

VALIA
PANGA
ACHAN
v.
MARUTHA
VERRA
KAVUNDAN.

has shown sufficient cause within the meaning of section 108, Civil Procedure Code, cannot be set aside except so far as it is one and indivisible. I am of opinion that the Munsif had no power to set aside the decree obtained against the defendants Nos. 1 and 2 personally, but that he was right in setting aside so much of the decree as made the devasam liable for the money. I therefore agree that the order of the Munsif should be modified as indicated.

APPELLATE CIVIL.

Before Mr. Justice Miller.

DUR AISAMI REDDI (PLAINTIFF), PETITIONER,

v.

MUTHIAL REDDI BY RAMALINGA REDDI, APPOINTED
GUARDIAN *ad litem* OF THE MINOR RESPONDENT IN PLACE
OF AUTHI AMMAL, HIS FORMER GUARDIAN (DEFENDANT),
RESPONDENTS.*

Guardian and minor—minor bound by bond of guardian for existing liability binding on minor—Civil Procedure Code, s. 622—Material irregularity.

A bond executed by the guardian of a minor as such but which contains only a personal covenant by the guardian to pay and does not charge the minor's estate, will nevertheless be binding on the minor, if it is executed for a pre-existing debt which is binding on him.

A mistaken view of law by the lower Court is no ground for the interference of the High Court under section 622 of the Code of Civil Procedure.

But where the case has not been properly heard by the lower Court and the mistake of law was probably the result of such defective trial the High Court will interfere on the ground that the lower Court had acted with material irregularity within the meaning of section.

THE mother of the minor defendant purporting to act as his guardian executed, in favour of the plaintiff, a bond which was as follows:—

“Simple debt bond executed on 20th September 1902 to Duraisami Reddiyar, son of Subba Reddiyar, residing in Attandamaruthur, Tirukkoyilur taluk, by Authi Ammal, guardian and mother

* Civil Revision Petition No. 449 of 1906, presented under section 622 of the Code of Civil Procedure, praying the High Court to revise the decree of F. H. Hammett, Esq., District Judge of South Arcot, in Appeal Suit No. 207 of 1905, presented against the decree of M.R.Ry. K. V. Desikachariar, District Munsif of Vriddhachalam, in Original Suit No. 652 of 1905.

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of Muthial Reddi, a minor son of T. Kesava Reddiyar, residing in Puvanur (K). A dispute arose in the said Attandamaruthur between you and Muthial Reddiyar about partition; and the common paddy of you, etc., was sold and Rs. 192 was deposited with T. Venkata Reddiyar. As this sum of one hundred and ninety-two rupees has been received by my husband from the said Venkatraya Reddiyar, the sum due out of this amount to you is Rs. 96. For this sum of rupees ninety-six the interest due from the month of Thai, Manmatha (January-February 1895) up to date is Rs. 76-14-0 : total for the two items is Rs. 172-14-0. As the panchayat has decided that I should pay the whole of this sum of rupees one hundred and seventy-two annas fourteen to the owner, I shall pay, on demand, the principal together with interest at the rate of 1 per cent. per mensem, in one single instalment and discharge the debt."

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The plaintiff brought this suit to recover the amount due on the bond and the plaint recited the original liability of the father of the minor defendant, and the execution of the plaintiff bond in consideration of such liability. The mother who was the guardian *ad litem* of the minor defendant admitted the claim.

The Munsif, however, dismissed the suit on the ground that the bond as drawn contained only a personal covenant by the guardian and could not bind the minor. No evidence as to the nature of the debt was taken.

The Munsif's judgment was confirmed on appeal by the District Judge. The plaintiff put in revision petition in the High Court under section 622 of the Code of Civil Procedure. While the petition was pending, another guardian *ad litem* was appointed, who disputed the liability of the minor.

T. R. Ramachandra Ayyar for petitioner.

T. Pathabhirama Ayyar for respondent.

JUDGMENT.—A new guardian has now been appointed and contests the petitioner's claim. I take it that Subrahmania Ayyar, J.'s order amounts to a ruling that the minor was not duly represented in the Courts below, and the question I have to decide is whether the Courts below have acted irregularly in dismissing the suit on the grounds, (1) that the bond is not so drawn as to bind the minor and, (2) that the guardian could not bind the minor. The bond does not purport to create a liability, but evidences a pre-existing liability, and there seems to be no reason in law why,

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if there actually was upon the minor a liability to pay the debt of his father the guardian should not bind him by a bond (vide *Subramania Aiyar v. Arumuga Chetty*(1). I cannot, acting under section 622, Civil Procedure Code, reverse the decree of the District Judge merely because he has made a mistake in law, but it is urged before me that but for the admission of the minor's mother, the petitioner would have been able to establish his claim, and the Courts have acted with the material irregularity in deciding against him without hearing his case.

The District Judge does not determine as a fact that the document was not executed by the guardian as guardian on behalf of the minor and on that point, in my opinion, it was open to the petitioner to adduce evidence, if the admission of the guardian had not rendered that necessary. I think the Courts have acted irregularly and had they heard the petitioner's case it is not impossible that they would not have made the mistake of law which they have assuming the petitioner's case to be true now made.

I therefore set aside the decrees of both Courts and remand the suit for disposal by the Court of First Instance. Costs will abide the event.

(1) I.L.R., 26 Mad., 330.
