

(1924) 10 PRI CK 0001

In the Privy Council

Case No : Privy Council Appeal No. 84 of 1923

Maung Dwe and others

APPELLANT

Vs

Khoo Haung Shein and others

RESPONDENT

Date of Decision : 21-10-1924

Acts Referred:

Citation : (1925) AIR(PC) 29

Hon'ble Judges : John Edge, Carson, Dunedin, JJ.

Advocate : A.M. Bramall, Hilbery and Son, G.S. Sanders, R.L. Parry, E.A. Harney, for the Appearing Parties.

Judgement

Lord Dunedin

This is the case of a disputed succession to the property of a lady named Ma Shwe Kin, a Chinese Buddhist living in Tavoy, who was the third wife and the widow of Khoo Shwe Goon. Khoo Shwe Goon was first married to Ma Lin and by her he had a son now deceased and another son Khoo Ping Hoe, one of the respondents in the appeal. Ma Lin died and Goon married Ma In, by whom he had a son Khoo Ping Kyan, now deceased. Khoo Ping Kyan married and had three sons and a daughter, who are the other respondents. Ma In died, and after some years Goon married his deceased wife's sister Ma Shwe Kin. Goon died in 1917 before his third wife, who died in 1919. He disposed of his own property by Will.

Ma Shwe Kin died in 1919 possessed of considerable property, which was her own. She was also entitled to a share of the succession of her mother Pwa Zo. Ma Shwe Kin was survived by a brother and married sister. This brother, the sister and her husband are the appellants in the present case. Originally a question was raised as to whether Goon really ever married his third wife, but it was held in the Courts below that the marriage was sufficiently established by habit and repute and no question as to that was raised before their Lordships.

The case, therefore, resolves itself into the question, who are to be preferred, the step-son and step-grandchildren on the one hand, or the lady's own brother

and sister on the other ?

The case was tried before the District Judge, who preferred the appellants. That learned Judge took the view that though in the case of *Ma Gun Bon v. Maung Po Kywe* (1) the grand children, as descendants, were preferred to the collaterals, that case really turned, not upon the general principle, but upon the fact that the property there in question had come from the real father and gone to the second wife and thus only reverted to the original family. He also held that, in this case, the step grand-children had not lived with the deceased and had not buried her, that ceremony being performed by the brother and sister.

Appeal was taken to the Chief Court of Lower Burma, and the learned Judges in appeal reversed the judgment. They held that the case of *Ma Gun Bon v. Maung Po Kywe* (1915) 2 U.B.R.66 proceeded on general principles and not upon the special character of the property in question. They also held that the facts above narrated created no disqualification.

Their Lordships have examined the Digest of Burmese Buddhist law, which is the available source of reference to the rules of the Dhammathats. They also considered the authorities cited. The leading case on the subject is undoubtedly the case of *Ma Gun Bon v. Maung Po Kywe* (1915) 2 U.B.R.66. It is quite true that in that case the property in question had come from the husband to the wife and that it was that property that was the subject of the disputed succession, but the judgment in no way proceeds on that point. There is a large citation of texts as to step-children, and the learned Judge sums up the matter thus :-

"These texts go to show that step-children are regarded as heirs without limitation, except in the case of ancestral property, and even in that they are granted a share provided the step parent has lived to have a vested interest in it, or to reach it according to the Burmese expression."

This is quite in accordance with certain citations which are to be found in the Dhammathats. Thus S. 6 (Manugye) :-

" There are four kinds of inheritance, namely, (1) that which is obtainable by children, grand children and great-grand children only ; (2) that which is obtainable by children and step children."

and in S. 295 (Manugye) :-

" The father marries again and both father and step-mother die leaving no offspring of the marriage."

"The rule of partition between the step-children and their step-mother's co-heirs is as follows :-

"The children shall receive the whole of their father's as well as their step-mother's animate and inanimate property. As regards the share of inheritance to which the step-mother was entitled in her deceased parents' estate which still remain undivided, her step-children shall inherit one half and her co-heirs the

remaining half."

and Manu to the same effect :-

"The children shall inherit the property owned by the father and step-mother jointly."

Once it is determined that step-children are descendants they necessarily oust collaterals, for by Buddhist law the property never ascends as long as it can descend. The learned appeal Judge in this case says :-

"The point of view of the Buddhist law is undoubtedly based on the community of interest between husband and wife. So strong is the bond between them that in the absence of natural children the husband's or wife's children, as the case may be, rank as the children of the step parent in the matter of inheritance to the exclusion of collateral blood relations."

Their Lordships agree with this statement.

There remains the question whether the appellants are disentitled to succeed, because : first, the respondents did not live with the deceased ; and second, that they did not bury her. The learned counsel for the appellants contended that these services, which he designated by the name of the filial bond, were a condition precedent to the allowance of a step-child's right. Their Lordships cannot accept this view. In the same paragraph, S. 6 of the Digest of Burmese Buddhist Law, heading 4, is :-

"That which should be withheld from children who failed in filial duty."

and this is explained thus :-

"Among laymen disobedient and idle sons can not inherit their parents' estate."

Their Lordships think it clear that conduct can indeed operate as a disqualification of the right, but that it is in no sense a necessary qualification to obtain the right. They agree with what was said in the case of *Maung Sein Thwe v. Ma Shwe Yi* (1920) 10 L. B. R. 396.

"We are not prepared to assent to the view that a man who has proved that he is an heir has further to prove that he has not broken off filial relations in such a case as this," and again p. 397 :-

"Mere separate residence does not now-a-days and by itself prove or even set up an inference of a breach of filial relations such as would deprive a child of his rights."

Their Lordships, upon the whole matter, agree with what was said by the learned Judges of the Court of appeal, that in this case there is no forfeiture. It would only be natural that the children, who are all minors, should live with their own mother, and for the same reason, they could not have been the conductors of the funeral ceremony.

As to the hereditary property to which the deceased became entitled in respect of her mother, but which was not as yet in her possession, the judgment is in accordance with the texts quoted.

In view of the fact that Buddhist law is in many ways obscure and the judgments are few, their Lordships think that it is necessary to make two observations in case the judgment should be used for the purpose of upholding propositions which it does not contain. The step-son here has made common cause with the step-grand-children and was content that they should share along with him. Their Lordships pronounce no opinion as to what would be the result in a contest between the step son and the step-grand-children ; but either or both are entitled to exclude the appellants. Farther, though the whole theory of succession depends upon the strict Buddhist view that intestacy is compulsory, this has so far been impugned upon that a Chinese Buddhist is allowed to test ; which accounts in this case for Goon's will as to his own property.

Their Lordships will humbly advise His Majesty that the appeal shall be dismissed with costs.