

Present: Lascelles C.J. and Ennis J.

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UDUMA LEBBE v. UDUMA LEBBE.

109—D. C. Puttalam, 1.

Lunatic—"Of unsound mind and incapable of managing his affairs"—
Appointment of manager of estate—Civil Procedure Code, chapter XXXIX., s. 555.

For the purposes of the appointment of a manager of the estate, and the further orders which can be made under chapter XXXIX. of the Civil Procedure Code, it is not necessary to prove complete insanity rendering the alleged lunatic incapable of looking after himself. It is sufficient to show that he is so far unsound in mind as to be incapable of managing his affairs.

THE facts are set out in the judgment.

Sampayo, K.C., for appellant.

van Langenberg, K.C., for respondent.

Cur. adv. vult.

October 16, 1912. LASCELLES C.J.—

This is an appeal from a finding of the District Judge, on an inquiry held under chapter XXXIX. of the Civil Procedure Code, that the appellant is of unsound mind and incapable of managing his affairs.

The appellant is admittedly a person of limited mental powers, but it is contended that his mental deficiency does not amount to imbecility. The question is, therefore, one of degree, which must be decided by reference to the ordinary standard of human intelligence.

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During the argument there was some discussion as to the meaning of the words "of unsound mind and incapable of managing his affairs" in the definition of the term "lunatic" in section 555 of the Civil Procedure Code. But I think it was conceded that in order to find the appellant a "lunatic" it was necessary to find that he was afflicted with mental unsoundness, and that by reason of that unsoundness he was disabled from managing his affairs.

Whether regard be had to the medical evidence, to the evidence afforded by the appellant's conduct, or to his personal examination at the inquiry under section 560, the result is the same. The evidence that the appellant is and has been for some time in a state of imbecility is, in my opinion, overwhelming. No good purpose would be served by going through this evidence in detail, and I will only refer generally to the evidence under the three heads which I have mentioned.

With regard to the medical evidence, the appellant was under the observation of Dr. Thomasz in March, 1911. (in connection with another case), and Dr. Thomasz was then of opinion that he was an idiot. Having had an opportunity of observing the appellant during the inquiry, Dr. Thomasz adhered to this opinion. Dr. Santiago's evidence, so far as it goes, corroborates that of Dr. Thomasz. On the other hand, the learned District Judge refused to believe the evidence of Dr. Rosairo, and counsel for the appellant did not ask us to rely on it. The medical evidence is thus all on one side.

The evidence afforded by the appellant's conduct is analysed by the District Judge. It shows that the appellant had signed promissory notes, mortgages, and transfers of property in the most reckless manner. During the three years preceding June, 1911, he raised Rs. 43,000 on promissory notes and mortgages. There is no evidence as to what was done with this money, or whether any considerable proportion of it ever reached the appellant's hands. Within a period of about six months the appellant gave away or otherwise alienated land of the estimated value of about a lac of rupees. I do not think it advisable to comment on these transfers, as it is not improbable that their validity may be the subject of further proceedings. But here again there are grave reasons for doubting whether the appellant received anything approaching to an adequate consideration for this property.

The personal examination of the appellant affords the strongest evidence of his mental incapacity.

Although born in a good position, he has been unable to learn how to write and read. He cannot count beyond ten. He did not know how many 25-cent pieces made a rupee. He was not aware that he had sold the whole of the very valuable land Kalladimavaditotam, but thought that, on the expiration of a lease, the property would be his. He appears to have made over the rent of the whole of

his property to his uncle, the Udaiyar, who supplied him with what he wanted. Generally he appears to have been in complete ignorance of the particulars of the property which he has alienated. In the opinion of the District Judge the demeanour, manner of speech, and appearance of the appellant were those of a person who was mentally defective.

Against this evidence there was nothing to show that the appellant, by his conduct or by any action, had given proof that he possessed the reasoning powers of an ordinary human being. It was said that he was married three times, and that it was incredible that respectable fathers would allow their daughters to marry the appellant if he had been imbecile.

