Privy Council Appeal No. 58 *of* 1925.

Allahabad Appeal No. 4 *of* 1923.

Mahant Rai and others - - - - - - *Appellants*

v.

Musammat Lachhmina Kunwar and another - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 11TH MARCH, 1927.

Present at the Hearing:

VISCOUNT DUNEDIN.
LORD SALVESEN.
SIR JOHN WALLIS.

[*Delivered by* SIR JOHN WALLIS.]

This is an appeal from a decree of the High Court at Allahabad, reversing the decree of the Subordinate Judge of Ghazipur in O.S. 210 of 1919, a suit instituted on the 7th November, 1919, to recover possession of certain zemindari lands which had been conveyed by Rudra Deo Narain Rai, the first plaintiff, to the defendants by a registered deed of gift dated the 18th December, 1909, subject to the payment of a maintenance allowance of Rs. 2,000 a year for the benefit of the first plaintiff himself, of his two stepmothers, one of whom was the second plaintiff, and of his wife, the third plaintiff, and subject to the condition that on any failure to pay the allowance the deed should become null and void.

Alleging that the first plaintiff was insane at the date of suit, the second plaintiff, one of his step-mothers, sued in his name as his next friend as well as on her own behalf, and his wife also joined as third plaintiff. The plaint alleged that the defendants, who belonged to another branch of the first plaintiff's family, took

advantage of his bodily weakness and mental infirmity, and of the fact that he had quarrelled with his wife and daughters and the daughters' husbands, and obtained from him a fictitious deed of gift of the suit lands which was never intended to be operative, and that after the execution of the deed the first plaintiff continued in possession as before. It alleged further that the deed had become void by reason of the defendants' failure to pay the stipulated maintenance allowance, and that in any case the second and third plaintiffs were entitled to recover their shares of the arrears of maintenance which were charged on the suit lands. In their written statement the defendants pleaded that the second plaintiff was not entitled to sue as the next friend of the first plaintiff as he was not insane at the institution of the suit, they denied that the gift was obtained by improper means or was fictitious or unaccompanied by possession, they further denied that there had been any breach of the conditions of the deed.

The Subordinate Judge, after recording a finding on the fourth issue that the deed was not wrongly obtained by the defendants from the first plaintiff, held on the third issue that the first plaintiff was not incapable of suing on the date of suit and that accordingly the second plaintiff was not entitled to sue as his next friend. He accordingly dismissed the first plaintiff's suit, and holding that the second and third plaintiffs were not entitled to sue for possession of the suit lands, gave them a decree for arrears of maintenance. On appeal the High Court found that by reason of the first plaintiff's mental condition, the second plaintiff was entitled to sue as his next friend. They further found that in consequence of the defendants' failure to pay the stipulated maintenance, the first plaintiff was entitled under the terms of the deed to recover the suit lands with mesne profits, and made a decree to that effect.

In dealing with the issues whether the deed was improperly procured from the first plaintiff in 1909, and whether he was insane in November, 1919, the date of the institution of the suit, the Subordinate Judge reviewed the whole of the evidence as to the life history of the first plaintiff, and arrived at the conclusion that he was undoubtedly a man of weak intellect and incapable of duly managing his own affairs, but that the medical evidence, which was that of a junior civil surgeon who had recently begun to practice was not quite sufficient having regard to his want of experience in this class of case to justify the Court in accepting his conclusion that the first plaintiff was suffering from delusional insanity at the date of the institution of the suit. He found that the first plaintiff belonged to a wealthy and influential family and was the largest co-sharer in the family property, that he succeeded to the zemindari as a young man on his father's death, but found the management of the zemindari burdensome and was anxious to relinquish it to other members of the

