

APPELLATE CIVIL.

Before Mr. Justice Pratt, Officiating Chief Justice, and Mr. Justice Cunliffe.

KO SAN DWE

v.

MA NYEIN HLA AND ONE.*

1928

April 23.

Buddhist Law—Claim of relative to the whole estate of deceased lunatic—Plea of maintenance and support of lunatic—Manugye X, 36.

A Buddhist lunatic and his demented brother who predeceased him inherited their parents' estate. They were looked after by their aunt and her daughter till they died. The aunt and the cousin were appointed guardians of the lunatics by a Court that also allowed them a good remuneration from the wards' property. On the death of the surviving lunatic, the aunt and her daughter claimed his whole estate to the exclusion of other heirs by virtue of their having taken care of the lunatic. They relied on *Manugye X, 36*.

Held, that a relative who takes care of and supports a Buddhist lunatic would not in all cases be entitled as a matter of course to the whole share of the lunatic's parental estate for the pains taken. The principle laid down in *Manugye X, 36*, did not apply in this case, because the lunatic succeeded to his parents' estate, and there was no partition and no definite share of the property was set aside for the lunatic; and the guardians were sufficiently remunerated from the estate.

Ma Saw Win v. Maung Gyi, 2 Ran. 328—distinguished.

Kyaw Din for the appellant.

Hay for the respondents.

PRATT, C.J.—Plaintiff Maung San Dwe sued for administration and a share of the estate of his deceased nephew Maung Po Tu, a lunatic.

The District Court held that the defendants Ma Nyein Hla and Ma Bein, aunt and first cousin respectively of the deceased were entitled to the whole estate of deceased to the exclusion of all other heirs by virtue of their having taken care of the lunatic for the past 25 years. The Court relied upon chapter

* Civil First Appeal No. 232 of 1927 against the judgment of the District Court of Hanthawaddy in Civil Regular No. 39 of 1926.

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36, Book X, of the *Manugye* and the case of *Ma Saw Win v. Maung Gyi* (1).

The chapter of the *Manugye* cited provides that, if, among the children of parents given in marriage by their parents, one shall have severe disease, be unable to work, stutter or be dumb, the share such child is entitled to shall be set aside, the relatives shall support it and at its death the person who supported the child shall take its share.

A later sentence makes it clear that severe disease includes insanity.

In *Ma Saw Win's* case referred to, Duckworth, J., following this provision of the *Manugye*, held that in a case when the family property had been partitioned after the death of the parents and the eldest son had held the share of a deaf-mute in trust, and supported and maintained her, the eldest son was entitled on the death of the deaf-mute to succeed to her share of the parental estate.

In the present instance the share of the deceased was not set aside on the death of the parents but was inherited by him. It seems he was the survivor of two brothers, both mentally defective, who both succeeded to their share of the parental estate. Undoubtedly the defendants took care of Maung Po Tu, and apparently their care was not unremunerative. As the learned Judge of the District Court remarked, it is clear that the lunatic's estate was sufficient to maintain him and the defendants who supported him as well.

In Civil Miscellaneous Case No. 10 of 1913 of the District Court of Hanthawaddy, Ma Nyein Hla and Ma Bein were appointed guardians of Maung Po Tu and his brother and were allowed one-third of the estate as

remuneration for their trouble by order of the Chief Court on appeal in September 1921.

It does not appear to me therefore that the principle laid down in the *Manugye* X, 36, applies to the facts of the present case, since no definite share was set aside for the lunatic on the death of his parents. In *Ma Saw Win's* case there was a partition of property and one of the children held the defective child's share in trust. The circumstances were therefore analogous to those set forth in the passage of the *Manugye* referred to.

I cannot, however, see any good reason to extend the principle to cover all cases in which relatives take care of lunatics.

Ma Bein and her mother have undoubtedly taken care of the deceased lunatic and for this they have been amply remunerated. This being so, there appears no necessity in equity or otherwise to allow them to succeed to the whole of the lunatic's estate to the exclusion of other heirs.

To hold that the relative or relatives who took care of and supported a Buddhist lunatic would in all cases as a matter of course be entitled to his share of his parental estate for their pains might have far reaching consequences and would be establishing to my mind a dangerous precedent.

I would set aside the finding and decree of the District Court and remand the case for decision on the merits.

Appellant to have costs in both Courts.

CUNLIFFE, J.—I concur.

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