

(1934) 05 MAD CK 0036
In the Madras High Court

Krishna Ayyar

APPELLANT

Vs

Subbalakshmi Ammal

RESPONDENT

Date of Decision : 01-05-1934

Acts Referred:

Citation : AIR 1934 Mad 724 : (1935) ILR (Mad) 252 : 153 Ind. Cas. 94 : (1934) 40 LW 712

Hon'ble Judges : Curgenven, J

Bench : Division Bench

Judgement

Curgenven, J.—This is an appeal against the order of the District Judge of Trichinopoly, dismissing an application by the appellant for the custody of a lunatic, who is his natural son. The proceeding arose in a petition by the lunatic's wife to have him declared a lunatic and herself appointed guardian of the person and property. This application was closed by an order passed by agreement between the parties according to which the wife was to be the guardian of the property and the father, the present appellant, guardian of the person. It appears that a difficulty arose in carrying out the terms of this order, so that the appellant had to institute this application for getting custody of the lunatic.

2. The first question that has been raised before us is whether the order dismissing his application for custody is an appeasable order. Orders passed by a Court in lunacy outside the Presidency Towns are provided for by Chap. 5, Lunacy Act, and Section 83, the last section in that chapter, provides that an appeal shall lie to the High Court from any order made by any District Court under the chapter. Section 71 empowers the District Court to appoint a guardian of the person of a lunatic, and that is the section under which the original order in this case, appointing the appellant guardian of the person of his lunatic son was passed. There is no express provision in the chapter for giving custody of the person of the lunatic to the guardian thus appointed but it is not questioned before us that such power must reside in the Court which passed the order appointing a guardian. This is a well-known principle of the interpretation of

statutes; we need only refer to Craiss on Statute Law, 3rd Edn., p. 227 and the English case *Scott v. Legg* (1877) 10 Q.B.D. 236. We do not think we need discuss that point further, as it is not disputed. Assuming then that the Court has power to pass an order for the custody of a lunatic the only question is whence that power is derived. It seems clear from the authorities which we have cited that it lies by implication within the four corners of the Act which grants the primary power and, extending the same principle, it can scarcely be questioned that it lies in that part of the Act which confers that power, and in the present case within Ch. 5, Lunacy Act. If these reasoning be correct Section 83, which allows an appeal from all orders passed under that chapter, will make this particular order appealable.

3. Coming to the merits of the case, the first order of the District Judge appointed the appellant guardian of the person of the lunatic and unless anything exceptional appears to the contrary it appears to us that the right so conferred upon the appellant implies the right to the custody of the lunatic's person. The learned Judge in the order now under appeal considers that it does not necessarily permit him to have "exclusive" or "separate" custody of the lunatic. He scarcely conceals his disagreement with the order of his predecessor and we think that in the observations which he has made on it, it was incumbent upon him to say - what he has omitted to say - that the order was passed by consent of the parties. The main ground upon which he appears to have proceeded is that it is not possible to separate the lunatic from his wife. The position apparently is that all the parties lived together in the house occupied by the lunatic and his wife from 1929, when the lunatic's adopted mother died, until 1933, when there was a quarrel over some question relating to the estate. It was said that the father (appellant) had mismanaged the property. It became then impossible for the appellant and his wife to remain in the house and he withdrew to his own village of Allur, which is only two miles away from Kambarasanpettai, where the lunatic at present resides. The argument that the husband cannot be separated from his wife appears to us to be somewhat of an inversion of the normal state of affairs which requires that the wife should follow the fortunes or misfortunes of her husband rather than vice versa. We have no ground at present to suppose that giving the custody of the lunatic to the appellant will necessarily involve separation between husband and wife, but at any rate that in itself cannot on general grounds be made a reason for not implementing the order appointing the appellant as guardian. Virtually what the order of the Court below seems to us to say is, you have, it is true, been appointed guardian of the person but you shall not have any custody or control of it.

4. It seems quite clear that unless an order for custody is made the virtual guardian of the lunatic will be the wife herself who will have no compunction, it appears, in shutting the door in the face of the natural father. In these circumstances we think that the only course compatible with enforcing the order of appointment is to pass an order giving the appellant custody of the lunatic; and allowing the appeal, we pass such an order. There is a further application for

a monthly allowance for the maintenance of the lunatic. We are not in a position to deal with that finally now and we direct the learned District Judge to dispose of it. The appellant will get his costs throughout, including the costs of privately printing the records, from the estate, and the respondent will bear her own costs.