

In Re: Periaswami Goundan

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Court : Chennai

Decided On : Oct-06-1953

Reported in : AIR1954Mad810

Judge : Ramaswami, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 32, Rule 15; Code of Civil Procedure (CPC) , 1882 - Sections 463

Appeal No. : Civil Revn. Petn. No. 1694 of 1953

Appellant : In Re: Periaswami Goundan

Advocate for Pet/Ap. : M. Natesan, Adv.

Disposition : Petition dismissed

Judgement :

1. This is a civil revision petition, which is sought to be filed against I. A. No. 1685 of 1952 in O. S. No. 586 of 1950 on the file of the District Munsif of Erode.

2. The facts are : O. S. No. 586 of 1950 has been filed by one Karuppa Goundan against Umal Malaya Goundan and three others. This Umai Malaya Goundan is a deaf-mute. The plaintiff filed an application for the appointment of a guardian-ad-litem under Order 32, Rule 15 C. P. C. It was resisted on the ground that Umai Malaya Goundan has been leading a family life with a wife and child and that he is

eking out his livelihood by grazing cattle and doing farm work and that he is quite capable of managing his family affairs and that therefore a guardian-ad-litem need not be appointed.

On the other hand, the elaborate enquiry held by the learned District Munsif revealed two sets of facts. In regard to the properties of this Umai Malaya Goundan several documents have been executed on his behalf by a guardian or his wife has been associated with the conveyances along with him. Ex. A 1 dated 25-2-1924 is a registration copy of maintenance deed by Angammal as guardian of Umai Malaya Goundan to Varusaiyammal. Ex. A. 2 dated 25-2-1924 is registration copy of a release deed by Vanjiyammal to Angammal. as guardian of Umai Malaya Goundan. Ex. A. 3 dated 20-6-1930 is registration copy of a usufructuary mortgage deed by Malaya Goundan and his wife Nanjakkal to Marappa Goundan and another for Rs. 1000. Ex. A. 4 dated 2-9-1930 is registration copy of a sale deed by Nanjakkal on her behalf and as guardian of her husband Umai Malaya Goundan to Chellappa Goundan for Rs. 2000. Ex. A. 5 dated 21-8-1942 is registration copy of a sale deed by Nanjakkal on her behalf and as guardian of Umai Malaya Goundan to Kaliappa Goundan. Ex. E. 3 dated 19-3-1951 is a registration sale deed by Umai Malaya Goundan and his wife to Palani-sami Gounder for Rs. 1500.

The only document which has been executed by Umai Malaya Goundan without a guardian or being associated with his wife is Ex. B. 1 dated 25-2-1927 which is registration copy of a lease deed between Umai Malaya Goundan and Malaya Goundan and another for five years. So, between 1924 and 1951 whenever a document is executed in regard to the properties of this deaf-mute it is by some one purporting to act as his guardian or being associated with him like his wife. Secondly the evidence of the three witnesses, P. Ws. 1 to 3 establishes that this Umai Malaya Goundan is a deaf-mute who is mentally infirm and whom no one else excepting his wife could understand.

The learned District Munsif has carefully marshalled all these facts in paragraph 2 of his order which need not be repeated. He came to the conclusion that the evidence of those three people showed that he cannot be understood by ordinary

persons who are not acquainted with him and that he is not capable of understanding such persons. Therefore, he ordered the appointment of a guardian-ad-litem and inasmuch as this deaf-mute's wife was unwilling to act as his guardian he directed the appointment of a court guardian.

3. The point taken in revision is that the lower court had no jurisdiction to appoint a guardian-ad-litem in the case of a deaf-mute who has been leading a family life with his wife and children and eking his livelihood by grazing cattle.

4. Order 32 Rule 15 C. P. C. corresponds to Section 463 of the Civil P. C. 1882, with some additions and alterations. The old section is reproduced below to observe the changes introduced by the present rule:

'The provisions contained in Sections 440 to 462 (both inclusive) shall 'mutatis mutandis' apply in the case of persons of unsound mind adjudged to be so under Act No. 35 of 1858, or under any other law for the time being in force.'

