

Appellate Jurisdiction. (a)

Civil Miscellaneous Regular Appeal No. 136 of 1875.

STREE SASHADRY AIYANGAR..... *Appellant.*

PERIA NATCHIAR *alias* PARWATHA }
 VURTHANI NATCHIAR and another. } ... *Respondents.*

A testamentary guardian applied to the District Court for permission to remove his wards for the purpose of having them educated. *Held*, that as the guardian derived his authority from the will of the minors' father, and did not come within the meaning of the Regulations and Acts previous to Act IX of 1861, he could not thus apply to the District Court.

1875.
 August 27.
 C. M. R. A.
 No. 136
 of 1875.

THIS was an Appeal against the order of Mr. F. H. Woodroffe, the Acting District Judge of Madura, dated the 22nd March 1875, passed on Civil Miscellaneous Petition No. 93 of 1875.

In this case petitioner, as guardian of the minor sons of the late Poonnusami Tévar, applied to the Court for permission to remove the minors from Ramnad to Madras or elsewhere for their better education.

Counter-petitioners, the mothers of the minors, opposed the application.

The Acting District Judge was of opinion that he had no jurisdiction to make any such order as that applied for, and observed "under Regulation V of 1804 as extended by Regulation X of 1831, the District Court, subject to confirmation of the High Court, may appoint guardians to minor heirs not subject to the jurisdiction of the Court of Wards, and under Section 2, Act XIV of 1858, the District Judge is further empowered to exercise in respect of such minors all the powers, &c., which by Sections 2 and 3, Act XXI of 1855, the Collector is authorized to exercise in respect of minors subject to the Court of Wards. In the present instance then, if petitioner could be regarded as having been so appointed by this Court, there could be no question as to his right to make this application and mine to adjudicate thereon. It is clear, however, that petitioner has not been appointed guardian so, but under Act IX of 1861, and the Act no where provides that such guardian and

a.
 (a) Present :—Sir W. Morgan, C.J., and Innes, J.

his wards shall be amenable to the provisions of Act XXI of 1855 as extended by Act XIV of 1858, and very naturally so, as the object of Act IX of 1861 was simply to afford opportunity for relief which did not exist before, and, subject to the granting of such relief, it leaves the provisions of Act XIV of 1858 extending Act XXI of 1855, just as it found them.

1875.
August 27.
C. M. R. A.
No. 136
of 1875.

“This being so, and petitioner not having been appointed guardian in the manner set forth in the preamble of Act XIV of 1858, this application is not maintainable and must be dismissed. The costs of each party will be chargeable to the estate.”

From this order the petitioner appealed on the ground that the District Court had jurisdiction to make the order asked for by the appellant, and ought in the interests of the minors to have made it.

Mr. O'Sullivan and Bhashyam Iyengar, for the petitioner contended that Section 1 of Regulation V of 1804, (a) did not apply as the appellant is guardian by Will. Regulation X of 1831 (b) extends the sections to all minors. Act XIV of 1858 (c) extended Act XXI of 1855 (d).

(a) Regulation V of 1804, s. 18:—“Where persons succeeding by right of inheritance to land, or other property, paying revenue directly to Government, may happen to be incapacitated by reason of sex, minority, or natural infirmity, for the management of such property on their own behalf, Collectors shall, respectively, accompany their reports of such cases, to the Court of Wards, with a description of the conditions of the persons concerned, the value of the property devolving to them, and the names of persons most proper in the judgment of them (the Collectors) to be appointed guardians of the disqualified heirs: *provided that guardians may not have been appointed for such disqualified heirs, according to the Will of persons authorized by law to make such appointment.*”

(b) “A Regulation to prohibit the sale of estates belonging to Minors, not under the charge of the Court of Wards; and to extend the provisions of Section XX of Regulation V of 1804, to property of every description, not subject to the jurisdiction of that Court.”

(c) “An Act to extend the provisions of Act XXI of 1855 in the Presidency of Fort St. George to Minors not subject to the superintendence of the Court of Wards.”

(d) “An Act for making better provision for the education of Male Minors, and the marriage of Male and Female Minors, subject to the superintendence of the Court of Wards in the Presidency of Fort St. George.”

1875.
 August 27.
 C. M. R. A.
 No. 136
 of 1875.

[CHIEF JUSTICE. Do not these Acts apply only to cases where no guardian has been appointed by the father?]

