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alienate unaccompanied by possession, and an alienation by registered deed with notice of the previous agreement; but we are not compelled to adopt this conclusion. The subject has been fully considered in the case of *Waman Ramchandra* v. *Dhondiba Krishnaji* (1), and the judgment of Westropp, C. J., at pp. 146 to 154, discusses the effect of actual notice and the application of the English rules of equity to mofussil cases, and that too in a case to which the Specific Relief Act did not apply, as it does not in these cases before us. It is unnecessary to recapitulate the reasons upon which the judgment of Westropp, C. J., are founded. It is sufficient to say that we follow them, and consider that they apply to these cases.

The foregoing remarks apply equally to Appeal No. 1595. We therefore dismiss these appeals with costs; but we think that the decree of the Munsif must be amended, for in its present form it will not have the effect that the cases require. We think that it should declare the leases by the raja-defendant to Madhub Mondul and Narain Mondul void as against the plaintiff; and that, on the plaintiff paying Rs. 100 to the raja-defendant, the latter shall execute mokurari pottahs to the plaintiff, receiving from him kabuliats in the terms of the agreement between them.

Appeals dismissed.

Before Mr. Justice Pontifex and Mr. Justice McDonell.

IN THE MATTER OF THE PETITION OF BHOOPENDRA NARAIN ROY.

BHOOPENDRA NARAIN ROY *v.* GREESH NARAIN ROY AND ANOTHER.*

1880 *Nov.* 23.

Application under Act XXXV of 1858—Interference of Court—Ill-treatment of Lunatic—Accounts of Joint Property—Mitakshara.

The husband of a lunatic's daughter applied to the Court to declare his father-in-law, who was a member of a joint Mitakshara family, to be a lunatic, and appoint a manager of his property and guardian of his person under Act XXXV of 1858. The lunatic had an interest both in joint ances-

* Appeal from order, No. 197 of 1880, against the order of A. J. R. Bainbridge, Esq., Judge of Moorshedabad, dated the 7th April 1880.

(1) I. L. R., 4 Bomb., 126.

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tral property and in property inherited collaterally, which might, but was not shown to, belong to him separately. The lower Court found that the application was made with a view to taking consequent proceedings for partition.

Held that, it appearing that he had remained for sixteen years in the same house under the same guardians, and there being no allegation of ill-treatment, no sufficient grounds were shown for the Court's interference, or the appointment of another guardian of his person. Before any action can be taken under the Act in this respect, there ought to be a strong case made out that the change of custody would be for the lunatic's benefit. *Held* also, that as his daughter could not inherit his ancestral property, and as it was doubtful if the collaterally inherited property was the separate property of the lunatic, the Court would not, under such circumstances, appoint a manager of the property: but that the guardians of the lunatic, who were managers of the joint family, should, on her request, furnish accounts to the daughter, of the management of the collaterally inherited property.

Semble.—Act XXXV of 1858 applies to the members of a Mitakshara family.

Quære.—Assuming the application to be made with a view to a partition of the property, and that the lunatic was declared a lunatic under the Act, whether a partition could be had?

THE facts material to the report are sufficiently stated in the judgment of the Court (PONTIFEX and MCDONELL, JJ.)

Baboo *Hem Chunder Banerjee*, Baboo *Gurudass Banerjee*, Baboo *Srish Chunder Chowdhry*, and Baboo *Saroda Prosaud Roy* for the petitioner.

Baboo *Mohesh Chunder Chowdhry* and Baboo *Mohiny Mohun Roy* for the respondent.

PONTIFEX, J.—The District Judge in this case has refused to grant an application under Act XXXV of 1858 to declare that one Kasinauth Roy is a lunatic, and to appoint a manager of his estate and guardian of his person. The application was made by the husband of the lunatic's daughter. The family is a Mitakshara family, and consequently the daughter would not inherit the interest of her father in the ancestral property. The Judge has found that in reality the application has been made with a view to taking consequent proceedings for partition. Now it appears, according to the statements of the applicant, that there are two qualities of property in which the lunatic

