

Moreover, exhibit B creates a contract personally with the second defendant alone which was not assignable. The plaintiff, therefore, under exhibit A acquires no rights as against the first defendant. The suit should have been dismissed. We reverse the decree of the District Judge and restore that of the District Munsif with costs in this and in the lower Appellate Court.

UTHANDR
MUDALI
v.
RAGAVA-
CHARI.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Moore.

ARUNACHELLAM CHETTY (PETITIONER FIRST DEFENDANT),
APPELLANT,

1905
December 5.

v.

RAMANADHAN CHETTY (MINOR) BY HIS NEXT FRIEND
ALAMELU ACHI (COUNTER-PETITIONER, ATTACHING CREDITOR),
RESPONDENT.*

Civil Procedure Code—Act XIV of 1882, ss. 258, 462—Adjustment of decree by guardian without leave under s. 462 cannot be certified under s. 258 of the Civil Procedure Code.

The provisions of section 462 of the Code of Civil Procedure apply to compromises after decree; and no adjustment by compromise of a decree by the guardian of a minor can be certified under section 258 of the Code of Civil Procedure when the guardian had not applied for leave to enter into the compromise under section 462 of the Code.

THE minor respondent, in execution of a decree, attached certain decrees passed against the appellant and his brother, and took proceedings in execution of the decrees so attached. Thereupon a compromise was entered into by which the guardian of the respondent through her agent agreed to give up a portion of the amount due under the attached decrees and received the balance. The appellant applied to the Court under section 258 of the Code of Civil Procedure to certify the adjustment thus made.

The Subordinate Judge refused to certify on the ground that the guardian had not obtained leave under section 462 of the Code of Civil Procedure to enter into the compromise.

* Civil Miscellaneous Appeal No. 30 of 1905, presented against the order of M.R.Ry. W. Gopalachariar, Subordinate Judge of Madura (East), in Execution Application No. 328 of 1904 (Original Suit No. 46 of 1901).

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.