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Grover, J.

counsel for the appellant maintains that in the previous litigation of 1941 the matter had been fought out and adjudicated and a decision had been given in favour of Hanuman Parshad. It had been found that there was relationship of landlord and tenant between him and Bishan Chand and that eliminated all questions of denial as to title by Bishan Chand. The fact still remains that in spite of Roop Narain asserting hostile title against Hanuman Parshad in 1941 the latter took no steps to obtain possession from him by determining the lease in favour of Bishan Chand which he was certainly entitled to do under section 111(g) of the Transfer of Property Act. Even the Rent Restriction laws in force in Delhi at least up to 1947 did not restrict the right of a landlord to maintain an action for ejectment where there was denial of title by the tenant. The learned Single Judge also seems to be right in saying that it has always been a ground on which ejectment could be sought even under the Rent Restriction laws that a tenant has sublet or parted with possession of the premises without the consent of the landlord and thus there was no bar to the filing of a suit by Hanuman Parshad at any time after 1942.

In the result, the appeal fails and it is dismissed but in view of the nature of the points involved the parties are left to bear their own costs throughout.

Kapur, J.

S. K. KAPUR, J.—I agree.

K.S.K.

APPELLATE CIVIL

Before Inder Dev Dua, and R. S. Narula, JJ.

NAGAHIA SINGH,—*Appellant.*

versus

AJAIB SINGH AND ANOTHER,—*Respondents.*

First Appeal from Order No. 126 of 1963

1965

May, 27th

Lunacy Act (*IV of* 1912)—*S.* 3(5)—*Lunatic—Meaning of—Whether includes person with weak intellect—Declaration of a person as a lunatic—Principles to be borne by Court when doing so stated.*

Held, that it would be wrong to be swayed by what is often described by some by the attractive expression "humanitarian consideration" in applying the provisions of the Lunacy Act to persons who are not truly idiots or persons of unsound mind and who may be merely possessing weak intellect and, therefore, not able to manage their property as efficiently as may be desirable. To do so would be to ignore or at least to unduly minimise the drastic consequences in various aspects to the person who is judicially described to be a lunatic and subject to an order under the Lunacy Act. The Court is expected to proceed cautiously and judiciously in evaluating and weighing the evidence on the record and coming to a finding with a judicial sense of responsibility, keeping to the forefront all the implications of making a finding that the alleged lunatic is an idiot or a person of unsound mind and incapable of managing himself and his affairs etc. Such a finding, it is worth remembering, must expose the person concerned to the serious risk of being deprived of some of his cherished constitutional rights and liberties.

Held, that the Courts, when dealing with cases under Chapter V of the Lunacy Act, are expected to be vigilant and to make orders of far-reaching consequence with full sense of responsibility. That perhaps explains the anxiety on the part of the Legislature in conferring jurisdiction on the District Court.

Case referred by the Hon'ble Mr. Justice A. N. Grover, on 5th January, 1965 *to a larger Bench for decision owing to an important question of law being involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Inder Dev Dua and the Hon'ble Mr. Justice Narula, on 27th May,* 1965.

First appeal from Order of the Court of Shri M. L. Puri, District Judge, Patiala, dated the 18*th July,* 1963 *appointing Shri Manohar Lal Agnihotri, as the Manager of the estate of Raj Kaur, under section* 71 *of the Lunacy Act and giving directions for management of the estate, etc., etc.*

B. R. AGGARWAL AND KESHO RAM MAHAJAN, ADVOCATES, for the Appellant.

M. R. AGNIHOTRI, ADVOCATE, for the Respondents.

JUDGMENT

Dua, J.

DUA, J.—This order will dispose of two appeals (F.A.O. No. 126 of 1963 and F.A.O. No. 181 of 1963) because they both arise out of the same order and have indeed been referred to larger Bench by a learned Single Judge by the same referring order.

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The reference has been necessitated because a Division Bench of the Patna High Court in *Sonabati Debi* v. *Narayan Chandra Upadhya* (1), has placed a more liberal interpretation on the word "lunatic" as defined in section 3(5) of the Indian Lunacy Act, 1912 (hereinafter called the Act) than the Andhra Pradesh High Court did in *Ganga Bhayanamma* v. *Somaraju* (2). The learned Single Judge was apparently inclined to the view adopted by the Andhra High Court but considered it more desirable to have the matter considered by a larger Bench.

