

1966 Present : Abeyesundere, J. and Alles, J.

G. J. FERNANDO, Appellant, and K. L. FERNANDO,
Respondent

S. C. 35 (Inty.)/65-D. C. Kalutara, 944/MR

Action against minor-Appointment of married, woman as guardian ad litem-Illegality-Civil Procedure Code, s. 495. A married woman, whether a party to the action or not, is not competent

under section 495 of the Civil Procedure Code to be guardian ad litem of a defendant who is a minor.

APPEAL from an order of the District Court. Kalutara.

A. C. Gooneratne, Q.C.. with H. Rodrigo, for 3rd Defendant-Appellant.

S. W. Jayasuriya, for Plaintiff-Respondent.

June 23, 1966. **ABEYESUNDERE, J.-**

In this action the 1st defendant is the minor daughter of the 3rd defendant. On 27th January 1964 the learned District Judge made order appointing the 2nd defendant as the guardian ad litem of the 1st defendant. The 2nd defendant is the mother of the 1st defendant. At the trial two of the issues framed related to the appointment of the 2nd defendant as the guardian ad litem of the 1st defendant. They are as follows :-

" 8-Has the 2nd defendant been duly appointed guardian ad litem over the 1st defendant?

9-If the 2nd defendant has not been duly appointed guardian ad litem over the 1st defendant can the plaintiff maintain this action against the 1st defendant in that the plaintiff himself admits that the 1st defendant is a minor? "

The learned District Judge tried the two aforesaid issues and gave the following answers to them :-

" Issue No. 8-Yes.

" Issue No. 9-The plaintiff can proceed with the action against the 1st and 3rd defendants with the 2nd defendant as the guardian ad litem of the 1st defendant minor. "

The 3rd defendant, who had in his answer pleaded that the 2nd defendant was not a proper person to be appointed guardian ad litem of the 1st defendant, submitted at the trial of the two aforesaid issues that under section 495 of the Civil Procedure Code the 2nd defendant, being

admittedly a married woman, was not competent to be appointed a guardian ad litem. The learned District Judge has taken the view that a married woman referred to in that section is a married woman who is a party to the action. That view of the learned District Judge is not justified by the provisions of that section. We hold that he has misdirected himself in taking that view. In our opinion a married woman, whether a party to the action or not, is not competent under the aforesaid section 495 to be a guardian ad litem. We therefore set aside the order of the learned District Judge appointing the 2nd defendant as guardian ad litem of the 1st defendant, holding that the answer to issue 8 is in the negative and the answer to issue 9 is that the plaintiff cannot maintain his action against the 1st defendant until a fit and proper person is appointed to be the guardian ad litem of the 1st defendant.

The appellant is entitled to the costs of this appeal and also the costs of the proceedings in the District Court in which issues 8 and 9 were tried.

ALLES, J.-I agree.

Appeal allowed.

- End -