

APPELLATE CIVIL.

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

1935,
March 6.

MANDAPAKA SUDARSANA RAO (FIRST DEFENDANT),
APPELLANT,

v.

VARADA KAMESWARA RAO NAIDU AND ANOTHER
(TRANSFEREE DECREE-HOLDER AND ORIGINAL DECREE-HOLDER),
RESPONDENTS.*

*Code of Civil Procedure (Act V of 1908), O. XXXII, r. 11—
Guardian ad litem—Termination of appointment of—
Appointment of another guardian in other proceedings, if
by itself results in.*

A guardian *ad litem* once validly appointed continues to exercise his functions as such until he has ceased to be so, and he only ceases to be so by his retirement with the permission of the Court or by his death or by his removal by an order of the Court. The mere appointment of another guardian in other proceedings does not by itself divest the guardian *ad litem* of his position as such.

Samarendranath Mitra v. Pyareecharan Laha, (1934) I.L.R. 61 Calc. 1023, followed.

APPEAL against the order of the Court of the Subordinate Judge of Berhampore, dated 16th November 1932 and made in Execution Petition No. 78 of 1931 in Original Suit No. 8 of 1928.

D. Ramaswami Ayyar for *H. Suryanarayana* for appellant.

Government Pleader (P. Venkataramana Rao) and *P. V. Rajamannar* for respondents.

BEASLEY C.J. BEASLEY C.J.—The JUDGMENT of the Court was delivered by
The question arising in this appeal is whether, when a person has been validly

* Appeal Against Order No. 148 of 1933.

appointed guardian *ad litem* of a minor defendant and subsequent to the date of the appointment of that person as guardian *ad litem* the natural guardian is appointed by another Court in other proceedings as guardian of the person and property of the minor and the guardian *ad litem* is removed, *ipso facto* the two latter orders the guardian *ad litem's* appointment ceases to have any legality and thereafter he is disentitled to continue the proceedings in the suit as the guardian *ad litem* of the minor. The learned Subordinate Judge held that the appointment of the guardian *ad litem* was not *ipso facto* the subsequent appointment terminated and that consequently the minor was properly represented in the suit. Upon this question there is no direct authority except a decision of the Calcutta High Court, viz., *Samarendranath Mitra v. Pyareecharan Laha*(1). There, it was held that a certificated guardian of minors who has been properly appointed guardian *ad litem* does not *ipso facto* cease to be the guardian *ad litem* because some other person has been appointed certificated guardian in his stead during the pendency of the suit. The facts in this case are exactly similar to those in that case and I agree with the reasons put forward by COSTELLO J. in support of that ruling. If a guardian *ad litem* has once been validly appointed, he continues to exercise his functions as guardian *ad litem* until he has ceased to be so, and he only ceases to be so by his retirement with the permission of the Court or by his death or by his removal by an order of the Court. Those are the only ways in which the guardian *ad litem* can cease to function as such

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during the pendency of a suit. None of those conditions are present here. The mere appointment of another guardian in other proceedings does not by itself divest the guardian *ad litem* of his position as guardian *ad litem*. He still continues to function. For these reasons, the order under appeal was right and this appeal must be dismissed with costs.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Curgenvven and Mr. Justice King.

PERIYAKKAL (APPLICANT), APPELLANT,

v.

THE AGENT, SOUTH INDIAN RAILWAY Co., LIMITED,
TRICHINOPOLY (OPPOSITE PARTY), RESPONDENT.*

Workmen's Compensation Act (VIII of 1923), sec. 2 (n)—
"Workman"—Definition of—Exclusion of a person from
—Conditions—Sec. 12 (1)—Railway company—Ordinary
business of—Maintenance of its line, if part of.

A person, to be excluded from the definition of "workman" in section 2, clause (n), of the Workmen's Compensation Act, must not only be one "whose employment is of a casual nature" but also one "who is employed otherwise than for the purposes of the employer's trade or business". Both these qualifications must be present together. The mere fact that the injured man had been employed only for a few days at a time will not of itself remove him from the category of "workman".

The maintenance of its line is part of the ordinary business of a railway company in India within the meaning of section 12 (1) of the Workmen's Compensation Act.

* Appeal Against Order No. 507 of 1932.