It would appear on a comparison that the words 'and to persons who though not so adjudged are found by the court on enquiry by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued' have been added. The additions seem to have adopted the principles laid down in -- 'Venkatramana Rambhat v. Timappa Devappa', 16 Bom 132 (A)', 'Kadala Reddi v. Narisi', 24 Mad 504 (B), and -- 'Rasiklal Datta v. Bidhumji Dasi', 33 Cal 1094 (C), and to set at rest the conflicting rulings, all of which have been discussed in the above Calcutta case. The above amendment has overridden -- Subbay v. Buthayya', 6 Mad 380 (D), and -- 'Tukaram Anant Joshi v. Vithal Joshi', 13 Bom 656 (E). By the addition of the words 'or mental infirmity' the scope of the present rule has been enlarged. The old section was applicable to persons of 'unsound mind' only, but the present rule applies to persons of unsound mind as well as to persons who are suffering from any mental infirmity in consequence of which he is incapable of protecting his own interests. The Select Committee have extended this rule so as to cover the case of a person incapacitated from protecting his interests by reasons of his mental 'weakness or of his being a deaf-mute.'

5. A person who is not of unsound mind may yet be mentally infirm within the meaning of Rule 15 : --- 'Amulya Ratan v. Kanak Nalini' : AIR1950 Cal30 . The Lahore High Court considered the case of a deaf-mute in -- 'Nanak Chand v. Banarsi Das', AIR 1930 Lah 425 (G). The learned Judge observed :

'It is to be noted that Dina Nath is absolutely deaf and dumb. We had occasion to watch him during the hearing of the appeal as he was present almost throughout its hearing which lasted for several days and though it cannot be stated that he is mentally deficient, it is at the same time very difficult, in fact almost impossible, to communicate with him or to follow any reply given by him. It is only by means of signs that one can communicate with him and his replies can be given only by means of signs, and it further appears that only a few persons who know him intimately are capable of making him understand by signs what they desire to convey to him or to follow his replies given in a similar manner. Under the circumstances I should say that it is almost impossible for any person not intimately acquainted with him either to reach his mind or to interpret it.

No definition of the expression 'mental infirmity' is to be found in any of the books on the subject dealing with mentally defective persons, nor did the counsel on either side refer to any authorities on the subject; the case, therefore, is one of first impression and after giving the matter my careful consideration I am of opinion that Rule 15, Order 32 is intended to cover the case of persons like Dina Nath who are absolutely deaf and dumb and on that account are incapable of receiving any communications or of communicating their wishes or thoughts to others. The case would be different with those who are not absolutely deaf and dumb but partially so and are able to . communicate with others though with some difficulty.'

Such a case is to be found in -- 'Buggee Ram y. Buldeo Singh', 2 N W P H C R 414 (H), wherein it was held that a deaf and dumb person is not on that account to be deemed incompetent to sue or to be sued. In fact, in that case, according to the Munsif, the man was managing his affairs and had already more than once taken part in suits. Therefore the High Court held that a man who has hitherto been regarded, as is shown by the Munsif's judgment, competent to conduct business and to appear in suits cannot summarily on inspection be thus declared

incompetent. There can be no doubt that these mentally infirm persons are under the peculiar protection of the court and the mere fact that by reason of the ignorance of the court no enquiry was made, will be no excuse and the decree will not be effective: -- 'Bhondomal v. Thomas Skinner' : AIR1937 All39 . It is the duty of the court to enquire into the matter as soon as it comes to be appraised of it. This also applies to the stage of an appeal if without enquiry into or finding as to this mental infirmity the suit is tried out and then the appellate court finds out the defect and in which case it must hold an enquiry -- 'Mirendralal v. Bepin Chandra' : AIR1935 Cal224 .

6. The procedure adopted by the learned District Munsif is correct and merits no inter-ference in revision and this petition is dismissed,

7. It is pointed out by Mr. Natesan that the learned District Munsif has come to a definite finding on a matter which is the subject matter of the dispute in the suit itself and that therefore he reserves the liberty of moving for a transfer of the case from the file of the District Munsif. This is not a matter on which I can pronounce any opinion and it will be entirely for the District Judge to decide, as and when such an application is filed, on its own merits.

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