APPELLATE CIVIL—FULL BENCH.

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

R. S. RAMACHANDRAN AND ANOTHER (PETITIONERS), PETITIONERS,

1937, December 15.

v.

R. G. BALASUBRAMANIA AYYAR (PETITIONER AND RESPONDENT), RESPONDENT.*

Guardians and Wards Act (VIII of 1890), sec. 41—Discharge of guardian—Discretion of Court—Exercise of—Principles—Order of District Judge granting a discharge—Revision against—Interference in—Mal-administration alleged against guardian inquired into and found against by District Judge.

The respondent was appointed guardian of the property of the petitioners who were brothers and constituted an undivided Hindu family. His appointment ceased on the first petitioner attaining majority. Thereupon the respondent filed a petition praying that he might be discharged from his guardianship. The petitioners filed two counter-petitions. In one they asked the Court to assign the security bond executed by the respondent to the first petitioner and the other was for an order directing the respondent's accounts to be audited. It was alleged that the respondent had been guilty of mal-administration and an affidavit in support of that charge was filed. After considering that affidavit the District Judge granted the respondent's petition, being of opinion that he had acted properly, and dismissed the petitioners' applications on the ground that they were frivolous. Two revision petitions were filed under section 115 of the Code of Civil Procedure to set aside the order of the District Judge discharging the respondent and his order refusing to direct the bond to be assigned to the first petitioner.

Held by the Full Bench that in discharging the respondent the District Judge exercised a jurisdiction vested in him and that his order could not be interfered with in revision.

* Civil Revision Petitions Nos. 1071 and 1072 of 1935.

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When the *quondam* guardian has complied with the directions of the Court under sub-section 3 of section 41 of the Guardians and Wards Act, the Court has full discretion in the matter and can discharge him, if it thinks fit.

The proper course for a Court which has appointed a guardian of the property to adopt on the minor coming of age is to refuse to grant a discharge if it appears that there is sufficient reason to keep open the question of the guardian's liability, and in that case to assign to the *quondam* minor the security bond. Similarly, if it considers that the guardian has acted properly throughout and no reasonable claim can be brought against him, it should exercise the power which it has of discharging the guardian.

PETITIONS under section 115 of Act V of 1908 praying the High Court to revise the order of the District Court of Tinnevelly dated 12th February 1935 and made respectively in Interlocutory Applications Nos. 62 of 1932 and 62 of 1933 in Original Petition No. 51 of 1918.

The petitions originally came on for hearing before VARADACHARIAR J. who made the following

ORDER OF REFERENCE TO A BENCH:—

Mr. T. L. Venkatarama Ayyar contends that except in cases where there is no dispute raised by the *quondam* minors, the Court should not pass an order of discharge under clause 4 of section 41 of the Guardians and Wards Act, as the result of such an order would restrict the minors' right of suit (implied in section 37) to cases of "fraud which may be subsequently discovered". There is no authority directly in point, though in another connection this Court had to consider the significance of the use of the word "may" in that clause; *Subbarami Reddi* v. *Pattabhirami Reddi*(1). If, as held in that case, the option rests with the Court, there is no reason to limit the *power* of the Court to uncontested cases. On the

(1) (1926) LL.R. 50 Mad. 80.

other hand there is this to be said in favour of the contention advanced by Mr. Venkatarama Ayyar, that there being no right of appeal against such an order, the minor will be deprived of his right of suit without even an opportunity of contesting the correctness of the order on the merits by an appeal. The question is one of general importance and it is desirable to have an authoritative ruling from a Division Bench, as even the decision in *Subbarami Reddi* v. *Pattabhirami Reddi*(1) dissents from the Allahabad view.

The petitions were directed to be posted before a Full Bench and came on for hearing before the Full Bench constituted as above.

