

VENKAYYA  
GABU  
v.  
VENKATA  
NARA-  
SIMHULU.

Hindu mother has no authority to make such appointment by will. It was, therefore, the duty of the Court to have enquired under section 7 as to the necessity for appointing a guardian, and, if necessary, to have appointed a fit and proper person. In making such appointment he might very properly take into consideration the wishes of the mother expressed in any genuine will.

We must therefore set aside the order of the District Judge and direct him to restore the petition to his file and to dispose of it according to law. Costs will abide and follow the result.

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## APPELLATE CIVIL.

*Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.*

1897.  
December 13.

SITARAMA CHARYA (PETITIONER), APPELLANT,

v.

KESAVA CHARYA (PETITIONER), RESPONDENT.\*

*Lunatic—Act XXXV of 1858—Guardian for property of lunatic—Lunatic trustee of a mutt.*

A guardian may be appointed under Act XXXV of 1858 to the property vested in a lunatic as the head of a mutt.

**APPEAL** against the order of H. G. Joseph, District Judge of South Canara, in Civil Miscellaneous Petitions Nos. 312 and 348 of 1896.

In the order appealed against the District Judge appointed a guardian to a lunatic, Vidyānidhi Tirtha Swami, the trustee of the Bhandarkeri mutt, whose disciple, Vidyānidhi Samudra Tirtha Swami, was an infant. The present appeal was preferred by the father of the infant and the brother of the lunatic, who sought to be appointed guardian of the infant and who, it was alleged, had become the sole trustee by reason of the lunacy. The respondent was the person who had been appointed guardian to the lunatic.

*Pattabhirama Ayyar and Madhava Rau* for appellant,

*Ramachandra Rau Saheb and Narayana Rau* for respondent.

**JUDGMENT.**—It is not alleged that any one is entitled jointly with the lunatic to the possession or control of the estate, and,

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\* Appeal against Order No. 126 of 1897.

therefore, the cases (*Sham Kuar v. Mohanunda Sahoy*(1), *Jhabbu Singh v. Ganga Bishan*(2), and *Virupakshappa v. Nilgangara*(3)) are not in point.

It is next contended that the Judge had no jurisdiction to appoint a guardian for the property inasmuch as it was in the nature of trust property. The person adjudged to be a lunatic is the head of a mutt. His exact position and right in regard to the property vested in him as head of the mutt have not been investigated as the point was not raised in the Court below.

*Primâ facie*, however, we must take it that the lunatic's right is similar to that of the heads of the mutts referred to in *Sammantha Pandara v. Sellappa Chetti*(4) and *Giyana Sambandha Pandara Sannadhi v. Kandasami Tambiran*(5). In this view it is quite clear that a guardian for such property may be appointed under Act XXXV of 1858. The term "estate" used in the Act is very wide, and may properly be held to include such interest as the head of the mutt has in the property. It is not necessary for us to go further and decide whether the Act would be applicable if the property were trust property, pure and simple.

On the merit we think the Judge's order is right.

We dismiss the appeal with costs.

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## APPELLATE CIVIL.

*Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.*

VIRABHADRAPPA CHETTI (COUNTER-PETITIONER),  
APPELLANT,

1897.  
December 13.

v.

CHINNAMMA (PETITIONER), RESPONDENT.\*

*Civil Procedure Code—Act XIV of 1882, s. 158—Application for succession certificate—Order for costs of adjournment against opposing party—Effect of non-compliance with such order.*

A widow applied for a succession certificate to her late husband. The application was opposed by his brother who claimed to have been undivided from him.

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(1) I.L.R., 19 Calc., 301.

(2) I.L.R., 17 All., 529.

(3) I.L.R., 19 Bom., 309.

(4) I.L.R., 2 Mad., 175.

(5) I.L.R., 10 Mad., 375.

\* Appeal against Order No. 59 of 1897.