

Revenue to extend the enhancement to the other villages of the zamindari, which when carried out will mean an annual increase in the rents of the tenants by over Rs. 1,50,000 annually. The amount involved is, therefore, very considerable.

RYOTS OF
GARABANDHA,
ETC., VILLAGES
v.
ZAMINDAR OF
PARLAKIMEDI.

The certificate will issue on the usual conditions.

A.S.V.

APPELLATE CIVIL—FULL BENCH.

Before Sir Lionel Leach, Chief Justice, Mr. Justice Varadachariar and Mr. Justice Lakshmana Rao.

KATNENI VENKATAKRISHNAYYA AND ANOTHER
(RESPONDENTS), APPELLANTS,

1938,
January 24.

v.

GARAPATI CHINA KANAKAYYA (RESPONDENT),
RESPONDENT.*

*Code of Civil Procedure (Act V of 1908), O. XXXII, r. 7—
Decree in favour of minors—Transfer by mother as the
guardian of their property—Leave of Court—Necessary if.*

In a suit instituted by two minors through their mother, acting as their next friend, a decree was passed in favour of the minors. That decree was subsequently transferred to a third party by the mother, acting as the guardian of the property of the minors.

Held by the Full Bench: The transfer of the decree by the mother of the minors was something entirely outside the suit, and she had full power to effect the transfer without the leave of the Court under Order XXXII, rule 7, Civil Procedure Code.

Govindarajulu Naidoo v. Ranga Rao(1) approved.

* Appeal Against Order No. 82 of 1937.

(1) (1920) 40 M.L.J. 124.

VENKATA-
KRISHNAYYA
v.
CHINA
KANAKAYYA.

Kancherla Kanakayya v. Mulpuru Kotayya(1) overruled.
Scope and effect of Clause (1-A) added to rule 7 of Order
XXXII by the Madras High Court in 1910 considered.

APPEAL against the order of the District Court of West Godavari at Ellore, dated 30th January 1937 and made in Execution Petition No. 36 of 1936 in Original Suit No. 27 of 1932.

The appeal came on for hearing before BURN and VENKATARAMANA RAO JJ. who made the following

ORDER OF REFERENCE TO A FULL BENCH :—

The ORDER of the Court was delivered by VENKATARAMANA RAO J.—This is an appeal against the order of the learned District Judge of Ellore allowing execution to proceed at the instance of a transferee-decree-holder. One of the objections to the recognition of the transfer that was urged before him was that the original decree-holders in the case being two minors and the transfer having been taken from the next friend of those minors without the sanction of the Court under Order XXXII, rule 7, Civil Procedure Code, the learned Judge ought not to recognise the transfer and allow execution. But the learned Judge overruled the objection following the decision of a Division Bench of this Court reported as *Govindarajulu Naidoo v. Ranga Rao*(2). That was a decision of ABDUR RAHIM and ODGERS JJ. and the view taken by those learned Judges in that case was that a decree being property, any transfer of a decree by a next friend of a minor would not come within the plain language of Order XXXII, rule 7, which relates to an agreement or a compromise with reference to a suit. The learned Judges also considered the effect of the rule made by our High Court, namely, Order XXXII, rule 7 (1-A) which added the words “for taking any other action on behalf of a minor”. These words were construed to refer to an action taken in the course of the suit in the nature of a compromise or withdrawal or any agreement of that nature in favour of a minor and not to relate to any transfer of a decree. This decision was expressly dissented

(1) (1921) 41 M.L.J. 75.

(2) (1920) 40 M.L.J. 124.

from in *Kancherla Kanakayya v. Mulpuru Kotayya*(1) by another Division Bench consisting of SPENCER and RAMESAM JJ. The reason given by the learned Judges in that case was that a transfer involves an agreement between the transferor and the transferee and therefore sanction of the Court under Order XXXII, rule 7, Civil Procedure Code, must be obtained and the word "suit" should not be understood as meaning only a suit in which a decree has not been passed. As this is a matter of frequent recurrence, we think that this matter should be set at rest, in view of conflicting decisions, by the decision of a Full Bench. We accordingly direct that the papers be placed before the Honourable the Chief Justice for constituting a Full Bench.

VENKATA-
KRISHNAYYA
v.
CHINA
KANAKAYYA.

The appeal came on for hearing pursuant to the aforesaid order of Reference before the Full Bench constituted as above.

