as a witness to give evidence on behalf of a person who was at the material time a client. It is clear that as far as the client who called Mr. Singh was concerned he was waiving the privilege. C
No objection was taken by Counsel for the other client concerned, namely the Defendant-Appellant, when Mr. Singh was giving his evidence in chief. Indeed Counsel for the Defendant-Appellant cross-examined Mr. Singh on his evidence and sought to elicit further information from him concerning the transactions between his two former clients. As no objection was taken at the trial I think it is far too late for this Court at this stage to enter into the question of whether any of the evidence given by Mr. C. D. Singh at the trial could or could not have been the proper subject of a claim to privilege by the Defendant-Appellant if he had in fact claimed it. D
In the absence of a claim to privilege by a client represented at the trial of a civil suit by independent Counsel, there is no duty on the Court itself to intervene on this issue.