APPELLATE CIVIL.

Before Mr. Justice Kumaraswami Sastri and Mr. Justice Reilly.

1928, January 16.

ATHIAPPA NARAYANA REDDY (1ST DEFENDANT), APPELLANT,

v.

AUDILAKSHMI AMMAL, A MAJOR AND GUARDIAN ON RECORD DISCHARGED AND 2 OTHERS (PLAINTIFF, 2ND DEFENDANT AND PARTY RESPONDENT), RESPONDENTS.*

Indian Registration Act (XVI of 1908), ss. 2 (10), 32, 40 and 41 and 77—Authority to adopt in favour of a minor wife—Death of executant—Presentment for registration by father of the minor, whether valid—Whether a Court can under sec. 77 direct an invalid registration.

On the marriage of a minor Hindu girl, her father, who was till then her natural guardian ceases to be her guardian. Hence he cannot, as her guardian, validly present for registration a will of her deceased husband, authorizing her to adopt. If after his presentation, the Registrar refuses to register the will, the Court will not, in a suit under section 77 of the Indian Registration Act, compel the Registrar to register it. *Amba* alias *Padmavati* v. *Shrinivasa Kamathi*, (1921) 26 C.W.N., 369 (P.C.), followed. *Venkatappayya* v. *Venkata Ranga Row*, (1920), I.L.R., 43 Mad., 288, not followed.

Quaere.—Whether a will or an authority to adopt can be validly presented for registration by a *de jure* guardian?

APPEAL against the decree of B. SUBBA RAO, Subordinate Judge of Vellore, in O.S. No. 15 of 1922.

The facts are given in the judgment.

M. Patanjali Sastri for appellant.—The so-called will is a forgery. The evidence in the case establishes that the testator could not have executed it. Supposing it is genuine it is not a will but only an authority to adopt, as it does not contain any independent disposition of any property but simply gives a power to adopt and merely states the legal consequences of the adoption.

* Appeal No. 360 of 1923.

As it is not registered, it is invalid as an authority to adopt; *Somasundara Mudaly* v. *Duraisawmi Mudaliyar*(1) *Sri Jagannadha Gajapati* v. *Sri Kunja Bihari Deo*(2), *Bheema Deo* v. *Behari Deo*(3). Even supposing that it can be registered, the Registrar cannot be compelled to register it as the presentation by the father as guardian of the minor was not a proper presentation. A will or a power to adopt is not like other documents which could be presented by agents or assigns or representatives under section 32, clauses B and C of the Registration Act. A will or authority to adopt can be presented for registration only by the class of persons mentioned in sections 40 and 41 of the Act which are the sections specifically dealing with their presentation and by no one else. An authority to adopt, such as this, could be presented for registration only either by the donor or the donee of the power or the adopted son; see section 40 (2). The omission in the section to empower agents, assigns or representatives to present is not accidental but deliberate, as these two classes of documents are very valuable documents. Even if the donee of the power is a minor, as in this case, the minor can and must present it for registration and not her father and the Registrar cannot refuse to receive the document for registration simply because the person presenting it is a minor, though he may refuse to register if the executant is a minor. Even supposing that a representative of a donee of the authority such as a guardian may present the authority for registration, the father's presentation as guardian is invalid, for on the marriage of the minor he ceased to be her natural guardian and it is her husband's relations that are her legal guardians thereafter. Even if they refuse to present it for registration it cannot be helped. The view of SADASIVA AYYAR, J., in *Venkatappayya* v. *Venkataranga Rao*(4) to the contrary on both the last points, and the decision in Appeal No. 200 of 1918 to the same effect are wrong and must be considered to be wrong in view of the decision of the Privy Council in *Amba alias Padmavati* v. *Srinivasa Kamathi*(5) which affirmed the decision in *Amba alias Padmavati* v. *Srinivasa Kamathi*(6).

K. Krishnamachari (with *K. Chakravarti*) for respondents.—Section 40 is an addition to and is wider than section 32 and gives power to more persons to present documents for

(1) (1904) I.L.R., 27 Mad., 30. (2) (1919) M.W.N., 52.
(3) (1921) I.L.R., 44 Mad., 733 (P.C.). (4) (1920) I.L.R., 43 Mad., 288.
(5) (1921) 26 C.W.N., 369 (P.C.); 14 L.W., 575.
(6) (1918) 7 L.W., 329.

