

In Re: Rayalla Ramappa

In Re: Rayalla Ramappa

SooperKanoon Citation : sooperkanoon.com/792651

Court : Chennai

Decided On : Jul-24-1944

Reported in : AIR1944Mad528

Appellant : In Re: Rayalla Ramappa

Judgement :

Byers, J.

1. The main point taken in this appeal against an order under Section 476, Criminal P.C., is that the appellant against whom a complaint has been directed to issue for offences he is alleged to have committed under Sections 465, 467 and 471, Penal Code, was not a party to the proceeding within the meaning of Section 195 (1) (c) of the Code. The appellant's learned advocate relies on the decision in Emperor v. Mallappa Tejappa : AIR1937 Bom14 in which it was held that the guardian or next friend of a minor plaintiff in a suit was not a party to the proceeding within the meaning of Section 195 (1) (c) of the Code. In the course of the judgment, reference was made to Rupchand v. Dasodha (1908) 30 All. 55, a case in which the question of limitation was involved: the plaintiff had appealed but failed to implead the guardian ad litem of the minor respondent, and by the time an attempt was made to remedy the defect the period of limitation had run out; objection was taken but it was held that there was no substance in it because the guardian ad litem was not a party to the suit or to the appeal. In Satyanarayana v. Anjareddi A.I.R. 1941 Mad. 719 the learned Chief Justice and Somayya J. held

that the word 'plaintiff' in Section 95, Civil P. C., must be confined to the plaintiff and it does not include the next friend of a minor plaintiff, and consequently no order could be made under that section against the next friend of a minor plaintiff by way of compensation. The learned Public Prosecutor contends that a guardian instituting a suit on behalf of a minor is as much a plaintiff as a party who is litigating in his own name; but in view of these authorities, and there is no decision cited to the contrary, I must hold that a guardian is not a party within the meaning of Section 195 (1) (c), Criminal P. C. In view of this it becomes unnecessary to consider the other objections which have been taken to the order and it is accordingly set aside.

2. There are, however, circumstances in this case which render it necessary that action should be taken against the appellant who has since 1928 been mainly instrumental in agitating the claims of his son to have been adopted by one Lakshmappa in that year. The falsity of the claim and the document on which reliance was placed has been found by more than one learned District Judge; and although the appellant may not be a party within the meaning of Section 195 (1) (c) of the Code, it will be open to the learned District Judge to proceed against him in respect of an offence punishable under Section 193, Penal Code, which he would appear to have committed. In the course of his evidence he stated that he was present when the adoption took place, that the adoption deed was drawn up and executed in his presence, and that he attested it. Whether or not the delay which has elapsed between 1928 and the present proceedings is material will no doubt be decided by the learned District Judge if he initiates further proceedings. No order as to costs.