

## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.*

SUNDARARAJA AYYANGAR (PLAINTIFF), APPELLANT,

v.

PATTANATHUSAMI TEVAR AND OTHERS (DEFENDANTS),

RESPONDENTS.\*

1894,  
January, 16.

*Legal Practitioners' Act—(Act XVIII of 1879), ss. 28, 29—Remuneration by promissory note for past professional services rendered under oral agreements—Guardian and ward—Services necessary or manifestly beneficial.*

A guardian executed a promissory note in favour of a vakil (the plaintiff) as remuneration for his past professional services rendered under oral agreements with him :

*Held*, that a suit upon the note was barred by ss. 28 and 29 of Act XVIII of 1879, and that, as there was no such necessity for the proceedings in question as to render the contract binding on the minors, no suit would lie against them.

SECOND APPEAL against the decree of J. W. F. Dumergue, Acting District Judge of Madura, in appeal suit No. 270 of 1892, reversing the decree of H. Krishna Row, District Munsif of Madura, in original suit No. 272 of 1891.

This was a suit upon a promissory note executed by the fourth defendant as the guardian of his sister's sons, defendants 1 to 3, for Rs. 600 alleged to be due to the plaintiff as remuneration for past professional services rendered by the plaintiff as vakil under oral agreements with the fourth defendant in certain criminal cases and proceedings which arose as follows :—

The present zamindar of Sivagunga and the late zamindar granted the villages of Tiruvelloor, Vembatore and Thavasagudy to the father of the first, second and third defendants on a perpetual cowle in August 1882. After the death of the said defendants' father in September 1887, the present zamindar granted a cowle of the village of Tiruvelloor to his own wife. Disputes arose since then between zamindar's wife backed by the zamindar and first, second and third defendants' mother, who was supported by her brother, the fourth defendant. The zamindar's wife

\* Second Appeal No. 700 of 1893.

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through her husband commenced to issue puttass to the tenants and collect melwaram, which the first, second and third defendants' mother through her brother, the fourth defendant, resisted. The first, second and third defendants' mother leased the village of Tiruvelloor to one Gopalsamy Naidu, who brought suit against zamindar's wife for possession in original suit No. 7 of 1890 on the file of the East Subordinate Court and obtained decree. While matters were thus progressing, two criminal cases arose out of them. The zamindar's wife's agent charged the fourth defendant's agents with carrying off the fruits of Karuvela trees in Tiruvelloor village before the Sub-Magistrate of Sivagunga. The fourth defendant engaged the plaintiff's service to defend the accused and the accused were acquitted. In the other case, while first, second and third defendants' men were taking the melwaram of Vembator village to the said defendants' house, the zamindar's men waylaid them near Othapoovarasu and beating them, carried off the said melwaram produce. The fourth defendant charged the zamindar's men with dacoity and the preliminary enquiry was conducted by the Head Assistant Magistrate, who committed the men to the Session Court where, however, they were acquitted. The plaintiff was engaged to prosecute the men before the Head Assistant Magistrate during the preliminary enquiry. It was mainly in connection with the plaintiff's services in these two criminal cases that fourth defendant executed the plaint promissory note. The promissory note further stated that plaintiff's services were engaged in a breach of trust case and putta transfer case against the zamindar.

The District Munsif passed a decree in favour of the plaintiff, which the District Judge reversed, on the grounds that the suit on the promissory note was barred by sections 28 and 29 of the Legal Practitioners' Act, which require all agreements for remuneration between a pleader and his client to be in writing and filed in Court, and that there was no such necessity in the case as to render the agreement of the guardian binding on defendants 1 to 3.

The plaintiff preferred this appeal.

*Bhashyam Ayyangar* and *Gopalasami Ayyangar* for appellants.

*Sundara Ayyar* for respondents.

JUDGMENT.—This was a suit upon a promissory note executed by fourth defendant as the guardian of his sister's sons, defendants

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1 to 3, for Rs. 600, alleged to be due to plaintiff as remuneration for professional services rendered by plaintiff as vakil in criminal cases and proceedings. We agree with the judge that the claim cannot be supported on the special contract evidenced by the promissory note. Sections 28 and 29 of the Legal Practitioners' Act require that such agreements should be in writing and filed in Court. It appears from the promissory note that it was executed for past services rendered under oral agreements with the fourth defendant.

It has been held that this is no bar to a decree being passed for such reasonable remuneration as may be found due on the principle of *quantum meruit*. If, therefore, the fourth defendant should be held to have had authority to bind the minor defendants 1, 2, 3 by this contract, we should have considered it necessary to call for a distinct finding as to the amount that plaintiff would be entitled to as reasonable compensation for services rendered. But no contract made by fourth defendant whether as guardian of the minors, or as their next friend can be held to be binding on them unless the services to be rendered were either necessary or manifestly beneficial to the minors. The finding of the judge is that there was no such necessity as to render the contract binding on the minors. Having regard to the objects for which the plaintiff was employed, we do not think they were necessary or manifestly beneficial to the minors. In this view of the case it is not necessary for us to express an opinion as to the competency of the minors' mother to appoint a guardian for her sons. We also observe that a decree has been passed against fourth defendant for the amount claimed by plaintiff and he has preferred no appeal.

We dismiss the appeal with costs.

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