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and the appeal should be remanded to the permanent Subordinate Judge of Trichinopoly for disposal on the merits with reference to the foregoing observations. Costs to abide the result.

N.R.

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice and Mr. Justice Srinivasa Ayyangar.

1916. February 8 and 9.

AMANCHI SESHAMMA (DEFENDANT), APPELLANT,

v.

AMANCHI PADMANABHA RAO (PLAINTIFF), RESPONDENT.*

Hindu Law—Adoption by one adjudged a lunatic under the Lunatic Act (XXXV of 1858), valid only if of sound mind at the time—Presumption of continuity of unsound mind—Onus of proving the contrary.

The effect of an adjudication under the Lunatic Act (XXXV of 1858) that a person is a lunatic is to raise a presumption that he continued to be of unsound mind until the contrary is shown.

Van Grutten v. *Foxwell* (1897) A.C., 658 and *Snook* v. *Watts* (1848) 11 Beaven 105, followed.

Though the effect of an order under the Act appointing a manager for the properties of a lunatic is not to incapacitate him from making an adoption till the order is set aside ; still, unless it is proved that the lunatic was of sound mind at the time he is alleged to have made the adoption, the adoption is invalid.

Semble : Adoption is not an act which amounts to an alienation of property. It affects status and it has in the opinion of Hindus, religious efficacy and it would not be right for a Court to hold that a Hindu is deprived by any statute of the power of making an adoption unless there are clear unambiguous words therein to that effect.

APPEAL against the decree of J. W. HUGHES, the District Judge of Nellore, in Original Suit No. 18 of 1913.

One Krishna Rao was adjudged a lunatic in December 1903, under the Lunatic Act (XXXV of 1858) by the District Court of Nellore and one A. Bhima Rao (the natural father of the present plaintiff) was appointed the guardian of his person and the

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* Appeal No. 376 of 1914.

lunatic's mother and another were appointed guardians of his property. Krishna Rao, the lunatic, died in July 1912. The plaintiff, a minor boy and brother of the second wife of the deceased, brought this suit for a declaration that he was entitled to the suit properties, which once belonged to the deceased, as the adopted son of the deceased, alleging that he was adopted in 1907 by the deceased and his second wife. The defendant who was the first wife of the deceased, denied the fact and also the validity of the adoption, on the grounds that the deceased continued a lunatic at the time of the alleged adoption and that the adoption, if a fact, was brought about without the sanction of the District Court, by the undue influence exercised by Bhima Rao, the natural father of the plaintiff and father-in-law of the deceased. The District Judge found that the adoption was as a fact made, that the deceased was then of sound mind and that it was therefore valid. In the result the District Judge allowed the suit. Hence this appeal by the defendant.

T. V. Venkatarama Ayyar and *A. Venkatarayaliah* for the appellant.

B. Somayya for the respondent.

JUDGMENT.—The question in this case is whether the deceased Krishna Rao was capable of making an adoption. He had been found a lunatic under the Lunatic Act XXXV of 1858 in 1903 and the effect of that finding is to raise a presumption that he continued to be of unsound mind until the contrary is shown. We are altogether unable to accept the arguments presented by Mr. Venkatarama Ayyar for the appellant that the effect of an Order under that Act appointing a manager of the properties of the lunatic is to incapacitate the lunatic from making an adoption till the Order is set aside. No authority has been cited in support of that proposition. On the other hand, as pointed out by the District Judge, in the Courts of Wards Act I of 1902 in this Presidency, where it was desired to control the power of an incapacitated person under that Act to make an adoption, express provisions to that effect were inserted and a perusal of those provisions shows how very careful the legislature was and that all that it did was to provide that the Court of Wards should satisfy itself that the power of adoption was not being abused. We cannot accept the argument that an adoption is an act which amounts to alienation of property

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like a lease or mortgage. It affects the status and further than that, it has, in the opinion of Hindus, religious efficacy and it would not be right for the Court to hold that a Hindu was deprived by any statute of the power of making an adoption unless there were clear unambiguous words to that effect. We therefore disagree with that contention and it only remains therefore to see upon the evidence whether it is satisfactorily shown that the adoptive father was of sound mind at the time when he made the adoption.

As to the law on this question, we may refer to *Snook* v. *Watts*(1) where it is said:

"The finding of the jury upon a commission of lunacy that a party is lunatic, throws the burthen of proof on those who contend the contrary. The presumption is not then, as it would otherwise be, in favour of sanity or soundness of mind, but the contrary must be proved; that is, they who allege the sanity of a person at a time subsequent to that at which he has been found lunatic under a commission, have the burthen cast on them of proving the soundness of mind of such person."

