

## ORIGINAL CIVIL.

*Before Mr. Justice Subramania Ayyar.*

1895.  
August 14.

IN THE MATTER OF NAGAPPA CHETTI, AN ALLEGED LUNATIC.\*

*Lunatic—Act XXXIV of 1858—Enquiry into alleged lunacy—Degree of unsoundness of mind.*

A Hindu, who had acquired considerable assets without any ancestral property, lived with one of his wives and his eldest son who managed the property. A younger son, who lived apart with his mother, made an application to the High Court alleging that his father was a lunatic and praying that he be declared to be so, and that a committee be appointed under Act XXXIV of 1858, and that the eldest son be directed to deliver the property to the committee. It was found on the enquiry held under the above Act, that the alleged lunatic had for many years now and then been for short periods in such a state of mind as to render it right to detain him at home, and that he now had about him that which when aroused by the recollection of past losses or by the recurrence of family quarrels might produce mental derangement, but that he was of sound mind at the dates of the above application and of the enquiry :

*Held*, that the application should be dismissed.

*Per curiam* : The eldest son should give to those who would be co-heirs with him to his father a fair opportunity of satisfying themselves that his management is open to no question and that nothing is done to their detriment.

Distinction between lunacy with lucid intervals, and a state of sound mind, subject to occasional unsoundness arising from accidental and temporary causes, considered.

PETITION under Act XXXIV of 1858 for a declaration of lunacy and the appointment of a committee.

The petitioner was one Singaravelu Chetti, and the prayers of his petition were as follows :—

“(a) That an enquiry be held into the lunacy of Mandi Nagappa Chetti residing at No. 4, Sivaraman Street, Triplicane.

(b) That it be declared that the said M. Nagappa Chetti is of unsound mind and incapable of managing his affairs.

(c) That a committee be appointed to take charge of the estate and effects of the said M. Nagappa Chetti.

(d) That M. Kuppasami Chetti, a son of the said lunatic, now in charge and management of all the real and personal estate of the said lunatic, be removed and he be directed to deliver to the committee so appointed all the immovable properties, cash, books

\* Application under Act XXXIV of 1858.

of account, documents and papers of any kind whatsoever relating to, or any way connected with, the said estate.

(e) The said M. Kuppusami Chetti be also directed to give a true account to the said committee of the management by him for the past several years since the said M. Nagappa Chetti became lunatic.

(f) The Court will be pleased to declare the persons entitled to be provided for from and out of the said estate and their respective amounts payable to them from time to time for their maintenance."

Mr. G. P. Johnstone for petitioner.

Seshagiri Ayyar for the alleged lunatic.

JUDGMENT.—This is an application under Act XXXIV of 1858 for a declaration that one Nagappa Chetti is of unsound mind incapable of taking care of himself and his property, and for the appointment of a committee to take charge of his person and his estate.

Nagappa married two sisters, of whom the mother of the petitioner is the second wife, whilst the mother of the counter-petitioner is the first wife. The petitioner is the second of Nagappa's three sons, of whom the counter-petitioner is the eldest.

The petitioner called three witnesses, who are some of the neighbours of Nagappa. The first witness, Muttusami Naidu, stated that the witness has known Nagappa for the last ten or twelve years, that he has for many years been subject to periodical mental derangement, that on such occasions he goes about interfering with people passing along the streets and behaving otherwise in an eccentric manner, that when this is the case he is locked up in his house until he gets better again, and that the last time he was so confined was about twenty days ago when the witness found Nagappa near the Triplicane tank giving trouble to the people there and took him to the counter-petitioner, who kept him in confinement for two or three days. In cross examination the witness admitted that he and the counter-petitioner have been on unfriendly terms for about a year, that the counter-petitioner obtained a decree against him for Rs. 17-8-0 and took out a warrant for his arrest, and that the witness still owes Rs. 15 under the decree, though the counter-petitioner had allowed him to pay at the rate of Rs. 5 a month. With reference to the last occasion when the witness said he took part in seeing Nagappa placed under restraint, he

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contradicted himself and stated that this was not twenty days ago as he stated in the examination-in-chief, but more than a year ago. The witness' description of what Nagappa did on the occasions when he suffered from his malady appears to be exaggerated. The second witness, Loka Razu, stated that Nagappa has been for the last ten years suffering from periodical attack of insanity, that it appears once or twice in a month and lasts for a few days, during which time he is shut up in the house. The witness admitted that he got a loan of Rs. 650 through the intervention of the counter-petitioner some time ago, that he was called upon to return the money, but he has not yet repaid it. The third witness, Kandasami Mudali, stated that during the last six years Nagappa has been conducting himself as if he was not altogether of sound mind, and that he has noticed Nagappa making a noise, singing songs, distributing fruits and cocoanuts to people passing in the street, and taking them back. All the three witnesses admitted that when Nagappa is not labouring under the periodical attacks, he is of sound mind. This is the whole of the evidence in support of the application.