ON THE REFERENCE:

T. L. Venkatarama Ayyar for petitioners.—A guardian of the property of a minor ceases to be the guardian immediately on the ward coming of age; *see* section 41 (1) of the Guardians and Wards Act. Clause 2 of that section provides for the guardian delivering up all property and accounts. The preponderance of authority as to the construction of section 41 is that on the ward attaining majority the Court becomes *functus officio* and that if there is a dispute as to the guardian's liability it must not be gone into under that section but must be left to be decided in a suit.

[THE CHIEF JUSTICE.—Suppose the Court wrongly discharges the guardian in a case in which he had misappropriated the minor's property, has the minor no remedy in law?]

[Sections 20 and 37 were referred to.] Sections 35 and 36 refer to the period during minority.

[VARADACHARIAR J.—Do you contend that apart from section 35 there is any other provision providing for the assignment of the bond?]

There is no other provision in the Act. That is why this Court has held that section 35 is applicable both to the period during minority and to the period after the minor attains majority. The effect of the decisions may be stated thus: Proceedings under section 41 are summary. There is no trial and no evidence need be taken. If the District Judge

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improperly grants a discharge, his order practically becomes final. There is no appeal from the order and a revision will be practically useless, because under section 115, Civil Procedure Code, this Court cannot interfere except on a question of jurisdiction. *Subbarami Reddi* v. *Pattabhirami Reddi*(1) shows that in case of dispute the Court cannot and should not hold an inquiry but must refer the parties to a suit. The use of the word "may" in clause 4 of section 41 shows that the power to grant a discharge should be exercised only in uncontested cases. In case of dispute the District Judge has no jurisdiction to grant a discharge. In *Nabu Bepari* v. *Sheikh Mahomed*(2) the order of discharge was set aside in revision on this ground.

[VARADACHARIAR J.—That case merely decides that the District Judge has no jurisdiction under section 41 to go into the correctness of the accounts and direct payment of the amount found to be due on such taking of accounts. The Court did not consider the case of an order of discharge at all.]

The case is authority for the position that the District Judge has no jurisdiction to pass any order at all under section 41 in case of dispute. He becomes *functus officio* in such a case. The Full Bench held that the inquiry itself was beyond the scope of section 41. The section is sufficiently satisfied if its scope is confined to uncontested cases. Clause 4 of the section does not show in what circumstances an order of discharge can be made. The Calcutta High Court says it can be made in cases in which there is no dispute.

[THE CHIEF JUSTICE.—Clause 4 of section 41 vests a discretion in the Court appointing a guardian to grant a discharge and if it does exercise its discretion and grant a discharge there is an end of the matter even if the result may be unfortunate to the minor.]

The word "may" no doubt vests a discretion in the District Judge but the circumstances in which the discretion is to be exercised must be determined with reference to the scope of the Act and of the inquiry under section 41 and with reference to the other provisions of the Act. Thus construed clause 4 of the section must be confined to uncontested cases. The order of discharge in the present case can be set aside on

(1) (1926) I.L.R. 50 Mad. 80. (2) (1900) 5 C.W.N. 207 (F.B.).

the ground that the District Judge has not considered all the circumstances which have to be considered by him.

K. S. Rajagopalachariar for *K. Rajah Ayyar* for respondent was not called upon.

LEACH C.J.

The JUDGMENT of the Court was delivered by LEACH C.J.—The petitioners are brothers and constituted an undivided Hindu family. The first petitioner became of age in December 1931. The second petitioner was a minor when the proceedings out of which these petitions arise began. In 1925 the respondent was appointed guardian of the property of the petitioners. His appointment ceased on the first petitioner attaining majority in December 1931. On this event happening, the respondent filed a petition in the Court of the District Judge of Tinnevelly asking that he be discharged from his guardianship. Thereupon the petitioners filed two counter-petitions. In one they asked the Court to assign the bond which had been executed as security for the respondent's stewardship and the other was for an order directing his accounts to be audited. The respondent's petition was granted, but the petitioners' applications were both dismissed. This Court is now asked, in the exercise of its powers under section 115 of the Code of Civil Procedure, to set aside the order of the District Judge discharging the respondent and his order refusing to direct the bond to be assigned to the first petitioner. No application has been filed against the order dismissing the petition asking for an audit.

