

(1928) 04 MAD CK 0055
In the Madras High Court

Kanhirampare Ravunni Nair and Another

APPELLANT

Vs

Nalannad and Another

RESPONDENT

Date of Decision : 23-04-1928

Acts Referred:

Citation : AIR 1928 Mad 1131

Judgement

1. The first point argued is that there is a special custom governing,, Nambudri families under which a Nambudri woman gets some rights in he husband"s family which enable her to dispose of the husband"s property under certain circumstances. Such a custom was not pleaded in the Courts below. Nambudris are governed by the ordinary Hindu law except in certain matters which need not to specified herein. Such a custom as that now set up is opposed to the ordinary Hindu law and has to be established by satisfactory and cogent evidence. There is no such custom set up, nor is there any evidence about it. We therefore decline to go into this question.

2. The next point urged is that a de facto guardian of minors is entitled to encumber the minors" property for meeting the -expenses necessary for their sustenance; in other words, a person who acts as a guardian of minors is entitled to pledge the minors" property for raising funds for maintaining them, or if no money is raised on the security of the property the minors would have to starve. The judgment under appeal was specifically referred to by a Bench of this Court in Seetharamamma v. Appiah AIR 1926 Mad. 457, and disapproved. It was held in that case that an alienation by a de facto guardian of a Hindu minor for the necessity of the minor is valid under the Hindu law. Almost all the cases on the point have been cited by bath the learned Judges, Odgers and Viswanathi Sastri, JJ. It is unnecessary for us to consider this question at length. Apart from questions of Hindu law or the Guardians and Wards Act or any other law we would like to put our reasons on a much broader basis. Where minors or incapacitated persons who are unable to take care of themselves are left adrift, a person who takes pity on them and looks after them and raises money for their maintenance out of the family property does what is expected of an ordinary

human being and any debt incurred for the maintenance of such incapacitated persons or minors must be discharged out of the estate of such persons or minors. It is opposed to natural justice, after a person has been maintained, in other words, has been kept alive, that he should turn round and say that a debt incurred for the purpose of keeping his body and soul together is not binding upon his estate because the money was raised not by a guardian who was appointed by a Court or entitled to act under the law but by a person who acted out of pure humanity. In this case the person who maintained these minors and defendant 1 was no other than the second wife of defendant 1, and the stepmother of the minors. That being so, we have no hesitation in holding that the debts incurred by her for the maintenance of defendant 1 and his minor sons are binding upon the estate of defendant 1 and the minors.

3. Mr. Ramachandra Ayyar raises the contention that there is no finding that Pappi Antarjanam acted as the guardian of the minors and the idiot husband and he wanted to rely upon a statement of one of the witnesses that the minors lived with the maternal uncle and paid visits only at the time of some ceremonies. We cannot go into this question as the finding of the Subordinate Judge is quite clear that Pappi Antarjanam did look after and maintain the husband and her stepson, for in para. 5 he says:

It is not shown by the defendants how the lady was managing to meet her needs and those of her husband and defendants in the house.

4. And Jackson, J., in the course of his judgment has assumed that it was found that Pappi Antarjanam acted as guardian for he discusses only the question of - the powers of a de facto guardian and does not say anything about Pappi Antarjanam not having acted as guardian of the husband and minors. We hold that there is a clear finding that Pappi Antarjanam did act as guardian of the idiot husband and stepsons and that she did maintain the children out of the moneys borrowed by her. The Subordinate Judge on the basis of that has calculated the amount that was required for their maintenance and has given a decree. We accept the Subordinate Judge's finding that; the amount was borrowed for the necessities of the family. We therefore set aside the judgment of the learned Judge here and restore that of the Subordinate Judge in Appeal No. 25 with costs here and in the second appeal.