

APPELLATE CIVIL.

Before Sir Guy Rutledge, Kt., K.C., Chief Justice, and Mr. Justice Carr.

MAUNG BA GON

v.

MA PWA THIT.*

1927

July 27.

Buddhist Law—Heirs all related in the same degree to the *propositus* share equally each in his own right.

Held, that not only in case of grandchildren of the *propositus*, as his sole heirs, but in case of all heirs who are all related in the same degree to the *propositus* they inherit each in his own right (*per capita*) equally, and not by representation (*per stirpes*).

Where the deceased, a Burman Buddhist, left surviving him as his heirs the son of his deceased paternal aunt, two children of his deceased maternal uncle and six children of another deceased maternal uncle, they all shared equally, each being entitled to a one-ninth share of the estate.

Maung Po Thu Daw v. Maung Po Than, 1 Ran. 316—followed.

Ze Ya—for Appellant.

Tun Byu—for Respondent.

RUTLEDGE, C.J., AND CARR, J.—The question arising in this appeal is—how is the estate of the deceased Maung Aung Myin to be partitioned among his heirs, who are :—

- (1) the plaintiff, the son of Aung Myin's deceased paternal aunt ;
- (2) and (3) two children of a deceased maternal uncle ;
- (4) to (9) six children of another deceased maternal uncle ?

The learned Judge on the Original Side has found that the estate must be divided among these nine persons *per capita* and that each of them is entitled to a one-ninth share.

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The appellant's contention is that the estate should be divided *per stirpes* and that therefore he is entitled to one-third. Logically he should claim one half because his connection with the deceased must be traced through the latter's paternal grandparents, while all the other eight heirs trace their connection through the maternal grandparents.

We think that the question is concluded by the Full Bench decision in *Maung Po Thu Daw v. Maung Po Than* (1) in which it was decided that where the only heirs were grandchildren of the *propositus* the division must be *per capita*. The cases are, of course not identical, but the principle involved is the same—that when the heirs are all related in the same degree to the *propositus* they inherit each in his own right and not by representation and that therefore each shares equally with all the others.

In our opinion, therefore, the decision appealed from is correct.

The appeal is dismissed with costs.

(1) (1923) 1 Ran. 316.