The force of this argument obviously depends upon the character of the fathers, and to the extent to which the wealth of the appellant may have been considered to be a compensation for his mental deficiencies. It is also said that Mr. Senathirajah would not have attested the deeds which were executed by the appellant in settlement of the claim in action No. 2,211, but it must be remembered that Mr. Senathirajah himself put in a plea of idiotcy on behalf of the appellant in another action. But considerations of this nature are of no avail against the positive evidence that the appellant is of unsound mind so as to be incapable of managing his property.

While I agree with the finding of the District Judge as to the mental unsoundness of the appellant, I am by no means satisfied that the respondent is a proper person to be appointed manager of the appellant's estate. He appears to be a nephew of the appellant, and to be a youth of about twenty-one years of age. He himself attested two promissory notes given by the appellant for Rs. 12,000; and there is nothing to show that he is a suitable person to be entrusted with the management of the appellant's estate.

I would set aside the judgment of the District Court so far as it appoints the respondent the manager of the appellant's estate, and direct the District Judge, after further inquiry, to appoint some person who is qualified to manage and protect the appellant's estate. It is highly desirable that some person should be selected who is not connected with the persons who have been exploiting the appellant's property. Subject to this modification, I would dismiss the appeal with costs.

ENNIS J.—

This is an appeal from an order under chapter XXXIX. of the Civil Procedure Code appointing a manager of the estate of one Kader Saibo Marikar, found after inquiry to be of unsound mind and incapable of managing his affairs.

The appeal is presented against the finding and against the petitioner's appointment as manager.

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The District Court found that the respondent-appellant was incapable of managing his affairs, and from this fact and Dr. Thomasz's expert opinion found that the respondent was of unsound mind.

I can find nothing in the evidence to lead me to the conclusion that this finding is incorrect. It appears that the respondent is not only incapable of managing his affairs, but is so deficient in his mental capacity as to be incapable of managing the slightest thing, although he does not suffer from delusions, neither is he insane. He was examined by the District Court, and that examination fully bears out the opinion of Dr. Thomasz and the finding of the Court. It appears he did not know how many 25-cent pieces went to a rupee; he said he did not know what it was to borrow money; that he never received any; he was not aware that he ever had an estate of 500 acres which he had mortgaged, neither did he appear to be aware that he borrowed sums amounting to Rs. 43,000. He is conscious of having signed some documents, but appeared to think that the land dealt with was still his property and was all coming back to him.

For the appellant, it has been urged that the general bearing towards him should be taken into account; that he had married three times; and that the deeds executed by him were all executed by notaries of standing, and witnessed by those who would not have assisted in the transaction had the man been insane.

It is significant, however, that the appellant's present wife has not been called, and that in two cases arising out of the transactions of the appellant a plea of insanity was inserted in the answer as a defence to the actions, which answers were signed by two of the proctors who were witnesses to the deeds executed by the appellant both for and after the actions.

The reasons very fully given by the District Judge are irresistible, that the respondent was through imbecility of mind quite incapable of managing his affairs; and for the purposes of the appointment of a manager of the estate, and the further orders which can be made under chapter XXXIX. of the Code, it was not necessary to prove complete insanity rendering the alleged lunatic incapable of looking after himself. It is sufficient to show that he was so far unsound in mind as to be incapable of managing his affairs, a principle which seems to be borne out in the cases cited in *Mews Digest* 566, and the principle is enunciated in *Lord Halsbury's Laws of England* 406.

With regard to the question whether the petitioner is the proper person to be appointed manager of the estate, I think the District Court should make further inquiry to find a person to manage it who has not been in receipt of property at the hand of the respondent. It is clear that the petitioner has been benefited by the respondent's liberality towards him.

I would affirm the finding of the District Court, and send the case back for a further inquiry as indicated above.

Sent back.