

APPELLATE CIVIL.

Before Mr. Justice Munro and Mr. Justice Pinhey.

KAJIKAR LAKSHMI (FIRST RESPONDENT), APPELLANT,

v.

MARU DEVI AND OTHERS (Nos. 1 TO 4 PETITIONERS AND
SECOND RESPONDENT), RESPONDENTS.*

1908.
October 29.

Guardian and Wards Act VIII of 1890, ss. 10, 11—No guardian of property to be appointed in the case of a minor member of an undivided family governed by Aliyasunthanum Law.

The only right of a minor member of an undivided family governed by Aliyasunthanum Law is a right to be maintained in the family house; and, where there are adult members of such family, no guardian of property of such minor can be appointed by the Court under the Guardian and Wards Act.

No such appointment can be made, even with the assent of the adult members, as the minor has no property in respect of which a guardian can be appointed.

APPEAL against the order of H. O. D. Harding, District Judge of South Canara, in Original Petition No. 87 of 1901. Petitioners Nos. 1 and 2 and petitioners Nos. 3 and 4 (minors) were members of an undivided family of Jains governed by the Aliyasunthanum Law. The second petitioner was the son and petitioners Nos. 3 and 4 minor daughters of the first petitioner.

The petitioners applied under sections 10 and 11 of the Guardian and Wards Act for the appointment of a guardian of the properties of the minor Nos. 3 and 4 petitioners.

The petition was opposed by the grandmother of petitioners Nos. 2—4 on the ground that no guardian could be appointed as the family was an undivided family governed by the Aliyasunthanum Law. The District Judge appointed a guardian

The grandmother first (respondent in the lower Court) appealed.

K. Ramanath Shenai and *K. P. Madhava Rao* for appellant.

The Hon. The advocate-General for respondents.

JUDGMENT — There is ample authority that a guardian of the property of an infant cannot properly be appointed in respect of the infant's interest in the property of an undivided Mitakshara

MUNRO
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family, the reason being that the infant's interest is not individual property—*vide Gharibullah v. Khalak Singh*(1), *Harihar Pershad Singh v. Mathura Lal*(2) and *Sham Kuar v. Mohanunda Sahoy*(3).

The same principle would apply *a fortiori* in the case of an Aliyasunthanum family like the present, where the only right of the infant is a right to be maintained in the family house. It is argued that there is no objection to the appointment of a guardian in the present case because the mother and adult brother of the minors are willing that a guardian of the minor's property should be appointed. This however cannot affect the question; seeing that the minors have no property in respect of which a guardian can properly be appointed. This appeal is therefore allowed and the order of the District Judge set aside with costs in both Courts.

APPELLATE CIVIL.

Before Mr. Justice Munro and Mr. Sankaran-Nair.

SUBBARAYA MUDALIAR AND OTHERS, PLAINTIFFS,

v.

RAKKI DEFENDANT.*

1908.
November
20.
December
3.

Estates Land Act (Madras) I of 1903, s. 189—Civil Courts have jurisdiction to hear and determine suits instituted before Act came into force.

Section 189 of the Madras Estates Land Act does not take away from Civil Courts the jurisdiction to hear and determine suits which were taken cognizance of by them before the Act came into operation. The section merely bars cognizance of suits and says nothing of pending suits.

Sadasiva Pillai v. Kalappa Mudaliar, [(1901), I.L.R., 24 Mad., 39], referred to.

Vedavalli Narasiah v. Mangamma, [(1904), I.L.R., 27 Mad., 538], referred to.

CASE stated under section 617 of Act XIV of 1882 by S. Rangamadha Mudaliar, District Munsif of Tiruvalur, in Small Causes Suit No. 130 of 1908.

The facts of the case are sufficiently stated in the judgment.

T. Rangaramanujachariar for appellant.

C. Aiyasami Sastri for respondent.

(1) (1903) I.L.R., 25 All., 407. (2) (1908) I.L.R., 35 Calc., 561.
(3) (1892) I.L.R., 19 Calc., 301. * Referred Case No. 13 of 1908.