The word "lunatic" has been defined in section 3(5) of the Act to mean an idiot or a person of unsound mind, though of course, this definition is subject to anything repugnant in the subject or context. In the *Patna case,* one Narayan Chandra Upadhya was found by the District Judge to be a person of unsound mind, with the result that his father, Ganga Prasad Upadhya, was appointed manager of his estate and guardian of his person. The lunatic was a young man whose mother had died when he was about two years old. He had been invalid all his life and at the time of the proceedings under the Lunacy Act he was an epileptic suffering from the usual succession of daily epileptic fits. He had a small property yielding an income of about Rs. 2,000. In 1915, there was some litigation in which his father was appointed guardian of his person and property on account of his minority. When he attained majority, his father applied for discharge from his liability as a guardian. The young man went to live with some relatives and apparently made a deed of gift of a considerable part of his property to Sonabati Debi. The father of the lunatic on hearing of the deed of gift promptly made an application for a commission to issue to enquire into the allegations made as to his son's lunacy. The District Judge made an order for a commission and since the alleged lunatic lived at some considerable distance from the Court, a Subordinate Judge was appointed to conduct the inquisition in which he was to be assisted by two assessors, one of whom was a medical gentleman of considerable experience. The District Judge examined the young man in Court by what was described a mild type of examination and he is stated to have apparently

(1) A.I.R. 1935 Pat. 423.
(2) A.I.R. 1957 A.P. 938.

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given reasonably intelligent replies to questions put to him. The assessors assisting the Subordinate Judge had stated as their opinion that the young man had attacks of typhoid fever, that he was at the time when they examined him suffering from a defective mental capacity and that he suffered from epilepsy with the usual result of periods of unconsciousness. There were also certain other bodily defects and maladies from which he suffered. On the report of the learned Subordinate Judge, the District Judge made an order appointing Ganga Prasad Upadhya, the father, as manager of his son's estate and guardian of his person. On appeal, a Division Bench of the Patna High Court expressed its opinion in the following words:—

> "We took the precaution to have the young man brought before us. We interviewed him for some little time privately, but in the presence of the advocates on the respective sides, and we have no hesitation in coming to the conclusion that the opinion of the District Judge is entirely correct. An argument has been addressed to us to the effect that the words of the statute are that a person must be an idiot or a person of unsound mind. That is undoubtedly true. We were reminded that an idiot is a term applied to a person whose mind has been defective from birth whereas unsoundness of mind usually has some traumatic origin; but unsoundness of mind does not necessarily imply mania. Unsoundness of mind is of various kinds. Now no person can have direct experience of the mind of another and the proper test of insanity is conduct. A person might conceivably have all kinds of mental unsoundness; he might have all kinds of delusions, but if his conduct remains normal there would be no power under the Lunacy Act to deal with him because the law of lunacy deals with conduct and the proper test for insanity is not the beliefs that the person concerned may entertain but the conduct exhibited by that person.
>
> Now it frequently happens that persons of unsound mind are capable of logical answers to questions

> and of giving a reasonably intelligent account of themselves. That does not necessarily imply that such persons are capable of looking after themselves or that their minds are in such a condition that would enable them to look after themselves or their property."

Considering the case before the Court, the Bench felt that the mental condition of the young man before it had obviously been seriously weakened and it would, therefore, be an act of cruelty to him to allow him to move about and dispose of his property at his own will and pleasure. It was with this approach that the High Court affirmed the order of the learned District Judge. A Division Bench of the Andhra Pradesh High Court (Subba Rao, C.J., and Satyanarayna Raju, J.) in *Ganga Bhavanamma's case* speaking through the Chief Justice expressed itself thus:—

> "Though weak-minded people also may require the assistance of others and the protection of Courts, to apply the Lunacy Act to such persons is, in our view, to go beyond the scope and purpose of the Act. If the Legislature intended to bring in persons of weak intellect under the definition of a 'lunatic', it would have said so in specific terms. It appears to us incongruous to style a dull-witted man a 'lunatic' either in its technical or popular sense."

