

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Fulton.

1894.

November 29.

ANPURNA'BA'I AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, v.
DURGA'PA MAHA'LAPA NA'IK (PLAINTIFFS), RESPONDENTS.*

Lunatic—Lunatic's estate—Act XXXV of 1858, Sec. 14†—Manager appointed under the Lunacy Act—Manager of joint family—Alienation by manager.

Where a person is appointed manager of a lunatic's estate under Act XXXV of 1858, he can only make a valid alienation in accordance with the provisions of that Act, although he may also be *de facto* manager of the family property.

A Hindu married woman having a lunatic husband and minor sons was appointed guardian of the lunatic's estate under Act XXXV of 1858. She was also *de facto* manager of the family. She mortgaged the family property without the sanction of the Court, as required by section 14 of the Act.

Held, that the mortgages were invalid as regards the lunatic's interest in the property, but as regards the interest of the minors, which was vested in them at the time of the mortgages, the property being ancestral, the mortgages were binding if made for family purposes.

THESE were second appeals from the decision of Gilmour McCorkell, District Judge of Kánara, reversing the decree of Ráo Sáheb V. D. Joglekar, Subordinate Judge of Honávar.

Suit for possession of land. The land in question was the property of one Venkatesh, who was found to be a lunatic under the Lunacy Act (XXXV of 1858). His wife Lakshmbái was appointed manager of his estate under section 14 of that Act. She was also *de facto* manager of the family, which consisted of her lunatic husband and two minor sons Ganpaya and Pándurang (defendants Nos. 3 and 4). In 1876 she mortgaged the land, without possession, to the first defendant.

On the 4th February, 1882, Ganpáya having then attained

* Second Appeals Nos. 383 and 551 of 1890.

† Section 14 of the Lunacy Act (XXXV of 1858)—

14. Every manager of the estate of a lunatic appointed as aforesaid may exercise the same powers in the management of the estate as might have been exercised by the proprietor, if not a lunatic; and may collect and pay all just claims, debts, and liabilities due to or by the estate of the lunatic. But no such manager shall have power to sell or mortgage the estate, or any part thereof, or to grant a lease of any immoveable property for any period exceeding five years, without an order of the Civil Court previously obtained.

majority, sold the same land to the plaintiff, who in 1889 brought this suit for possession.

The first defendant claimed as mortgagee from Lakshmi Bai. Defendants Nos. 2 and 3 did not defend the suit. Defendant No. 4 (Ganpaya's brother Pandurang) contended that his share in the property was not bound by Ganpaya's sale to the plaintiff.

The Subordinate Judge dismissed the suit, holding that defendant No. 1 had proved his mortgage, and that the share of defendant No. 4 was not bound by the plaintiff's purchase from defendant No. 3.

On appeal, the Judge passed a decree for the plaintiffs, ordering that they "should recover possession of the land free from all incumbrance on the part of defendants Nos. 1 and 2, and mesne profits from the date of suit."

The following is an extract from his judgment:—

"Lakshmi Bai was the wife of one Venkatesh Pai, who had been declared a lunatic, and his wife had obtained a certificate. In 1876 she mortgaged to defendant No. 1. Plaintiffs contend that that mortgage is invalid. On this point there can be no doubt. Lakshmi Bai had obtained a provisional order to sell some lands, but she did not fulfil the conditions imposed. She had, therefore, no authority to sell. Now it must not be assumed that even an absolute authority to sell can be construed as an authority to mortgage. Under such special Acts as Acts XXXV of 1858 and XX of 1864*, the administratrix must act in strict conformity to the authority conferred; otherwise her acts are invalid *ab initio*. The argument of the Subordinate Judge, that she was acting as the guardian *de facto* of her sons, cannot be sustained for a moment. Her husband was alive, and she held in trust for him and not for her children. Her children could only claim proper maintenance, but they had no proprietary right in the estate such as came after the death of their father.

"Defendant No. 5 obtained a decree against Lakshmi Bai as administratrix of her husband's estate in respect of maintenance. The maintenance of a widow in a joint Hindu family is a charge against the general family estate, and not against any particular portion. The maintenance of defendant No. 5 must be held as a charge against the lands in dispute along with the rest of the family estate."

* Section 18 of the Minors' Act (Bombay Act XX of 1864)—

18. Every person to whom a certificate shall have been granted under the provisions of this Act may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a minor, and may collect and pay all just claims, debts and liabilities due to or by the estate of the minor. But no such person shall have power to sell, alienate, mortgage, or otherwise encumber any immovable property, or to grant a lease thereof for any period exceeding five years without the sanction of the Civil Court previously obtained.

1894.

ANPERNA BA I
2.
DURGA PA
MAHA LAPA
NA EK.

1894.

ANPURNĀ BĀI
v.
DURGA'PA
MAHA'LAFA
NĀIK.

The first defendant (Anpurnābāi) preferred a second appeal.

Scott with *Ghanashām N. Nādkarni* appeared for appellant (original defendant No. 1):—The mortgage by Lakshmibāi to the first defendant was valid. She acted in two capacities. She had been appointed manager under the Mofussil Courts' Lunacy Act, and, therefore, any alienation made by her in that capacity was effectual. She also acted as the *de facto* manager of the family, and borrowed money from the first defendant to pay off previous debts. Therefore the alienation made by her as the *de facto* manager cannot be impeached, the alienation being for a family necessity—*Bāi Amrit v. Bāi Manik*⁽¹⁾; *Girraj Baksh v. Kāzi Hamid Ali*⁽²⁾; *Keshav v. Doulatkhan*⁽³⁾; *Manishankar v. Bāi Muli*⁽⁴⁾.

