

**(1926) 04 PRI CK 0001**

**In the Privy Council**

**Case No :** Privy Council Appeal No. 165 of 1924

(Maung) Po Kin and another

APPELLANT

Vs

Maung Po Shein

RESPONDENT

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**Date of Decision :** 16-04-1926

**Acts Referred:**

**Citation :** (1926) AIR(PC) 77

**Hon'ble Judges :** John Edge, Darling, Atkinson, Lord Chancellor, JJ.

**Advocate :** Bramall and Bramall., Hentry Hilbery and Son, G.S. Sanders, A.M. Dunne, R.W. Leach, G. Lawrence, for the Appearing Parties.

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## Judgement

The Lord Chancellor

This is an appeal from the decree of the High Court of Judicature at Rangoon, reversing the decision of the District Judge of Myaung mya.

A man named Ko Lu Gale died on the 14th October 1913. There were then standing in his name a number of conveyances of paddy lands and also a number of mortgages of considerable value. The principal appellant, who was his brother alleges that he was beneficially entitled to the lands comprised in the conveyances and to the mortgages and that the deceased was a benamidar for him. The burden of establishing that claim was, of course, upon the appellant, and the question in the case is whether he has discharged that burden. The trial Judge said that he had, but the High Court came to the opposite conclusion. The appellant appeals, and it is for him to satisfy the Board that the judgment of the High Court was wrong.

The facts have been brought before their Lordships in a very able and careful argument by Mr. Lawrence. No doubt there are circumstances which tell in favour of the appellant. First, it was he who actually paid the purchase moneys for the lands and the sums advanced on mortgage or the greater part of them, although it is not shown where he obtained those moneys. Secondly, when the matter came to be litigated, he held the title-deeds ; and, although the High

Court seems to have thought that he came by the title-deeds dishonestly, and in short that he stole them after the death of his brother, there is, in their Lordships' opinion, no evidence to support such a conclusion. If the property was not held by his brother in trust for him, he probably held the deeds, not because he stole them, but because he had the custody of them for his brother. Thirdly, the appellant let some of the property (according to the evidence) and received some of the rents ; but the receipts for those rents are not produced, and it does not appear whether he received them as being his own or as agent for his deceased brother. All these facts are circumstances which are very justly adduced in favour of the appellant's claim. But on the other side there are also some most important facts. To begin with, and this no doubt is the most important of all, all this property stood in the name of the deceased ; and on some of the documents it is stated that the deceased (apparently the deceased in person) paid the money. Of course the burden is on the appellant to displace the natural inference to be drawn from that fact. The burden is no doubt a difficult one to discharge, because in all these benamidar transactions the very object of the parties is secrecy ; but still the person who alleges that property conveyed to another belongs to him must prove his allegation and prove it beyond reasonable doubt. In the next place, it is to be noted that the appellant, the first defendant in the case, did not on the death of his brother tell his brother's heirs, that is to say his brother's widow and son and daughter, that there was property standing in the name of the deceased which he, the appellant, claimed to be his. In fact, it is plain from the appellant's own statement, that he concealed from the heirs the existence of this property and these mortgages. That is a very suspicious circumstance indeed. Then there is this : that about a year after the death Ko Lu Gale the appellant, the first-named defendant in the action, procured the daughter of his deceased brother, then a girl of sixteen years of age and living in the appellant's house, to give her formal consent to a mutation of names under which the greater part of these properties were transferred to the appellant's sister and, as the appellant says, in trust for him. One would have thought that an honest man seeking to bring about such a transfer would call, not upon the minor daughter of the deceased, the youngest of all the heirs, but upon all the heirs including the deceased's son and his widow, to join in effecting this mutation of names, and, if they refused and if the claim was a proper one, would have taken proceedings to enforce it. Nothing of the kind was done, and the mutation was effected secretly through the agency of this minor daughter. That again is a most suspicious circumstance.

At a later date, the appellant applied for a succession certificate to the estate of the deceased in order that he might transfer into his own name, or that of his nominee, two mortgages which up to that time had not been transferred. On that application the heirs were cited. They inquired as to what was meant, and, having been told that the appellant claimed that the deceased held these mortgages for him, they immediately made further inquiries and then for the first time learnt of the existence of the conveyances and mortgages and what had

been done with them ; and ultimately they brought this suit to compel the defendant and his sister to re-transfer the property and to account for the proceeds.

There is this further fact. The widow of the deceased swore that after her marriage to him, that is to say about six months before his death, she and her husband went to the appellant's house and took with them two cash bags, containing about Rs. 3,000, for investment. That evidence was not shaken on cross-examination, and it supports the view that the deceased was entrusting money to his brother for investment in his own name.

It is also to be observed that the deceased had jewellery to the value of about Rs. 10,000, in addition to other jewellery of about the like value which had been lost or made away with by a former wife, whom he had divorced ; and it is unlikely that a man, possessed of jewellery to that value, should have such small resources as have been disclosed, apart from those which are in issue in this suit. It is unnecessary to refer at length to the history of the jewellery in question, although a good deal has been said about it ; but the facts are so confused that it would be dangerous to draw any definite conclusion from that part of the evidence. Nor would it be useful to examine whether the deceased had sufficient means to enable him to make these investments, or whether, on the other hand, the appellant had sufficient means for that purpose. The evidence tinker that head is so slight that it is undesirable to build any conclusion upon it

Upon the whole, while the case no doubt admits of serious argument, such as has been addressed to the Board, the appellant has not satisfied their Lordships that the decision of the High Court, which was expressed in a detailed and careful judgment, was wrong. Accordingly their Lordships have come to the conclusion that this appeal must fail, and they will humbly advise His Majesty that the appeal should be dismissed with costs.