
(1924) 03 MAD CK 0017
In the Madras High Court

Rukmani Ammal		APPELLANT
	Vs	
Veerasami Iyengar and Another		RESPONDENT

Date of Decision : 24-03-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3

Citation : 80 Ind. Cas. 942

Hon'ble Judges : Jackson, J

Bench : Single Bench

Judgement

Jackson, J.—In O.S. No. 420 of 1919 on the file of the Gourd of the District Munsiff of Sriraugam, the plaintiff Pichu Aiyar died. Both his

widow Rukmani Animal, the present petitioner and his daughter Seethai Ammal, the present 2nd respondent applied to be brought on record as

legal representative. The District Munsif found that Rukmani 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 Animal's application by merely recording ""defendant (present 1st respondent) has no

objection."" And Rukmani Ammal now applies to have both orders revised.

2. I cannot hold that the District Munsif acted irregularly in rejecting Rukmani Ammal's application, On the analogy of Order XXXII, Rule 2, he

exorcised a discretion allowed him by law, though I think he exercised that discretion very hastily Of. Rationbai v. Ghabbildas Lalloobhoy 7 Ind.

Dec. 5. 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 Rukmani and she had raised the question. The mere fact that Rukmani 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 XXXII, 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 has been unduly delayed.

3. There is no statutory right of appeal against an order under Order XXII, Rule 3. The Legislature has chosen not to give a right of appeal against

orders under that rule. *Lakshmi Achi v. Subrama Aiyar* 29 Ind. Cas. 142 : 28 M.L.J. 491 : (1915) M.W.N. 327 : 17 M.L.T. 385. But

respondents rely upon *Ayya Mudali Velan v. Veerayee* 58 Ind. Cas. 498 : (1920) M.W.N. 467 where it is held that an order rejecting the claim of

a person to 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 rights of the parties in the suit, and it so happens that all the parties in *Ayya Mudali*

Velan v. Veerayee 58 Ind. Cas. 498: (1920) M.W.N. 467. were parties in the suit, the 2nd defendant was the person applying to be plaintiff's

legal representative. In *Lakshmi Achi v. Subrama Aiyar* 29 Ind. Cas. 142; (1915) M.W.N. 327 : 17 M.L.T. 385 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* 58 Ind. Cas. 498 : 12 L.W. 188 itself that the learned Judges still regarded

Lakshmi Achi v. Subrama Aiyar, 29 Ind. Cas. 142 : 2 L.W. 403 : 28 M.L.J. 491; (1915) M.W.N. 327 : 17 M.L.T. 385. as good law in regard to

the facts of that case (of. p. 815). I, therefore, find that the 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.

Malkarjan v. Narhari 25 B. 337: 5 C.W.N. 10.

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 I do 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 C.R. Ps. 401 and 402 with costs, one set, I reverse

the order of the lower Court and direct the District Munsiff to determine the question whether Rukmani Ammal or Seethaiammal is or is not the

legal representative of the deceased plaintiff, Pichu Ayer and then proceed with the suit. C.R. Ps. Nos. 403 and 400 are dismissed with costs, one

set.