The answer to the question before us depends on the construction to be placed on section 41 (4)

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of the Guardians and Wards Act, 1890. Sub-section (2) of that section states that the powers of a guardian of the property of a minor cease (*a*) by his death, removal or discharge ; (*b*) by the Court of Wards assuming superintendence of the property of the ward ; or (*c*) by the ward ceasing to be a minor. Sub-section (3) says :

> " When for any cause the powers of a guardian cease, the Court may require him, or, if he is dead, his representative, to deliver, as it directs, any property in his possession or control belonging to the ward, or any accounts in his possession or control relating to any past or present property of the ward."

Then comes sub-section (4) which is worded as follows :

> " When he has delivered the property or accounts as required by the Court, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered."

It will be observed that a guardian of the property of a minor ceases to be the guardian immediately on the ward coming of age. On this event happening the Court may require the *quondam* guardian to deliver the property of the ward in his possession or control according to its direction and similarly require him to deliver the accounts which he has kept relating to past or present property of the ward. That is as far as the Court can go, both as regards the property and as regards the accounts. When the *quondam* guardian has complied with an order passed under sub-section (3), the Court may in its discretion discharge him from his liability as guardian, save in respect of any fraud which may subsequently be discovered.

In this case it was alleged that the respondent had been guilty of mal-administration and an

affidavit in support of this charge was filed. After considering this affidavit and giving it the weight which he considered it deserved, the learned District Judge came to the conclusion that the applications for the assignment of the bond and for an order directing an audit were frivolous and, being of the opinion that the respondent was entitled to an order discharging him from liability, granted his petition. It is said that in so doing the District Judge erred in law. It is argued that on a proper construction of sub-section (4) the District Judge should, in view of the charge of mal-administration, have refused the respondent his discharge and should have assigned the bond to the first petitioner. This is reading into sub-section (4) something which is not there. When the *quondam* guardian has complied with the directions of the Court under sub-section (3), the Court has full discretion in the matter and can discharge him, if it thinks fit. The learned District Judge did think that the respondent was entitled to his discharge and accordingly granted it. In so doing he exercised a jurisdiction vested in him, and it is not open to the petitioners to say that this Court in the exercise of its revisional powers can interfere with the order.

In *Subbarami Reddi* v. *Pattabhirami Reddi*(1) a Division Bench of this Court, consisting of PHILLIPS and MADHAVAN NAIR JJ., held that where a guardian has been discharged and has filed his accounts the Court cannot hold an inquiry under the Act into the correctness of the accounts and determine the amount or the

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property in respect of which the guardian is accountable. The correctness of this decision has not been challenged ; nor do we think it can be challenged. The same view was taken by the Calcutta High Court in *Nabu Bepari* v. *Sheikh Mahomed*(1). This being so, all that the Court which appointed the guardian can do when the minor has come of age is to discharge him or refuse to discharge him. In the latter case the minor will be left to pursue his remedies against the *quondam* guardian by way of a suit. The Act provides no machinery by which an inquiry can be held under the Act once a guardian has ceased to function.

The proper course for a Court which has appointed a guardian of property to adopt on the minor coming of age is to refuse to grant a discharge if it appears that there is sufficient reason to keep open the question of the guardian's liability, and in this case to assign to the *quondam* minor the security bond. Similarly, if it considers that the guardian has acted properly throughout and no reasonable claim can be brought against him, it should exercise the power which it has of discharging the guardian. In this case the learned District Judge has come to the conclusion that the respondent acted properly and has granted him discharge. Consequently the order is not open to question in revision proceedings.

The two petitions before us will be dismissed and the respondent will be granted costs on one petition.

A.S.V.

(1) (1900) 5 C.W.N. 207 (F.B.).