We rely on Act IX of 1861(a.) The order under this last Act is dated the 26th April 1872. *Skinner v. Orde*(1).

The *Advocate-General* and *Mr. Shephard*, for the counter-petitioners, contended that (1) guardians under Act IX of 1861 are not invested with powers given under Act XXI of 1855. Act XIV of 1858 extends these powers to Zillah Courts in cases where guardians have been appointed under Regulations V of 1804 and X of 1831. Under Regulation V of 1804, Section 20, a guardian is appointed on the report of the Collector. Under Act IX of 1861, guardians are appointed on the motion of the parties. (2.) The agreement under Act IX of 1861 was obtained by a fraud on the Court, and behind the back of the widow, therefore appellant will not be recognized as having the general power of a guardian. If Sobadu be guardian, this case must go back, but probably he would succeed, *Eyre v. Countess of Shaftesbury*. (3.) The will favors his position. If the Court has jurisdiction apart from Regulations and Acts, a party must proceed by regular suit.

Mr. O'Sullivan in reply.

The Court delivered the following

JUDGMENT:—The appellant is stated to be the testamentary guardian of the minors: his application to the Judge was clearly not made or intended to be made under the Act of 1861, but was an application such as was authorized by previous Regulations and Acts to be made by certain guar-

(a.) The Preamble of this Act recites the expediency of amending the law for hearing suits relative to the custody, &c. of minors.

Section 1 provides that any relative or friend of a minor desiring to prefer claims as to the custody, &c. of the minor, may apply by petition to the principal Civil Court, which, if satisfied with the grounds, shall give notice of the application to the person named in the petition, and, under *Section 2*, may direct that the minor be produced in Court on a day named; when, under *Section 3*, the case shall be heard and an order made as to the custody of the minor, &c. *Section 4* provides that the procedure under Act VIII of 1859 is to be followed as far as applicable. *Section 5* gives an appeal to the Sudder Court, whilst *Section 6* declares that the order shall not be contested in a regular suit. The two remaining sections are immaterial to the present enquiry.

(1) XIV Moore's I. A., p. 309.

(2) 2 White and Tudor's L. C., p. 694 (4th edition.)

dians in some cases to Collectors, in others to the District Courts. The appellant, not being a guardian within the meaning of those Laws but deriving his authority from the will of the minors' father, could not thus apply to the District Court; and, on this ground alone, we dismiss the appeal. The costs will be paid out of the estate.

1875.
August 27.
C. M. R. A.
No. 136
of 1875.

Appeal Dismissed

Appellate Jurisdiction.(a)

Civil Miscellaneous Special Appeal No. 178 of 1874

NARANAPPA AIYAN.....(Defendant)Appellant
NANNAAMMALiasPARVATHYAMMAL(Plaintiff)Respondent

Limitation Act No. IX of 1871, governs applications to execute decrees made before the Act, and, in computing the period of limitation, the Act directs the date of the prior application to be taken and that date cannot be altered because intermediate payments may have been made on account of maintenance.

THIS was an Appeal against the order of Mr. J. H. Nelson, the Acting District Judge of North Tanjore, dated the 11th March 1874, passed on Civil Miscellaneous Petition No. 57 of 1874, presented against the order of the Court of the District Munsif of Negapatam, dated 20th January 1874.

1875.
August 27
C. M. S. A.
No. 178
of 1874.

Plaintiff in O. S. No. 229 of 1864 sought to execute the decree she obtained in the said suit awarding her maintenance. The Judgment of the District Munsif of Negapatam, so far as it is material was as follows:—

“ The Act No. XIV of 1859, which was in force at the time the Judgment alluded to by the plaintiff was passed by the High Court, has been cancelled. It is laid down in para. 167 of Schedule 2 of the new Limitation Act IX of 1871 that the limitation period for the decree passed for payment of money by instalments should be calculated from the date of each instalment. It has to be ascertained now whether the plaintiff's decree had, prior to the date when the said new Act came into force, been barred under the said Act No. XIV and the High Court's decision, and if so, whether the benefit of the said new Act can be given to the said decree. It is clear from the records of this Court that the plaintiff's decree is not barred as aforesaid it appears that the execution of the plaintiff's decree was carried out in this Court in No. 182 of 1868 at the end of

(a) Present:—Sir W. Morgan C.J. and Innes, J