
(1917) 04 MAD CK 0024
In the Madras High Court

Obla Venkatachalapathi Aiyar and Another	APPELLANT
Vs	
Thirugnana Sambanda Pandara and Others	RESPONDENT

Date of Decision : 19-04-1917

Acts Referred:

Guardians and Wards Act, 1890 — Section 7

Citation : 42 Ind. Cas. 273 : (1917) 6 LW 637 : (1917) 33 MLJ 297

Judgement

1. During the minority of the plaintiff, the court purporting to act u/s 7 of the Guardians and Wards Act appointed one Vaidyalinga Thambiran as

the guardian of his person and property. As there were debts contracted by the predecessors of the Matadhipati, sanction was obtained u/s 29 of

the Act to sell some of the properties of the mutt. The present appellants are the successors in interest of those who purchased the properties in

pursuance of the order of the District Judge.

2. The minor Pandarasannadhi has attained age and now sues to set aside the sales. The Lower Appellate Court gave a decree to the plaintiff. In

this Second Appeal, Mr. KV. Krishnaswami Aiyar contended that the properties of the mutt are not trust properties and that it was competent to

the District Court to have appointed Vaidyalinga Thambiran as guardian under the Act. It may become necessary to consider on some future

occasion whether the decision of the Judicial Committee in Ram Parkash Das v. Anand Das ILR (1916) 48 C. 707 that the mutt properties partake

of the nature of the trust properties should not be confined to the class of mutts under the consideration of the Board and whether the decision in

Baluswami Iyer v. Venkitaswami Naicker (1916) 32 M.L.J. 25 does not lay down the proposition too broadly. We do not think it necessary to

decide that question now.

3. In the present case, there is ample evidence to support the finding that in its inception the properties endowed were given to the head of the mutt

as trustee. It has not been shown that the particular properties in suit are different in character from the originally endowed properties. We must

therefore hold that the properties in suit are trust properties. Consequently u/s 7 Clause (a) no guardian should have been appointed. Section 29

which gives, power to sell the Immovable properties of the minor was therefore, wrongly invoked.

4. Mr. Krishnaswami Aiyar contended that as the District Judge has found that the head of the mutt had a beneficial interest in the surplus income,

the properties belonged to the minor, and that the appointment of guardian was valid. In the first place, we are unable to agree with the District

Judge that a Dharmakartha has ordinarily a beneficial interest in the surplus income: It is just the other way. In a given case, such a right may be

established, as pointed out by Bashyam Iyengar, J. in *Vidyapurna Thirthaswami v. Vidhyanidhi Thirthaswami* ILR (1901) M. 435. The District

Judge does not find that in this institution, either by custom or otherwise, a right in surplus income was secured to the trustee. But apart from this,

we are unable to agree with the learned vakil that a right to a portion of the income would vest the property in the beneficiary, so as to attract the

provisions of Sections 7 and 29 of the Guardian and Wards Act. The decision in *St. Thomas' & Hospital (Governors) v. Richardson* (1910)

1.K.B. 271 proceeded upon the special language of the statute and should not be applied to control the clear language of the Guardians and

Wards Act.

5. We must therefore hold that the order of the District Court appointing Vaidyalinga and the proceedings taken thereunder were wholly without

jurisdiction. The decision of the District Judge is right and we dismiss the second appeal with costs.

6. We express no opinion on the question whether the appellants are not entitled to recover for the trust properties the monies which were

legitimately applied to meet the necessary expenses of the mutt.