A little lower down, the Court observed that the words "idiot" and "unsoundness of mind" both indicate an abnormal state of mind as distinguished from weakness of mind or senility following old age and a man of weak mental strength cannot be called an idiot or a man of unsound mind. The intellectual competency of the human mind being of varying degrees, it fluctuates between brilliance and dullness and sometimes in the same individual, brilliance in one field may surprisingly appear in juxta-position with subnormal practical apprehension in an allied field. The Act, the Court finally concluded, is not intended to protect dull-witted people but only those who suffer from a mental disorder or derangement of the

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mind. In *Mt. Teka Devi* v. *Gopal Das, etc.,* (3), Tek Chand, J., stated the legal position thus:—

> "Now in assuming jurisdiction under the Lunacy Act, the Court must first of all keep in view the distinction between mere weakness of intellect and 'lunacy' as understood in the Act. In section 3(5), a 'lunatic' is defined as meaning an 'idiot or a person of unsound mind', and it is hardly necessary to point out that it is only with 'lunatics', as defined above, that the Act is concerned. It is, therefore, the duty of the Court before proceeding further to determine judicially whether the person, alleged to be incapable of managing himself or his affairs, is really a 'lunatic' in this sense. Secondly it must be remembered that this finding has got very far-reaching consequences and must be given after very great care and deliberation. It may have the immediate effect of putting a human being under restraint. It might deprive him for a time, or for ever, of the possession and management of his property. It will be *prima facie* evidence of his 'lunacy', and may be read in proof of it in other proceedings. The Legislature has, therefore, laid down an elaborate procedure for conducting an enquiry into this matter, and this procedure must be strictly followed. The Court cannot and ought not to deal light-heartedly with this important question, and it should not consider itself relieved of its responsibility by the mere circumstance that some or all of the relatives of the person concerned have declared that he is 'lunatic'.

Our attention has also been drawn to a Bench decision of the Allahabad High Court in *Mst. Lalita Devi* v. *Nathuji Joshi* (4), the head-note of which is in the following terms:—

> "Where a person owning considerable immovable and movable property, who voluntarily remained silent for 26 years, could not answer even simple

(3) A.I.R. 1930 Lah. 289.
(4) A.I.R. 1939 All. 333.

questions without considerable delay and persuasion and could be easily imposed upon and made to sign almost any document that is produced before him by a person in whom he has confidence:

Held, that the mere silence for such a long time alone showed the weakness of the person's mind and that he was incapable of managing his affairs in consequence of his mental weakness and unsoundness of mind and that Civil Court had jurisdiction to appoint a manager of his property."

This decision was distinguished on facts in *Joshi Ram Krishan* v. *Mst. Rukmini Bai* (5), by a Division Bench (Raghubar Dayal and Mushtaq Ahmad, JJ.). The last mentioned decision contains an exhaustive discussion of the case-law and the Bench quoted with express approval, describing it as undoubtedly an accurate statement of the policy of the Lunacy Act, part of the observations reproduced above of that eminent Judge of the Lahore High Court, Tek Chand, J., in *Mst. Teka Devi's case.*

In my view, the decisions of the Lahore and Andhra Pradesh High Courts and of the Allahabad High Court in *Mst. Rukmini Bai's case* lay down the correct approach to the problem and it would perhaps be wrong to be swayed by what is often described by some by the attractive expression "humanitarian consideration" in applying the provisions of the Lunacy Act to persons, who are not truly idiots or persons of unsound mind and who may be merely possessing weak intellect and, therefore, not able to manage their property as efficiently as may be desirable. To do so, appears to me to ignore or at least to unduly minimise the drastic consequences in various aspects to the person who is judicially described to be a lunatic and subjected to an order under the Lunacy Act. The Court is expected to proceed cautiously and judiciously evaluating and weighing the evidence on the record and coming to a finding with a judicial sense of responsibility, keeping to the forefront all the implications of making a finding that the alleged lunatic

(5) A.I.R. 1949 All. 449.

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is an idiot or a person of unsound mind and incapable of managing himself and his affairs, etc. Such a finding, it is worth remembering, must expose the person concerned to the serious risk of being deprived of some of his cherished constitutional rights and liberties.

Coming to the case before us, the facts in brief may be stated. An application was filed under sections 62 and 63 read with section 71 of the Indian Lunacy Act for appointing a manager of the estate of Smt. Raj Kaur, widow of Kishan Singh, who had died some years ago and also for appointing a guardian of her person. Ajaib Singh, claiming to be Kishan Singh's sister's son, was the applicant. According to the averments in the application, Raj Kaur owned about 165 *bighas* of land and a house which were stated to have been illegally occupied by Nagahia Singh, (appellant in F.A.O. No. 126 of 1963). Raj Kaur, it may be pointed out, is the appellant in F.A.O. 181 of 1963. Raj Kaur, in her written reply, denied that she was a lunatic or a person of unsound mind, but asserted that her property was in wrongful possesion of Nagahia Singh, etc., who claimed to be her husband's collaterals. She also complained that these persons were neither maintaining her nor giving her any income. The learned District Judge got Raj Kaur examined by Dr. Vidya Sagar, Medical Superintendent of the Punjab Mental Hospital, Amritsar, and observing that she was very much in need of another person to look after her affairs, he allowed the application and appointed Shri Manohar Lal Agnihotri, an Advocate and a Court auctioneer, to be the manager of Raj Kaur's estate. In my opinion, this order is wholly unsustainable on the present record and is clearly erroneous, both on facts and in law. Dr. Vidya Sagar, has categorically stated in his opinion that his impression formed on the basis of conversation is that the lady is quite well-informed in agriculture and has thoughts and attitudes of agriculturists of her geographical zone. To reproduce some other relevant portion of the report:—