family. In 1889 the Maharajah of Dumraon, who had obtained a decree against the family, brought their zemindari lands to sale and purchased them himself. The plaintiff joined with the other co-sharers in a suit to set aside the sale, but in 1893 went over to the other side and allowed the suit to be dismissed as regards himself. He would thereby have permanently lost the lands which are the subject of this suit if the Local Government had not subsequently, in 1908, effected a settlement with the Maharajah of Dumraon under which they purchased the estate and restored it, in January, 1908, to the original owners, including the first plaintiff, on easy terms as to the repayment of the purchase money. Shortly afterwards the first plaintiff became involved in quarrels with his family. He had no sons; but two married daughters and their two husbands, and even the father of one of the husbands, came to live in his house and were encouraged by his wife to go on living there in spite of his objections, and in the course of the quarrels the husband's father assaulted him by hitting him on the head with a lathi. In resentment at the treatment he had received he appears to have contemplated transferring his zemindari lands to another branch of the family, and he was further provoked by the application made by members of his family to the revenue authorities in November, 1909, that his lands should be transferred to their names as he had become insane. Accordingly, in December, 1909, he executed the deed of gift in favour of the defendants which is the subject of the present suit. The family were then advised, wrongly the plaint states, to take proceedings in the District Court of Ghazipur under the Lunacy Act. The proceedings were unsuccessful, and the decision of the District Court was affirmed by the High Court on appeal. It appears from the judgment of the High Court in that case that there was evidence that the first plaintiff had refused to take food on the ground that the family had caused it to be spoiled by demons; but in his examination before the Court he explained the refusal as due to its having a bad smell and also to his fear of being poisoned. Dr. Baldeo Rao, the civil surgeon of Ghazipur, who gave evidence, deposed that he had treated the first plaintiff for mania in 1908, but that he appeared to have recovered. In the result the High Court affirmed the decision of the District Court, observing that it by no means followed that because a man might have delusions on one or two points he was incapable of managing his own affairs.

In 1912, after the failure of the lunacy proceedings, the first plaintiff went away on pilgrimage and appears to have renounced the world and to have become a *Udasi Sadhu*, or sanyasi, under the new name of Ankar Das; and, as found by the Subordinate Judge, for six years he led the life of a fakir, depending on gifts of food for his support. He threw off the sacred thread, cut off the tuft of hair usually worn by Hindoos, wore yellowish garments, and observed no distinctions of caste or creed. In 1918 he returned to his family and continued to live the life of an ascetic, and took no

steps to recover either the suit lands or the arrears of maintenance from the defendants. With reference to this part of the evidence their Lordships entirely agree with the Subordinate Judge that the fact that the first plaintiff had renounced the world and become a sanyasi, devoting himself wholly to spiritual things and entirely neglecting his worldly affairs, would not of itself, however unusual such conduct might be in a man of his position, justify the Court in holding that by reason of unsoundness of mind or mental infirmity he was incapable of protecting his interests, when suing or being sued, so as to entitle the second plaintiff to sue as his next friend (Order 32, Rule 15); but, as will be seen, much more than this was proved in the case.

Before instituting the present suit, the first plaintiff's family obtained a certificate dated the 12th October, 1919, from Dr. M. K. Sarda, assistant civil surgeon of Ballia, that the first plaintiff, B. Rudra Deo Narain Rai, alias Ankar Das, who had been under his treatment since the 8th September, 1919, was suffering from chronic delusional insanity, and that his delusions were such as to render him incapable of managing his own affairs or protecting his interests. In his examination Dr. Sarda deposed that the first plaintiff had complained that he was troubled with gas, which gave a bad smell in the room and abused him in violent language and prevented him from sleeping. He also said that he had asked his relations to get the civil surgeon to give him chloroform and cut his throat, and he also asked the witness to do so. He also said that it was his desire to obtain, by means of penance, salvation for all animals from an ant to a cow, that is to say, that they might be freed from re-birth. In cross-examination the witness deposed: "He said the delusions were to extirpate all animals from an ant to a cow. He said it was his budbichar inspiration to extirpate the animals from an ant to a cow, and that he did not learn it from any book. I would call the plaintiff's insanity a religious insanity." As to this witness the Subordinate Judge observed that he did not think his evidence quite sufficient, in view of the other circumstances, to declare the first plaintiff a lunatic incapable of managing his own affairs, especially as the witness had only a few years' experience and this was his first case of insanity. The Subordinate Judge was also influenced by the fact that the plaintiffs had failed to produce the first plaintiff in Court for examination, but had contented themselves with applying during the hearing that the Court should go to Narhi to see the first plaintiff or send a civil surgeon to report upon him. But the force of this observation is lessened by the fact that it was found impracticable to procure the attendance of the first plaintiff at the lunacy proceedings which were instituted by the family in the District Court of Ghazipur after the dismissal of the first plaintiff's suit, while the appeal to the High Court was pending. In these proceedings they produced a certificate from Lieut.-Col. Overbeck Wright, at the time and for many years previously

Superintendent of the Lunatic Asylum at Agra, and author of a treatise on insanity, to which the Subordinate Judge had referred in his judgment. According to this certificate, the first plaintiff was a lunatic and incapable of managing his own affairs and was also liable to be dangerous to himself and others.

