

## APPELLATE CIVIL.

*Before Mr. Justice Brown.*

A.R.V. CHETTYAR FIRM AND THREE OTHERS

v.

MAUNG HLA GYI AND TWO OTHERS.\*

1928

Feb. 23.

*Burmese Buddhist mother's power to dispose of minor child's property—Disposal for benefit of minor.*

*Held*, that a Burmese Buddhist mother as natural guardian of a minor, has ordinarily no power to dispose of immoveable property of her ward. A transfer by her may however be upheld if the circumstances clearly indicate that the transfer was in the interests of the minor.

*P. Sen* for the appellants.*Eunoose* for the respondents.

BROWN, J.—The 1st appellant, A.R.V. Chettyar firm, filed a suit against eight persons for a decree for sale on a mortgage document. The executants of the document were the 1st defendant, Ma Kin Lay, and the 5th defendant, Maung Sint. The 2nd, 3rd and 4th defendants, who are now the only respondents, to this appeal, are the minor children of Ma Kin Lay. Ma Khin Lay signed the mortgage deed for herself and as the guardian of these minors. The remaining defendants are the legal representatives of the purchaser at an auction sale of the equity of redemption of the land. Apparently, the three minors were not parties to that suit and, therefore, whatever interest they had in the land would not seem to have passed by the sale. The suit against the three minor children has been dismissed by the District Court on the ground that Ma Khin

\* Special Civil Second Appeal No. 385 of 1927 against the judgment of the District Court of Pegu in Civil Appeal No. 15 of 1927.

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Lay had no power to execute the mortgage deed on their behalf.

The property in question was purchased on the 17th of November, 1919, from one U Dut for Rs. 2,500 in the name of Ma Kin Lay and her three children. The evidence is to the effect that the purchase money was paid by Maung Shwe Gon, the father of Ma Khin Lay.

In the year 1920, Ma Kin Lay executed a mortgage deed with regard to this property in favour of the Chettyar. The mortgage deed in suit is dated the 24th of August, 1922. The consideration for that mortgage was said to be Rs. 543-12-0 still due on a previous mortgage, and Rs. 956-4-0 in cash. Chakarasbarni, an agent of the plaintiff firm, says that, at the sale, Ma Khin Lay told him that the money was being taken for the benefit of the children. There is, however, no real evidence that the money was taken for this purpose, or, indeed, that any real enquiries in the matter were made by the Chettyar firm.

According to the evidence of Ma Khin Lay, the money was borrowed not for the children at all but in order to help her brother-in-law, Ko Yaw Han, out of difficulties. There is no evidence to the contrary, and it is unlikely that so large a sum as Rs. 1,500, or even Rs. 1,000, would be required for the three minor children, unless for some special occasion. It has not been suggested that any special occasion existed in this case. It seems to me, therefore, impossible to hold that this mortgage was effected for the benefit of the children, or that the children profited in any way from the proceeds of the mortgage.

It has been contended before me that Ma Khin Lay, as the mother of the minor children, is their

natural guardian, and, as such, entitled to dispose of their property. I have been referred to Trevelyan on Minors (sixth edition), at page 151 and following pages.

In the case of Hindus and Mohammedans undoubtedly parents of minor children have, in certain circumstances, power to act as their guardian and to dispose of their property ; but no corresponding power has been shown to me to exist in the case of Burman Buddhists.

At page 167 of Trevelyan the following passage occurs :—

“The law applicable to persons other than Hindus and Mahommedans does not permit guardians, other than those appointed by the Court, or having power given to them by the instrument appointing them, to sell or charge the immoveable property of their wards.”

I am not prepared to say that in no circumstances could a Burman Buddhist mother validly dispose of the immoveable property of her minor children. Circumstances might exist which made it so clear that she was acting in the interests of the minor that a transfer by her might be upheld. But that has not been shown to be the case here. In fact, all the evidence there is is strongly the other way, indicating that the minors got no advantage whatsoever out of the proceeds of the mortgage.

In these circumstances I am of opinion that the District Court was right in holding that the minors were not bound by the mortgage deed.

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