

We cannot see how an application for a list of attached property can be said to be an application to take a step in aid of execution.

The appeal is allowed, and the District Munsif's order restored with all costs.

RANGA
CHARIAR
v.
BALA-
RAMASAMI
CHETTI.

APPELLATE CIVIL.

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

VENKAYYA GARU (PETITIONER), APPELLANT,

v.

1897.
December 13.

VENKATA NARASIMHULU (COUNTER-PETITIONER), RESPONDENT.*

Guardians and Wards Act—Act VIII of 1890, ss. 7, 8—Testamentary appointment of a guardian.

A Hindu mother has no authority to appoint a guardian for her son by will; it is accordingly the duty of the Court on an application under Guardians and Wards Act, 1890, for the appointment of a guardian for the son of a Hindu widow who had purported to make such an appointment to inquire, under section 7, as to the necessity for an appointment being made and itself to appoint a fit and proper person.

APPEAL against the order of G. Campbell, District Judge of Ganjam, on Miscellaneous Petition No. 362 of 1896.

This was an application under Guardians and Wards Act, 1890, section 8, for the appointment of a guardian of one Mushnuri Ramamurti, an infant aged ten years. It appeared that one Narasimhulu, who opposed the present application, had been appointed guardian by the will of the adopted mother of the infant. The District Judge dismissed the application, seeing no sufficient reason to interfere under the above circumstances.

The applicant preferred this appeal.

Vylianadha Ayyar and *Pattabhirama Ayyar* for appellant.

Mr. N. Subramanyam for respondent.

JUDGMENT.—Assuming that the will in this case is genuine (a question, however, which has not been tried), the appointment by it of a guardian cannot be held to be such an appointment as comes within section 7, clause 3, of the Guardians and Wards Act, for a

* Appeal against Order No. 129 of 1897.

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.

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,

* Appeal against Order No. 126 of 1897.