> "He was excited and garrulous, full of exaggerated religious fervour and delusions. He stated that devils had possessed him for forty years and that God had put a penance on him to banish all creatures and destroy the world. He has hallucinations of smell, stating that foul gases emanate from various parts of his body, including his umbilicus and nostrils, and he says these have troubled him for 15 years. He states that God has decreed that his release can only be obtained by his being chloroformed by a doctor sahib and having his head cut off."

The defendants in the present suit appeared in the lunacy proceedings and cross-examined Colonel Overbeck Wright at great length on his certificate and evidence. The District Judge found that his conclusions were not in any way shaken, and by an order dated the 19th January, 1922, declared the first plaintiff to be a lunatic incapable of managing his own affairs, and appointed the second plaintiff to be his guardian. No orders, he said, were necessary for the custody of the lunatic, who apparently so far had not been dangerous to anyone and was leading the life of a fakir. At the hearing of the appeal in the present case in the High Court an application was made by the plaintiffs that the evidence and certificates of Lieut.-Col. Overbeck Wright should be admitted as evidence and made part of the record, more especially as the Subordinate Judge had stated that he was not quite satisfied with the medical evidence of Dr. Sarda. In these circumstances the learned Judges came to the conclusion, in which their Lordships concur, that a case had been made out for taking the evidence of Lieut.-Col. Overbeck Wright, and, as he had already been cross-examined at great length by the defendants in the lunacy proceedings, it was not thought necessary to call him again, and his certificates and deposition were accordingly admitted as evidence in this case.

Although Colonel Overbeck Wright did not examine the first plaintiff until nearly two years after the institution of the present suit, the learned Judges were of opinion that his certificates and evidence thoroughly corroborated those given in the suit by Dr. Sarda and showed the first plaintiff to have been insane at the date of the institution of the suit. They observed that in all the main outlines the statements made by the first plaintiff in September, 1919, and in September, 1921, were identical, and that some of the delusions which were manifest in 1919 and persisted in 1921 in an aggravated form were said to have been present in 1910, particularly the haunting by "shaitans" or demons. With reference to this part of the case their Lordships would observe that the first plaintiff's persecution by imaginary voices which he attributed to gases issuing from various parts of his body and the religious megalomania which led him to regard himself

as destined to be in some sort a saviour of the world are symptoms which are familiar in inquiries of this kind ; and in their Lordships' opinion the learned Judges were well justified in accepting the medical evidence of an acknowledged expert that in September, 1921, the first plaintiff was in an advanced state of systematic delusional insanity and incapable of managing his own affairs, and in coming to the conclusion he had been in this condition long before 1919, when Dr. Sarda examined him and formed the same opinion. Their Lordships have the less hesitation in arriving at this conclusion because they think it probable that the Subordinate Judge would have been of the same opinion if the evidence of Lieut.-Col. Overbeck Wright had been before him.

The suit having been properly constituted, it only remains to deal with the first plaintiff's claim to recover the suit lands according to the condition of the deed for failure to pay the maintenance allowance. As regards this part of the case the defendants pleaded in paragraph 9 of the written statement that they never evaded payment of the maintenance allowance, but made payments under the first plaintiff's orders and kept the balance in deposit under his instructions. They also pleaded in paragraph 12 that the plaintiffs had spent what they liked out of the maintenance allowance and that they held Rs. 11,983.11 in deposit under the instructions of this first plaintiff and had always been ready and willing, and still were, to pay the same. There are concurrent judgments of both the lower Courts rejecting the evidence tendered by the defendants in support of these pleas. The Subordinate Judge found that the defendants had never paid anything to the second and third plaintiffs, and that though they might have paid something to, and incurred certain expenses for, the first plaintiff until he left them in 1912, they paid him nothing afterwards, and that there had been a clear violation of the conditions. The learned Judges on appeal expressed their complete agreement with the learned Subordinate Judge in his estimate of the evidence given to prove the fulfilment of the conditions in the deed, and found further that the condition as regards the payment of Rs. 2,000 annually was never complied with and that the defendants had no justification for withholding it. The first plaintiff having died while the appeal was pending, they gave the third plaintiff, his widow and legal representative, a decree for possession with mesne profits for three years prior to the suit and until delivery of possession. In their Lordships' opinion this was the right decree to make on the findings. Accordingly the appeal fails and should be dismissed with costs, and their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

MAHANT RAI AND OTHERS

v.

MUSAMMAT LACHHMINA KUNWAR AND ANOTHER

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