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registration. Ordinarily no minor can act in any matter. If the Registration Act wanted to specially authorize minors to present documents for registration it would have specifically said so. A guardian, though *de facto*, can act and can present documents for registration; I adopt the reasons given by SADASIVA AYYAR, J., in *Venkatappayya* v. *Venkatarangu Rao*(1). It does not appear whether the improbability of hostile legal guardians of the minor widow, such as the relations of her deceased husband, presenting for registration the authority to adopt was pressed before the Privy Council in the case cited. The will is genuine.

JUDGMENT.

KUMARASWAMI SASTRI, J.

KUMARASWAMI SASTRI, J.—This appeal arises out of a suit filed by the respondent (who was the plaintiff acting by her father and next friend) under section 77 of the Registration Act to direct registration of a document purporting to be a will executed by the husband of the minor plaintiff. The Sub-Registrar to whom the document was presented for registration refused to register it on the ground that execution was not proved and his decision was confirmed by the District Registrar on appeal. A suit was filed by the plaintiff by her father as next friend to compel registration. The defendants were the members of the undivided family consisting of themselves and the deceased Guruswami Reddi, husband of the minor plaintiff. The Subordinate Judge was of the opinion that execution of the document was proved and directed registration. Hence this appeal.

The document presented for registration purports to be a will executed by Guruswami Reddi, husband of the minor plaintiff. The minor plaintiff had not attained puberty at the date of the death of her husband and was living under the protection of her father. She had not gone to join her husband's family. The document purports to be a will. It states that the testator while

(1) (1920) I.L.R., 43 Mad., 388.

on a pilgrimage got fever, that he was suffering from fever and was growing worse and that he was an undivided member of the joint family which consisted also of Venkatasubba Reddi and Narayanappa Reddi. It gives power to his wife to adopt Ramachandra Reddi, the son of his sister and nobody else and says that Ramachandra Reddi should enjoy his share of the movable and immovable properties. The document was presented for registration by Bala Reddi, the father of the widow, who under the will is directed to make the adoption. No adoption admittedly was made at the date of the death of the deceased or at the time when the document was presented for registration. The only person who could ordinarily present it for registration would be the widow who was given power to adopt, but as she was a minor it was presented by her father Bala Reddi. It is contended in appeal that the presentation by Bala Reddi was not a valid presentation under the Registration Act and that even if the Sub-Registrar registered the document the registration would be invalid and that therefore no suit would lie in a Court to direct the Registrar to register the document presented by a person who had no authority to present it. It is also contended in appeal that the Subordinate Judge's judgment was wrong on the merits as the evidence and probabilities point to the conclusion that the will was not executed by the deceased. Mr. Patanjali Sastri has laid stress on various circumstances which he says go to show that the deceased could never have executed the will, but we consider that it is unnecessary to go into the question of the execution of the will as we are of opinion that the other ground, namely, that the document was not presented by a person who in law was entitled to present it, is sufficient to dispose of the appeal. Section 32 of the Registration Act provides for persons

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who under the Registration Act are entitled to present a document for registration. Clause (*a*) refers to a person executing or claiming under the document, clause (*b*) refers to the representative or assign of any such person and clause (*c*) refers to the agent of such person, representative or assign duly authorized by power-of-attorney executed and authenticated in the manner prescribed by the Registration Act. Section 2, clause 10 defines a representative as including the guardian of a minor and the committee or other legal curator of a lunatic or idiot. Section 40 deals specially with presentation of wills and authorities to adopt. It runs as follows:

> "(1) The testator or after his death any person claiming as executor or otherwise under a will may present it to any Registrar or Sub-Registrar for registration. (2) The donor or after his death the donee of any authority to adopt or the adoptive son may present it to any Registrar or Sub-Registrar for registration."

Section 41 provides for the registration of wills and authorities to adopt and the procedure to be followed. Section 40 contains no such provisions as are contained in section 32, clauses (*a*), (*b*) and (*c*). It is argued for the appellant that so far as section 40 is concerned, there being no provisions such as are contained in section 32, clauses (*a*), (*b*) and (*c*) the only persons who can present a document are, in the case of wills, the executor or the legatees and in the case of documents giving authority to adopt, the person who executes the document or the person to whom power is given to adopt or the adopted son. It is argued that in cases of minority there is no power in the guardian to present a document for registration. It is contended for the respondents that section 40 which deals with these two classes of documents, namely, wills and authorities to adopt, must be read as subject to the general law that in the case of minors the

