

Hakimullah and Another Vs Nobin Chandra Barua

None

Court: Calcutta High Court

Date of Decision: May 7, 1914

Citation: AIR 1915 Cal 19 : 24 Ind. Cas. 177

Hon'ble Judges: Holmwood, J; Chapman, J

Bench: Division Bench

Judgement

Holmwood, J.

This second appeal arises out of a suit, brought by a lunatic, named Nobin Chandra Barua, through his next friend, guardian

and sister, Srimati Shanti, against several defendants, of whom the defendants Nos. 1, 2, 3 and 4 are the only defendants with whom we are

concerned in this appeal. It appears that the defendant No. 2 was another sister of the lunatic and the wife of the defendant No. 1, Isap Ali. During

the lunacy of the plaintiff (which is found, as a fact, notorious and known in the neighbourhood where he lived and had his property), a suit was

brought by the landlord for the rent of two plots Nos. 1 and 2 in the schedule of the present plaint : and two rent decrees were obtained, ex parte,

against the lunatic, who was not at all represented in the suit. Both the Courts below have held that as in the decrees and auction sales Nobin was

not properly represented, his right was not affected by the sales : that, as the defendant No. 1 was the de facto Manager of Nobin, he acquired no

title by his purchase as against Nobin : and that, as the sales were nullities and inoperative, so far as Nobin was concerned, the other defendants,

who are purchasers from Isap Ali with full knowledge of the lunacy and knowing everything about the family affairs, have also acquired no title.

2. We think that the judgments and decrees of the , lower Courts must be supported.

3. It has been argued in appeal before us that the plaintiff, not having been adjudged a lunatic and the case falling under the provisions of the former

CPC by reason of the provisions of Section 463 of that Code, the Court trying the rent suit had jurisdiction to pass a decree and to sell the

property : and it is sought to be argued that the Court has such jurisdiction in every case, except the case mentioned in Section 463 (the case of

adjudged lunatics). Now, that that is not the case has been clearly shown in the case of Rasik Lal Datta v. Bidliumukhi Dasi 33 C. 1094 at p. 1098

: 10 C.W.N. 719 : 4 C.L.J. 306., where Mookerjee, J., (at page 1098) says : ""The Code, therefore, makes no provision for the representation of

lunatics, who may be plaintiffs or defendants, but who have not been adjudged as persons of unsound mind. Under such circumstances, I must

hold that the Court, in which a suit has been instituted by or against such a person, has an inherent power to determine whether a party, who is

alleged to be a lunatic, is really so, and, if he is found to be a lunatic, to make an order for the appointment of a next friend or guardian ad litem. If

any other view were maintained, the consequences might be extremely inconvenient and there might be a failure of justice : for instance, during the

pendency of the proceedings under Act XXXV of 1858, the right of suit of the lunatic may become barred by limitation : or, if the lunatic is

proposed to be made a defendant, the intending plaintiff would be obliged to take recourse to proceedings under the Lunacy Act before he could

be permitted to institute his action"". Where, therefore, through the ignorance of the Courts the Court assumes jurisdiction over a lunatic, it appears

to us that that proceeding is a nullity : and that is what has been laid down by their Lordships of the Judicial Committee in the case of Khairaj Mal

v. Daim 32 C. 296 at p. 315 : 1 C.L.J. 584 : 2 A.L.J. 71 : 9 C.W.N. 201 : 7 Bom.L.R. 1 : 32 I.A. 23 (P.C.). It is true that was a case of minors :

but their Lordships deal with the observations of Lord Hobhouse, who laid down the rule which was pressed before us in this appeal, that where

the Court in exercising its jurisdiction had made a mistake, the wronged party can only take the course prescribed for setting matters right, and that

if that course is not taken, the decision, however wrong, cannot be disturbed. But the Privy Council say that the case, where the Judge accepted,

without question, the statement on the record that the minor was legally represented and Alahnawaz was his guardian and never applied his mind to

the matter, where the proceedings were cut short by the agreement for reference and other matters, and where, therefore, there was no

adjudication on the question of whether the estate was represented or not, was not the case of an erroneous decision, ruling or exercise of

discretion of the Judge in a matter in which the Court had jurisdiction. They held that the estate of Nawaz was not represented in law or in fact in

either of the suits and that the sale of his property was, therefore, without jurisdiction and null and void. And that is precisely the case here. The

fact that it was not brought to the notice of the Court that the defendant was a lunatic left the Court entirely without jurisdiction. The lunatic was

never represented at all, and his estate certainly was not represented in the rent suits. The sales under the decree of that Court were nullities. The

defendant No. 1, therefore, in any case, acquired no title by his purchase, he being, in fact, found to be a fraudulent purchaser, who had acted

deliberately in breach of his trust as de facto Manager of Nobin. He could not, in any case, have been allowed to take any advantage whatever of

the Court sale, even if it had been made with jurisdiction. As he had no title whatever, the purchasers from him have also acquired no title. The

lower Appellate Court has gone so far as to hold, as a fact, that the defendants Nos. 3 and 4 were aware throughout of the lunacy of the plaintiff

and of the family affairs : and it has held that it was not a bona fide purchase for value. So that, in any case, they would have to make restoration by

reconveyance, had anything passed to them. But : we hold, on the principles we have already enunciated, that the sales were nullities and

inoperative (sic) that nothing passed.

4. Nothing has been said to us regarding the right of the defendants Nos. 3 to 8 to plot No. 1 in schedule 3, as tenants of the plaintiff, nor does

anything appear to have been said in the lower Appellate Court. We must, therefore, take it that the original decretal order of the Munsif is the

order in the suit which has been affirmed by the lower Appellate Court : and, as we are of opinion that both the lower Courts are correct in their

decision, this appeal must be dismissed with costs and the decrees of the lower Courts affirmed.

Chapman, J.

5. I agree. A sale in execution of a decree obtained against a lunatic who has not been properly represented is, in my opinion, a void sale, not

merely voidable. In so far as the case of Uma Sundari Dasi v. Ramji Haldar 7 C. 242 : 9 C.L.R. 13. lays down any general rule to the contrary, I

must respectfully dissent from it. The English cases there cited are no authority for any such general rule as that stated in the judgment.