1920

MUHAMMAD JUNAID v. AULIA BIBI.

the death of Lachmi Narain, but he pleads that the application of the 23rd of March asking the court to note on the record that Shambhu Nath was a legal representative of the deceased was a good application made under order XXII, rule 4, and that the subsequent application was merely one in continuation thereof. In the alternative he suggests that the father was the true representative. We cannot accept the first plea. It amounts to this that it was open to the plaintiff to ask the court to add somebody, other than the legal representative, as a party to the suit and that such an application would bind the real representative. Whatever the law may have been under the old Code of Civil Procedure, the present law is clear and such an application as that of the 23rd of March, 1915, cannot affect the true representative. It is clear that the suit did abate so far as Munni Bibi is concerned.

* * * * * * *

No other point was pressed for our decision. The result is that, except in respect to mesne profits from the date of suit up to the date of possession and in respect to item no. 16 of list D., Khata No. 79, as shown on page 71 of the paper book, the appeal will fail.

Decree modified.

Before Mr. Justice Piggott and Mr. Justice Walsh.

1920

April, 13.

MUHAMMAD YAQUB (APPLICANT) *v.* NAZIR AHMAD AND OTHERS (OPPOSITE PARTIES)*

Act No. IV of 1912 (Indian Lunacy Act), Chapter V—Lunacy—Inquisition as to mental condition of alleged lunatic—Procedure.

An inquisition under Chapter V of the Indian Lunacy Act once started must be prosecuted to the end. Before such an inquisition is ordered there ought to be a careful and thorough preliminary inquiry and the Judge ought to satisfy himself that there is a real ground for an inquisition.

An application for an inquisition should ordinarily be supported by affidavit or by examination on oath of the applicant, and by a medical certificate of some doctor as to the condition of the alleged lunatic. It would also be desirable, in many cases, that the Judge should seek some personal interview with the alleged lunatic with a view to satisfy himself that there is a real ground for supposing the existence of an abnormal mental condition which might bring the person within the Lunacy Act.

* First Appeal No. 72 of 1919, from an order of E. H. Ashworth, District Judge of Cawnpore, dated the 24th of January, 1919.

1920

MUHAMMAD YAQUB v. NAZIR AHMAD.

IN this case one Muhammad Yaqub, alleging himself to be the full brother of Musammat Naziran, applied under section 62 of Act No. IV of 1912 for an inquisition into the mental condition of Naziran. He stated that the lady was insane; that she was in possession of a considerable amount of property, and that her husband was one Shaikh Muhammad Ismail. He stated further that Nazir Ahmad, "who was in no way related either to the lunatic or to the applicant", was keeping Musammat Naziran in wrongful confinement with a view to appropriate her property. Nazir Ahmad, on the other hand, stated that he himself was the husband of the lady and that she was of sound mind. He admitted that she had, a long time ago, been married to Ismail, but stated that Ismail had divorced her.

Muhammad Ismail, the alleged husband, filed an application stating that the lady was insane, and that he had no objection to the appointment of Muhammad Yaqub as her guardian.

Muhammad Sadiq stated by the applicant to be a brother of Musammat Naziran, also alleged that she was insane and professed to give his consent to the appointment of Muhammad Yaqub as guardian.

The court below (District Judge of Cawnpore) without completely following out the procedure indicated by Chapter V of the Indian Lunacy Act, 1912, considered some medical evidence and rejected the application. The applicant, Muhammad Yakub, appealed to the High Court.

Dr. *Kailas Nath Katju*, for the appellant.

Dr. *S. M. Sulaiman*, for the respondents.

PIGGOTT and WALSH, JJ.:—We agree with a great deal of the criticism that has been passed upon the proceedings in this matter in the court below. It is not necessary to examine all of them in detail. They may be not unfairly summed up in this way, that the learned Judge, having somewhat hastily and without sufficient cause, ordered what he called "proceedings in inquisition," proceeded to repent of it and got rid of those proceedings by a sort of half inquisition which was really never properly conducted. If the brother's application was *bona fide* (and it is quite true that the mere fact that he was prepared to deposit Rs. 600, to pay for the Civil Surgeon's fees,

1920

MUHAMMAD YAQUB v. NAZIR AHMAD.

