
(1925) 09 MAD CK 0082
In the Madras High Court

Rajamanicka Chetty

APPELLANT

Vs

P.K. Venkatramana Rao and Others

RESPONDENT

Date of Decision : 01-09-1925

Acts Referred:

Citation : AIR 1926 Mad 950

Hon'ble Judges : Spencer, J;Madhavan Nair, J

Bench : Full Bench

Judgement

Spencer, J.—The manner in which the Subordinate Judge (Mr. K. Krishnamacharya) has dealt with the rights of a minor in the matter of his representation in this suit amounts practically to a denial of justice. The suit was based upon a mortgage and was brought against the 1st defendant and his minor son, the 2nd defendant. The 1st defendant evaded service of summons and an ex parte decree was passed against him. The 2nd plaintiff filed an affidavit, on 10-9-23 stating that the minor's mother had no interest adverse to the minor, that the minor was under her protection and that she might be appointed as guardian ad litem of her son. On 16-10-23 the Subordinate Judge appointed the Head Clerk of his Court as the guardian of the minor, while the petition to appoint the mother of the minor was still pending, and without recording any reasons for not appointing the natural guardian of the minor to be guardian ad litem. Afterwards on 2-11-23 the Subordinate Judge dismissed the petition to appoint the mother of the minor as his guardian, for no other reason than that the Head Clerk had already been appointed guardian. When the case came on for trial, the Court guardian contented himself with putting the plaintiff to proof of his case. He was not put in funds for the purpose of defending the case,, he got no instructions from the minor's mother, and the plaintiff was given a decree. After this, the mother of the minor applied to set aside the decree passed against her son and to have the case disposed of on its merits. The Subordinate Judge required her to deposit all the costs of the plaintiff in the suit up to date, and when the amount was not deposited, dismissed the petition.

2. In *Bhagvan Dayal v. Param Sukh Das* [1915] 37 All. 179, it was observed that the appointment of an officer of the Court as guardian ad litem of minors without requiring the party who gets him appointed to make a deposit for the purpose of defending the case is generally little more than a farce. The appointment of the Head Clerk in this case was nothing but a farce. The minor's guardian had previously in 1919, brought a suit to have it declared that the minor was not bound by the mortgage -a suit which was withdrawn in 1922 with liberty to file a fresh suit--and after the decree in this suit was passed on 5-11-23 she applied on 1-12-23 for the removal of the Head Clerk from the guardianship and that she should be appointed. She was, therefore, evidently interested in supporting the minor's rights. To appoint a Court guardian without funds, to represent the minor when there was a natural guardian available meant that the minor would not be able to defend the suit, and to require the minor to deposit all the costs of the plaintiff before restoring the suit to file was to put the minor in a position which made it impossible to have his defence heard. For these reasons, I consider that the Subordinate Judge's order appointing his Head Clerk as guardian of the minor was bad and must be set aside. Further proceedings in the case from the date of that appointment on 16th October including the decree must be vacated so far as the minor is concerned because he was not properly represented. The Subordinate Judge will be directed to restore O.S. No 22 of 1923, to file as against the minor and to appoint his mother as guardian ad litem and proceed with the trial of the suit. The appeal against order and the civil revision petition will be allowed with costs in this Court.

Madhavan Nair, J.

3. I agree with the order proposed by my learned brother.