

ANDHRA PRADESH HIGH COURT

A. Ramacharlu

Vs.

Archakam Ananthacharlu

A.A.O. No. 267 of 1952

(Subba Rao, C.J. and Satyanarayana Raju, J.)

04.10.1951. 06.04.1955

JUDGMENT

Satyanarayana Raju, J.

1. This is an appeal against the order of the District Judge of Chittoor dismissing an application filed by the appellant under Section 67 of the Lunacy Act, to adjudge his father the 1st respondent as a lunatic and to appoint him as the manager.
2. The appellant is the son of the 1st respondent who is the alleged lunatic, and the 2nd respondent is his mother. It was alleged by the appellant in his petition that the properties mentioned in the schedule attached to the petition are the joint family properties of the appellant and the 1st respondent, that one Venkata Gowdu had taken advantage of the unsoundness of mind of the 1st respondent, brought respondents 1 and 2 under his influence and was managing the properties and appropriating the income from them.
3. As the 1st respondent was residing at a place more than 50 miles from the District Court, the District Judge directed the District Munsif of Madanapalle to hold an inquisition under Section 66 of the Lunacy Act. Accordingly the District Munsif made an enquiry and submitted a report, which was to the effect that there was no adequate proof of the unsoundness of mind, but that the 1st respondent was unable to manage his affairs by reason of feebleness of mind and mental infirmity. The District Judge held that the 1st respondent was unable to manage his affairs by reason of unsoundness of mind though he was in a position to manage himself. But he held that the appointment of a manager of the property of the 1st respondent would be of no use because such a manager would obtain no right of management over the joint family properties.
4. Section 67 (2) of the Lunacy Act runs as follows:

"When upon the inquisition it is specially found that the person to whom the inquisition relates is of unsound mind so as to be incapable of managing his affairs, but he is capable of managing himself and is not dangerous to himself or to others, the Court may make such orders as it thinks fit for the management of the estate of the lunatic including proper provisions for the maintenance of the lunatic and of such members of his family as are dependent on him for maintenance, but it shall not be necessary to make any order as to the custody of the person of the lunatic".

5. In his petition, the appellant specifically alleged that the properties mentioned in the schedule attached to the petition are the joint family properties of himself and the 1st respondent. From the record it does not appear that the 1st respondent has any separate property.

6. In - '*Govindan Nair v. Narayanan Nair*¹', Sundara Ayyar and Sadasiva Ayyar, JJ., had to deal with an application for the adjudication of a Karnavan of an undivided Malabar tarwad as a lunatic, and for the appointment of a manager. The learned Judges held that the property of a tarwad was not the individual property of the Karnavan and a manager appointed for a lunatic under the old Lunacy Act (XXXVIII of 1858) would obtain no right of management over the property of the tarwad but over the individual property of the lunatic for whom he was appointed and therefore the appointment of a manager would be of absolutely no use. The learned Judges took the view that the rule that a guardian could not be appointed under the Guardians and Wards Act for an undivided member of a Mitakshara family would be equally applicable to the appointment of a manager for a lunatic of a Mitakshara family. Following the above decision, the District Judge dismissed the petition.

7. In appeal, the counsel for the appellant relied upon a decision of the Nagpur High Court in - '*Dada v. Chandrabhaga Bai*²', where it was held that if a member of a joint Hindu family under the Mitakshara law was a lunatic, the courts have power to appoint a manager of the lunatic's share under the Lunacy Act where it is shown that his property is being wasted. This decision followed the view of the Calcutta High Court in preference to that of the Madras High Court. No decision of the Madras High Court which has taken a view at variance with the above decision has been placed before us. We are bound by the decision of the Madras High Court in - '*Govindan Nair v. Narayanan Nair* '.

8. It is not disputed that the 1st respondent is the manager of the family and that the properties mentioned in the schedule annexed to the petition are joint family properties and there is no individual property of the 1st respondent. If so, the decision in - '*Govindan Nair v. Narayanan Nair*', applies to the facts of the case. In this view there are no grounds for interference with the decision of the District Judge rejecting the application.

9. The appeal, therefore, fails and is dismissed.
Appeal dismissed.

¹23 Mad LJ 706

² AIR 1929 Nag 93