

**(1909) 12 MAD CK 0022**  
**In the Madras High Court**

Ranee Vellai Nachiar

APPELLANT

Vs

The Court of Wards

RESPONDENT

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**Date of Decision :** 07-12-1909

**Acts Referred:**

**Citation :** 5 Ind. Cas. 740(1)

**Hon'ble Judges :** Arnold White, C.J;Krishnaswamy Aiyar, J

**Bench :** Division Bench

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### **Judgement**

Arnold White, C.J.—In this case we are asked to make an order that the Court of Wards should detain in Madras the person of the

zemindir of Sivaganga now under the guardian-ship of the Court of Wards and prevent his being married to a certain lady pending the disposal of

an appeal to us against an order made yesterday by Mr. Justice Wallis on an application to him that this marriage should be prevented by an order

of this Court.

2. We are told that the marriage is going to take place the day after to-morrow and that is the ground of urgency and the reason why an application

has been made to us to-day. It is not disputed that an order that has been made making the zemindar a ward of the Court of Wards under the

provisions of Section 15 of the Court of Wards Act of 1902, and the Court of Wards under the provisions of that section has been ordered to

assume the superintendence of the person and property of this zemindar.

3. Section 48 says: ""No declaration made by the Local Government u/s 15 or 18 and no act done in the exercise of any discretionary power

conferred by this Act shall be questioned in any Civil Court.

4. Mr. Naraina Row who appeared in support of the application asks us to make the order either under the powers conferred upon us u/s 45 of the Specific Relief Act or in exercise of the powers reserved to us by Section 3 of the Court of Wards Act.

5. As regards Section 45 of the Specific Relief Act which empowers this Court to make an order in the nature of a mandamus, before such an order could be made, it must be shown that some person holding a public office has committed a breach of his duty either by doing or by not doing, certain specific acts. Here it seems to me it is impossible to allege that the Court of Wards has committed a breach of duty by making the order which it has made, because in Section 23 of the Court of Wards Act, it is expressly stated that "the Court may make such orders and arrangements as to it may seem fit, in respect of the custody, residence, education, and marriage of any ward whose person is for the time being under its superintendence." Therefore, it is perfectly clear that in a case of this sort an order u/s 45 of the Specific Relief Act in the nature of any mandamus should not be made.

6. Then have we power u/s 3 of the Court of Wards Act? In my opinion we have not. It is not necessary to attempt to define the extent of the powers which are reserved to us under the Court of Wards Act, Section 3 and I express no opinion as to whether those powers would enable us in the case of an infant, idiot or lunatic to make an order directing the ward of the Court of Wards to be removed from the custody of the Court of Wards and be made a ward of this Court. I express no opinion on that. It is perfectly obvious that the present application is not an application of that character.

7. The ward is legally a ward of the Court of Wards and an order is made in pursuance of the express provisions of the Court of Wards Act by the Court of Wards. That being so, I am clearly of opinion that we have no jurisdiction to interfere. Mr. Justice Wallis took the view that he had no jurisdiction and I agree with him, The appeal also, will be dismissed.

Krishnaswami Aiyar, J.

8. I do not think that Section 45 of the Specific Relief Act can possibly have any application to the present case. There is no specific act within the meaning of that section which the Court of Wards is required to do u/s 23 of the

Court of Wards Act.

9. As regards our other powers reserved by Section 3 of the Court of Wards Act, it is sufficient to say that whatever they may be, they do not

justify the making of an order directing the marriage to be postponed of a ward who is legally under the custody of the Court of Wards.

10. There is no application before us to oust the jurisdiction of the Court of Wards and to appoint a guardian for the property or the person of the disqualified proprietor. I agree with the order dismissing the application.