de facto or *de jure* guardian can act for a minor and that the omission of clauses (*a*), (*b*) and (*c*) does not restrict but on the contrary enlarges the scope of persons who are entitled to present a document for registration. Reference has been made to *Venkatappayya* v. *Venkataranga Rao*(1), where it was held that a document containing authority to adopt presented for registration by the natural father of a minor was validly presented. SADASIVA AYYAR, J., though he thought that it was unnecessary to go into these questions because of the other findings, still referred to some English authorities and thought that the presentation by a natural guardian was sufficient. This decision was given in May 1919. Reference has also been made to an earlier decision of AYLING and NAPIER, JJ., in Appeal No. 200 of 1908. The document there, was a will and it was held that section 40 was wide enough to cover the presentation of a document by the guardian of the minor interested under the will. This decision was given in October 1912. These decisions no doubt support the contention of Mr. Krishnamachariar, but we think that the matter is concluded by the decision of their Lordships of the Privy Council in *Amba alias Padmavathi* v. *Shrinivasa Kamathi*(2). This decision was on appeal from a decision of ABDUR RAHIM and OLDFIELD, JJ., in *Padmavathi* v. *Shrinivasa Kamathi*(3). The facts of that case, so far as registration is concerned, are similar to the facts of the present case. There the donor was a member of an undivided family. The property was given to the minor daughter-in-law of the donor and the gift deed was presented for registration by the natural father of the minor. The minor had not joined her husband and she was under the protection of her natural father who would be the *de facto* guardian of

(1) (1920) I.L.R., 43 Mad., 288.

(2) (1921) 26 C.W.N., 369.

(3) (1928) 7 L.W., 839.

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the minor. The only difference is that that case would fall under section 32 of the Registration Act because it was a deed of gift and although section 32 makes provisions for presentation of documents in the case of minors, the question was still raised whether the father of a married minor could be the guardian entitled to present a document under section 2, clause 10 and section 32 of the Registration Act. OLDFIELD, J., in that case, was of opinion that the presentation by the natural father of the minor was invalid under section 32. The learned Judge observed:

"I should moreover be ready to hold that they were invalid because under section 32 of the Registration Act the documents could be presented only by plaintiff's representative or assign and P.W. 7 who presented them was not her assign or her representative under section 2 (10) since he had ceased to be her natural guardian on her marriage and had not been appointed her legal guardian".

ABDUR RAHIM, J., did not go into this question as in his view of the facts the document was invalid. OLDFIELD, J., differed from him on the facts but they both agreed that as the document had been revoked before it was presented for registration the plaintiff-donee got no title. On these facts the case went to the Privy Council, the donee being the appellant. Their Lordships set out the facts in detail and the view of the learned Judges and considered it unnecessary to go into the question as to which there was a difference of opinion as they thought that the document conveyed no title as the registration was invalid owing to the document being presented for registration by the natural father of a married girl who was not her guardian. Their Lordships observed as follows:

"Their Lordships do not think it necessary to pronounce any decision on the question upon which these two learned Judges differed. It was not and is not disputed that these two deeds cannot be given in evidence or enforced if they have not

been duly registered. Their Lordships are clearly of opinion that as the appellant was not only a minor but a married woman, her father had ceased to be her natural guardian and was not therefore her assignee or representative within the meaning of section 34 of the Registration Act, 1877. He was not an executant of the said deeds or either of them; neither was he within the meaning of section 34 of that Act, the representative, assign or agent duly authorized on behalf of Krishna Kamathi, the only executant. The presentation by him of the two deeds for registration was in direct conflict with the express provisions of the 34th section. The deeds were consequently never legally registered. The registration of them which was procured was illegal, invalid and a nullity, and if that be so, as in their Lordship's opinion it must be held to be, it is not disputed that the deeds would be void and unenforceable, and this apart altogether from the question whether they have not been implicitly revoked by the agreement, dated the 9th of June 1908, entered into between Krishna Kamathi, and the respondent, and duly registered by the former on the 12th of June 1908. It is therefore unnecessary for their Lordships to expressly decide this latter question. They are of opinion that owing to the invalidity of the registration of the two deeds of May 1908 the appeal fails and must be dismissed".

