

the land in suit and declaring that the decree and the sale in Civil Regular No. 75 of 1924 and Civil Execution No. 61 of 1925 are inoperative against the plaintiffs. The 1st respondent will pay the costs of the appellants throughout.

APPELLATE CIVIL.

Before Mr. Justice Brown.

MAUNG BA AND ONE

v.

MAUNG KYWE AND ONE.*

Possession of land not recoverable by person with invalid title—Transfer of Property Act (IV of 1882), s. 54; Registration Act (XVI of 1908), s. 49—Possession in virtue of invalid sale a good defence.

A person in possession of immoveable property under a contract for sale is entitled to resist a suit for possession and he has that right even if the original transaction purported to be an outright sale but was not a valid sale owing to the absence of a registered sale deed. But that does not mean that a title can be conferred in total disregard of the provisions of the Transfer of Property Act, and therefore a person who is not in possession of property cannot bring a suit for possession based on an invalid title.

Held, that a person who purported to derive title to immoveable property from his vendor who based his title on an unregistered sale document, where the provisions of section 54 of the Transfer of Property Act applied, could not eject a person in possession of the property and who was not put in possession thereof by him or his vendor.

Maung Myat Tha Zan and two v. Ma Dun and one, 2 Ran. 285; *Ma Ma E and two v. Maung Tun*, 2 Ran. 479—*distinguished*.

Ba Thein (1) for the appellants.

Ganguli for the respondents.

BROWN, J.—The appellants sued the respondents, Maung Kywe, Ma E Me and Ma Ngwe Myit, mother of the respondent Maung Kywe, to evict them from

* Special Civil Second Appeal No. 193 of 1927 from the judgment of the District Court of Pegu in Civil Appeal No. 233 of 1926.

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a certain house. In their plaint they stated that they had bought the house by a registered deed from Maung Po Mya and his wife Ma E Nyun. Their vendors made over possession and the defendants who were living in the house at the time agreed to go away but subsequently refused to do so. The appellants were given a decree in the trial Court but this decree was set aside by the District Court on appeal and they have now come to this Court in second appeal.

The appellants claimed that their vendors Maung Po Mya and Ma E Nyun were the owners of the house. This is denied by the respondents. Maung Po Mya and Ma E Nyun have given evidence and base their title on an unregistered sale document dated Tabaung 1278 B.E. Admittedly the house originally belonged to Ma Lay. Ma Lay had seven children, of whom Ma Ngwe Myit, who was a defendant in the first instance, and has subsequently died was one. The sale deed purports to be signed by Ma Ngwe Myit and her six co-heirs. Maung Po Mya is one of the sons of Ma Ngwe Myit and the respondent Maung Kywe is another of the sons. It is quite clear that the transaction of 1278 conveyed no title to Maung Po Mya and his wife Ma E Nyun. Section 54 of the Transfer of Property Act was then in force and title could only be transferred by a registered document. Further the document being unregistered could not be received in evidence of the sale under section 49 of the Registration Act, and the transaction having been reduced to writing no oral evidence on the point is admissible. I have been referred to the cases of *Maung Myat Tha Zan and two v. Ma Dun and one* (1) and of *Ma Ma E and two v. Maung Tun* (2). All that these cases

(1) (1924) 2 Ran. 285.

(2) (1924) 2 Ran. 479.

establish is that persons in possession of immoveable property under a contract for sale are entitled to resist a suit for possession and that they still have that right even if the original transaction purported to be an outright sale but was not a valid sale owing to the provisions of section 54 of the Transfer of Property Act. Further than this they do not go and they do not furnish any authority for the view that a title can be conferred in total disregard of the provisions of the Transfer of Property Act or that a person who is not in possession of property can bring a suit for possession based on an invalid title. The present suit is framed as one for eviction but the defendants are clearly in possession. So far as the suit is based on title alone it seems to me that it is bound to fail. To hold any other view would be to render the provisions of section 54 of the Transfer of Property Act and section 49 of the Registration Act entirely nugatory. In my opinion the plaintiffs could only succeed in this case if they could show that they had received possession and put the defendants in possession as their licensees. This it seems to me they have failed to do, nor did they base their suit on this ground. Maung Po Mya was one of the children of Ma Ngwe Myit and he did for a time live in the house, but he left it long before the sale to the appellants and after that it was occupied by the respondent Maung Kywe, another son of Ma Ngwe Myit. It is not shown that Maung Kywe was put in possession merely as a licensee of Maung Po Mya, and, as I have said, that is not the cause of action made out in the plaint. Whether the plaintiffs could establish any cause of action with regard to the house, if they framed their suit differently is not a matter for decision here. They have based their suit on title and claimed to

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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.