APPELLATE CIVIL.

Before Mr. Justice Farran, Chief Justice, and Mr. Justice Parsons.

TRIMBAKLA'L GOVANDA'S (ORIGINAL APPLICANT), APPELLANT, *v.* HIRA'L A'L ITCHHA'LA'L (ORIGINAL OPPONENT), RESPONDENT.* 1895. *July* 26.

Lunacy Act XXXV of 1858, Secs. 15, 16, 17, 18 *and* 20—*Hindu lunatic—Guardian—Manager—Joint member of the lunatic's family appointed manager of the lunatic's estate, not bound to render account—Manager charged with mismanagement is entitled to have particulars of the charges made against him—Order or certificate of appointment.*

The manager of a Hindu lunatic's estate appointed under Act XXXV of 1858, who is in possession with others of joint family property, is not, in his capacity of manager of the lunatic's estate, bound by the provisions of section 15 of the Act to exhibit an inventory and account of the family property. The lunatic is possessed of no property for which the manager is liable to account. It does not make any difference if the manager is himself a joint owner or not. The Act provides no machinery, nor does it confer any power upon the Court, to deal with joint family property or interfere in the affairs of a joint family.

If a manager is charged with mismanagement he is entitled to some particulars of the charges made against him.

In all cases of lunacy in which a guardian or a manager of the lunatic's estate is appointed by the Court under the Act, it is desirable to issue a formal order or certificate of appointment.

APPEAL from the decision of R. S. Tipnis, Assistant Judge at Broach.

Three brothers—Navnidhalál, Chhotálál and Hirálál—were members of an undivided Hindu family governed by Mitákshara law. Navnidhalál was a lunatic. In the life-time of the father Itchhálál a family arrangement was made by registered deed whereby provision was made for the maintenance of the lunatic.

After Itchhálál's death the appellant Trimbaklál, who was the son-in-law of the lunatic, applied to the District Court under Act XXXV of 1858 for a certificate of guardianship of the lunatic's person and property. The object of the application was that steps might be taken to set aside the deed of family arrangement and to effect partition of the family property.

The application was opposed by Hirálál Itchhálál, who contended (*inter alia*) that, if a certificate to any one was necessary, it should be given to him.

* Appeal, No. 11 of 1895.

1895.

TRIMBAKLÁL GOVANDÁS v. HIRÁLÁL.

On the 7th December, 1891, the Judge appointed Hirálál manager of the lunatic's property and Bái Godávari (the lunatic's wife) the guardian of his person. The order made was as follows :—

"Under section 13 of the Act I order that Hirálál Itchchálál should provide for the maintenance of the lunatic and his family and for extraordinary expenditure on occasions of feasts, ceremonies, &c., as if he were a member of the joint family, out of the joint family property and as laid down in the deed of the family arrangement, and at the same time pay to the lunatic's wife Rs. 25 a month for miscellaneous expenditure. This is certainly not a large allowance, considering the income of the family is Rs. 10,000 a year as admitted by Hirálál; Rs. 15 per month provided in the deed seems to me too small a sum."

The following is an extract from the Judge's judgment :—

"The real questions at issue are whether any appointment of a guardian of his (Navnidhalál's) person and a manager of his property should be made, and, if so, who shall be appointed?

"I hold that the wife of the lunatic should be appointed guardian of his person, and the opponent Hirálál manager of his property. This case is very similar to that reported at p. 539, I. L. R., 6 Cal., with this difference that in this case the wife of the lunatic is alive and lives with him in a part of the ancestral house.

"There is no ill-treatment of the lunatic alleged or proved, although it appears from the lunatic's wife's evidence that there are occasional disputes between her and Hirálál about little matters. The reason why the present applicant seeks a certificate of management is clearly stated by him in his application to be to take legal measures for a partition of the estate, so that his share may descend to the wife and daughter instead of lapsing to the surviving brothers. Whether such a suit would be allowed or not, or whether it would be successful or not in the Bombay Presidency looking to the provisions of the Hindu law about disqualifications for inheritance, and how far all or any of the persons who have signed the deed of family arrangement put in in this case are bound by it, are questions which it is not necessary for me to answer at present, although a good deal has been said on them in argument. But, I think, so long as no ill-treatment of the lunatic or his family is made out, it is to his best interests, and in accordance with the policy of the English law, not to allow interference with the course of his inheritance. At the same time whilst his wife is alive she seems to be the person best able to take care of him, and watch over his interests if they are at any time neglected by Hirálál."

Against this order Trimbaklál appealed to the High Court (Jardine and Telang, JJ.), which without writing a judgment confirmed it on the 10th August, 1892.

In the year 1894 Trimbaklál applied under sections 17 and 18 of Act XXXV of 1858 alleging that Hirálál was mismanaging the property and had not filed accounts as required by section

1895.

