

Present : Fisher C.J. and Drieberg J.

1928

In re SEBASTIAN PERERA

176—D. C. (Inty.) Chilaw, 13.

Lunatic—Order against manager of estate—Direction to pay fixed amount to Court—Civil Procedure Code, chapter XXXIX.

An order requiring the manager of the estate of a lunatic to pay a fixed sum into Court as the income of the estate without regard to a statement of accounts, showing the receipts and disbursements, is irregular.

A PPEAL from an order of the District Judge of Chilaw.

F. de Zoysa, K.C. (with *Croos Da Brera*), for appellant.

H. V. Perera, for respondent.

December 5, 1928. DRIEBERG J.—

In August, 1922, the respondent was appointed manager of the estate of Sebastian Perera, who was adjudged to be of unsound mind and incapable of managing his affairs. The respondent is married to a sister of the lunatic. The appellant was appointed guardian of his person.

In November, 1927, the appellant presented a petition alleging that the estate was deteriorating by neglect on the part of the respondent in not properly cultivating and supervising it. He set out the gross income derived from the estate when it was previously managed by Mudaliyar Abeyratne and compared it with the income obtained during the respondent's management in 1925, 1926, and 1927. He did not say that the accounts rendered by the respondent were false or inaccurate. He asked for the appointment of a receiver or in the alternative that the estate be leased for a term of years, the lease to be sold by public auction.

The learned District Judge says that he had grave doubts whether such an application as this could be made. It is not an application under section 572 of the Civil Procedure Code to impugn the accuracy of the accounts rendered by the respondent, nor is it an application under section 575 to remove the respondent from office and appoint another manager, but the Judge says that during the argument the petition reduced itself into a prayer by the petitioner that he be appointed manager—this might be more correctly described as an extension or enlargement of the petition—and that the petitioner

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be given a lease of the lunatic's estate on a rental double the average nett income shown by the respondent. There was evidence, which the Court accepted, that the lunatic's estate could be leased for Rs. 1,250 a year ; whether this is more or less than the nett income accounted for by the respondent is not stated.

The learned District Judge thought that it would be inequitable to deprive the respondent of his right to manage the lunatic's estate, for he claims to have made some sacrifice in marrying his wife, whose sanity was once doubted, and could fairly expect to be allowed the management of her half share. As the respondent is managing this share he thought there would be disadvantages attending the possession by a stranger of the lunatic's half.

He therefore ordered that the respondent should be allowed to continue as manager if he paid into Court half-yearly to the credit of the lunatic Rs. 625, and that he was to manure and properly cultivate the lunatic's half share ; the land is not divided.

I presume this means that the respondent is not to draw the special remuneration allowed, but is entitled to retain anything over this amount if there is a surplus and to pay the full Rs. 625 even if the estate should not yield that amount.

This arrangement is not a satisfactory one. The lunatic is entitled to have credited to his account the income of this estate after deduction of costs of working and of remuneration to the manager, who cannot get more. The present arrangement is in effect a lease to the manager without the advantage of a lease binding him to a definite term ; nor is it clear from this order whether the respondent is absolved from rendering accounts of income and expenditure ; if he is liable to pay a definite sum, whatever the income is, the Court would not be concerned with the amount of the income ; though the Court may need an account of the expenditure to satisfy itself that the estate is properly cultivated.

I doubt whether such an order as this is possible. There is no evidence, beyond the offer of Elaris to lease it at Rs. 1,250 and the offer of the petitioner to lease it at double the average nett income shown by the respondent, to show what the real income of this estate is. We have not been given the figures of what nett income the respondent has accounted for.

District Courts have the control of many estates and should be able to secure for them proper management and due receipt of income by requiring proper accounts and subjecting them to examination.

If the Court is satisfied that the yearly income should be at least Rs. 1,250 and if the respondent fails to account for that amount, that would be proof that the respondent is dishonest or negligent and he should be made to pay the deficit ; security has been given for the due administration of the estate. If, as is suggested and

as the past administration by the Mudaliyar shows, the estate can be made to yield much more; I do not see how the Court can permit this arrangement. Mudaliyar Abeyratne's accounts of the working from May, 1921, to July 31, 1922, showed a total income of Rs. 4,029·60 and Rs. 1,128·54 expenditure, leaving a profit of Rs. 2,901·06, which he paid into Court. This is exclusive of remuneration and cost of hire of cars to visit the estate; a co-owner residing on the land should be able to show at least as good results as this.

The appellant appeals from this order, which he says will give the respondent Rs. 825 half yearly, which is more than the lunatic will get. If he is right this is a good reason for not allowing this order to stand.

The respondent has not appealed from this order, though he could have done so, but he agrees with the appellant that this order should be set aside, though he opposes the other ground of the appeal, viz., that the respondent should be removed from office. Sufficient reason has not been shown to justify the removal of the respondent from office and apart from this, his removal was not asked for in the petition.

We, therefore, set aside the order of the District Judge of July 11, 1928. The appellant will have an opportunity of questioning the accounts presented by the respondent, and the Court can under section 572 make such order as is considered proper.

I think the inquiry into the accounts should now be confined to those rendered after the presentation of the petition.

The order of the District Court as to costs will stand, but in view of the failure of the appellant to succeed on the question of removing the respondent from office, he should pay to the respondent half the costs of this appeal.

FISHER C.J.—I agree.

Set aside.

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