

(1927) 02 PRI CK 0002

In the Privy Council

Case No : Privy Council Appeal No. 118 of 1925

Ma On

APPELLANT

Vs

Maung Tin

RESPONDENT

Date of Decision : 28-02-1927

Acts Referred:

Citation : (1927) AIR(PC) 105

Hon'ble Judges : Lancelot Sanderson, Ameer Ali, Darling, Carson, Phillimore, JJ.

Advocate : Grant and Dold, Douglas, E.B. Raikes, A.M. Dunne, for the Appearing Parties.

Judgement

Mr. Ameer Ali, J.

This appeal arises out of a suit brought by the plaintiff, Maung Tin, on the 21st February 1923, in the Court of the District Judge of Tharrawaddy in Burma. The action is for recovery from the defendant, Ma On, of certain jewellery which he alleged belonged to his wife, Ma Saw Yi, of which the defendant took possession on her death at Letpadan on the 18th February 1920. The defendant, Ma On, who is the maternal aunt of the deceased Ma Saw Yi, and who admittedly was, at the time of Ma Saw Yi's death, at the house in which she died, denies taking possession of the jewellery claimed by the plaintiff, and further alleges that the jewellery the deceased girl used to wear was merely lent to her by different people, among them her grandmother Daw U.

The house in which Ma Saw Yi died belonged to Daw U and, as already stated, the defendant was there at the time of her death.

It appears to be the custom among Burmans to give the brides, at the time of marriage, jewellery by way of a dowry ; and it is the plaintiff's case that the jewellery his wife was wearing at her wedding, which was of considerable value, was either her own or was given to her by her grandmother Daw U, according to the evidence on both sides, a wealthy woman. It is further the plaintiff's case that on his wife's death some jewellery was placed on her dead body, as appears

to be the custom among Burmans ; and that a photograph was taken of her with the jewellery in which she was dressed.

The defendant admits that jewellery was placed on the dead body, but alleges that it was borrowed for the purpose.

The suit came for trial before the District Judge, Mr. Gilbert. His conclusion on the evidence may be given in his own words as follows :

That Ma Saw Yi was in possession of a considerable outfit of jewellery while she was living with Maung Tin, after the marriage, in the various stations to which he was posted is clearly proved. U Thein (4 P. W.) was a neighbour of Maung Tin at Tharrawaddy, and often saw Ma Saw Yi wearing diamond earrings, studs, bracelets, hairpins and a ring. Ma Ma Le (5 P. W.), when visiting Ma Saw Yi at Tharrawaddy, saw her wearing such jewellery ; so did Ma Mya Gyi (6 P. W.) and Ma Yu Kin (7 P. W.), and Naung Gyi (9 P. W.). At Maymyo, Daw Ein Zi (15 P. W.), when staying a fortnight with Maung Tin and Ma Saw Yi, saw Ma Saw Yi wearing this jewellery. Ma Saw Yi spoke of them (the ornaments) as hers. Ba Bwa (11 P. W.), who used to live next door to Maung Tin at Maymyo, says that Maung Tin, when he went on tour, used to ask witness to look after this jewellery. Ma Saw Yi told witness that it was hers. Ba Bwa says he used to lock the things up in a safe at Maung Tin's house, while Maung Tin was away and sleep there. Ma Ein Zi, though Maung Tin was away on tour during part of a visit did not encounter Ba Bwa, - which at first sight seems to contradict Ba Bwa's statement. But it is probable that Ma Saw Yi, having a companion on this occasion did not feel the need of protection, and this would account for Ba Bwa's absence during Ma Ein Zi's stay at Maymyo. There is no reason to doubt the evidence that Ma Saw Yi was possessed of much jewellery while she was with her husband at Tharrawaddy and Maymyo.

Then comes the following passage :

The inherent vagueness of this case lies really in the fact that no attempt has been made by either party to trace the history of this jewellery, and show who was its purchaser or owner in the first instance. Plaintiff's case in effect rests on the bare fact that Ma Saw Yi, after her marriage, was in possession of a set of jewellery, and that the mere proof of possession is in itself adequate to raise a presumption of ownership. But this presumption is a weak one, since it is quite clear that Ma Saw Yi and her husband were never in a position to purchase these articles; and, in fact, it is not alleged that they did acquire them in any such manner. Maung Tin relies on an alleged gift. Neither the fact of this gift is proved, nor was the title of the alleged donatrix established. The weight of evidence in the case goes to show that these jewels were owned by Daw U and that, though Daw U was willing to lend them, she was averse to making an outright gift of them. Daw Me's ownership of these jewels is not proved and cannot be inferred. There was, of course, every prospect at the time of the marriage that ultimately Ma Yi Saw would get these or similar articles by way of inheritance, and at

Maymyo she even spoke of them as hers. But the mortality of Daw U, and her daughter Daw Me, and Daw Me's daughter Ma Saw Yi, followed a chronology which was the exact reverse of the expected sequence of deaths. The result of this was Ma, Saw Yi died without acquiring title.

