A KARUMANDA GOUNDER

v.

MUTHUSWAMY GOUNDER AND ORS.

JANUARY 10, 1996

B [MADAN MOHAN PUNCHHI AND SUJATA V. MANOHAR, JJ.]

Property—Partition between brothers—One of the brothers gifting certain properties which was subsequently sold by the donee—Other brother objecting to the transactions claiming the properties to be joint—Also claim-
C *ing that his brother has become lunatic and hence not capable of alienating the properties—Trial Court holding him to be `mild lunatic'—High Court held that in view of admitted partition, the other brother had no right over the properties—On appeal held : There is no such thing as `mild lunatic'—A person of weak intellect not lunatic—Also not declared as lunatic under the*
D *Lunacy Act—Hence alienation validly made—Lunacy Act.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 545 of 1982.

From the Judgment and Order dated 15.10.76 of the Madras High Court in A. No. 644 of 1972.

E A.T.M. Sampath for the Appellant.

Sivasubramanium, Rakesh K. Sharma and Rajendra K. Choudhary for the Respondent Nos. 1-3.

Mrs. Revathy Raghavan, Ms. Sheela Rao and S. Balakrishnan for the
F Respondent No. 4.

The following Order of the Court was delivered :

The appellant herein, Karumanda Gounder, was one of the defendants in the suit. He was a brother to Komaraswamy Gounder. At one point of time
G they had joint properties with their father. A partition took place between them which was put to some doubts. Out of the properties allotted to Komaraswamy Gounder, a parcel of land was gifted by him to M.K. Komaraswamy Gounder. When Muthuswamy Gounder the plaintiff respondent wanted to purchase that property, he persuaded the donor and the donee to sell the property to him in
H unison. That having occasioned, resistance was faced by the plaintiff-respond-

ent from the present appellant on the ostensible plea that the properties were joint. The plaintiff-respondent concededly after sale had not been put to possession of the property. This led to the suit for possession by the plaintiff-respondent.

Amongst other pleas, the star plea of the appellant was that his brother Komaraswamy Gounder was a lunatic; hence, he was incapable of selling or gifting the property. Further there had been no partition and the question of the sold property having fallen to the share of Komaraswamy Gounder did not arise. When the parties went to issue before the trial court, the plaintiff-respondent failed as the court took the view that Komaraswamy Gounder was mildly a lunatic; the properties were joint and that the alleged interest in the properties by the appellant, was justified. The High Court, on appeal, however, reversed the findings recording that Komaraswamy gounder was not a lunatic ; the properties amongst brothers stood partitioned as conceded to by the appellant, and that the property in dispute had fallen to the share of Komaraswamy Gounder. On that basis, the right of the appellant to question the gift and the sale deed was negatived inasmuch as on date he had no right over the property. Thus, the High Court put the appellant to the position of an interloper; not even a proper party to the suit, what to talk of a necessary party. It is to upset these findings that the appellant is before us, in appeal.

We have heard Mr. A.T.M. Sampath, learned counsel appearing for the appellant. He has taken us through the lengthy judgments prepared by the subordinate court as also that of the High Court. It is prominently noticeable that no effort ever had been made by the appellant to have his brother Komaraswamy Gounder declared as a lunatic from the District Court under the Lunacy Act. Even on the findings recorded by the subordinate Court, there is hardly any substance to entertain the view that he was a lunatic. A person has to be adjudged a lunatic whereafter certain consequences may follow. There is no such thing as a 'mild lunatic'. A person may be of a weak intellect; incapable of managing his affairs, but that *per se*, would not make him a lunatic. Once partition stands conceded and the property in dispute fallen to the share of Komaraswamy Gounder and the plea of his being a lunatic rejected, the appellant has no stake left to pursue the appeal. It is far-fetched to assume that Komaraswamy Gounder would some day die intestate and issueless on which the appellant might have a claim to succeed to his estate. Even this plea is presumptuous, because the property in dispute has already been gifted and then sold to the plaintiff-respondent. The claim of

A the plaintiff-respondent for possession, thus, was legitimate in the facts and circumstances. The questions raised herein by Mr. Sampath, learned counsel, to upset the view of the High Court are essentially those of fact. It would be difficult for us to upset those orders of the High Court in this jurisdiction.

The appeal accordingly fails and is hereby dismissed. No costs.

B

G.N. Appeal dismissed.