ON THE REFERENCE :

Y. Satyanarayana and V. Dharmasuri for appellants.—The case of *Govindarajulu Naidoo v. Ranga Rao*(2) decides (i) that Order XXXII, rule 7, Civil Procedure Code, does not apply to proceedings after a decree is passed and (ii) that it has not the effect of curtailing the power of the natural guardian to alienate the property of the minor which he otherwise possesses. *Muthalakkammal v. Narappa Reddiar*(3) has overruled that case on the first point. As regards the second point, viz., the power of the natural guardian to alienate property of the minor, it depends upon the construction of the words "agreement" in Order XXXII, rule 7 (1), and "for taking any other action on behalf of the minor" in Order XXXII, rule 7, sub-rule (1-A) (Madras amendment). In this connection rules 6 and 7 must be read together as they are intended to safeguard the interests of the minor against the acts of a person who acts as the next friend. Rule 6 prohibits the guardian from receiving money under the decree without the leave of the Court. [Vide *Ganesha Row v. Tuljaram Row*(4).] The object of the Legislature is to give complete power to the Court regarding the interests of the minor litigant. There is no reason why the word "agreement" in Order XXXII, rule 7 (1), should be construed as meaning only an

(1) (1921) 41 M.L.J. 75.

(2) (1920) 40 M.L.J. 124.

(3) (1933) I.L.R. 56 Mad. 430 (F.B.).

(4) (1913) I.L.R. 36 Mad. 295 (P.C.).

VENKATA-
KRISHNAYYA
v.
CHINA
KANAKAYYA.

agreement between the parties to the suit and regarding the procedure—a construction which is likely to circumvent the other provisions of the Act and defeat the object of the Statute. To read such a restriction into rule 7 (1) would enable a person, who is prevented from coming into possession of funds under rule 6, to achieve that end by alienating the decree. He would be able to defeat the provisions of rule 7 (1) also. So the words “agreement” and “with reference to the suit” in rule 7 (1) should be construed liberally, viz., any agreement whether with third parties or with the other party to the suit regarding the procedure, prosecution or the subject-matter of the suit. According to the Madras amendment, sub-rule (1-A) to rule 7, leave of the Court is necessary “for taking any other action on behalf of a minor”.

[THE CHIEF JUSTICE.—Can the Rule Committee say that a guardian under the Hindu law has no right to transfer the property of the minor?]

A minor becomes a ward of the Court, so far as the subject-matter of the suit is concerned, the moment he is a party litigant. So the chief guardian would be the Court, and the guardian for the suit would be an officer of the Court. [Vide Halsbury's Laws of England, Vol. XVII, paragraph 1452.] So the Rule Committee would not be interfering with the powers of the natural guardian since the power of dealing with the subject-matter of the suit mainly rests with the Court. The construction put in *Kancherla Kanakayya v. Mulpuru Kotayya*(1), upon the word “agreement” in Order XXXII, rule 7 (1), Civil Procedure Code, is correct. So the transfer of the decree standing in favour of the minors by the mother to a third party requires the sanction of the Court.

T. V. Ramanatha Ayyar for respondent.—The decision in *Govindarajulu Naidoo v. Ranga Rao*(2) is correct. Here the mother who is the natural guardian according to the Hindu law can transfer the decree of the minors to a third party without the leave of the Court.

JUDGMENT.

LEACH C.J.

LEACH C.J.—The appellants were the defendants in Original Suit No. 27 of 1932 of the District Court of West Godavari, instituted by

(1) (1921) 41 M.L.J. 75.

(2) (1920) 40 M.L.J. 124.

two minors through their mother, acting as their next friend. A decree was passed against them and this was subsequently transferred to the respondent by the mother, acting as the guardian of the property of the minors. The respondent then applied to be brought on the record in the place of the decree-holders and to be allowed to execute the decree. The learned District Judge allowed the application, and the appeal is from that order. The question for decision is whether a guardian of the property of a minor can transfer a decree passed in favour of the minor without first obtaining the sanction of the Court. In allowing the application the learned Judge relied on the decision in *Govindarajulu Naidoo v. Ranga Rao*(1). The appeal has been placed before a Full Bench as that decision was dissented from in *Kancherla Kanakayya v. Mulpuru Kotayya*(2).

Order XXXII, rule 7, of the Code of Civil Procedure provides that no next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian. The Rule Committee of this Court has added to rule 7 this further rule :

“(1-A) Where an application is made to the Court for leave to enter into an agreement or compromise or for withdrawal of a suit in pursuance of a compromise or for taking any other action on behalf of a minor or other person under disability and such minor or other person under disability is represented by counsel or pleader, the counsel or pleader shall

VENKATA-
KRISHNAYYA
v.
CHINA
KANAKAYYA.
LEACH C.J.

(1) (1920) 40 M.L.J. 124.

(2) (1921) 41 M.L.J. 75.