[FULTON, J.:—Lakshmibai did not obtain the sanction of the Court under section 14 of the Lunacy Act to mortgage the property. Therefore the alienation made by her as the manager of her lunatic husband would be bad. See *Court of Wards v. Kupulmun Sing*⁽⁵⁾].

The family having derived the benefit of the mortgage transaction, it should not now be set aside—*Tilkoer v. Roy Ajand Kishore*⁽⁶⁾. As the mortgages were made for the benefit of the family, neither the lunatic nor the minors are entitled to have it set aside without making restitution.

We further contend that the lunatic had no interest in the family property. Lunacy deprived him of his share, and he became entitled only to maintenance. A lunatic is not entitled to a share on partition—Mayne's Hindu Law, article 443.

Shāmrao Vitkal for the respondents (original plaintiffs):—The previous sanction of the Court under section 14 of the Lunacy Act was not obtained, and, therefore, the mortgage was not valid so far as the lunatic was concerned—*Court of Wards v. Kupulmun Sing*⁽⁶⁾. It was not as the *de facto* manager of the family that she purported to deal with the property, but as

(1) 12 Bom. H. C. Rep., 79.

(2) I. L. R., 9 All., 340.

(3) P. J., 1891, p. 147.

(4) I. L. R., 12 Bom., 686.

(5) 10 B. L. R., 364.

(6) 10 C. L. R., 547.

manager appointed under the Lunacy Act. She ought to have obtained the sanction of the Court either under the Lunacy Act or the Minors' Act. There is no authority for the proposition that a lunatic is under no circumstances entitled to a share in the family property. If a man becomes a lunatic after partition, he cannot be deprived of his share. It is only where a man is a lunatic at the opening of the inheritance that he is not entitled to a share.

Narayan G. Chandavarkar appeared for respondents (original plaintiffs) in Appeal No. 551.

SARGENT, C. J.:—The District Judge has decided in favour of the plaintiff on the ground that the mortgages by Lakshmi Bai, under which defendant No. 1 claims, were bad, both as regard her lunatic husband and the defendants Nos. 3 and 4. As to the latter, he disputes the ground of the Subordinate Judge's decision in favour of defendant No. 1 as proceeding on the assumption that she was acting as the guardian *de facto* of her minor sons. But this is a mistaken view of the Subordinate Judge's reasoning. He treated Lakshmi Bai as being the *de facto* manager of the family, and, as such, being able to alienate the property for family purposes. It was not disputed that she did fill that character; but the question for consideration is, whether having been appointed a guardian of her lunatic husband's estate under Act XXXV of 1858, she could mortgage the lunatic's interest without the consent of the Court as required by section 14 of the Act. The decisions in *Shurrut Chunder v. Rajkissen*⁽¹⁾ and *Bhupendro Narayan v. Nemye Chand*⁽²⁾ are conclusive that in the case of a manager of a minor appointed under the Minors' Act, although he may have been *de facto* manager of the family property, he can only make a valid alienation in accordance with the Minors' Act. The language of section 14 of the Act XXXV of 1858 is the same as that of section 18 of the Bombay Minors' Act XX of 1864, and the decision must be the same with regard to the manager of a lunatic. The remarks of Phear, J., with respect to a lunatic's estate in *The Court of Wards v. Kupulman Sing*⁽³⁾, and which is referred to in *Shurrut Chunder v. Rajkissen*⁽¹⁾, are to that effect.

(1) 15 B. L. R., p. 350.

(2) I. L. R., 15 Calc., 629 at p. 634.

(3) 10 B. L. R., 364.

• 1894.

ANURNABAI

v.
DURGA'RA
MAHA'RAJA
NA'IK.

The mortgages, therefore, under which defendant No. 1 claims, were invalid as regards the lunatic's interest in the property, but as regards the interest of the minors, defendants Nos. 3 and 4, which was vested in them at the time, it being admittedly ancestral property, if the mortgages were for family purposes, they would be binding on defendants Nos. 3 and 4, through whom plaintiff claims. Owing to the view the District Judge took of the rights of the parties, there is no finding as to this. It was contended for defendant No. 1 that the lunatic was only entitled to maintenance after the partition, but this would not be so if the lunatic was not one at the time of Giriappa's death so as to disqualify him from inheriting or demanding a partition, and as no issue was raised in either Court below relative to the lunatic's proprietary right, it must be assumed that such was the case, as was held by Phear, J., under similar circumstances in *The Court of Wards v. Kupulmun Sing*⁽¹⁾.

Lastly, it was said that, at any rate, equity requires that the plaintiff should not recover possession of the lunatic's proprietary interest in the property without paying some portion of the amount of the mortgage passed to defendant No. 1, as it was expended on the family estate, and the plaintiff has had the benefit of it. This question cannot be satisfactorily dealt with until it has been determined whether the money raised by defendant No. 1's mortgages was for a family purpose. We must, therefore, before disposing of the case send down the following issue for determination :—

Were the mortgages executed by Lakshimbai to defendant No. 1 or was either and which of them for a family purpose?

Finding to be sent to this Court within three months.

(1) 10 B. L. R., 364.