

## APPELLATE CIVIL.

*Before Mr. Justice Reilly and Mr. Justice  
Anantakrishna Ayyar.*

1931,  
February 18.

SUBBARATHNAMMAL (PETITIONER), APPELLANT,

v.

SESHACHALAM NAIDU (RESPONDENT), RESPONDENT.\*

*Guardians and Wards Act (VIII of 1890), sec. 7—Guardian of  
minor's person—Person resident outside British India if can  
be appointed.*

Under the Guardians and Wards Act a person residing outside British India cannot be appointed guardian of a minor's person, as over such a guardian the Court cannot exercise its proper control.

APPEAL against the order of the District Court of Chittoor, dated 10th November 1930, and made in Original Petition No. 18 of 1930.

*K. Rajah Ayyar (S. Narasinga Rao with him) for  
appellant.*

*S. Varadachari (S. V. Venugopalachari with him) for  
respondent.*

## JUDGMENT.

In this case it appears that the appellant is a resident of Mysore. It is clearly against the intention of the Guardians and Wards Act that any one residing outside British India should be appointed guardian of a minor's person, as over such a guardian the Court could not exercise its proper control—see *Batcha Chetty v. Ponnusawmy Chetty*(1). The appellant therefore cannot herself be appointed guardian of the minor under the Act. For this reason, without going into any of the

\* Appeal against Order No. 459 of 1930.

(1) (1911) 22 M.L.J. 68.

other questions raised, we find it unnecessary to interfere in the appellant's favour with the order of the learned District Judge. This will not preclude the appellant from seeking any other remedy open to her.

The appeal is dismissed.

A.S.V.

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## APPELLATE CRIMINAL.

*Before Sir Owen Beasley, Kt., Chief Justice, and  
Mr. Justice Sundaram Chetti.*

[IN THE MATTER OF A MINOR MALE CHILD NAMED  
PARTHASARATHI NAIDU.]

SUBBARATHNAMMAL, PETITIONER,

v.

SESHACHALAM NAIDU, RESPONDENT.\*

1931  
March 26.

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Habeas corpus—*Writ of—Infant—Court acting under Guardians and Wards Act (VIII of 1890) declares a person fit and proper to be guardian of—Habeas corpus—Whether available for going behind such order and depriving guardian of custody—Intervention of Court by habeas corpus—Illegal or improper detention necessary.*

Where a Court of competent jurisdiction has under the Guardians and Wards Act (VIII of 1890) declared a person to be a fit and proper person to exercise guardianship over an infant, the procedure by way of *habeas corpus* cannot be utilized for the purpose of going behind such an order and depriving the guardian so appointed of his custody.

It is only in cases where it can be shown that a minor child is illegally or improperly detained that Courts will interfere by way of *habeas corpus*.

PETITION under section 491 of the Code of Criminal Procedure, 1898, praying the High Court to direct the

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\* Criminal Miscellaneous Petition No. 175 of 1931.