VENKATA-
KRISHNAYYA
v.
CHINA
KANAKAYYA.
LEACH C.J.

file in Court with the application a certificate to the effect that the agreement or compromise or action proposed is in his opinion for the benefit of the minor or other person under disability. A decree or order for the compromise of a suit, appeal or matter to which a minor or other person under disability is a party, shall recite the sanction of the Court thereto and shall set out the terms of the compromise as in Form No. 24 in Appendix D to this schedule."

It is said on behalf of the appellants that the words "for taking any other action on behalf of a minor or other person under disability" prohibit the lawful guardian of a Hindu minor transferring a decree obtained by the minor without the sanction of the Court. In *Govindarajulu Naidoo v. Ranga Rao*(1) ABDUR RAHIM and ODGERS JJ. held that these words did not take away the right of a guardian under Hindu law to transfer a decree in favour of the minor, as the transfer did not constitute a proceeding in the suit. A decree is property and there is no reason why the guardian of a Hindu minor should not exercise the same powers with respect of it as he is allowed to do with regard to other assets of the minor. Hindu law permits the guardian to alienate property under proper circumstances, but the minor can challenge the alienation on attaining majority if the power has been improperly exercised. It was on this reasoning that the learned Judges held that the sanction of the Court was not required to a transfer. The same question came before SPENCER and RAMESAM JJ. in *Kancherla Kanakayya v. Mulpuru Kotayya*(2). The learned Judges expressed their dissent from the decision in *Govindarajulu Naidoo v. Ranga Rao*(1) and regarded the decision in *Shaik Davud Rowther*

(1) (1920) 40 M.L.J. 124.

(2) (1921) 41 M.L.J. 75.

v. *Paramasami Pillai*(1) as being in conflict with *Govindarajulu Naidoo v. Ranga Rao*(2). With great respect we can see no conflict. In our opinion *Shaik Davud Rowther v. Paramasami Pillai*(1) has no bearing on the question. This was a case of an agreement adjusting a decree, the agreement which required to be recorded in Court being between the parties to the suit. We are here merely concerned with the transfer of a decree to a third party by a person who has in law the power to make the transfer. We consider that *Govindarajulu Naidoo v. Ranga Rao*(2) was rightly decided and consequently the decision in *Kancherla Kanakayya v. Mulpuru Kotayya*(3) must be overruled.

VRNKATA-
KRISHNAYYA
v.
CHINA
KANAKAYYA.
LEACH C.J.

When a transfer of a decree has been made in accordance with law the Court is required to bring the name of the transferee on the record in the place of the decree-holder. When this has been done the decree may be executed in the same manner and subject to the same conditions as if the application were made by the decree-holder (Order XXI, rule 16). The appellants object to the order placing the respondent on the record as the transferee of the decree on the ground that the minors when they come of age may challenge the validity of the action of the guardian. It is possible that they may do so, but if they do, it does not mean that the appellants will be compelled to pay twice over. Payment made in accordance with the Court's order will protect them.

It is also said that the acceptance of the opinion expressed in *Govindarajulu Naidoo v. Ranga Rao*(2) will have the effect of allowing a next

(1) (1916) 31 M.L.J. 207.

(2) (1920) 40 M.L.J. 124.

(3) (1921) 41 M.L.J. 75.

VENKATA-
KRISHNAYYA
v.
CHINA
KANAKAYYA.
LEACH C.J.

friend or guardian *ad litem* when he happens to be the guardian under Hindu law to evade rules 6 and 7 of Order XXXII which have been framed for the protection of the minor. Rule 6 prohibits a next friend or guardian for the suit receiving without the leave of the Court any money or other movable property on behalf of a minor by way of compromise before decree or order, or under a decree or order in favour of the minor. This may be the effect of holding that rule 7 (1-A) only applies to matters in a suit or proceeding, but this is not a matter with which the Court is now concerned. We are here to interpret the law and not to make it. If it is considered that a transfer of a decree of this nature should be subject to the sanction of the Court the Legislature may say so; but as the law stands at present it is not subject to such sanction. The transfer of this decree by the mother of the minors was something entirely outside the suit, and in our opinion she had full power to effect the transfer without the leave of the Court.

It follows that in our opinion the order of the learned District Judge is correct and the appeal consequently fails and must be dismissed with costs.

VARADA-
CHARIAR J.

VARADACHARIAR J.—I agree that the leave of the Court is not necessary before a decree passed in favour of a minor plaintiff can be assigned; but I wish to add a few words indicating my reasons. In *Kancherla Kanakayya v. Mulpuru Kotayya*(1) it seems to have been assumed by the learned Judges that the decision in *Govindarajulu Naidoo v. Ranga Rao*(2) proceeded on a distinction

(1) (1921) 41 M.L.J. 75

(2) (1920) 40 M.L.J. 124.

between what happened before decree and what happened after decree. With due respect, I do not so read the judgment in that case. I understand the learned Judges to have emphasised the distinction between matters in dispute between the parties and matters outside the scope of the suit. Clause 1 (b) of rule 6 of Order XXXII makes it clear that the Order as a whole is not restricted to proceedings prior to decree; and in view of the fact that the Code contemplates agreements or adjustments between parties either under Order XXIII, rule 3, which applies to the stage prior to decree, or under Order XXI, rule 2, which applies to the stage after decree, it does not seem to me right to read the decision in *Govindarajulu Naidoo v. Ranga Rao*(1) as turning on that distinction.

