

ABUNA-  
CHELLAM  
CHETTY  
v  
RAMA-  
NADHAN  
CHETTY AND  
ALAMBILU  
ACHAI.

Appellant appealed to the High Court.

*T. Rangachariar and S. Venkatachariar* for appellant.

*C. V. Anantakrishna Ayyar* for respondent.

JUDGMENT—The appellant asked for an order under section 258, Civil Procedure Code, certifying that the claim of the attaching-creditor had been adjusted by a compromise. The attaching-creditor is a minor and when the application under section 258 of the Civil Procedure Code was made no application had been made by his guardian for leave to enter into the compromise relied upon as the adjustment as required by section 462 of the Civil Procedure Code. In this state of things we think the Court below was right in declining to make an order under section 258 of the Civil Procedure Code. This appeal is dismissed with costs.

## APPELLATE CIVIL.

*Before Mr. Justice Benson and Mr. Justice Moore.*

LAKSHUMI AMMAL (PETITIONER), APPELLANT.

v.

SEERANGATHAMMAL (RESPONDENT), RESPONDENT\*

1905  
November 23.

*Lunacy Act-Act XXXV of 1858, ss. 3, 9, 10.—Court bound to enquire into existence of property if denied.*

A petition under Act XXXV of 1858 to declare a person a lunatic and to appoint a proper manager and guardian, should not be dismissed without enquiry because the counter-petitioner denies the existence of any property belonging to the lunatic.

The existence of such property is necessary as a pre-requisite to the Court taking action and must be ascertained by enquiry where the existence of such is alleged by the petitioner and denied by the other party.

THE petitioner (appellant) was the wife and the counter-petitioner was the mother of one G alleged to be a lunatic. The petitioner alleging that the properties belonging to G were in the control and management of the counter-petitioner who was wasting them, applied to the District Court under sections 3, 9 and 10 of Act.

\* Civil Miscellaneous Appeal No. 21 of 1905, presented against the order of F. D. P. Oldfield, Esq., District Judge of Tanjore, in Original Petition No. 799 of 1904.

XXXV of 1858 for the appointment of a guardian and manager. The counter-petitioner contended, *inter alia*, that the insanity of G was congenital, and that the properties alleged to have become his by inheritance did not so devolve on him under Hindu Law as he was incompetent to inherit, and that she inherited the properties which accordingly belonged to her.

The District Judge dismissed the application as the counter-petitioner denied that the lunatic had any properties.

Petitioner appealed to the High Court.

Sir V. Bhashyam Ayyangar and S. Gopalaswami Ayyangar for appellant.

S. Srinivasa Ayyangar for V. Krishnaswami Ayyar and S Srinivasa Ayyar for respondent.

JUDGMENT.—We think that the District Judge is in error in refusing to entertain the petition on the ground that it is not admitted that the alleged lunatic is possessed of any property. If that were a sufficient reason the jurisdiction of the Court could be ousted in every case by the respondent simply refusing to admit that the lunatic has any property. No doubt it is necessary as a pre-requisite to the Court taking action that the Court should be satisfied that the alleged lunatic has property.

The petitioner alleges that the lunatic has property, and the respondent denies it. Obviously it is necessary for the District Judge to enquire, it may be summarily, and to decide whether or not the lunatic has property, and in case he decides in the affirmative the District Judge should proceed to take further action in accordance with law.

We set aside the order of the District Judge with costs and remand the petition for disposal according to law.