

**C.B. Chandrasekhar**

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**Court :** Chennai

**Decided On :** Aug-08-1989

**Reported in :** I(1990)DMC410

**Judge :** Abdul Hadi, J.

**Acts :** Indian Succession Act - Sections 236; Guardian and Wards Act - Sections 4(2); [Hindu Minority and Guardianship Act, 1956](#) - Sections 4

**Appeal No. :** O.P. 319 of 1989

**Appellant :** C.B. Chandrasekhar

**Advocate for Pet/Ap. :** B. Jagannathan, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**Abdul Hadi, J.**

1. This Original Petition is for appointing the petitioner as guardian of his minor daughter in order to enable him to file, on her behalf, petition for Letters of Administration with the Will dated 22-7-1981, annexed which was executed by the said minor's grandfather. It is said that under the said Will, the said minor is the legatee, entitled to half share in the immovable properties set out in the schedule to the petition. The petitioner being the father of the said minor, is the natural

guardian under Hindu Law. So, I put a question to the learned counsel for the petitioner, asking him whether the petitioner could not, as the natural guardian, file an Original Petition straightway, praying for the above referred to Letters of Administration, without this additional Original Petition for appointing him as a guardian of the said minor. I also pointed out to him that under the Guardian and Wards Act, a person who was natural and lawful guardian, was automatically entitled to exercise the right of a guardian, without any order of Court appointing him and that he need not be formally appointed vide *Mt. Ulfat Bibi v. Bafati* : AIR1927 All581 , *Rasulan v. Dilawar* : AIR1971 All248 and *Mistafa v. Inyath Rathima Shah*, 89 LW 59. But, he replied that since the Office of this Court insisted that before a petition for Letters of Administration with the Will annexed is filed, he should get himself first appointed by the Court as guardian and then only file a petition for Letters of Administration on behalf of the said minor. I do not think that this view is correct. In *Sarajubala v. Jyoti Kamaldas* : AIR1973 Cal45 , it has been held that where no executor is appointed under the Will, a petition filed by minor legatee through his natural guardian for grant of Letters of Administration was maintainable in law and that Section 236 of the Indian Succession Act was not a bar to the filing of such a petition. This decision was rendered by a single Judge of the Calcutta High Court on a reference made to him for decision when two Honourable Judges of the said Court had differed on this point of law. Section 236 of the Indian Succession Act says that Letters of Administration cannot be granted to any person, who is a minor. The learned Judge of the Calcutta High Court, who rendered the above said decision took into consideration the following principles set out by him in paragraph 18 of the judgment :--

(a) the provision in the Indian Succession Act as to persons who are entitled to Letters of Administration is not so stringent as that of Probate;

(b) the welfare of the infant or the minor is a paramount consideration and the court should always lean in favour of safeguarding the interests of the minors;

(c) in the matter of administration it ought to follow the interest and a minor may have a large interest in the Estate as in this case.

(d) the property may be in jeopardy; it may be perishable or otherwise;

(e) there is no bar in the Act, to other disqualified persons except persons of unsound mind and no bar about the appointment of minor as an executor;

(f) the bar by necessary implication is not to be favoured;

(g) the language in the Act should not be too strained and in doubtful cases the Letters of Administration may be granted, and lastly--

(h) in the matter of Letters of Administration the court has discretion unlike that in the probate'.

Then, the learned Judge concludes by saying 'if we apply these principles to the facts in the instant case, the answer on the point under reference cannot but be plainest possible yes.'

2. Section 236 of the Indian Succession Act rightly bars grant of Letters of Administration to a minor because of his legal incapacity. But it does not bar his guardian, whether natural guardian or a guardian appointed by court, obtaining Letters of Administration on his behalf. The term 'guardian' is defined under Section 4(2) of the Guardian and Wards Act, as the person having the care of the person of a minor or of his property, or of both his person and property. It has also been held in several decisions that this definition has been used in a very wide sense and such a person need not necessarily be a statutory guardian appointed or declared under the said Act and the said definition includes a natural guardian too. Under Section 4(b) of the [Hindu Minority and Guardianship Act, 1956](#) also the term 'guardian' includes a natural guardian. Further Section 6 of the said Act says that the father is the natural guardian.

3. No doubt, it has been held by this Court in *Viramma v. Seshamma* AIR 1931 Mad. 343 (DB) that, in the case of Section 244 of the Indian Succession Act (which provides that when a minor is sole executor or sole residuary legatee, Letter of Administration with the Will annexed may be granted to the 'legal guardian' of the said minor), before such Letters of Administration can be granted to a 'legal guardian' of a minor, the legal guardian must apply to be appointed the minor's guardian to enable him to obtain Letters of Administration for the benefit of the

minor. It has also been *Bhagawathi v. Bahuria* AIR 1920 Pat. 182 that the expression 'legal guardian' means a guardian appointed under the Guardian and Wards Act. But, the present case is not a case of a minor, who is sole executor or sole residuary legatee. Therefore, I think that the above decision reported in *Viramma v. Seshamma* (supra), will not apply to the facts of the present case. I, therefore, hold that the present petition is unnecessary and the petitioner can straightaway file an Original Petition for grant of Letters of Administration with Will annexed on behalf of his minor daughter. Hence this petition is dismissed.

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