APPELLATE CIVIL.

Before Mr. Justice Krishnan Pandalai.

1933, March 2.

SUBBA NAICKER (PLAINTIFF), APPELLANT,

v.

SOLAIAPPA NAICKER AND FOUR OTHERS (DEFENDANTS 2, 3 AND 5 TO 7), RESPONDENTS.*

Lunatic—Alienation by lunatic found such by inquisition—Invalidity of—Rule as to—Applicability of, to a case arising from the mofussil—Alienation made at a time when lunacy did not exist—Plea of—Permissibility—Order in lunacy—Conclusive nature of.

An alienation by a lunatic who has been found such by inquisition is entirely null and void, and it is not open to the alienee to show that at the time of the alienation the lunacy did not exist. This rule is applicable in India, as well to a case arising from the mofussil as to a case arising under the Indian Lunacy Act.

An order in lunacy, although it is not a judgment which is conclusive against the world as one of the judgments enumerated in section 41 of the Evidence Act, is still relevant and binding upon the parties thereto and those who claim under them just like any other judgment of a Civil Court. It is not therefore open to the lunatic to contend that the order finding that he was a lunatic on the date of the order was incorrect and a subsequent alienee from him is in the same circumstances.

APPEAL against the decree of the Court of the Subordinate Judge of Tuticorin in Appeal Suit No. 70 of 1927 preferred against the decree of the Court of the District Munsif of Tuticorin in Original Suit No. 175 of 1925.

T. V. Muthukrishna Ayyar and *A. Swaminatha Ayyar* for appellant.

S. Ramaswami Ayyar and *R. Krishnaswami Ayyangar* for respondents.

* Second Appeal No. 1743 of 1928.

JUDGMENT.

This suit was brought on a mortgage dated 10th August 1917 by the plaintiff as assignee from the mortgagee, the sixth defendant. Defendants one to three are the mortgagors. The fourth defendant since deceased was the father of the mortgagee and the fifth defendant is the son-in-law of the fourth defendant. The questions in dispute in this case arose from an order by the District Judge of Tinnevelly adjudging the sixth defendant a lunatic by an interim order dated 28th October 1919 which was confirmed after security given on 16th January 1920 by which the fourth defendant, his father, was appointed guardian of the person and manager of the property of the sixth defendant. The assignment by sixth defendant of the mortgage was dated 11th June 1923, i.e., some three and a half years after the order in lunacy and while it was still in force. The sixth defendant soon after the assignment, i.e., on 17th July 1923, applied to have the order against himself set aside and it was set aside on 31st August 1923 on the ground that he had ceased to be insane.

The dispute in the case was based upon two contentions. First, the fifth defendant contended that the same mortgage right had been assigned to him by the deceased fourth defendant acting as the guardian of his lunatic son in March 1919 and that therefore the sixth defendant was himself incompetent to assign it a second time. This assignment both the lower Courts have rejected as affording any valid defence because the fourth defendant was not authorised to transfer the property of his son even though the latter were a lunatic because at the time of the alleged assignment he had not been appointed manager of the property and in fact had not even applied to be so appointed.

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The other defence of the mortgagors, defendants one to three, was that the plaintiff's assignment gave him no right to sue because it was executed at a time when the lunacy order was in force and when the management of the lunatic's property was entrusted to the fourth defendant who was appointed manager by the Court. On this question the District Munsif has really not said anything definite because he did not consider the question in that way. But he seemed to have considered that the order in lunacy was itself incorrect because it appeared to him to have been procured to defeat a suit brought against the sixth defendant by a creditor on a promissory note. On that ground he held that the sixth defendant was never really insane and that therefore the plaintiff's assignment was valid. As to this, however, although an order in lunacy is not a judgment which is conclusive against the world as one of the judgments enumerated in section 41 of the Evidence Act, it is still relevant and binding upon the parties thereto and those who claim under them just like any other judgment of a Civil Court. On that ground, to put it at the lowest, it is not open to the sixth defendant now to contend that the order finding that he was a lunatic on the date of the order was incorrect and the plaintiff who claims by a subsequent alienation of the sixth defendant's property is in the same circumstances. The plaintiff being therefore bound by the order as far as it goes, the real question is how far it does go? On the one hand the appellant says that in spite of the order it is open to a subsequent alienee from a lunatic so found on inquisition to show that at the time of the alienation the lunacy did not exist. On the contrary the respondents contend that a subsequent alienee is not entitled to give such proof because the alienation by the lunatic who has been found such by inquisition

is of no effect whatever as the management of the property is by Court entrusted to the hands of the manager. This is really the only question in the appeal although several matters have been extensively argued. On this point there seems to be no Indian authority directly in point. The cases of *Debi Charan* v. *Raghuber Dayal*(1), *Bishambarnath* v. *Parbati*(2) and *Court of Wards* v. *Kupulmun Sing*(3) which were cited are really of no use to the point. But English authority is clear and conclusive. In *Walker* (*A Lunatic so found*), *In re*(4) the Court of Appeal held :

"When a person has been found lunatic by inquisition, so long as the inquisition has not been superseded, but continues in force, he cannot, even during a lucid interval, execute a valid deed dealing with or disposing of his property."

"The Court will not recognize such a deed even by directing proceedings to be taken to try the question of its validity or to perpetuate testimony as to the state of the lunatic's mind when it was executed, but will treat the deed as entirely null and void."

All the authorities on the subject were there cited in argument and are dealt with by the Lords Justices. This conclusion was arrived at even though VAUGHAN WILLIAMS L.J. said :

"We should have been glad if we could have found a means of according such powers (removing restrictions from lunatics dealing with their property in their lucid intervals) consistently with the protection of lunatics; but we have not been able to find any such means."

And COZENS-HARDY L.J., citing Lord COKE, said :

"And therefore after the office found thereof, the alienation, gift, etc., of him who is *non compos mentis* are in equal case with the alienation or gift of an idiot."

He referred to the authorities which were cited to show that an issue as to the state of mind of the lunatic

(1) (1912) 16 I.C. 885.
(2) (1918) 52 I.C. 609.
(3) (1873) 10 Ben. L.R. 364.
(4) [1905] 1 Ch. 160.

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when the deed in question was executed might be set down for trial and explained that in every one of them the deed in question had been executed before, not after, inquisition found.

"It cannot be right that the Crown, or the committee who represents the Crown", (here the Court), "should have the control and management of the lunatic's estate, and at the same time that she should have power to dispose of her estate as she thinks fit."

This case was followed in *In re Marshall. Marshall* v. *Whateley*(1). Learned Counsel for the appellant has stated that he is not aware of any authority to the contrary. Such being the state of the authorities in England I am unable to see why the law should be different in the exercise of lunacy jurisdiction under the Indian Lunacy Act. This case no doubt arises from the mofussil and the authority of the Act is not traceable to the law which the Supreme Court began to administer on its establishment. The only remark possible upon the decisions I have referred to is that they refer to a system of law which had its origin in the Lord Chancellor's jurisdiction over lunatics and the jurisdiction of the mofussil Courts over lunatics is entirely dependent upon Indian Legislation. But I see no sufficient ground in this circumstance not to apply the rule enunciated in the English decisions. On this ground the plaintiff's suit was rightly dismissed. The second appeal must be dismissed with costs.

A.S.V.

(1) [1920] 1 Ch. 284.