
(1924) 03 MAD CK 0044
In the Madras High Court

Ruckmani Ammal

APPELLANT

Vs

Veerasami Aiyangar and Another

RESPONDENT

Date of Decision : 24-03-1924

Acts Referred:

Citation : (1924) 47 MLJ 370

Hon'ble Judges : Jackson, J

Bench : Division Bench

Judgement

Jackson, J.—In O.S. No. 420 of 1919 on the file of the Court of the District Munsif of Srirangam, the plaintiff Pichu Aiyar died. Both his

widow, Ruckmani Ammal, the present petitioner and his daughter Seethai Ammal, the present 2nd respondent, applied to be brought on as legal

representatives. The District Munsif found that Ruckmani Ammal was a minor, who had no right to apply in her own right, and dismissed her

application. Having done so he disposed of Seethai Ammal's application by merely recording ""Defendant (present Ist respondent) has no

objection. ""Ruckmani Ammal now applies to have both orders revised.

2. I cannot hold that the District Munsif acted irregularly in rejecting Ruckmani Ammal's application on the analogy of Order 32, Rule 2. He

exercised a discretion allowed him by law, though I think he exercised that discretion very hastily. CA Rattonbai v. Chabildas Lallo Bhoy ILR

(1888) Bom 7. But I cannot find that the District Munsif was justified in adding Seethai Ammal as legal representative without determining the

question on its merits after notice had gone to Ruckmani Ammal as she had raised the question. The mere fact that Ruckmani Ammai was

discovered to be a minor was no reason for not considering her plea that she was

the rightful representative. Here the analogy to be applied is that under Order 32, Rule 3. The respondents do not attempt to justify the action of the Court which indeed is quite opposed to the ordinary duties of a Court in regard to minors, so much as to show that the petitioner has no right to move this Court for revision. They contend that her remedy was by way of appeal against the order, or at any rate by way of suit after reaching her majority, and in any case her application for review has been unduly delayed.

3. There is no statutory right of appeal against an order under Order 32, Rule 3. "The legislature has chosen not to give a right of appeal against orders under that rule. Lakshmi Achi Vs. Subbarama Aiyar and Others, But respondents rely upon Ayya Mudali Velan Vs. Veerayee, where it is held that an order rejecting the claim of a person to be the legal representative of a deceased plaintiff is appealable in cases where such orders have also the character of decrees. If it is to have this character, the order must conclusively determine the right of the parties in the suit, and it so happens that all the parties in Ayya Mudali Velan Vs. Veerayee, happened to be parties, in the suit, the 2nd defendant was the person applying to be plaintiff's legal representative. In Lakshmi Achi Vs. Subbarama Aiyar and Others, and in the present case the persons applying to be legal representatives were never parties to the suit and this application having been rejected, they could never have been regarded as such and it is clear from Ayya Mudali Velan v. Veerayee ILR (1920) M 812 : 39 MLJ 218 itself that the learned Judges still regarded Lakshmi Achi Vs. Subbarama Aiyar and Others, as good law in regard to the facts of that case (cf. p. 815). I therefore find that petitioner had no remedy by way of appeal, and is entitled to move for revision.

4. I do not think it necessary to drive petitioner to a fresh suit, nor do I think that her remedy lies that way....The lower Court having appointed a legal representative that appointment, unless it is set aside, is final, and binds the estate. "If the Court decides wrong the wronged party can only take the course prescribed by law for setting matters right; and if that course is not taken the decision however wrong cannot be disturbed.

Malkarjun v. Narhari ILR (1900) Bom. 337 : 1900 10 MLJ 368 (PC).

5. I do not find that there has been inordinate delay. Petitioner first sought her

remedy by way of review on grounds which were certainly not

frivolous. Nor do I see any reason for holding that petitioner is still a minor, and even if she were, I. should not reject her petition on that account;

there would only be a formal question of appointing a guardian ad litem. Accordingly I allow Civil Revision Petitions Nos. 401 and 402 with costs

one set. I reverse the order of the lower Court and direct the District Munsif to determine the question whether Ruckmani Ammal or Seethai

Ammal is or is not the legal representative of the deceased Pichu Aiyar and then proceed with the suit. Civil Revision Petitions Nos. 403 and 400

are dismissed with costs one set.