VENKATA-
KRISHNAYYA
v.
CHINA
KANAKAYYA.
—
VARADA-
CHARIAR J.

The real question, as indicated in the opinion delivered by my Lord, is whether there is sufficient in the provisions of Order XXXII to interfere with the rights of a natural guardian or a legal guardian who also happens to be the next friend, in the matter of dealing with a decree as part of the property belonging to the minor. It does not seem to me that there is much force in the argument based upon clause 1-A added to rule 7 by the rules made by this Court in 1910. That clause does not prescribe that the leave of the Court is necessary in any particular matter; it only prescribes the course to be adopted when an application is made to the Court for leave to do certain things. It assumes that under other provisions of Order XXXII or of some other law, an application for leave has to be made. Such

(1) (1920) 40 M.L.J. 124.

VENKATA-
KRISHNAYYA
v.
CHINA
KANAKAYYA.
—
VARADA-
CHARIAR J.

applications are contemplated by rule 6 as well as the proviso added to it by this Court and also by rule 7. It does not, therefore, seem to me right to infer from clause 1-A of rule 7 that the scope of rule 7 has been extended. As regards rule 7 itself, the natural construction of the words used there, namely, "agreement or compromise", appears to be that the agreement or compromise is one between the parties to the suit as contemplated by Order XXIII, rule 3, or Order XXI, rule 2.

It is no doubt possible that this view restricting rule 7 in the above sense may enable a next friend to evade the restrictions imposed by rule 6 ; but, as pointed out by my Lord, this is not a matter which the Court can take into account in *interpreting* rule 7. Rule 7 deals with the conduct of a "next friend" as such who, as pointed out in *Rhodes v. Swithenbank*(1), is an officer of the Court to conduct the suit ; and the principle underlying rule 7 is that whenever he proposes to do anything beyond the normal conduct of the suit, he has to obtain the leave of the Court to do so. But when a decree passed in favour of a minor is sought to be assigned, the person making the transfer acts not in the capacity of next friend but in his capacity as the guardian of the minor's estate. It is true that in *Ganesha Row v. Tuljaram Row*(2) the Privy Council have laid down that to the extent to which the Code has imposed limitations upon the powers of a guardian under the Hindu law, those powers must be exercised in conformity with the provisions of the Code ; but except to the extent to

(1) (1889) 22 Q.B.D. 577.

(2) (1913) I.L.R. 36 Mad. 295 (P.C.).

which the Code has expressly limited those powers, there is no reason to curtail them.

LAKSHMANA RAO J.—I agree with my Lord the CHIEF JUSTICE and have nothing to add.

V.V.C.

VENKATA-
KRISHNA YYA
v.
CHINA
KANAKAYYA.

APPELLATE CIVIL—FULL BENCH.

*Before the Hon'ble Mr. A. H. L. Leach, Chief Justice,
Mr. Justice Varadachariar and Mr. Justice Mockett.*

RAMACHANDRA NAIDU AND THREE OTHERS (APPELLANTS
1 TO 4), APPELLANTS,

1937,
December 15.

v.

VENGAMA NAIDU (DEAD) AND EIGHTY-TWO OTHERS (RESPONDENTS 1 TO 8, 11, 13, 14, 16 TO 47, 49 TO 58, 60 TO 86, 88 TO 90 AND 94 AND LEGAL REPRESENTATIVES OF RESPONDENTS 1, 34 AND 35), RESPONDENTS.*

Part performance—Doctrine of—Applicability—Maintenance decree—Charge on properties created by—Alienees of portion of properties charged—Agreement between them and decree-holder widow for release of properties in their possession on happening of certain events—Events contemplated not happening but widow receiving a portion of amount payable to her under agreement—Applicability of doctrine of part performance in such a case so as to debar assignee of decree from widow from executing decree against properties in hands of alienees—Alienees taking with notice of agreement—Civil Procedure Code (Act V of 1908), O. XLI, r. 2 proviso—Appellate Court deciding case upon a point taken by itself—Opportunity to party affected to meet the point—Necessity.

In 1890 a Hindu widow obtained a decree against her stepsons, R and another, for maintenance then due and for future maintenance. The maintenance was made a charge on

* Letters Patent Appeal No. 292 of 1927.