

APPELLATE CIVIL.

Before Jack and Khundkar J.J.

1934

NABAKUMAR SINGH DUDHURIA

May 31; June 5.

v.

FATEH SINGH NAHAR.*

Lunatic—Committee—Joint managers—Survivorship, if any—Rule of English law, Applicability to British India of—Indian Lunacy (District Courts) Act (XXXV of 1858)—Indian Lunacy Act (IV of 1912)—Guardians and Wards Act (VIII of 1890), s. 38—Indian Succession Act (XXXIX of 1925), s. 312—Indian Trusts Act (II of 1882), s. 76.

The principles of equity as applied to the practice of the courts in England should be observed in the courts of British India in cases, in which there is no law extant, which laid down a different procedure.

Pransukram Dinanath v. Bai Ladkor (1) followed.

Waghela Rajsanji v. Shekh Masludin (2) and *Muhammad Raza v. Abbas Bandi Bibi* (3) referred to.

Until the legislature sees fit to introduce into the Indian Lunacy Act a provision similar to section 38 of the Guardians and Wards Act applying the principle of survivorship in the case of death of one of the joint guardians until another is appointed by the court, the rule of English law should be followed in British India and where there is no provision for survivorship in the order of appointment of the joint managers, the office of the survivor should terminate on the death of his co-manager.

Ex parte Lyne (4), *Ex parte Clarke* (5) and *Bradshaw v. Bradshaw* (6) followed.

The cases of joint executors or joint trustees are distinguishable, because in these cases there is a vesting of property in the surviving executor or trustee. *Vide* section 312, Succession Act, and section 76, Trusts Act.

APPEAL FROM ORIGINAL ORDER by the petitioner.

The facts of the case and the arguments in the appeal appear sufficiently in the judgment.

Panchanan Ghosh, Durgadas Ray, Soureendranarayan Ghosh and Pareshnath Mukherji (junior) for the appellant.

*Appeal from Original Order, No. 128 of 1934, against the order of H. G. S. Bivar, District Judge of Murshidabad, dated Jan. 27, 1934.

(1) (1899) I.L.R. 23 Bom. 653.

(2) (1887) I. L. R. 11 Bom. 551 ;

L. R. 14 I. A. 89.

(3) (1932) I.L.R. 7 Luck. 257 ;

L. R. 59 I.A. 236.

(4) (1735) Cases t. Talbot 142 ;

25 E.R. 707.

(5) (1822) Jac. 589 ; 37 E.R. 975.

(6) (1826) 1 Russ. 528 ; 38 E.R. 203.

Atulchandra Gupta and *Bhageerathchandra Das*
for the respondent.

Cur. adv. vult.

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JACK AND KHUNDKAR JJ. This appeal has arisen out of an application for managership of the estate of lunatic Jnanchand Golecha.

The estate was under the joint managership of Fateh Singh Nahar and Raja Bijay Singh Dudhuria of Azimganj by an order of the District Judge of Murshidabad under Act XXXV of 1858. Raja Bijay Singh, having died on the 18th May, 1933, it is claimed that by his death the managership of Fateh Singh Nahar was terminated and the petitioner Nabakumar Singh Dudhuria applied to be appointed sole manager.

The learned District Judge found that the original managership of Fateh Singh was not terminated by the death of Raja Bijay Singh and that, consequently, there was no vacancy in the managership and, therefore, dismissed the petition of Nabakumar Singh.

The question, therefore, to be decided in this appeal is whether the management of Fateh Singh terminated on the death of Raja Bijay Singh.

There is no provision in the Lunacy (District Courts) Act (XXXV of 1858) nor in the present Act on this point and it has been laid down in a number of cases that the principles of equity, as applied to the practice of the courts of England, should be observed in the courts of this country in cases, in which there is no law extant which laid down a different procedure [*Pransukhram Dinanath v. Bai Ladkor*, (1)]. The cases of *Waghela Rajsanji v. Shekh Masludin* (2) and *Muhammad Raza v. Abbas Bandi Bibi* (3) may also be referred to. We have been referred to three English cases.