TRIMBAKLÁL GOVANDÁS v. HIRÁLÁL.

15 of the Act. He prayed that Hirálál should be required to furnish accounts, and that his appointment as manager should be cancelled.

The Judge rejected the application. The following are extracts from his judgment:—

"It would seem, from the judgment of this Court, that Hirálál was appointed manager of the lunatic's property, and the lunatic's wife was appointed guardian of his person. Such is the finding on the issue raised. But the order itself is silent as to whether Hirálál was appointed manager or not, though such appointment ought necessarily to be presumed from the fact that the order was made under section 13 of the Act, and it would have directed Hirálál to provide for the maintenance of the lunatic and his family and for extraordinary expenditure on occasions of feasts, ceremonies, &c., as if he were a member of the joint family, out of the joint property as laid down in the deed of family arrangement, and at the same time pay to the lunatic's wife Rs. 25 a month for miscellaneous expenditure. Section 13 contemplates an order to the manager appointed by the Act. I, therefore, hold that Hirálál was appointed manager of the lunatic's estate under section 10.

"But the Court held that the lunatic was only a member of the joint family, of which Hirálál was another member. There was no specific direction in the order or judgment as to how the management of the lunatic's share in the undivided property of the family should be conducted by Hirálál. The Calcutta High Court in the two decisions (one of which was referred to by Mr. Khareghát in his judgment, the other being reported in 13 C. L. R., 86) expressed no positive opinion as to whether a manager under this Act in regard to joint property can be appointed. However, in the present case the appointment being made, this point arises only in connection with the manager's liability to furnish accounts as required by section 15.

"In my opinion, it is impossible for Hirálál to produce any accounts of the lunatic's undivided share of the property, for the property is joint and there can be no separate accounts of his share and none have been kept. It is impossible to predicate of the lunatic's share in the joint property or of the several items of the joint property until a division takes place.

"It seems that, unless Hirálál produces accounts of the whole estate and allows inspection thereof, there is no other course open for finding if the lunatic's share is properly managed or not. But there is no law for requiring a person to disclose accounts of the property other than that of the lunatic, and the course proposed would simply place the entire family accounts at the disposal of strangers and of the Court. Moreover, according to strict law, even the lunatic's share cannot be definitely predicated at this moment to admit of seeing what might be the income and expenditure regarding his share by inspection of the entire family accounts.

"This difficulty is further enhanced by the deed of family arrangement, which is alleged to have been executed. I cannot in this matter pronounce any opinion as to the validity or otherwise of this deed or any of its provisions. Mr. Khareghát, however, was fully aware of the difficulty in appointing a manager in this case, and

1895.

TRIMBAKLÁL GOVANDÁS v. HIRÁLÁL.

he ordered that the lunatic should be maintained as laid down in the deed of family arrangement. It seems to me, from this special order, that separate management of the lunatic's estate or share in the joint property was not entrusted to Hirálál, who cannot, therefore, be expected to give an inventory of the lunatic's property or account of the management of the lunatic's estate. His management was to be in accordance with the deed, and this he has been doing.

"In any view of the case, I cannot see my way in requiring accounts to be furnished.

"The petitioner alleges that Hirálál mismanages the property, and his appointment should be cancelled. His pleader is unable to state what specific acts of mismanagement Hirálál committed. But he says that he will be able to show if the accounts are furnished. I am unable to comply with this request. I do not think it necessary to record any evidence on this point of mismanagement, as I am of opinion that should Hirálál be removed from the management of the lunatic's estate, this removal would be tantamount to his removal from the management of the entire joint property,—a thing which I have no right to do; and, moreover, my own opinion is that no manager can legally be appointed to the estate of a lunatic who is only a member of the joint family and possesses no separate property. I should, in the event of cancelment of the managership, make an order under section 20 of the Act, for the expressions used in that section are wide enough to include cases not only of properties of small value, but also of joint properties wherein separate management of a share is impossible."

The applicant appealed.

Nagindás T. Márphatia appeared for the appellant (applicant):—As Hirálál was appointed manager of the property of the lunatic under Act XXXV of 1858, it was incumbent upon him to file an inventory of the property within six months under section 15 of the Act and also to furnish accounts. But he has admittedly not yet done so. The Judge dismissed our application on the ground that as the property is the undivided property of the lunatic and his two brothers, the lunatic cannot be considered to hold a specified portion of the property. But whether the property is divided or undivided, a manager is bound to render accounts—*Dámodardás* v. *Uttamrám*[1]. The interest of the lunatic must be protected—Phillips on the Law of Lunatics, p. 341.

Hirálál's mismanagement of the property could have been proved if copies of the accounts had been furnished to us. An opportunity should be given to us to prove mismanagement.

