
(1916) 10 AHC CK 0016
In the Allahabad High Court

Syed Amir Kazim

APPELLANT

Vs

Syed Musi Imran and Others

RESPONDENT

Date of Decision : 30-10-1916

Acts Referred:

Lunacy Act, 1912 — Section 71

Citation : 36 Ind. Cas. 983

Hon'ble Judges : Walsh, J; Stuart, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Five connected appeals are brought before us, as to two of which we direct an adjournment, namely Nos. 145 and 146, and as to the remaining three, decrees must be drawn up in accordance with this judgment. It is not necessary to discriminate between the appeals of the parties thereto. The question raised involves really one simple issue, though it is difficult no doubt to determine it. The facts are sufficiently set out in the judgment of the Court below. The present position is not satisfactory and the order of the Court below must be reversed. The matter relates primarily to the person and also to the property of one Ali Imran, a young man who was brought up at St. George's College, Mussoorie, where he was educated together with his present guardian, and later at Jesus College, Oxford, and who was the son of a wealthy man who appears to have been of somewhat dissolute habits and somewhat of a miser except in respect of his son's education. The young man left his wife in India, and a very affectionate correspondence which passed between them shows that in certain matters the father and the wife did not get on, and that the son himself felt this rather keenly. In course of time, the son returned to India and unfortunately, whether from some hereditary cause or vicious habits or the effects of the sun, he became ill at the end of 1913 or early in 1914, and is now what may be regarded as incurably insane and unable to manage his affairs. The property is considerable and there are other persons, some of them females and one of them either a minor or until recently a minor, interested in it. He was, for some

time, at Agra in the care of one doctor and after his father's death, which occurred in August 1914, he was in the charge of another medical man. Between these two states of his history, the applications were made out of which the present appeals arise. These were made in September 1914, and were for the guardianship of the person of the lunatic, Now as too frequently happens in these cases, various members of the family are desirous of being appointed and have been employed in making charges of one sort and another against each other. The dispute is substantially between the young wife and her father, with whom she is now residing, on the one side and one Nazar Hasan on the other. The latter has been appointed guardian of the person. He is in fact managing and controlling the property of the lunatic. Serious allegations are made against him as regards his past conduct both with the father and with the lunatic's property, and there is a controversy as to whether or not he is a persona grata or was a persona grata with the lunatic. On the other hand he makes charges against the lunatic's wife. We do not see any necessity for coming to any conclusion about the truth of these accusations, nor to go into any detail into the medical evidence. Substantially the learned Judge has founded himself upon this argument that Nazar Hasan was undoubtedly the confident and trusted factum of the deceased father; that he helped him to look after his affairs and was trusted by him, and naturally after the father's death slipped into the position which he now occupies and controlled and managed the property of everybody, including that of the lunatic. Now we are not saying for one moment that the learned Judge was wrong in principle in saying that a person indicated by the conduct of a deceased father is not a desirable person; but in this particular case there are circumstances which we think outweigh that consideration, and looking at the matter broadly we have come to the conclusion that it is far better for the lunatic himself that he should be in the personal custody of his own wife; so long at any rate as she resides with her father she is the person naturally indicated for the duty, and it is sufficient to say that Nazar Hasan has failed to show anything disentitling her to be trusted with that duty, at any rate so long as she resides with her father, and we, therefore, take the course which may be unusual, but which seems to us within our jurisdiction, of appointing both the wife and her father to exercise the duties jointly of guardian of the person of the lunatic u/s 71, so long as they reside together, and the lunatic must be under their custody, not necessarily under their roof but sufficiently near them to be really under their custody. Now we think the learned Judge was possibly misled by the argument addressed to him based upon Section 72. Section 72 says that the legal heir of a lunatic shall not be appointed unless the Court considers that such an appointment is for the benefit of the lunatic. It is a little odd, this section. In this case there is no such thing as a equal heir; there are several heirs and, of course, the wife is one, but it cannot mean that, in the case of a wife who under some system of law may be the sole heir she is necessarily an undesirable person to be appointed, and indeed we can but endorse the established principle in English Law that a wife has the first claim and when the section is carefully looked at, one sees that it is almost tautologous because no appointment ought

to be made by the Court which the Court does not consider to be for the benefit of the lunatic, and we think that what that section means is that it is a kind of warning that particular care should be exercised by the Court where a person is entitled to inherit a part of the property of the lunatic, and is, therefore, benefited by his death, to see that his appointment is a beneficial one. We think it is a mere direction or caution to the Court and we are satisfied that this appointment will be for the benefit of the lunatic. The appeal No. 152, which is actually before us, must be allowed in part to the extent which we have already declared, and we must make the appointment of the two persons, the father-in-law and the daughter, jointly while they reside together. In the other appeals the decree must be drawn up so as to correspond with that order.

2. Two other important questions remain, neither of which is perhaps directly brought before us by way of appeal, but both of which are matters with which we are bound to deal in disposing of the case for the time being. The first is with regard to the property of the lunatic. There is no order in existence. Nearly everybody seems to want to be amplified, but we are not satisfied on the materials at present before us that either, the father-in-law or the brother-in-law, Nazar Hasan, respondent in this appeal, are desirable persons for this purpose, though it may hereafter be shown that one or other of them is. The present state of things is clearly undesirable in the interests of everybody. The present respondent is, as I have said, de facto manager and in control, but it is most desirable from his point of view that his legal position should be defined, and serious allegations are made about his conduct. We think that under the circumstances it is a case in which if we had the power u/s 69, we should unhesitatingly direct the Collector to take charge, and we think that it is so important that if we had the power to do so, we should make an order at once, but the section prohibits us from making an order until his consent has been previously obtained, and we are compelled, therefore, to suspend the decision of this matter until the Collector has been communicated with. As to whether he is willing or not there is again controversy, the appellant asserting his willingness and the respondent denying it; but we postpone the decision of such portions of the appeal as relate to the property of the lunatic to enable the Collector to be communicated with without delay, and direct that the expression of our opinion should be conveyed to him, that it is desirable in the interest of everybody concerned and of the property that an order should be made directing him to take charge.

3. The other matter is a matter which is really not before us at all. It is one of those matters which is cognate to the appeal and enables a Judge sometimes to do what is desirable in the general interest of the parties. We suggest to the Collector that having regard to the nature of the other interests involved, namely of one who only recently attained his majority, and of four others who are purdannah ladies (one of whom is married), the attention of the Court of Wards should be drawn to the estate with a view to considering whether it is not a matter which calls for their intervention. Whatever order was made in the Court

below for the provision of funds for the maintenance of the lunatic, must be maintained as regards the amount, and we direct that such amount per month be paid by Nazar Hasan from the lunatic's estate to the father-in-law for the maintenance of the lunatic. This allowance is only a current allowance until farther order by the competent authority and does not cover, of course, any claims which the father-in-law may have to be reimbursed for capital expenditure. We think under the circumstances the costs of all the proceedings here and in the Court below must come out of the estate.