This decision in our view applies exactly to the facts of the present case and the fact that the present case falls under section 40 which makes no provision for presentation by legal representatives makes the case stronger. In order to hold that the document was properly presented for registration, we have got to hold that under section 40 it is open to the guardian of a minor girl to present a document for registration and further hold that a *de facto* guardian who will not come under section 2, clause (10) can present a document for registration when there is a *de jure* guardian in existence. Even if a guardian can do so we are bound by the decision of their Lordships of the Privy Council to hold that the father of a minor married girl is not a guardian competent to present a document for registration on her behalf. There are no facts to distinguish the

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present case so as to render the decision inapplicable. It has been urged by Mr. Krishnamachariar that it does not appear, that the rights of a *de facto* guardian in cases, where the interests of the *de jure* guardian were adverse to those of the minor, and he was disputing the document, were pressed before their Lordships, but we cannot say that this aspect of the case was not presented to their Lordships in the course of the argument or was not considered by them as it was obvious from the facts set out by their Lordships. It is no doubt true that for some reason or other the legislature has omitted to provide for cases where the donee having power to adopt is the minor widow of a member of an undivided family and the legal guardian of the donee, namely, the other co-parceners are interested in denying the authority to adopt. In such cases the only person who can represent the minor effectively would be the father or other relations of the minor who before the marriage would be her legal guardian or would be her legal guardian at the date of presentation if she remained unmarried. Seeing that authorities to adopt unlike wills require registration the hardship is not imaginary but one of considerable weight but we think this is a question for the legislature and not for us. We are of opinion that having regard to the terms of section 40, section 2, clause (10) and the decision of their Lordships of the Privy Council, the presentation by the father of the minor girl was not a proper presentation by one who was entitled to present the document under the Registration Act. It would be therefore useless to direct the Registrar to register the document which if registered would be inoperative and on this ground we think that the plaintiff's suit for registration under section 77 of the Registration Act should be dismissed. We may point out that we do not decide any question

as regards the factum or validity of the will. The suit is a narrow one under section 77 and the only question that we have to decide is whether the Registrar is bound to register the document if presented. As he is not bound to register a document which is presented by a person not entitled to present it under the Registration Act, a suit under section 77 asking him to register it would not lie. It is no doubt true that this point was not taken before the Sub-Registrar or before the Subordinate Judge, but it is a pure question of law and the fact that it was not taken before the Sub-Registrar or the Subordinate Judge would not enable us to direct an act to be done which will be in contravention of the provisions of the Registration Act, especially when the suit is one under section 77 of the Act. We are however of the opinion that, having regard to these facts, this is a proper case where each party should bear his costs throughout. We reverse the decree of the Subordinate Judge and dismiss the plaintiff's suit, each party bearing his own costs.

REILLY, J.

REILLY, J.—I agree. The decision of their Lordships of the Privy Council in *Amba* v. *Shrinivasa Kamathi*(1) appears to me to suggest that it is only by virtue of clause (*b*) of section 32 of the Registration Act that a guardian can present a document for registration on behalf of a minor under that section. That gives some support to Mr. Patanjali Sastri's contention that under section 40 of the Act, which contains no similar clause, a will or an authority to adopt cannot be presented by a guardian at all. I prefer not to express a definite opinion upon that question on this occasion; but it appears to me quite clear that the decision of their Lordships in *Amba* v. *Shrinivasa Kamathi*(1) is

(1) (1921) 26 C.W.N., 369.

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authority for the proposition that the only kind of guardian who can present a document for registration on behalf of a minor at all is either a guardian according to the personal law of the minor concerned or a guardian legally appointed under the Guardians and Wards Act or otherwise. That is sufficient to dispose of the present case, and I agree therefore that the plaintiff's suit must be dismissed, though in the circumstances of the case it is appropriate that each party should bear his own costs. This restriction of the persons who can present documents for registration on behalf of minors appears to me obviously likely to work great and unnecessary hardship in some cases and I think that is a matter to which the attention of the legislature might well be drawn.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Kumaraswami Sastri and Mr. Justice Reilly.

1928, January 4.

RAMASWAMI CHETTIAR AND THREE OTHERS (DEFENDANTS), APPELLANTS,

v.

TYAGARAJA PILLAI AND TWO OTHERS (PLAINTIFFS), RESPONDENTS.*

O. XIII, r. 1, Civil Procedure Code (V of 1908) and r. 64 of the Civil Rules of Practice, no order under, to produce documents—Production of documents during trial—Rejection, whether justifiable.

A party was not ordered by the Court, under Order XIII, rule I, Civil Procedure Code, to produce his documents at the first hearing, nor was he directed, under rule 64 of the Civil

* Appeal No. 404 of 1923 and C.M.P. No. 2925 of 1924.