

(1966) 01 MAD CK 0004
In the Madras High Court

Santharam by Next Friend, Saradambal Ammal	APPELLANT
Vs	
S. Ramanuja Reddiar	RESPONDENT

Date of Decision : 07-01-1966

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 20, 3
Hindu Minority and Guardianship Act, 1956 — Section 2, 3, 4(a)

Citation : (1966) 79 LW 260 : (1966) 2 MLJ 546

Hon'ble Judges : T. Venkatadri, J

Bench : Single Bench

Judgement

T. Venkatadri, J.—This appeal arises out of execution proceedings in O.S. No. 1 of 1946, on the file of the Sub-Court, Cuddalore, a suit

instituted by the appellant herein against the respondent herein. The appellant is the illegitimate son of the respondent. The decree was originally

passed by the Sub-Court, Cuddalore, on 7th February, 1947 and it was confirmed by the High Court on 2nd February, 1951. Long after the

decree was confirmed by the High Court in the year 1951, the Hindu Adoptions and Maintenance Act (LXXVIII of 1956) came into effect. The

appellant herein filed E.P. No. 196 of 1962, out of which this appeal arises for arrears of maintenance for the period 17th October, 1961 to 17th

June, 1962. This application was resisted by the respondent herein as not maintainable on the ground that on the date of presentation of the present

E.P. the minor Santharam, i.e., the appellant herein, became a major as he completed 18 years of age on 31st August, 1961 and further he cannot

claim any maintenance since the Act came into force. The Courts below have come to the conclusion that the decree obtained by the appellant

herein becomes unexecutable since he attained majority on 31st August, 1961,

and, therefore, dismissed the E.P. and the said order has been confirmed by the District Judge. It is against this order, the illegitimate son has preferred the present appeal.

2. In this appeal, it was urged that since the decree was passed long ago before the Act came into force, he is entitled to execute the decree and

that the executing Court cannot go behind the decree. There seems to be some force in this contention urged by learned Counsel for the appellant;

but it is unnecessary to go into this question since I have to decide only whether the present E.P. for arrears of maintenance from 17th August,

1961 to 17th August, 1962, is maintainable because admittedly on the date of the presentation of the petition, he had attained 18 years of age. The

next question is whether the appellant should be considered to be a minor as soon as he reached the age of 18 years, or 21 years under the Indian

Majority Act. It is common case that the minor was represented by his mother Saradambal, a Court guardian appointed under the Guardian and

Wards Act. Under the Guardian and Wards Act, a minor continues to be so till the age of 21. If it is considered that he is a minor appointed under

the Guardians and Wards Act, he is still a minor on the date of the petition in spite of the fact that a minor has been defined u/s 3 of the Hindu

Adoptions and Maintenance Act as a person who has not completed the age of 18 years. u/s 20 of the Hindu Adoptions and Maintenance Act, an

illegitimate father is entitled to maintain his illegitimate child so long as he is a minor as defined u/s 3 who has not completed the age of 18 years.

Therefore, the learned Counsel for the respondent contended before me that when there is a specific provision in the Act, that a minor is defined as

a person who has not completed the age of 18 years, the other provisions of the other Acts, should not be taken into consideration. But there is a

decision of Veeraswami, J., who considered all the relevant portions of this section in Swaminatha v. Angayarkanni Ammal (1963) 2 M.L.J. 229 ,

he has made the following observations:

But as I read the sections in the two enactments I am unable to regard Section 4(a) of the Hindu Minority and Guardianship Act as in any Way

inconsistent with Section 3 of the Indian Majority Act. A perusal of the sections of the Hindu Minority and Guardianship Act shows that its

purpose is merely to replace the personal law governing a Hindu in respect of the

age of minority. The Hindu Minority and Guardianship Act itself does not contain provision for appointment of a Court guardian. On the other hand, this Act itself, as I already mentioned, provides that its provisions shall be in addition to and not in derogation of the Guardians and Wards Act, 1890. For the purpose of appointment of a Court guardian one has, therefore, to look to the provisions of the Guardians and Wards Act, 1890, and the definition of a minor in the Indian Majority Act. Further Section 4(a) of the Hindu Minority and Guardianship Act also indicates that the definition of a minor made therein is only for purposes of that Act. The purpose of the Act is not to supersede the provisions of the Guardians and Wards Act, 1890, but to supplement it. It follows, therefore, that to the extent the first part of Section 3 of the Indian Majority Act provides that Where a Court guardian has been appointed for the person of a minor he shall be deemed to be a minor until he shall have completed the age of 21 years, it is not inconsistent with the definition of a minor u/s 4(a) of the Hindu Minority and Guardianship Act.

3. Relying on this decision, we can safely presume that on the date of the petition, the appellant continued to be a minor in spite of the fact that he has completed the age of 18 years. Section 2 of the Hindu Minority and Guardianship Act says that the provisions of the Act shall be in addition to and not, save as hereinafter expressly provided, in derogation of the Guardians and Wards Act, 1890. Therefore, I feel that the findings arrived at by the Courts below seem to be erroneous; and the E.P. is maintainable since even though he had completed 18 years of age, still he continued to be a minor under the Guardians and Wards Act. But the other question whether the decree is executable or unexecutable since the Act came into force, is left open.

4. This appeal is allowed. Each party will bear their own costs throughout. No leave.