

**Gopalaswamy Vs. G.P. Ramayya**

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**Court :** Chennai

**Decided On :** Feb-24-1944

**Reported in :** AIR1944Mad397

**Appellant :** Gopalaswamy

**Respondent :** G.P. Ramayya

**Judgement :**

Leach, C.J.

1. The short question in this petition is whether the insertion of Section 34A in the Guardians and Wards Act, 1890, by the amending Act of 1929, compels the Court to place a different interpretation upon Section 34 (d) from that placed upon it by this Court in Harikrishna v. Govindarajulu A.I.R 1926 Mad. 478. On 20th December 1939, the petitioner was appointed the guardian of the property of the two minor sons of one Kotayya. He was directed to submit his accounts once a year. The respondent entered into a surety bond for the due administration of the estate during the minority of the wards. On 19th September 1940, the respondent filed a petition in the guardianship proceedings asking for an order of the Court directing the petitioner to file his accounts and the relevant vouchers. On 15th January 1941 the petitioner filed a statement of accounts in which he showed that he had collected Rs. 3864 and had disbursed Rs. 3822-13-3, leaving a balance in his hands of Rs. 41-2-9. The District Judge sent the accounts for audit under Section 34A. Three reports were presented by the auditor and in the final one he stated that the estate had been wrongly debited with the following sums : Rs. 265; Rs. 319-8-6 and Rs. 225. The first of these amounts had been taken by the petitioner himself by way of reimbursement of advances alleged to have been made by him on account of the expenses in the guardianship proceedings. The petitioner said that the Rs. 319-8-6 represented a repayment to his mother of moneys advanced by her to him as the guardian and that the Rs. 225 represented the discharge of a debt due by the estate to his mother. In the opinion of the auditor all these payments were fictitious. The predecessor of the District Judge who passed the order which is challenged in this petition examined the petitioner and recorded a statement. On that examination the present District Judge held that the auditor was justified in disallowing the three sums of Rs. 265; Rs. 319-8-6 and Rs. 225. Consequently, he ordered the petitioner to pay the aggregate amount into Court. The petitioner challenges the correctness of this order. It is not an order appealable under Section 47, but an application for revision lies under Section 115, Civil P. C, if it was passed without jurisdiction. Section 34 (c) states that the guardian of the property of a ward shall, if required by the Court, exhibit his accounts in the Court at such times and in such form as the Court from time to time directs. Clause (d) says that, if so required, the guardian shall pay into the Court the balance due from him on those accounts, or so much thereof as the Court directs. Section 34A states that when

accounts are exhibited by a guardian of the property of a ward in pursuance of a requisition made under Clause (c) of Section 34 or otherwise the Court may appoint a person to audit the accounts. The section does not contemplate anything more than an audit and the Court is given no other powers beyond those which it possessed before the section was inserted in the enactment. In *Harikrishna v. Govindarajulu* A.I.R 1926 Mad. 478, a Bench of this Court (Venkatasubba Rao and Madhavan Nair JJ.) held that Section 34 (d) did not empower the Court to direct the guardian to pay into the Court more than the amount shown to be due in the accounts filed by him. The words 'on those accounts' were of importance. If the intention of the Legislature had been that the Court should have power under that section to compel the guardian to pay the amount actually found due the clause would have been worded differently. We are in respectful agreement. Moreover, Sections 35 and 36 contemplate a suit being filed against a guardian who has not fulfilled his duty and is required to make restitution to the estate. Section 35 deals with a case where an administration bond has been taken and Section 36 a case where there is no administration bond.

2. In *Subbarami v. Pattabhirami* : AIR1926Mad977 , Phillips and Madhavan Nair JJ. held that where a guardian had filed his accounts and had been discharged the Court could not hold an enquiry under the Act into the correctness of the accounts and determine the amount in respect of which the guardian was actually accountable. The scheme of the Act was to relegate to a suit any dispute between the minor and the guardian. This opinion was accepted by a Full Bench of this Court in *Ramachandran v. Balasubramania* A.I.R. 1938 Mad. 347. The Full Bench held that the proper course for the Court to adopt on a minor coming of age was to refuse to grant the guardian a discharge if it appeared that there was sufficient reason to keep open the question of his liability and in that case to assign to the quondam minor the security bond. On the other hand, if the Court considered that the guardian had acted properly and was of opinion that no reasonable claim could be brought against him, the Court should exercise the power which it had of discharging the guardian. It is said on behalf of the respondent that *Subbarami v. Pattabhirami* : AIR1926Mad977 and *Ramachandran v. Balasubramania* A.I.R. 1938 Mad. 347 are not in point because in each of these cases the Court was considering the position of a guardian who had been discharged. We do not agree. In our opinion there is no difference in principle. Section 41 (3) states that when 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 past or present property of the ward.

3. In *Ramarao v. Rangaswami* : AIR1926Mad419 Waller J., said that he could not concede that the Court was bound to accept without scrutiny any account which the guardian chose to submit or to allow him to deliver only such property as he admitted himself to possess. In referring the present case to a bench Byers J., has indicated his concurrence in this opinion. If by this is meant that the Court can in summary proceedings pass an order requiring a guardian to deliver up property which he denies possession of we find ourselves unable to share the opinion. In any event it must be rejected in view of the decisions in *Harikrishna v. Govindarajulu* A.I.R 1926 Mad. 478; *Subbarami v. Pattabhirami* : AIR1926Mad977 and *Ramachandran v. Balasubramania* A.I.R. 1938 Mad. 347. Our attention has also been drawn to the fact that the Allahabad High Court in *Sitaram v. Mt. Govindi* A.I.R. 1924 All. 593 expressed an opinion similar to that expressed by Waller J. The judgment of the Allahabad High Court does not carry the matter any further and it is to be observed that in *Rangnath v. Murarilal* : AIR1936All179 another Bench of that Court dissented from the opinion

expressed in *Sitaram v. Mt. Govindi* A.I.R. 1924 All. 593. The later opinion was formed after Section 34A had been inserted in the statute. We can see no justification for the suggestion that the insertion of Section 34A has altered the position. The auditor has no power to decide questions of liability or whether a guardian has or has not made advances to the estate. The auditor's duty is to audit the accounts and to prepare a balance sheet on a proper basis. It will, of course, be within his duty to draw attention to suspicious features and to disputes, but that is quite a different matter from saying that he has the power of deciding whether the guardian has or has not made a particular payment in excess of his powers or in fraud of the estate when such matters are in dispute, which is the case here. If, on a balance sheet correctly drawn, it is obvious that the guardian has in his hands more than what he has himself showed, the Court has no doubt power to order the guardian to pay into the Court the correct amount, but the balance sheet must be drawn up on the accounts submitted by the guardian. As we have indicated, Sections 35 and 36 provide the procedure for recovering from the guardian what he owes to the estate, and in our judgment an order of the nature of the one under discussion can 'only be passed in a regular suit. Whether a suit is the best mode of procedure is another matter. We consider that it would be far better to have such matters as the present one determined in proceedings under the Act, in which case provision would, of course, have to be made for an appeal. This is however a question for the Legislature to decide. We can have regard only to the Act as it now stands and in the circumstances the petition must be allowed with costs here and below.

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