is a sign that he had some belief in his case) it is a hardship upon him that all these proceedings should have taken place for nothing. But, holding the view that we do that no inquisition ever ought to have been ordered upon the materials before the learned Judge in the first instance, we should be ourselves committing an illogicality if we allowed this appeal. There will be nothing to prevent the appellant, the brother, making a fresh application, and that application ought not to be prejudiced by anything which has happened in this case, for an inquisition. We propose to make one or two suggestions, not applicable merely to this case but to all applications of this kind, to guide the learned Judges before whom these applications come. It is true that nothing is contained in the Act itself to direct or guide a Judge as to how he shall conduct applications for an inquisition and probably no rules exist for dealing with the matter, but ordinary common sense would appear to dictate to a tribunal before whom such an application comes that care should be exercised in a painful matter of this kind, namely, an inquiry into a man's or woman's state of mind; specially in the case of people in comfortable circumstances who merely wish to lead a quiet life, care should be exercised that they are not suddenly flung without sufficient reason into an elaborate inquisition which after all is nothing more or less than a trial involving sometimes the history of a person's life back for many years, medical evidence, and all sorts of family witnesses. An inquiry of that sort once started must be prosecuted to the bitter end and has all the attributes of an ordinary trial on an issue of fact, and therefore, when a person is alleged to be insane, before his or her family are cast into an elaborate proceeding of that sort, there ought to be a careful and thorough preliminary inquiry and the Judge ought to satisfy himself that there is a real ground for an inquisition. It is impossible to lay down any hard and fast rule, but in the first place it is essential that the person making the application should support it ordinarily by affidavit or by tendering himself for examination to the Judge on oath in support of the allegations in his application. The learned Judge would naturally want to know what relationship existed, what previous association had existed, between the applicant and the alleged insane person,

how long the illness was supposed to have lasted, why no previous steps had been taken and what were the present symptoms and actual causes which had induced the applicant to make the application as and when he did. Certainly in England and in a place like Cawnpore (one hesitates to say it generally about these provinces), an application of this kind ought to be supported by some medical evidence in the nature of a certificate of some doctor, lady or otherwise, who has had a reasonable opportunity of seeing the condition of the alleged invalid. If no medical evidence is forthcoming of more recent date than 8 years before the application, so much the worse for the applicant. In many cases, and we think that this case is probably one, it would be very desirable that the Judge should seek some personal interview with the alleged insane, not with a view to forming a final opinion as to her real condition but to satisfy himself in the ordinary way in which a layman can do, that there is a real ground for supposing that there is something abnormal in her mental condition which might bring her within the Lunacy Act. Of course it cannot be done without the consent of the person, but in this case if she really is able to manage her affairs, as two lady doctors have assured the Judge that she is, she would probably have no objection to coming with her husband, and her brother could be present if he so desired, to court and sitting in *pardah* in the Judge's chamber where the Judge could have some rational conversation with her if possible. In this case there was no evidence before the learned Judge of any sort or kind except *ex parte* statements in paper applications which of course are worth little or nothing, and the three medical certificates. But there are matters in the objector's application which are far more specific than the rather vague statements in the application of the applicant, which it would be well for the learned Judge to examine the applicant about on oath. If it be the fact that this woman was divorced many years ago and has been married for some years to her present husband and that for many years also last past the applicant has been fighting with her about property in several courts up to the High Court, there would probably be good ground for treating the application as merely another attack upon her and her husband. If the medical certificate stood alone,

1920

MUHAMMAD YAQUB v. NAZIR AHMAD.

and there was nothing else in the case, we should have no hesitation in saying that at whatever stage he did it, whether in rejecting the application or deciding the inquisition in the negative, the learned Judge would have been quite justified. We entirely dissent from the view which the learned Judge seems to have expressed somewhat hastily of a lady in the position of Miss O'Brien, who is a Bachelor of Medicine and a Bachelor of Science of the London University, one of the highest medical qualifications in the world, who had been a medical officer in charge of Dufferin Hospital in Lucknow, and is now the Principal of the Female Medical School at Agra and who had written a very careful, scientific and trustworthy account of her recollection of the general state of health and in particular the state of mind of this alleged insane person who was under the treatment of Miss O'Brien in hospital for a very serious complaint. It is really looking at the thing from the wrong angle of vision altogether, and is not fair to a woman of Miss O'Brien's position to suggest that, because she had formed an opinion that in 1918 the lady was sane and in her right mind, and capable of managing her affairs, she, Miss O'Brien, is not to be trusted to form a reliable scientific opinion about the woman's present condition of health and mind. As a matter of fact this disease is sometimes very difficult to diagnose and almost always progressive. A person who has a previous experience of the patient, her general constitution and habit of mind, is probably better qualified, from the medical point of view, than anybody else to express a reliable opinion. Indeed it would be very desirable in the face of that certificate, if it can be done without putting an unnecessary burden upon the family, that no final order should be passed without Miss O'Brien's opinion being taken on the subject. With these observations we dismiss the appeal with costs.

Appeal dismissed.