
(1925) 07 MAD CK 0008
In the Madras High Court

Tulasidass Govindjee

APPELLANT

Vs

Madhavadas Lalajee and Others
In Re: Liladhar Sait

RESPONDENT

Date of Decision : 22-07-1925

Acts Referred:

Guardians and Wards Act, 1890 — Section 41

Citation : 92 Ind. Cas. 570

Hon'ble Judges : Srinivasa Aiyangar, J

Bench : Single Bench

Judgement

Srinivasa Aiyangar, J.—I am clearly of the opinion that this application is incompetent The minor for whose person and property the

guardian had been appointed in this matter is now admitted to be dead and the petitioner now before me claims under an assignment from the son

of the deceased second respondent and I am told that the second respondent's son had a right so to assign a share in the property, because it is

alleged that on the death of the minor, the son of the second respondent became one of the reversionary heirs to the estate. When the application

came on for hearing before me last week, I intimated to the learned Vakil for the petitioner, Mr. Jayarama Iyer, that I had my doubts whether such

an application would be maintained under the Guardians and Wards Act after the death of the minor, I have now been referred to the case of

Nataraja Pillai v. Subbaraya Pillai 51 Ind. Cas. 529 : (1918) M.W.N. 410. In that case, Oldfield and Sadasiva Iyer, JJ., held that the words ""for

any cause"" in Clause 3 of Section 41 of the Guardians and Wards Act were wide enough to cover the case of the death of a minor, though such at

contingency is not contemplated or provide ed" for in the previous portion of that section. With all respect, I am constrained to state that I very

much doubt the correctness of that decision but being a decision of a Bench of this Court I cannot regard it as" anything but binding on me. But, for

the purpose of this application, it is unnecessary for me finally to hold whether or not the view of the law as set out in that decision is correct. In

that case what the learned Judges said was that the section applied and it was within the discretion of the lower Court to make or to refuse to

make an order of the kind referred to therein. Even though the section might apply to cases of the death of a minor, still, I am clear in my mind that-

the section is applicable only to simple cases where there can be no doubt whatever about the succession to the minor and about the items of

property which belong to the minor or the accounts relating to the management of the estate. When, however, there is a dispute relating to

succession or the likelihood even of a dispute as to succession, in my judgment, the Court has no powers under the Guardians and Wards Act to

seek to determine the succession to a deceased minor and thereupon make any orders for granting delivery of possession of property. Further the

prayers in this application are far from being identical with the reliefs asked for apparently in the application with the order on which the learned

Judges were, dealing in the case in the Madras Weekly Notes. The section clearly speaks merely of orders being passed for the delivery of any

property in the possession of the guardian or under his control and also for the delivery of any accounts in his possession or control. The prayers in

this present application are for rendering of the accounts. The phrase ""rendering of the accounts"" means an order against the guardian for an

account as in a suit for an account and cannot possibly mean the delivery of account books alone. It is also admitted that O.S. No. 2 of 1924 on

the file of the Additional Subordinate Judge of Coimbatore is now pending to determine the succession to the minor's estate. In the face of the

admitted fact that the succession to the minor's property is under litigation, or in other words, when the question is pending before another Court

of competent jurisdiction for the purpose of determining the person who would be entitled to the property it is impossible to accept the contention

that the Court that appointed the guardian of the person and property of the minor would have jurisdiction to make such an order as is asked for.

2. I am also surprised at prayer No. 2 for the removal of the guardian from the office when, exconcessu, his powers as guardian have ceased u/s

41 of the Guardians and Wards Act and that is the very basis of the contention before me.

3. The third prayer is still more strange, that the Court should appoint a fit and proper person to be in charge of the estate. I certainly think that a

Court acting under this enactment is really functus officio when the minor dies. Any disputes or rights with regard to the property of the minor

should be litigated in the ordinary Tribunals of the country. It may be that in simple cases where no contest arises or can arise, the Court having

regard to the fact that it appointed a particular person as guardian and entrusted him with the management of the property may make simple orders

for the purpose of the delivery of the property. But I do not think even such a provision can be extended to include the determination of doubtful or

disputed rights to the property of a deceased minor.

4. It is not for me to suggest what course the petitioner should adopt. I should have thought that the remedy would have been obvious to any one

who looked at the facts and circumstances of the case that the petitioner would have been well-advised to have gone to the Coimbatore Court and

applied for the appointment of a Receiver who would have been able either to get such reliefs as might be needed or else to enforce such rights by

proper proceedings. I must, therefore, dismiss the present application.