"Smt. Raj Kaur has been keeping calm and composed amidst the relatively trying environments of a Mental Hospital ward, looked after personal toilet, clothings and food, and expressed gratefulness for minor comforts provided to her. She is

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able to cook ordinary vegetables, and to prepare *chappaties*. Her spontaneous conversation is quite free, relevant and coherent and answers to ordinary common sense questions, that are understood by her, are quite correct. Her sentences show good understanding of words of day-to-day use by the agriculturists, although it has not been possible to get from her the meanings of some specific words, because of her hearing defect. * * * * * * * *."

It is also clear from the report that two lady doctors had spent nearly 20 hours in conversing with Raj Kaur and Dr. Vidya Sagar, himself about three hours.

This opinion quite clearly shows that there is no justification for the finding that Smt. Raj Kaur, is of unsound mind. Not only is this report insufficient to support the finding of the learned District Judge, but, in my opinion, it destroys the very basis of the finding. It appears to me that the learned District Judge, Shri M. L. Puri, has not given due importance to the vital aspect which falls for consideration. He has merely observed that Smt. Raj Kaur, is absolutely incapable of managing her affairs adding "and is of somewhat unsound mind". This order clearly betrays a somewhat superficial approach to the provisions of law and the learned District Judge seems to have slipped into the common error allured by what is described as "humanitarian consideration" against which, as observed earlier, the Courts are expected to guard themselves. The Courts, when dealing with cases under Chapter V of the Lunacy Act, are expected to be vigilant and to make orders of far-reaching consequences with full sense of responsibility. That perhaps explains the anxiety on the part of the Legislature in conferring jurisdiction on the District Court.

In view of the foregoing discussion, the order of the Court below is unsustainable and must be set aside. Accordingly, I allow this appeal and set aside the impugned order, dismiss the application for the appointment of a manager to the estate of Smt. Raj Kaur, widow of Kishan Singh and also for appointment of a guardian of her person. Smt. Raj Kaur would be entitled to her costs.

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In so far as F.A.O. No. 126 of 1963, by Nagahia Singh, is concerned, it is not understood as to how he is entitled to challenge the impugned order, but since the impugned order has been set aside on the appeal filed by Smt. Raj Kaur, Nagahia Singh's appeal becomes almost infructuous and it is unnecessary to pass any formal order allowing this appeal. There would be no order as to costs in this appeal.

R. S. NARULA, J.—I agree.

R.S.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur and Gurdev Singh, JJ.

KIRPAL SINGH,—*Petitioner.*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 999 of 1963.

1965

May, 28th

Constitution of India (1950)—*Articles* 226 *and* 227—*Petition under, dismissed by a Division Bench with the single word "dismissed"—Second petition on same facts and for same relief—Whether competent.*

Held, that a second petition under Articles 226 and 227 of the Constitution on the same facts and for the same reliefs is not competent when the first petition has been dismissed by a Bench of the High Court *in limine* with the single word "dismissed". Such an order, being final, can be challenged either by way of appeal or review and not by means of a second petition. There is neither any principle nor authority to invoke the proposition that the petitioner has a continuous right of making applications to the High Court under Article 226 or Article 227 of the Constitution of India till a judgment amounting to a 'speaking order' has been delivered. The Motion Bench is not enjoined either by statute or otherwise to support its decision by what is called a 'speaking order' in every petition in which the High Court is moved for enforcement of fundamental rights in the exercise of writ jurisdiction. In appropriate cases, the Bench may consider it necessary to write such an order but this is not a duty which can be enforced by the resort adopted by the petitioner in the present instance. A Court of concurrent jurisdiction must resolutely decline to make any comment on the qualitative aspect of the order passed by another Court and the Benches of the High Court