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is interested,—first, ancestral estate, which under the Mitakshara law his daughter would not inherit; and secondly, estate said to have been inherited from collaterals, and to have been inherited, not by the family as a joint family, but by the two senior members of the family at the time the inheritance fell in, to the exclusion of members of the family of a lower degree. It has been objected before us, and apparently the Judge seems to have been of opinion, that Act XXXV of 1858 cannot and does not apply to members of a Mitakshara family. We are unable, as at present advised, to admit that as a correct proposition. It appears to us that there may be cases where it is essentially necessary that a guardian should be appointed for a member of a Mitakshara family as much as for a member of any other family. It is not necessary, however, for us to decide that question, because we think the application fails on other grounds. We agree with the Judge that no sufficient cause has been made out for putting the Act into operation. In the first place, there is no suggestion, and certainly no evidence whatever, as to any ill-treatment of the lunatic. It is not even suggested that he has been improperly taken care of, or that he is not treated in a proper and considerate manner. He has been a lunatic for the space of some sixteen years, and during the whole of that period he has lived with his nephews in this joint family. No allegation is made that he has ever received ill-treatment. It is no doubt true that till quite recently his wife was living in the family and was capable of protecting and taking care of him. But we think that before any action can be taken under this Act, before we should be justified in removing the lunatic, who has been living for the last sixteen years in this house, to some other place and custody, there ought to be a strong case made that it would be for the lunatic's benefit.

Secondly, with respect to the management of the lunatic's property. The persons who are now in the management of the property are his two nephews, sons of deceased brothers. There is some allegation that they have not conducted the management with sufficient care; and indeed extravagance has been imputed from the fact that within the last five years the debt upon the property has materially increased. The only evidence of

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that consists in recitals in the various documents put in, and in an admission made by one of the nephews in his examination. We think that the admission does not go far enough. It was a mere statement that, in consequence of litigation and numerous law-suits to which the family was subjected, the debt was so increased that it was necessary to raise a considerable sum of money. Now, with respect to the supposition of the Judge that these proceedings were taken with the intention of ultimate proceedings for a partition, without deciding whether or not a partition could be had under such circumstances, if the lunatic were declared a lunatic under the Act, it may be not improper to refer to the policy of the Lunacy Enactments in England. Under these Acts, it has always been the policy of the Legislature not to interfere with the course of inheritance of the lunatic's property, and provisions for that purpose have been inserted into these Acts; so that even where it is necessary for payment of debts or otherwise that the lunatic's real property should be sold, it is provided that the surplus monies should be considered as in the same condition as if invested in land, leaving them heritable as if they were land; possibly, therefore, even if an application for partition were made, it might be refused in accordance with that policy.

One difficult question, however, remains, and that is with respect to the property which was inherited from collaterals. It seems to us, that that property, if it vested in the lunatic, might be on a different footing altogether from strictly ancestral property, and that the lunatic might be entitled to a separate share in that property; and if so entitled, his daughter might be his heir, and it might be material that a manager should be appointed for it. But the circumstances relating to that property are as follows:—Before his lunacy, as we must assume, Kasinauth had made a *hiba* of his share of the ancestral property, as also of his share of this collaterally inherited property, to his wife. That *hiba* had been in operation until about the year 1280 (1873), when the High Court held, that so far as it related to ancestral property it was void, and subsequently the wife relinquished her interest under the *hiba* in consideration of the nephews paying her the monthly sum of

Rs. 150. Now, if the *hiba* passed the lunatic's interest in the property inherited from collaterals, then there is nothing before us to show that such interest became revested in the lunatic; and, under these circumstances of doubt, we think we ought not to allow the Act to be put into operation, but that it ought to be left for the natural heir of the lunatic, if so disposed, to institute a suit as next friend of the lunatic to have that matter cleared up. If such a suit is instituted, and if it shall appear that this property is separate property belonging to the lunatic, then, if necessary, a further application might be made under the Act. But we wish to observe that the nephews who now, as members of the joint undivided family, have the custody of the lunatic and are managing the estate, ought, in our opinion, when requested thereto by the daughter of the lunatic as the natural heir, to produce and furnish her with accounts of the management of the property. We think it would be sufficient, if such accounts were produced yearly. If such accounts are refused, or if the lunatic's daughter is refused proper access to him, then a case might perhaps be made, which might influence the Court to interfere under the Act. At present we are of opinion that no sufficient case has been made, but, under the circumstances, we think there ought to be no costs of this application.

Appeal dismissed.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Field.

NEWAJ BUNDOPADHYA (DEFENDANT) *v.* KALI PROSONNO GHOSE (PLAINTIFF).*

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Dec. 10.

Suit for Enhancement of Rent—Plea that certain of the Lands included in Notice are not enhanceable—Onus of Proof of such Fact—Notice of Enhancement.

In suits for enhancement of rent, where the tenant pleads that a portion of the land sought to be enhanced is held by him rent-free, the onus is on the tenant to prove *primâ facie* that such portion of the land is so held by

* Appeal from order, No. 143 of 1880, against the order of H. L. Oliphant, Esq., Judicial Commissioner of Chota Nagpore, dated the 2nd February 1880, reversing the order of Baboo Akhoy Coomar Bose, Deputy Collector of Manbhoom, dated the 5th May 1879.