

1927
 MAUNG BA
 AND ONE
 v.
 MAUNG
 KYWE
 AND ONE.
 BROWN, J.

have the right to evict the defendants on the score of title. This title to the property has quite clearly not been established, and I think that the suit was rightly dismissed by the District Court.

I therefore dismiss this appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Carr and Mr. Justice Cunliffe.

MAUNG PAN GYAW

v.

MA BEIN AND OTHERS.*

Buddhist law—Congenital idiot whether entitled to inherit.

Held, that at Buddhist law, a child though physically or mentally incompetent or defective is entitled to his full share of inheritance.

Kinwun Mingyi's Digest, Volume I, ss. 110 and 111; Manugye, X, 36—*referred to.*

Sastri for the appellant.

CARR and CUNLIFFE, JJ.—The facts of this case are that Ko Aik and Ma Hpaw were Burmese Buddhist husband and wife. Ko Aik died over twenty years ago and Ma Hpaw died about eleven years ago, leaving two sons. These sons, Tha Dun U and Tha Htu, are alleged to have been congenital idiots, and this allegation appears to be admitted. Tha Dun U is said to have died some six years ago; Tha Htu died about seven months ago, and it is his death that has led to the present suit. It appears also that in the year 1918 the 1st defendant, Ma Bein, was appointed by the District Court of Hanthawaddy to be the custodian and manager of the estate of Tha Htu, who was declared then to

* Civil First Appeal No. 187 of 1927 against the judgment of the District Court of Hanthawaddy in Civil Suit No. 44 of 1926.

be of unsound mind. That is what is stated in the complaint, but we are informed now by Mr. Sastri that in fact it was the 11th defendant, Ma Nyein Hla, who was so appointed. The question is not of much importance, Ma Nyein Hla being the mother of Ma Bein.

The plaintiff-appellant is a son of a brother of Ma Hpaw. Defendants Nos. 2 to 9 are also children of other sisters and brothers of Ma Hpaw. The 11th defendant, Ma Nyein Hla, is a sister of Ko Aik, and we are informed that the 12th defendant, Maung San Dwe, is a brother of Ko Aik, but this fact does not appear on the record. The 1st defendant, as already mentioned, is a daughter of Ko Aik's sister, Ma Nyein Hla, the 11th defendant.

The plaintiff now sues for administration of the estate of Tha Htu. His first contention is that both Tha Dun U and Tha Htu were by reason of insanity legally incapable of inheriting, and that the estate to be administered should be regarded as the estate of their mother, Ma Hpaw, and he claims, therefore, that he and defendants Nos. 2 to 9 are the heirs of Ma Hpaw.

The plaintiff-appellant's whole case rests on the proposition that Tha Htu was incapable of inheriting from his parents. For that proposition we can find no sufficient authority. Mr. Sastri has relied upon the extracts from the *Dhammathats* in sections 110 and 111 of the Kinwun Mingyi's Digest. Those extracts appear, however, to tell very strongly against his contention, the only one which actually supports it being the extract from Pyu in section 111. The most important of these extracts is that from the *Manugve Dhammathat* which is taken from Book X, section 36 of that *Dhammathat*.

We note here that the translation given in the Digest differs materially in some respects from that

1927

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GYAW
v.
MA BEIN
AND
OTHERS.

CARR AND
CUNLIFFE,
JJ.

1927

MAUNG PAN
GYAW
v.
MA BEIN
AND
OTHERS.
CARR AND
CUNLIFFE,
JJ.

given by Richardson, and that Richardson's translation appears to be the more correct.

Excluding the extract from Pyu in section 111, all the other extracts clearly provide that a child who is physically or mentally incompetent or defective is entitled to his full share of inheritance, and these extracts are quite sufficient to settle that question. The *Manugye* provides further that such a child shall be taken care of by one of his relations and not co-heirs, as the translation in the Digest gives it. It provides further that, on the death of the person so defective, the one who has maintained and taken care of him shall be entitled to his share of the inheritance. Mr. Sastri contends that that provision does not apply in the present case. We do not think it necessary to go into that question.

The *Dhammathats*, as we have already said, clearly show that the deceased, Tha Htu, was entitled to inherit from his parents, and this fact seems to have been recognized throughout by all the parties to the suit, since there is no suggestion that any of them have during Tha Htu's life time claimed to inherit either jointly with him or to his exclusion.

We have, therefore, to deal with the estate of Tha Htu, and, on the facts as to relationship already stated, it is clear that his nearest heirs are his paternal aunt, Ma Nyein Hla and uncle, Maung San Dwe, if Maung San Dwe is, in fact, a brother of his father. Other considerations aside, those two heirs will exclude all the other parties to the suit, since they are the nearest. If, however, the rule given in the *Manugye Dhammathat*, to which we have already referred, is to be applied, then either Ma Nyein Hla, the 11th defendant, or Ma Bein, the 1st defendant, whichever of them is, in fact, the

costodian of Tha Htu and his estate, will be entitled to inherit to the exclusion of everyone else.

We are not called upon to decide between the claims of the defendants, and we express no opinion as to whether it is the natural heir or the custodian who is entitled to inherit.

One fact which is quite sufficient for the determination of this suit clearly emerges, and that is that the plaintiff-appellant, Maung Pan Gyaw, is not entitled to any share in the estate, and, therefore, has no status to bring this suit.

The appeal is, therefore, dismissed. There will be no order as to costs, the hearing having been *ex parte*.

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APPELLATE CIVIL.

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

KWAI TONG KEE

v.

LIM CHAUNG GHEE.*

1928
 Jan. 3.

Civil Procedure Code (Act V of 1908), ss. 63 and 73—Rateable distribution—Moneys attached by High Court and Small Cause Court creditors—Moneys paid into High Court—Whether all creditors to share rateably without Small Cause Court creditors applying to High Court prior to the receipt of the money—High Court to determine all claims.

Creditors of a judgment-debtor in the Small Cause Court of Rangoon attached a sum of money deposited by the judgment-debtor with a Club. A High Court creditor of the judgment-debtor also attached the same sum. The money was paid into the High Court.

Held, that under the provisions of s. 63 of the Civil Procedure Code the High Court alone could determine all claims to the money. S. 73 must be read in conjunction with s. 63 of the Code, and under the circumstances of the case the High Court must be deemed to hold the assets on account of the Small Cause Court also; and therefore all the creditors were entitled to a rateable distribution. The decree-holders in the Small Cause Court need not in such a case make an application to the High Court for execution before the receipt of the assets.

* Civil Miscellaneous Appeal No. 75 of 1927 from the order of the Original Side in Civil Miscellaneous No. 212 of 1926.