
(1869) 02 CAL CK 0029

Calcutta High Court

Case No: Miscellaneous Regular Appeal No. 375 of 1868

Jones Catharine Durant
and Another

APPELLANT

Vs

Chandra Nath
Chatterjee

RESPONDENT

Date of Decision: Feb. 15, 1869

Final Decision: Dismissed

Judgement

Loch, J.

It appears that Nicholas Kullonas was in 1844 placed as an inmate of the private Insane Asylum at Bhowanipore, and has since then continued, first as an inmate of the private asylum, and then of the Government asylum. In 1867 the Collector of Backergunge applied to the Judge of the 24-Pergunnas, within whose jurisdiction the insane was then residing, praying that a manager to the estate of the insane might be appointed under the provisions of Act XXXV of 1858. The Judge, after making the inquiries as required by the Act regarding the state of Mr. Kullonas, passed an order on the 27th November 1867, declaring him to be insane, and directing the Collector to take charge of his estate. After this order was passed, the son and daughter of Nicholas Kullonas applied to the Judge, praying that, as they were in the management of the estate, they might be continued as managers, and the order appointing the Collector manager might be withdrawn.

2. After hearing what the parties had to say, the Judge held that the past management was so unsatisfactory, that their prayer could not be complied with, and their application was rejected. An appeal has been preferred, from this order, by the son and daughter of Nicholas Kullonas. Two points are raised: first, that the Judge of 24-Pergunnas has no jurisdiction in the matter, as the properties are situated in the district of Backergunge; second, that the Judge has decided upon the management of the estate, and pronounced that the applicants are not qualified to act as managers, without looking into the evidence which they adduced.

3. On the first point we refer to Section 2, Act XXXV of 1858, and we see that the words are:-- "Whenever any person, not subject to the jurisdiction of the Supreme Courts, who is possessed of property, is alleged to be a lunatic, the Civil Court, within whose jurisdiction such person is residing, may, upon such application as is hereinbefore mentioned, institute an enquiry for the purpose of ascertaining whether such person is, or is not, of unsound mind, and incapable of managing his affairs."

4. It is said before us that the word "residing" means a voluntary residence, and cannot be applied to the case of Kullonas, who had been in the asylum for the last twenty years, and was so at the time when the Collector made the application. We think that we must take the word in its simple meaning; and it would certainly be very inconvenient if a party living in one part of the country, and there found to be insane, were obliged to be removed to another part of the country, where he had originally resided, and where his property is situated, in order that the inquiry regarding his lunacy might be made at that place. We may observe, with regard to the present case, that the lunatic was originally placed in the asylum by the act of his relations when it was a private asylum. We think there can be no doubt, looking into the wording of the section, that the Judge of the 24-Pergunnas had jurisdiction in the matter.

5. On the second ground, the appellants have altogether failed to satisfy the Court that they have managed the estate properly. What the Judge had to do, was to select a manager. The appellants came before him, alleging that the estate had been in their possession for a long time; and in proof of their good management, they produced an account and certain copies of decrees as vouchers to show that they had paid off large debts due by the estate. The copies of decrees prove nothing with regard to the payment of the debts, and there is no other evidence to show that these debts had been paid while we have, on the other hand, clear proof of the neglect of those managers in failing to pay for the subsistence of the lunatic. Various arrangements appear to have been made with them, first, to pay Rs. 100 per month; then to pay Rs. 500 a year. But all these arrangements fell through owing to their neglect to fulfill the conditions of the arrangements; and from a letter from the Superintendent of the Insane Hospital, dated the 13th July 1867, it appears that a sum of Rs. 4,500 is due as arrears for the maintenance of the insane, from the year 1858 up to the close of the year 1866. Under these circumstances we think it unnecessary to interfere with the order of the Judge, and we therefore reject this appeal.

Mitter, J.

I am of the same opinion.