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counsel appearing for the respondent Board do not, in our opinion, apply. The lower appellate court has relied on the case of *Sheo Narain v. Town Area Panchayat, Chhabramau* (1). In that case the question that arose for decision was with respect to a tax, properly so-called. The case is therefore distinguishable.

For the reasons given above we allow these appeals, set aside the decrees of the courts below and remand these cases to the lower appellate court with directions that it shall re-admit the appeals to their original numbers and shall proceed to decide the remaining issues that arise in these cases. Costs here and hitherto shall be costs in the cause.

Before Mr. Justice Raghpal Singh and Mr. Justice Ismail

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LALITA DEVI (APPLICANT) v. NATHUJI JOSHI (OPPOSITE PARTY)\*

*Lunacy Act (IV of 1912), section 65(2)—“Unsound mind”—Degree of—So as to be incapable of managing his affairs—“Imbecile”—Appointment of manager of the estate.*

There is no definition of the expression “unsound mind” in the Lunacy Act, 1912. For the purpose of section 65(2) of the Act the degree of unsoundness of mind has to be found in relation to the capacity of the alleged lunatic to manage himself and his affairs; it is not necessary that he must be found to be incapable in both the respects, and a special finding may be come to that though he is capable of managing himself and is not dangerous to himself or to others, yet he is of unsound mind so as to be incapable of managing his affairs; and in that case the court will appoint a manager of his property.

*Lahu Ram v. Thakur Das* (2), distinguished.

Messrs. P. L. Banerji and N. D. Pant, for the appellant.

Dr. K N. Malaviya, for the respondent.

RAGHPAL SINGH and ISMAIL, JJ.:—This is a first appeal from order of the learned District Judge of

\*First Appeal No. 321 of 1937, from an order of Sarup Narayan, District Judge of Benares, dated the 29th of August, 1937.

(1) [1936] A.L.J. 33.

(2) (1905) 2 A.L.J. 156.

Benares arising out of proceedings under Act IV of 1912. On the application of Mst. Lalita Devi, the appellant before us, the learned District Judge directed an inquisition for the purpose of ascertaining whether Nathuji Joshi was a person of unsound mind and incapable of managing himself or his affairs. The application was opposed by the alleged lunatic Nathuji. The learned District Judge upon a consideration of evidence came to the conclusion that Nathuji was of weak intellect but not of unsound mind. He accordingly held that he had no power to appoint a guardian of the person of Nathuji or a manager of this estate.

Nathuji is about 55 years of age and owns some zamindari property which is valued at Rs.11,000 and is also alleged to possess movable property which is valued approximately at Rs.8,735. Nathuji until a few years ago lived with his brother Diwakarji who looked after him and his property. Some three years ago Diwakarji died. Mst. Lalita Devi is his niece and is the daughter of Manorathji, a cousin of Nathuji. Since the death of Diwakarji the alleged lunatic has been living with a relative named Bishwanath son of Gopal Dat Joshi. It is alleged that Bishwanath is expropriating the income of Nathuji's property and has taken the latter under his care with dishonest motives. The learned Judge has not recorded a finding on these allegations and we have no material before us to enable us to ascertain the truth or otherwise of these allegations. We have, however, noticed that the alleged lunatic is very much attached to Bishwanath and is anxious to leave his estate in the hands of Bishwanath in whose favour he has already executed a power of attorney.

Nathuji was kept under observation of Lt.-Col. J. B. Vaidya, Civil Surgeon, Benares, for some time. In the opinion of Col. Vaidya the mental condition of Nathuji is not such that he can manage his affairs and that Nathuji is not a complete idiot but is bordering on

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idiocy. The doctor came to this conclusion after a thorough examination of Nathuji. It appears that for nearly 26 years Nathuji remained silent and did not speak to anybody. It is said that he had taken a vow of silence. We do not think that a person of sound mind possessed of property is likely to remain in voluntary silence for such a long time and we are inclined to agree with learned counsel for the appellant that this conduct alone showed the weakness of Nathuji's mind and his incapacity to manage his affairs. We have perused with care the notes of Col. Vaidya taken down from time to time when he interviewed Nathuji. The doctor notes that it was extremely difficult to extract any answers to the questions put to Nathuji. Very often the answers had no relation to the questions and when Nathuji was inclined to answer he took very long time to do so. To Col. Vaidya Nathuji always appeared to be nervous like a frightened animal and in the opinion of the doctor the mental condition of Nathuji is of low grade and poor, that is, he is of weak intelligence.