(1) (1899) I.L.R. 23 Bom. 653.

(2) (1887) I.L.R. 11 Bom. 551 (561);

L. R. 14 I.A. 89 (96).

(3) (1932) I.L.R. 7 Luck. 257 (267) ;

L.R. 59 I.A. 236 (246).

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Ex parte *Lyne* (1), where a husband and wife had joint custody of a lunatic's estate, the Lord Chancellor laid down that, on the death of the wife, the husband's right to the custody of the estate was terminated, it being a joint grant and a mere authority without any interest. The learned District Judge distinguishes this case on the ground that it was the wife who was related to the lunatic; however, the principle on which the decision was based was that the original grant was joint and a mere authority without interest and not because the remaining manager was not related to the lunatic.

The same rule was laid down by Lord Chancellor Eldon in the case of *Ex parte Clarke* (2). The Master of the Rolls, Lord Gifford, in the case of *Bradshaw v. Bradshaw* (3), held that, where joint guardians of a minor were appointed, the office did not, upon the death of one of them, survive to the others. It was probably owing to this rule that in the Guardians and Wards Act section 38 was enacted, laying down that the principle of survivorship applied in the case of death of one of the joint guardians until another was appointed by the court. The cases of joint executors or joint trustees are distinguishable, because in these cases there is a vesting of property in the surviving executor or trustee. (*Vide* section 312, Indian Succession Act and section 76, Indian Trusts Act). According to Pope (*Law and Practice of Lunacy*, page 102) :

Previously to the Lunacy Regulation Act of 1853, in cases where two or more persons were appointed committees, and one of them died, the grant being joint, and a mere authority without any interest, the right to the custody of the lunatic absolutely determined; and it became necessary to obtain an appointment of new committees. The only reported exception to this rule was a case where the property was very small [*In re Noble* (4)].

(1) (1735) Cases t. Talbot 142;
25 E. R. 707.

(2) (1822) Jac. 589 (595);
37 E. R. 973 (975).

(3) (1826) 1 Russ. 528;
38 E.R. 203.

(4) (1852) 2 DeG. M. & G. 280,
42 E.R. 880.

By section 66 of the Lunacy Regulation Act of 1853 the grant of authority might be extended to surviving or continuing committees in certain cases. This was repealed by the Lunacy Act of 1890, and rule 71 of the Rules on Lunacy (1890) under that Act provided that, where the Masters certify that several persons ought to be appointed committees of the estate or person and that it is expedient that one or more of such persons should continue to act after the death or discharge of the others or other of them, the order appointing the committees may direct that the custody of the estate or person shall continue to the surviving or continuing committees or committee. Pope on the authority of Elmer noted that this procedure had only been adopted in very special cases prior to 1890. This would go to show that it was not generally considered advisable, and there is probably reason for this. Joint managers are appointed permanently for the reason that it is advisable to have more than one manager possibly so that the second manager may act as a check on the conduct of affairs, and since, at the time of his appointment, it was not considered advisable that the first manager should have the sole conduct of the affairs of the lunatic, presumably on the death of the second manager he ought not to be allowed to continue as sole manager for the same reason.

In these circumstances, until the legislature see fit to introduce into the Lunacy Act a provision similar to section 38 of the Guardians and Wards Act, I am of opinion that the rule of English law should be followed and, where there is no provision for survivorship in the order of appointment of the joint managers, the office of the survivor should terminate on the death of his co-manager.

The order of the learned District Judge is, accordingly, set aside and the case will go back to him for hearing of the petitioner's application on the

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other points raised on the footing that the office of manager of the lunatic's estate is vacant except for the *ad interim* appointment of joint managers made by the judge, which will meanwhile continue. The petitioner will get his costs in this Court—hearing fee one gold *mohur*. Costs in the District Judge's court will abide by the final result.

Appeal allowed, case remanded.

G. S.