Macpherson (Advocate General, with *Chitnis* and *Motilál*) appeared for the respondent (opponent):—The lunatic is not the sole owner of the property. The accounts relate to the whole

(1) L. R., 17 Bom., 271.

of the joint family property, and copies of such accounts cannot be furnished. The other members have a joint interest in the property, and they would certainly object to the applicant's demand. We rely on *Bhoopendra* v. *Greesh* [1]; *Sham Kuar* v. *Mohunnunda Sahoy* [2]; *Soorbansi Singh* v. *Juggeshur Koer* [3]; *Virupakshappa* v. *Nilgangava* [4].

The applicant did not specifically mention particular acts of waste and mismanagement in his application. A mere vague statement as to mismanagement would not justify a Court in taking action. The Judge's order was, therefore, right.

FARRAN, C. J. :—The position of the respondent Hirálál Itchhálál in this case is peculiar. In 1891 the present petitioner and appellant Trimbaklál Govandás applied, under Act XXXV of 1858, to the Assistant Judge, F. P., at Broach to be appointed guardian of the person, and manager of the estate, of his father-in-law Navnidhalál Itchhálál alleged, and subsequently found, to be a lunatic. It was admitted then, as it is now, that the lunatic with his brothers Hirálál and Chhotálál were members of an undivided family governed by the Mitákshára law, and it was not alleged that the lunatic was possessed of any separate estate. The application referred to a family arrangement contained in a registered document, whereby Itchhálál, the deceased father of the lunatic (*inter alia*) made provision for the maintenance of the lunatic, but it was submitted that the arrangement was not binding upon the lunatic. The avowed object of the application was to take steps to set aside the deed of arrangement and to obtain partition of the family estate. No neglect or ill-treatment of the lunatic was alleged or proved, nor is any now alleged. Hirálál opposed the application. He stated that the lunatic was living with him and the other members of the family and was being maintained with the other members out of the property mentioned in the deed and in accordance with its terms. He submitted that no certificate for the management of the property or guardianship of the person of the lunatic should be issued, but that, if it was considered that a certificate to some one was necessary, it should be granted to him.

(1) I. L. R., 6 Cal., 539.
(2) I. L. R., 19 Cal., 301.
(3) 13 Cal., L. R., 86.
(4) I. L. R., 19 Bom., 309.

1895.

TRIMBAKLÁL GOVANDÁS v. HIRÁLÁL.

The Assistant Judge in his written judgment, after holding the lunacy of Navnidhalál to be established, pointed out that the real questions before him were "whether any appointment of a guardian of his person and of a manager of his property should be made," and held that the wife of the lunatic should be appointed guardian of his person, and the opponent Hirálál manager of his property. He ordered under section 13 of the Act that Hirálál should provide for the maintenance of the lunatic and for extraordinary expenditure on occasions of feasts, ceremonies, &c., as if he were a member of the joint family out of the joint family property as laid down in the deed of family arrangement, and should pay to the lunatic's wife Rs. 25 a month for miscellaneous expenditure.

On an appeal preferred by Trimbaklál to the High Court against that decision the High Court "confirmed the order of the lower Court with costs."

No formal order or certificate of the appointment of Hirálál as manager of the estate of the lunatic was ever drawn up or issued. Hirálál since the date of the decision of the Assistant Judge has been maintaining the lunatic in accordance with the terms of the family arrangement and of the decision, and paying Rs. 25 per mensem to Godávari, the wife of the lunatic. He has not filed an inventory or any accounts under section 15 of the Act (XXXV of 1858).

Trimbaklál made the present application, praying that Hirálál might be ordered to file an inventory and accounts. He alleged mismanagement of the lunatic's estate and sought to have Hirálál's appointment as manager cancelled. The Assistant Judge, F. P., at Broach has rejected the application *in toto*. Hence this appeal.

As the Act does not indicate any particular form in which the order appointing the manager of a lunatic's estate should be made, or enact that a certificate is necessary to complete his title, we think that the written judgment of the Assistant Judge (confirmed by the High Court) is sufficient evidence that the opponent Hirálál has been appointed manager of the lunatic's estate. At the same time we would point out to the Courts the desirability

1895.

TRIMBAKLÁL GOVANDÁS v. HIRÁLÁL.

of issuing a formal order or certificate of appointment in all cases of lunacy in which a guardian or a manager of a lunatic's estate is appointed under the Act.

The question, whether a manager of the property of a lunatic, who is possessed of no separate estate, but is a member of a joint Hindu family which owns property, can be appointed under the Act, does not seem to have been argued before or considered by the Courts when the original application was before them. The main question was whether Trimbaklál should be appointed, and the submission of Hirálál that he, if necessary, should be appointed manager was probably considered to render the consideration of that question unnecessary, nor is it before us. Hirálál has, as we have pointed out, been appointed manager, and his appointment has been confirmed by the High Court. We, therefore, express no opinion upon the general question.