On behalf of the appellant some respectable witnesses were produced to testify to the unsoundness of mind of Nathuji. Pandit Ganeshdat Shastri, who is a professor in the Benares Hindu University and is a neighbour, stated that he used to visit Diwakarji who was a Vaid. In the opinion of the professor, Nathuji is mad and his brain is affected. He gave reasons for this statement. Other witnesses who had intimate knowledge of Nathuji corroborated the above statement.

On behalf of the opposite party, Nathuji, Captain G. S. K. Iyer was examined, who had kept him under observation for 10 or 11 days. Captain Iyer stated that in his opinion Nathuji is not lunatic or person of unsound mind and is not incapable of managing his affairs. Some other witnesses were also produced on behalf of the opposite party who supported the statement of

Captain Iyer. The result of the learned District Judge's examination of Nathuji is described as follows:

"As already noted in the statement of Nathuji he speaks in a practically unintelligible voice and it was with much difficulty that the answers which he gave to the questions put to him could be heard or understood in spite of the fact that he had a sort of loud speaker through which he was made to speak every now and then. He was also feeling fidgety and ill at ease and also used to close and open fingers of his hand from time to time. Almost all the answers go to show that he might be mentally deficient but is not an idiot or a person of unsound mind. He is no doubt unable to give correctly the amount of revenue paid for his two zamindari villages but he is admittedly illiterate."

The evidence of his witness Jiwanji that Nathuji used to write letters and read with a teacher for a number of years is evidently incorrect.

A number of documents have been filed in order to show that since the year 1908 Nathuji has been treated as a person of unsound mind. In all transactions he was represented by his brother Diwakarji. Mortgages and leases were executed by Diwakarji for himself and as guardian of Nathuji *fatirul aql*. In the khewat of villages owned by the alleged lunatic he is similarly described. The sub-registrar on one occasion declined to register a document presented by Nathuji and described him as dumb and idiot. In this state of evidence we considered it desirable to summon Nathuji before us and after questioning him for some time we have come to the conclusion that Col. Vaidya's opinion correctly represents the mental condition of Nathuji. We found Nathuji very nervous and fidgety. Except simple questions Nathuji failed to answer, and even simple questions were answered after considerable delay and with much persuasion. There is no doubt that he is aware that he owns some zamindari and he repeated like a parrot the total revenue and the

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recorded income of the villages, but he entirely failed to give reasons why the rents were not realised nor could he suggest any method of realisation of the arrears. In our opinion Nathuji can very easily be imposed upon and he can be made to sign almost any document that is presented before him, provided he has confidence in that person. In his own interest it appears to us absolutely necessary to appoint a manager to look after his property and to make arrangements to realise the rents due to him. This course is possible only if we have jurisdiction to do so. In order to decide the question of jurisdiction it is necessary to examine the relevant section of the Act. Section 65, sub-clause (2) of the Act provides: "Upon the completion of the inquisition the court shall determine whether the alleged lunatic is of unsound mind and incapable of managing himself and his affairs, or may come to a special finding that such alleged lunatic is of unsound mind so as to be incapable of managing his affairs but that he is capable of managing himself and is not dangerous to himself or to others." We have no hesitation in holding that the alleged lunatic is not dangerous to himself or to others and that it is not necessary to appoint a guardian of his person to look after him. The question which we have to determine relates to the latter part of the section, that is, whether the alleged lunatic is of unsound mind *so as to be incapable of managing his affairs*. There is no definition of the expression "unsound mind" in the Act. In the opinion of Taylor "unsound" is not a medical but a legal expression denoting an incapacity to manage affairs. In *In the matter of Cowasji Beramji Lilaoovala* (1) it was held that the term "unsound mind" in section 1 of Act XXXIV of 1858 comprehends imbecility whether congenital or arising from old age as well as lunacy or mental alienation resulting from disease. LORD ELDON in *Ridgeway v. Darwin* (2) said: "Of late

(1) (1882) I.L.R. 7 Bom. 15.