And the same question has recently been alluded to in *Hill* v. *Clifford*(2) where COZENS HARDY, M.R., cites *Van Grutten* v. *Foxwell*(3) in which case LOPES, L.J., is cited as saying:

"The inquisition affords no doubt *prima facie* but not conclusive evidence of Mary's insanity in October 1833, anterior to the execution of the disentailing deed, evidence which should be acted upon unless there is evidence the other way."

And RIGBY, L.J., said:

"The inquisition of 1843 is evidence that Mary was insane as from October 1833, though, so far from being conclusive, it is not even strong evidence of her being insane at the date of the disentailing deed, if a contrary case can be made out."

The result of these authorities is that it depends upon the facts of each case whether there is satisfactory evidence or not. In the present case, the general effect of the evidence is that Krishna Rao was a person of unsound mind. There is considerable evidence for the defendants that he generally conducted himself in a way that a man of sound mind would not do; and this is corroborated by the petition put in on one occasion by

(1) (1848) 11 Beaven, 105. (2) (1907) 2 Ch., App. 236 at p. 245,
(3) (1897) A.C., 658.

the present plaintiffs' father (plaintiffs' first witness) who really brought about the adoption and is in fact conducting the case for the plaintiff, by his statement in Exhibit III that

"It is not true that the lunatic has now ceased to be such and has been capable of taking care of himself and of his property. He is still subject to mental delusions and commits acts which a sane man would not think of doing. Some of such acts are tearing of clothes, bathing stark-naked in the presence of females and other things."

That is the same evidence of the sort that is now before us. That certainly goes to show, as I have said, that he was a man of unsound mind. Also, it is no doubt true, on the other side, that he could write Telugu well. I mean that he wrote a good Telugu hand. He could write an intelligent letter. But that of course is no conclusive test. The letter (Exhibit A) though it is grammatically expressed does not appear to be a letter of a man of sound mind. It appears to charge his old mother with misconduct and is couched in terms of extraordinary violence. All this evidence goes to show that he was of an unsound state of mind. And that is not rebutted. But what is even more important is what happened with reference to this very adoption. He had made a will giving his second wife, the defendant, power to adopt. At the time he made the will, he had been ill. But before the adoption he appears to have recovered and there was no occasion therefore for him to make an adoption. He was twenty-seven and his second wife with whom he was living was only sixteen. Not only therefore is the very fact of making the adoption suspicious, but looking at Exhibit H, which is a letter from the defendant's father to the mother of Krishna Rao, we see that the invitation was to an adoption to be made by the second wife under the authority given by Krishna Rao himself, and Exhibit F which is a report by the father of the boy to the Court says that the boy was adopted on the authority given by Krishna Rao to his second wife. Now both these documents suggest that the actual adoption was by the second wife under an authority given by the husband who was at that time alive. This is a very extraordinary circumstance. This witness was questioned and it does not appear that the question was put with reference to Exhibit F as to whether the adoption had been made by Krishna Rao or by his wife and he said then that it

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was made by the boy himself. It may also be pointed out in this case that the adopted boy is the brother of the second wife and the son of Bhima Rao, who was at that time the sole guardian of the person of the boy, and it certainly looks as if the whole of his adoption was simply carried out to the wishes of Bhima Rao who was anxious to get the property for his son.

In these circumstances, we do not think that the presumption of unsoundness of mind which was raised by the finding that Krishna Rao was a lunatic has been satisfactorily rebutted, and we think it would be quite unsafe to support this adoption, and we are therefore constrained on this ground to differ from the conclusion arrived at by the District Judge and to allow the appeal with costs throughout.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Coutts Trotter and Mr. Justice Srinivasa Ayyangar.

1916. January 21 and 24 and February 18.

G. SAM (PLAINTIFF), APPELLANT,

v.

T. RAMALINGA MUDALIAR AND FOUR OTHERS (DEFENDANTS NOS. 1, 3, 4, 5 AND 6 AND THIRD DEFENDANT'S LEGAL REPRESENTATIVES), RESPONDENTS.*

Estates Land Act (Madras Act I of 1908), ss. 3 (2) (c) and 8—Meaning of "unsettled jaghir", as distinguished from ordinary inams—Jurisdiction of Civil Courts.

A personal grant for subsistence in no way differing from an ordinary *inam* is not an *unsettled jaghir* within the meaning of section 3 (2) (*c*) of the Estates Land Act, but an *inam*.

When the inamdar subsequently to the grant, acquires the *kudivaram* interest the case comes under the exception in section 8 of the Act, and the Civil Courts have jurisdiction in ejectment.

SECOND APPEAL against the decrees of V. VENUGOPAL CHETTI, the District Judge of Chingleput, in Appeals Nos. 249 and 400

* Second Appeal No. 2037 of 1914.