A careful perusal of the judgment of the Assistant Judge leads us to the conclusion that his intention in appointing Hirálál to be manager of the lunatic's estate was to preserve the *status quo* of the family and the lunatic's position therein and that he did not intend to bring the whole family estate under the superintendence of the Court. That intention would, no doubt, have been more appropriately effected by refusing to appoint a manager and making an order under section 20 of the Act or by declining to make any order as was done by the Calcutta High Court under almost identical circumstances in the case of *Bhoopendra* v. *Gresh Nárain*[1] upon which the Assistant Judge relied; but the intention of the Judge is immaterial if the law imposes upon Hirálál the obligation of rendering an inventory and accounts of the joint family property of which he and his brother are in possession. We refer to such intention for the purpose of pointing out that the order of the Assistant Judge (confirmed by the High Court) did not in terms or impliedly impose that duty upon the manager. This leads us to consider the main question argued before us, whether the manager of a Hindu lunatic's estate appointed under the Act (XXXV of 1858), who is in possession with others of joint family property, is in his capacity of manager of the lunatic's estate bound by the provisions of section 15 of the Act to exhibit an

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

1895.

TRIMBAKLÁL GOVANDÁS v. HIRÁLÁL.

inventory and accounts of the family property. There is a very close analogy between the position of a lunatic and of an infant in relation to such property, and much of the reasoning of the Full Bench in *Virupakshappa* v. *Nilgangava*[1] is applicable to the case before us. It is a mere coincidence that the manager in this case is identical with the joint owner. The law must be the same whether he is identical with the joint owner or distinct. The provisions of sections 16, 17 and 18 point, we think, to the case of a lunatic possessed of separate property and are inappropriate to joint family property in which he has merely an interest with others. The Act provides no machinery, nor does it confer any power upon the Court to deal with joint family property or interfere in the affairs of a joint family. Doubtless in cases of alienation or waste or mismanagement so gross as to imperil the lunatic's interest in family property the Court can and will protect that interest by allowing a suit to be brought for partition or other legal means to be taken to secure it, and, if necessary for that purpose, will remove one manager and appoint another; but we think, having regard to the consideration to which we have referred, that such property is not property which falls within the scope of section 15, and that it is a sufficient answer to the applicant's prayer for an inventory and accounts to say that the lunatic is possessed of no property for which the manager is liable to account.

The decision of this Court in *Dámodardás* v. *Uttamrám*[2], in which the Chief Justice Sir Charles Sargent points out the circumstances under which a Hindu manager is bound to account, was much pressed upon us by the appellant's pleader in support of his argument as to the liability of Hirálál, but the Chief Justice was there speaking of an account upon partition for the purpose of ascertaining the extent of the property liable to be divided, and his remarks are not applicable to the present case.

The appellant contends, independently of the question of accounts, that he tendered evidence of mismanagement which the Judge refused to record, and that the case ought to be remanded in order that such evidence may be taken. The application, however, contains no particulars whatever of such mismanagement.

(1) I. L. R., 19 Bom., 309. (2) I. L. R., 17 Bom., 271.

1895.

TRIMBAKLÁL GOVANDÁS v. HIRÁLÁL.

It is a general allegation, and if a manager is charged with mismanagement he is entitled to some particulars of the charges made against him. We might doubtless allow the application to be amended, or direct that the applicant give particulars of the nature of the mismanagement of which he complains; but when the pleader for the applicant was questioned by the Assistant Judge upon this subject, he stated that he was unable to furnish any particulars, but would be able to do so when the accounts were filed. The appellant's pleader before us was likewise unable to specify any. It would be useless, we think, to remand the case on this ground. Other than the non-filing of the inventory and accounts no cause for the removal of the manager has been urged before us.

We must, therefore, confirm the order under appeal with costs.

Order confirmed.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

IN RE BA'I HARKHA.*

1895. *July* 30.

Guardian and Wards Act (VIII of 1890), Secs. 47 (g) and 48—Order refusing to remove a guardian—Not appealable—Appeal—Practice.

The effect of sections 47 (*g*) and 48 of Guardian and Wards Act (VIII of 1890) is to allow no appeal from an order refusing to remove a guardian.

APPEAL from the decision of Venkatráo R. Inámdár, Acting Joint Judge of Ahmedabad.

One Jesang Bhukhan died leaving a widow Bái Harkha and four minor sons. On his death the District Judge of Ahmedabad appointed Shankár Bháibabhai to act as guardian of the minor's property.

Some time afterwards Bái Harkha applied to the District Judge to remove the guardian, on the ground that he had mismanaged the minor's property, and misappropriated its income, and was otherwise unfit to act as guardian.

* Appeal, No. 9 of 1895.