I think that Maung Tin has failed to establish his claim to this jewellery. I have already dealt with the question of the cash.

In this view of the case the District Judge dismissed the plaintiff's suit. The plaintiff appealed to the High Court at Rangoon, and the appeal was heard by two learned Judges, one of them being Mr. Justice Heald and the other Mr. Justice Chari. Mr. Justice Heald has considerable experience of Burmese customs and institutions ; his opinion on the respective allegations of the parties to the suit is of considerable value. He says, in the first place, that it is admitted by the respondent herself that Ma Saw Yi took the jewellery away with her when she left home and went to live with the plaintiff at Tharrawaddy, and that she had jewellery in her possession until she returned home ill not long before her death. He refers also to the admission of the defendant's sister Ma Gun and her witness Ma Thin Za that the jewellery Ma Saw Yi took with her to Tharrawaddy was the jewellery she wore at her wedding. He further refers to the fact that admittedly Ma Saw Yi took the jewellery that was in her possession to different places where her husband proceeded in the course of his official duties, such as Rangoon and Maymyo. The learned Judge adds that the defendant herself admits this, and her sister Ma Gun says that she took all the jewellery she had with her to Rangoon. He goes on to say as follows :

It is admitted that when Ma Saw Yi died her dead body was decked with jewellery, and there is some presumption that it was the jewellery which she had worn while she was alive.

It is noticeable, he observes further, that the articles of jewellery which were admittedly put on her correspond with the jewels which she had worn.

It is admitted that after the funeral the plaintiff asked for his wife's jewellery but was told that it did not belong to his wife, but to her grandmother. The comment of this learned Judge upon this statement is as follows :

I have no doubt that she did say so. The wife's relations would naturally resent her valuables going to a stranger. They nearly always do in such cases, and it is probable that that resentment is the sole reason for this litigation.

The learned Judge sums up the result of the evidence in the following words :

The mere fact that Ma Saw Yi wore the jewellery at her wedding would not go far towards proving that the jewels were hers, because Burmans habitually borrow jewellery for great occasions. But her continued possession of the jewellery and her taking it away with her when she went to live at the various places to which her husband, as a Government servant, was transferred, would raise a strong presumption that it was hers, particularly as her grandmother, to whom it is said

to have belonged was rather miserly, and would not be likely to let her own valuables go out of her possession for anything like so long a time.

In the result, the High Court made a decree for the plaintiff for various articles of jewellery, amounting in value to rupees 20,000, with costs in both Courts.

Their Lordships have heard the defendant's counsel at considerable length ; it is clear from the judgment appealed against that the learned Judges carefully examined the evidence on both sides, and their conclusion that the jewellery claimed by the plaintiff was the property of his deceased wife, and had been taken possession of by the defendant, is, in their Lordships' opinion, fully borne out by the circumstances. It is impossible to believe that Ma Saw Yi would have been allowed by the old grandmother, who was proved to have been a close-fisted woman, to take with her all the jewellery to the different places to which her husband was from time to time posted, unless this jewellery belonged to the deceased. Whatever might have been the origin of the articles, whether they were originally purchased by Daw U and were given by her by way of dowry to the plaintiff's wife at or about the time of the wedding, there can be no doubt on the evidence which has been carefully analyzed by the Judges of the High Court, that the deceased possessed them as her own property, and took them about as her own property. When she was in Rangoon, and her husband was away touring, the articles were taken care of by a neighbour who has given evidence on behalf of the plaintiff, and he says that it was at the plaintiff's request that he took care of his wife's jewellery. The inference which the High Court has drawn from the fact that on her death considerable jewellery was placed on her dead body is not without force in the circumstances of the case. It is hardly likely that borrowed jewellery would be placed on the dead person, and that seems to be the view of the learned Judge, to whose experience of Burma and Burmans the Board have referred to before.

On the whole, their Lordships see no reason to disturb the finding of the High Court, and would, therefore, humbly recommend to His Majesty that this appeal should be dismissed. There will be no costs, as the respondent does not appear.