

(1903) 05 CAL CK 0012
In the Calcutta High Court
Case No : Appeal from Order No. 248 of 1902
In Re: Joga Koer

Date of Decision : 15-05-1903

Acts Referred:

Citation : (1903) 05 CAL CK 0012

Judgement

Ghose and Pratt, JJ.—This is an appeal against an order of the District Judge of Shahabad dismissing an application made by one Musammat Joga Koer, mother of Rajendra Prosad Sahu. This individual was described in the application presented by Joga Koer to be a lunatic and the lady asked that she might be appointed guardian of the person and manager of the estate belonging to the lunatic under Act XXXV of 1858. The application was accompanied by a certificate from the Assistant Surgeon of Dumraon, stating that Rajendra Prosad Sahu was suffering from unsoundness of mind and was under his treatment and that he was unfit to attend to his business. The District Judge apparently took it for granted that Rajendra Prosad was a lunatic and expressed an opinion (that opinion being recorded on the 18th April 1902) that Rajendra Prosad being well off, his property should be devoted, first of all, to his welfare ; and he directed that, the lunatic be sent to the Patna lunatic asylum, where he would be properly looked after and perhaps cured. And the learned Judge added as follows:—"When this has been done this petition will be granted. Put this up on the 15th May if nothing further has been done by them." On the 25th April 1902, a petition was presented to the District Judge by Musammat Joga Koer, stating that Rajendra Prosad was residing in his family house at Dumraon and had been put under the treatment of the medical officer there; that he was the only male member in the family and that it would, be difficult to take him to Patna and put him under medical treatment there and further, that the zemindary being large and the mahajani business being extensive, the estate would suffer for want of a certificate of guardianship; and she prayed that the order made by him (the District Judge) on the 18th April be not carried out and that a certificate of guardianship be granted to her. She stated at the same time that she was willing to produce the lunatic before the Judge, if so required. On the 29th April 1902,

the Judge recorded the following order:--"The petition to excuse the lunatic being sent to Patna put in--Refused,"--and this was followed by another order, which was on the 15th May 1902:--"Orders not obeyed. Application refused." The result is that no manager in respect of the estate of the lunatic has been appointed and the lunatic has been ordered to be sent to the lunatic asylum at Patna.

2. Section 9 of Act XXXV of 1858 runs as follows:--"When a person has been adjudged to be of unsound mind and incapable of managing his affairs, if the estate of such person or any part thereof consists of property which by the law in force in any Presidency subjects the proprietor, if disqualified, to the superintendence of the Court of Wards, the Court of Wards shall be authorized to take charge of the same. In all other cases, except as otherwise hereinafter provided, the Civil Court shall appoint a manager of the estate. Any near relative of the lunatic or the public curator, or if there be no public curator, any other suitable person, may be appointed manager." So that, if a person be adjudged to be of unsound mind and incapable of managing his own affairs, it is incumbent upon the District Judge to appoint a manager of the estate belonging to such person. In the present case, the District Judge has simply passed the order that Rajendra Pershad Shahu, the lunatic, be sent to the Patna lunatic asylum. And he has refused the application made by the mother of the lunatic apparently without any consideration, whether it was incumbent upon him to appoint a manager to the estate belonging to the said lunatic. Referring to the order which he made on the 18th April 1902, it would appear that the Judge meant to reserve the question of the appointment of a manager to the estate of the lunatic, pending the treatment which he desired the lunatic should be put under at the Patna lunatic asylum. For aught we know, the lunatic might have to be detained for the purpose of treatment for some years together; and we do not understand whether the learned Judge seriously meant that all this while the estate of the lunatic should be left unearned for and without a manager.

3. We observe that the learned District Judge, although some evidence was produced before him as to the unsoundness of mind of Rajendra Pershad, has not determined whether that person is a lunatic, as he was bound to do under Act XXXV of 1858 (see Section 7) and it is necessary that this should now be done.

4. Turning then to the question whether Rajendra Pershad should be sent to the lunatic asylum, we observe that there is apparently no provision in Act XXXV of 1858 authorizing a District Judge to send a person adjudged to be a lunatic to the lunatic asylum; but it is not necessary in the view that we take of the matter to express any decisive opinion upon the point at the present stage. Rajendra Pershad is evidently a man of means. According to the statements made by his mother, he has been residing at Patna with his family and been under medical treatment there; and if he is not absolutely violent and may be well taken care of by his own people at Dumraon and can get proper medical treatment at that place, there is no reason why he should be forced to go to the lunatic asylum.

We think that the District Judge should reconsider this matter before he makes up his mind to take the step which he intended to take by his order of the 18th April 1902.

5. We need hardly add that, in any event, it would be incumbent upon the District Judge, in view of the provisions of Section 9 of Act XXXV of 1858, to appoint a manager to take charge of the estate of Rajendra Shahu and he will now be required to appoint a person as manager. If the mother be a fit and proper person, we do not see why she should not be so appointed.

6. With these remarks the orders of the District Judge of the 18th April 1902 and 15th May 1902 will be set aside and the case sent back to him, for reconsideration with reference to the remarks which we have already made. The learned Judge is 1903 request to take up this matter, if possible, out of turn.