(2) (1802) 8 Ves. 65.

the question (in issuing a commission of lunacy) has not been whether the party is absolutely insane; but the court has thought itself authorised to issue the commission, provided it is made out that the party is unable to act with any proper and provident management; liable to be robbed by any one; under that imbecility of mind, not strictly insanity, but as to the mischief calling for as much protection as actual insanity."

"It is quite impossible to define the term 'insanity' with any precision, for there is no definite dividing line between sanity and insanity—one state passing imperceptibly into the other. The term 'insanity' as ordinarily used connotes a fairly advanced degree of disorder or unsoundness of mind. It has to be noted, however, that certain types of insanity, for example moral insanity, may co-exist with an apparently ordered mind. . . . When that conduct becomes sufficiently disordered to bring the individual into conflict with his environment the law takes steps to place the person under care and restraint." (See Taylor, Medical Jurisprudence, volume 1, 9th edition, page 759).

The expression "imbecile" is defined in the Mental Deficiency Acts of 1913 and 1927 as follows: "As persons in whose cases there exists mental defectiveness which, though not amounting to idiocy, is yet so pronounced that they are incapable of managing themselves or their affairs." In the same Act idiots are defined as persons in whose cases there exists mental defectiveness of such a degree that they are unable to guard themselves against any physical danger.

It is not suggested that Nathuji is an idiot in the legal sense, but the appellant contends that he is a person of unsound mind so as to be incapable of managing his affairs. The question we have to determine is whether unsoundness of mind is of such a degree as to render Nathuji incapable of managing his

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property. Our observation of Nathuji and the notes of Col. Vaidya on the record fully satisfy us that he is incapable of managing his affairs in consequence of his mental weakness and unsoundness of mind. The learned District Judge relied upon *Lalu Ram v. Thakur Das* (1). That case was decided under Act XXXV of 1858. The learned Judges had to consider whether the appellant Rameshar Tiwari was a lunatic as defined in section 23 of Act XXXV of 1858. The word "lunatic" as used in that Act meant every person found in due course of law to be of unsound mind and incapable of managing his own affairs. In the present case, however, we have to interpret section 65 of Act IV of 1912 and come to a special finding whether the alleged lunatic is of unsound mind so as to be incapable of managing his affairs. It is manifest that there is a distinction between the two definitions. The degree of unsoundness of mind of Nathuji in the present case has to be found in relation to his capacity to manage the affairs of his estate. The facts of the case noted above are also distinguishable. In that case the Civil Surgeon who examined Rameshar was of the opinion that he was below the average of his class in life and was unable to manage a large property. The learned Judges from the above remark drew the inference that the doctor thought the alleged lunatic fit to manage a small estate. Our observation of Nathuji leads us to the conclusion that he cannot look after property whether large or small. He would certainly ask for food when he is hungry and require clothes to cover himself, but his mind is not sufficiently developed to enable him to manage his affairs. We would be stultifying the scope of the Act if we deprived Nathuji of the protection that law gives him. In our judgment the case relied upon by the learned District Judge is no guide for the decision of the present case. Several other authorities have been cited by counsel for the

(1) (1905) 2 A.L.J. 156.

parties. In our opinion they do not help us in ascertaining whether Nathuji is or is not a person of unsound mind. Each case has to be decided on its own facts, and on the facts proved in this case we are satisfied that we have jurisdiction to appoint a manager of the property of Nathuji.

The Collector of Benares was asked if he was willing to undertake the management of the estate of Nathuji and the Collector's reply on the record shows that he was willing to do so. As this question has not been determined we think the proper course for us is to allow the appeal, set aside the order of the court below and direct the learned District Judge to appoint a suitable manager of the estate of Nathuji as contemplated by section 67(2) of the Act. If the Collector is still willing to undertake the management of the estate of Nathuji the learned District Judge will appoint him in that capacity. Failing this the learned District Judge may appoint a suitable person as manager. The claim of Bishwanath should also be considered and if the learned District Judge is satisfied that he is a fit and reliable person he may be so appointed, provided the Collector declines to take over charge. Under the special circumstances of the case we make no order as to costs.

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