

Arumuga Mudali Vs. Viraraghava Mudali

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Court : Chennai

Decided On : Oct-30-1900

Reported in : (1901)11MLJ69

Appellant : Arumuga Mudali

Respondent : Viraraghava Mudali

Judgement :

1. There is no doubt according to the authorities to which our attention has been drawn that the husband is the legal guardian of his wife from the moment of marriage whether the marriage is consummated, or not. The real question in this case is whether the husband is entitled to the custody of his wife as against the parents, when she has not yet attained her maturity, and no special reason having been shown why the girl should be taken from their custody. As found by both the Courts below, it is the general practice of the Hindu community in this Presidency for a girl wife to be left with her parents until she attains puberty. The case of *Ramien v. Kondammal* (Sudder Decisions 1858, p. 154) is a direct authority on this point. To hold that the husband is not entitled by general custom to the custody of immature wife as against the parents does not really detract from his general rights as her legal guardian. Even in the matter of custody he would be entitled to it if it should appear necessary in the interests of the girl, but in the absence of evidence to the contrary, her custody by the parents is presumably preferential, which is no doubt the foundation for the general custom. In this view we think the lower Courts were right in dismissing the plaintiff's suit for the

recovery of his child wife.

2. The second appeal is dismissed with costs.

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