

## S.R. Srinivasaraghavan Vs Padmavathi Ammal (died) and Others

**Court:** Madras High Court

**Date of Decision:** Dec. 4, 1958

**Acts Referred:** Guardians and Wards Act, 1890 " Section 29  
Trusts Act, 1882 " Section 88

**Citation:** AIR 1959 Mad 468 : (1959) 72 LW 334

**Hon'ble Judges:** Ramachandra Iyer, J

**Bench:** Single Bench

**Advocate:** G.R. Jagadesan, for the Appellant; M. Sundaram, K.S. Desikan and K. Raman, for the Respondent

**Final Decision:** Dismissed

### Judgement

Ramachandra Iyer, J.

This appeal is preferred against the judgment of the Subordinate Judge of Rumba-konam in O. S. No. 3 of 1954.

Defendant 1 is the appellant. The suit was laid for recovery of possession. Padmavathi Animal, the plaintiff in the case, died pending the appeal.

Her legal representatives have been impleaded as party respondents to the appeal. Padmavathi Annual was the grandmother of the appellant. One

Minakshisundaram Chettiar left behind him a son, Sitaraman, through his first wife, and another son, Ramaswami, through Padmavathi Animal, the

second wife. Ramaswami died in 1931, leaving his widow, Rukmani Ammal, and his son. the appellant. In O. P. No. 117 of 1931, both

Padmavathi Ammal and Rukmani Ammal were appointed as joint guardians for the minor son of the latter, the appellant on 7-8-1932 by the

District Judge of West Tanjore. Some years prior thereto, during the lifetime of Ramaswami, two suits were instituted in the Sub Court,

Kumbakonam. O. S. No. 72 of 1927, was one for partition filed by Ramaswami against his step-brother Sitaraman. O. S. No. 74 of 1927 was

filed by Padmavathi Animal against her son and step-son for recovery of expenses incurred by her in connection with the marriage of her daughter.

It must be mentioned that Padmavathi Animal had already obtained a maintenance decree in O. S. No. 89 of 1917. In the decree for partition, the

liability for maintenance was divided between the two sons and a revised decree was granted in favour of Padmavathi Ammal who was impleaded

as defendant 8 to the partition suit. Partition of the properties was also effected between the two brothers. O. S. No. 74 of 1927 resulted in a

decree in favour of Padmavathi Ammal as against both the brothers. That decree was put in execution, and the properties covered by the present

suit, an extent of 6 acres of land, were purchased by the decree-holder, Padmavathi Ammal. Ex. A-2 is the sale certificate. Padmavathi Ammal

complained that her possession was interfered with in March 1953, by the appellant, her grandson, and filed a suit for recovery of possession. The

appellant contested the suit denying Padmavathi Ammal's title under Ex. A-2. He contested that the claim in O. S. No. 74 of 1927 was not binding

on him, and that, even if it were valid, the purchase in Court auction evidenced by Ex. A-2 should enure for his benefit, as Padmavathi Ammal was

one of his joint guardians along with his mother during his minority. Certain other pleas were also taken by him which it is unnecessary now to refer.

2. The learned Subordinate Judge held that the decree in O. S. No. 74 of 1927 was valid and binding on the appellant and the purchase in Court-

auction was not for his benefit but for the benefit of Padmavathi Ammal herself. He, however, was of opinion that Padmavathi Ammal should have

obtained the sanction of the District Court in the guardianship proceedings before she purchased in Court auction in execution of her decree and

that therefore the appellant's share in the property would not vest in the purchaser. In that view, he held that the appellant would be entitled to a

declaration that she was entitled to recover possession of one half share attributable to Sitaraman's branch and a decree for a half share of the

purchase money from the appellant's properties. Strangely enough, the learned Judge then proceeded to dismiss the suit. It is unfortunate that the

learned Judge should not have bestowed some care in the drafting of the decree. The appellant has filed this appeal against that portion of the

decree which contains the declaration.

3. The judgment and decree of the lower Court is rather understandable. A declaration is given in regard to Sitaraman's share of the property in

the absence of Sitaraman from the record. It is the appellant's case that the entire properties belong to him. The decree itself is drafted, as I

pointed out, in a way so as to nullify the effect of the very declaration granted by dismissing the entire suit. But, both the parties, however,

proceeded before me on the footing that the decree is effective to grant a declaration in favour of Padmavathi Ammal for one half share of the suit

properties together with a right to proceed against the other share for one half share of the sale price.

