

(1908) 11 MAD CK 0031
In the Madras High Court

Muhammad Abdul Satar Saheb

APPELLANT

Vs

Mekkena Kondappa Naidu

RESPONDENT

Date of Decision : 05-11-1908

Acts Referred:

Citation : 4 Ind. Cas. 1108

Hon'ble Judges : Miller, J

Bench : Single Bench

Judgement

Miller, J.—The District Munsif issued a notice to the proposed guardian to which he received no reply. He then appointed him as guardian ad litem finding that he had been appointed guardian of the minor's property under Act VIII of 1890. The guardian applied u/s 458, Civil Procedure Code, to be removed alleging that the suit was one in which his interest was adverse to that of the minor inasmuch as the contract which the plaintiff in the suit was seeking to enforce was one made by him (the guardian) under circumstances in which it was to the interest of the minor to allege that it would not bind him. The District Munsif has refused to remove this guardian.

2. I have no doubt that the appointment was not proper for the two reasons:

(1) that the guardian was appointed without his consent and (2) that his interests are apparently opposed to those of the minor and, therefore, when the guardian applied to be removed, the District Munsif ought to have removed him and appointed another guardian.

3. The only question is whether I can interfere u/s 622, Civil Procedure Code. In my opinion the District Munsif was bound to cancel the appointment when the guardian never, having expressed his consent, came forward alleging that he was unwilling to act, and the fact that an order of appointment had been made in his absence does not affect the question.

4. Nor does the fact that he was a guardian appointed under the Act VIII of 1890 make any difference: for it is clear that the guardian so appointed does not

become ex-officio a guardian ad litem in any given proceeding. A guardian must be appointed by the Court.

5. As the District Munsif had, in my opinion, no discretion in the matter, he has exercised his jurisdiction with material irregularity.

6. I, therefore, set aside the order and direct that a proper guardian be appointed. The respondent will pay the petitioner's costs of this petition.