Now Nagappa himself appeared before me and was examined at considerable length by Mr. Johnstone who appeared on behalf of the petitioner. Nagappa's answers were clear and perfectly natural, and not even the slightest trace or indication of any unsoundness of mind could be detected during the whole time. Nevertheless I have no doubt that Nagappa has during many years now and then been for short periods in such a state of mind as to render it prudent and advisable on such occasions to detain him in the house, and this seems to be practically admitted in paragraph 22 of the counter-petitioner's affidavit.

There is nothing in the evidence to throw any light on the origin of the distemper from which Nagappa has been suffering. But I infer from Nagappa's own statements that the losses which he had sustained in connection with certain speculative transactions in Government paper carried on by him many years ago affected his mind. Domestic troubles, which a man indulging in the folly of having more than one wife at a time thereby sometimes brings upon himself, may have had something to do with some of the attacks he has had (see paragraph 6, counter-petitioner's affidavit).

In dealing with a matter like this, assuming that the party alleged to be a lunatic is really so, the evidence may be considered

firstly, with reference to the circumstances connected with his health and personal comfort and the way in which those with whom he has been residing up to the time of the application have been treating him, and, secondly, with reference to the existing arrangements as to the management of his property. As to the former, Nagappa is a strong man, apparently in the enjoyment of excellent health, though he is now sixty years of age. He lives with his first wife and his eldest son in one house, whilst the petitioner and his mother live in the adjoining house, due provision having been made by Nagappa for the proper maintenance of both the households. There is absolutely no evidence that Nagappa's personal wants have not been carefully attended to. On the other hand, he stated, and I think truly, that under the protection of those with whom he lives he feels quite comfortable. As to the second point, it is admitted on both sides that Nagappa started without any ancestral property and acquired the large estate which now belongs to him. This itself is very good evidence of Nagappa's natural shrewdness and capacity. He is able to read and write, and informed me that he could, if necessary, look into the management of his affairs and ascertain for himself whether it was going on all right. He further stated that his reasons for allowing the counter-petitioner to manage his property are that he is trustworthy and has had experience, having been associated with (Nagappa) himself for many years in looking after the business which they together carried on before. He complained that the petitioner has been instigated to prefer the present application by persons who wished to create dissensions in the family, and wished that nothing should be done to disturb the present arrangements. In this connection I may also observe that there is not a tittle of evidence to show that the counter-petitioner has betrayed the trust reposed in him by his father; or has done anything to the prejudice of the petitioner.

In these circumstances the question is whether there is ground for my interference under the Act. The present case appears to be somewhat like *In the matter of J. B.* (1), where a distinction was drawn by Lord Cottenham, L.C., between lunacy with lucid intervals which presupposes a continuing malady, and a state of mind subject to occasional unsoundness arising from accidental

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(1) 1 Myl. & Cr., 538.

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and temporary causes. There one of the witnesses, under whose care the supposed lunatic lived for twenty years and who was called against the issue of the commission, stated "there has been no delusion of late, but I think him liable to a relapse at any moment; also that, since the year 1822, there have been long lucid intervals, but there were seeds of the disease which might have been readily excited and which would have rendered his discharge imprudent." Another witness stated:—"I should suppose B to be a man of sound mind from my observation of him. . . . , but strong excitement, particularly from liquor, would no doubt produce mania." Notwithstanding these statements, the Lord Chancellor refused to issue a commission observing as follows:—"That Mr. B is a person of weak understanding is clear; that he has got that about him which, when he is in liquor or labouring under other excitement, is readily roused into mental unsoundness, there seems no doubt: but that he is at this moment, and that even at the date of inquisition, he was free from such affection and was of sound mind is, I think, the fair result of the evidence before the jury and still more of the affidavits now before the Court."

In like manner, I here arrive at the conclusion, that Nagappa has about him that which, when aroused by the recollection of his past losses or by the recurrence of family quarrels, may produce mental derangement, but that he is now of sound mind, and that the evidence produced does not show that he was otherwise when this application was filed.

I must, therefore, disallow the petition, and, in doing so, I wish to observe that it is but just and proper that the counter-petitioner should give his brothers a fair opportunity of satisfying themselves by inspecting the accounts or otherwise, that his own management is open to no question, and that nothing is done by him to the detriment of those who would be co-heirs with him to Nagappa's estate: (see *In the matter of the petition of Bhoopendra Narain Roy*(1)).

I dismiss the petition, but, in the circumstances, without costs.  
*Narasimhachariar*, attorney for petitioner.

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(1) I.L.R., 6 Calc., 539, 543.