4. Mr. K. S. Desikan, learned counsel for the respondent, has tried to support the decree of the lower Court by contesting the correctness of the

decision of the lower Court on issue 3, and contending that the Court sale could convey full title to Padmavathi Ammal. Mr. G. R. Jagadisa Iyer,

learned counsel for the appellant, contended that the Court sale was either void in toto or should be held to be not binding on the appellant. This

contention he based on the principle of Section 88 of the Trusts Act. In this connection, he referred me to certain provisions namely Sections 20

and 27 of the Guardians and Wards Act, and Section 88 of the Indian Trusts Act. It must be remembered that Padmavathi Ammal had obtained a

decree against the father of the minor. The decree could not be nullified, nor could the execution thereof be prohibited by her becoming one of the

joint guardians of the properties of the minor. It is not contested that the appellant was properly represented in the execution proceedings. He was

a party to the execution proceedings and would normally be bound by the sale, so long as that sale had not been set aside by him. It is, however,

contended that, on the appointment of Padmavathi Ammal as a joint guardian, the entire property vested in her. No authority, however, is cited to

support that contention. A guardian of a minor is appointed for the care of the person and property of the minor. He is only in custody of the

property which is vested in the minor, though his obligations in regard to certain matters may be that of a trustee. In AIR 1949 235 (Nagpur) it was

held that a guardian of property appointed under the Guardians and Wards Act was not a trustee and that the property did not vest in him. It was

also held in that case that by virtue of his position, he could not profit or enter into an arrangement at the expense of the minor. In this connection,

learned counsel for the appellant referred to the provisions of Section 20 of the Guardians and Wards Act. Section 20 states that a guardian stands

in a fiduciary relation to his ward, and, save as provided for by the Act or instrument appointing him as guardian, he must not make any profit out

of his office. Section 27 requires the guardian to deal with the property of the minor as carefully as a man of ordinary prudence would deal with if it

were his own. These provisions can only make a guardian liable as a trustee. In *Kisandas Laxmandas Gujar and Others Vs. Godavaribai*

*Govinddas Gujar and Others*, the position of a guardian appointed under the Guardians and Wards Act has been held to be not that of a trustee

as the property did not vest in him. Section 20 and Section 27 of the Guardians and Wards Act do not mean that the guardian should forfeit his

rights against the minor's estate. Indeed his rights against the minor's estate cannot even be held to be suspended during the minority of his ward.

In such a case, no doubt there would come into existence a conflict between the personal interests of the guardian and the interests of the ward.

The guardian's duty then is to see that the ward is provided with proper and independent advice and assistance. In *Travelyan on Minors*, it is

stated thus at page 120 :

When the interests of the guardian conflict in any way with those of his ward, the guardian is bound to see that the ward is provided with proper

and independent advice and assistance.

Section 29 of the Guardians and Wards Act require previous permission only in regard to sales by the guardian of the minor's property. On the

other hand, Order 32, Rule 3, C. P. C. contemplates the case of appointment of a person other than the certificated guardian as a guardian-ad-

litem for the suit or proceeding. In the present case, the decree was passed long prior to the appointment of the guardian, and, indeed, was binding

on the properties of the minor its the decree was against his father. Padrnnavathi Ammal was only one of the joint guardians. The other guardian was

his own mother and she would have completely represented the minor. It is not stated now that there was any lack of representation or fraud, nor

even that Padmavathi Ammal by the use of her position as a guardian derived any advantage by reason of the Court-sale. The contention is that

even if there were no infirmities attached to the Court sale, Padrnnavathi should hold the purchase for the benefit of the appellant. That is based on

Section 88 of the Trusts Act. Section 88 of the Trusts Act runs thus :

Where a trustee, executor, partner, agent, director of a company, legal adviser or other person bound in a fiduciary character to protect the

interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters

into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for

himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

It is clear that, on the facts of the case, no question of taking advantage or profit at the expense of the minor can at all arise, as what Padrnnavathi

Ammal wanted to enforce was her own legitimate claim as against the properties in the possession of the minor. She did not sell the property

herself. The property was sold in execution of the decree of a Court, and in the execution proceedings, it was not nor is it even now contested that

the minor was sufficiently represented. The fact that One of the joint guardians of property happened to be the decree-holder can not render the

sale as such invalid. In Rajagopala Naidu v. Subbammal, AIR 1928 Mad 180, a mother acting as guardian purchased a portion of his pro perty

sold in execution of a decree passed against the estate with her own money. There was a trustee who was in possession of the properties on behalf

of the minor. It was held that she could of her own money purchase the property for her own benefit and that she was not bound to make over that

pro perty to the minor. I am therefore of opinion that in the present case, there was nothing wrong in Padmavathi Ammal having brought the

properties to sale in execution of the decree and that the decree granted by the lower Court gave her less than what would be due to her. There is

therefore no reason to interfere with the judgment of the lower Court.

5. The appeal fails and is dismissed with costs.