

(1948) 11 MAD CK 0006
In the Madras High Court

Vedachala Reddy by next Friend, Subramania Reddiar	APPELLANT
Vs	
Narayanaswamy Reddy	RESPONDENT

Date of Decision : 18-11-1948

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 1, Order 9 Rule 9

Citation : (1949) 1 MLJ 293

Hon'ble Judges : Mack, J

Bench : Division Bench

Judgement

Mack, J.—The petitioner is a Hindu minor who sought to sue in forma pauperis by a next friend under Order 32, Rule 1, Civil Procedure

Code, to set aside an alienation originally made by his own father on various grounds. The learned District Munsiff rejected his application under

Order 33, Rule 5 (d-1) on the ground that it was barred by Order 9, Rule 9, Civil Procedure Code, in view of a previous suit O.S. No. 13 of

1944 filed on behalf of the same minor by another next friend for the same relief being dismissed for default. It is common ground that an

application made by the next friend to set aside that order of dismissal was also dismissed. The minor's father is not made a party to the present

suit and is said to be dead. It is not known and no one can inform me whether he was alive during the pendency of O.S. No. 13 of 1944. That fact

is not really material.

2. It is urged on behalf of the petitioner that it is open to another next friend to file a suit on the ground of the first next friend's gross negligence or

fraud even during the minor's minority. But no decision has been placed before me in India where such a suit by another next friend has been

permitted. My attention has been drawn to Trevelyan's Law relating to Minors, fifth edition, at page 287, where without any authority in Indian or any other case-law, it is observed that it is not necessary that the minor should wait until he attains majority before taking proceedings to get rid of the consequences of his next friend's or guardian's fraud or negligence and that proceedings can be taken on his behalf by another next friend. The application of that dictum to this type of suit brought on behalf of Hindu minors to set aside alienation made by their de jure and natural guardians, their fathers, is extremely difficult to appreciate or define. The only decision placed before the lower Court, *Lalla Sheo Churn Lal v. Ramachandra Debey* ILR (1894) Cal. 8 and quite rightly rejected by the learned District Munsiff as inapplicable, concerned a case where a minor after attaining majority filed a suit alleging gross negligence on the part of a next friend, who had allowed a suit to be dismissed while he was a minor. There is, as the lower Court has observed, no prayer even in the present suit to set aside the previous decree on the ground of the previous next friend's gross negligence. I have no hesitation in confirming the learned District Munsiff's order rejecting the present plaint under Order 33, Rule 5 (d-1) as being barred under Order 9, Rule 9, Civil Procedure Code.

3. In the present case the learned advocate for the petitioner is unable even to tell me in what way the present next friend is related to the minor nor does such relationship even appear on the face of the plaint. He is not even able to say how the previous next friend in O.S. No. 13 of 1944 was related to the minor or whether the father was alive during the pendency of that suit. These suits filed by next friends on behalf of Hindu minors against their own fathers who when alive, generally are impleaded as defendant 1, more often than not remaining ex parte and being behind the suit itself constitute a grave problem in speculative litigation. I should like to express my considered opinion that these suits by next friends who can crop up under the provisions of Order 32, Rule 1, Civil Procedure Code, as it stands are often filed without any sense of responsibility. There is little or no control over these next friends who can bring to Court a large number of defendants as alienees in these suits. It seems very desirable to exercise some Court control over next friends who file this type of suits by requiring them first to be appointed property guardian under the

Guardians and Wards Act, of the minors in whose interests they purport to act. This will result in some Court control over such litigation and would also I think be in the real interests of the minors themselves.

4. The present petition is dismissed with costs.