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to law. I am not convinced that the practice of requiring memoranda of appeal to be stamped in accordance with the notification of the 29th of May 1924 is contrary to law. On the other hand, I consider that there is authority for the practice.

I, therefore, hold that the Court has power to refuse to accept the present appeal until the stamp required by the notification of the 29th of May 1924 has been affixed to the memorandum of appeal. The document will be returned to the appellants to enable them to affix the correct stamp.

ORIGINAL CIVIL.

Before Mr. Justice Leach.

MA CHIT MAY

v.

MA SAW SHIN AND OTHERS.*

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 Oct. 4.

Burmese customary law—Divorce—Arrangements as regards children and property—Parents' discretion—General custom as to division of property and children—Loss of succession rights—Resumption of filial relationship—Evidence—Ties of affection not enough—Taking back into the family.

On a divorce taking place between a Burmese Buddhist couple the children of the marriage are bound by the arrangements the parents choose to make. The parents have an unfettered discretion to decide how their property shall be divided and with whom the children shall live.

Ma E May v. Maung Po Mya, 11 B.L.R. 316; *Ma Tin U v. Ma Ma Than*, I.L.R. 5 Ran. 359; *Ma Yi v. Ma Gale*, 6 L.B.R. 167; *Mi San Mra Rhi v. Mi Than Da U*, 1 L.B.R. 161; *Mi Thaik v. Mi Tu*, (1872-92) S.J. 184—referred to.

On a divorce the general rule is that the daughters live with the mother and the sons with the father, with the result that the daughters lose their right to succeed to their father's property, and the sons to their mother's property.

Ma Tin U v. Ma Ma Than, I.L.R. 5 Ran. 359; *Mi Thaik v. Mi Tu*, (1872-92) S.J. 184—referred to.

The lost right may be recovered, but that depends entirely on the will of the parent concerned. A daughter who has lived with her mother since

* Civil Regular Suit No. 56 of 1934.

the divorce of the parents is not to be regarded as an heir of her father simply because she and her father have remained on terms of affection and she has continued to visit him. In such a case the daughter must establish that the father took her back into his family, and accepted her as one of the heirs.

Ma Sein Nyo v. Ma Kywe, (1892-96) 2 U.B.R. Buddhist Law, Inheritance, 159—referred to.

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Hormasji for the plaintiff. The question is whether the plaintiff is an heir of her deceased father. Her father divorced her mother, and though the evidence shows that she lived with the mother and that there was some interruption in their family relationship she remained throughout on terms of affection with her father, and used to visit him. This constituted a resumption of filial relationship which entitled her to inherit from her deceased parent. *Ma Tin U v. Ma Ma Than* (1).

Kyaw Myint for defendants 2 and 2 (a) supported the plaintiff's case.

Tim Aung for defendants 1 and 5. The attitude of the parent towards the child who has been separated from him after the divorce determines the question. The evidence shows that the deceased never regarded his daughter as his heir after the divorce, and this is strengthened by the fact that the deceased purported to give all his property to his other daughter, the first defendant. There was no maintenance of filial relationship. *Ma Paw v. Ma Min and others* (2); *Ma Yi v. Ma Gale* (3).

LEACH, J.—The plaintiff seeks a decree for the administration of the estate of her father, U Nyein, a Burmese Buddhist who died on the 25th of July, 1933. The suit has been contested by Daw Hla Dwe, the fifth defendant, on her own behalf and as the

(1) I.L.R. 5 Ran. 359.

(2) 4 L.B.R. 272.

(3) 6 L.B.R. 167.

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guardian of her daughter, Ma Saw Shin, the first defendant, who is a minor. Daw Hla Dwe claims to be the widow of the deceased. The plaintiff's mother, Ma Khin Aye, and U Nyein were divorced in the year 1912 and very soon afterwards U Nyein married Daw Hla Dwe. Daw Hla Dwe alleges that the plaintiff ceased to be an heir of U Nyein at the time of the divorce and that she never regained that status. While the plaintiff admits that Ma Saw Shin is the daughter of U Nyein by Daw Hla Dwe and as such is entitled to share in the inheritance, she denies that Daw Hla Dwe has any right therein. She avers that her father divorced Daw Hla Dwe several years before his death. Ma Hta Kin, the second defendant, also claims to be a widow of the deceased. Ma Ah Mah, defendant 2 (a), another minor, is admittedly the daughter of U Nyein and Ma Hta Kin. Maung Kyaw Hlaing, the third defendant, is a brother of the plaintiff. Ma Mya Tin, the fourth defendant, is said to be a daughter of U Nyein by one Ma Hla May, who predeceased him. Ma Hta Kin, on her own behalf and as guardian *ad litem* of Ma Ah Mah and Maung Kyaw Hlaing support the plaintiff. Ma Mya Tin did not appear at the hearing, but she filed a written statement admitting all the averments in the plaint. The plaintiff recognises the claims of all the defendants, except the claim of Daw Hla Dwe. Daw Hla Dwe maintains that she and Ma Saw Shin are the only heirs of U Nyein.

The only question with which the Court is at present concerned is whether the plaintiff is entitled to a share in the estate of her father. The rights of the various defendants cannot be investigated at this stage. A finding in favour of the plaintiff would involve the passing of a decree for the administration of the estate and this in turn would involve an

inquiry into the claims of the respective defendants, but an inquiry of this nature cannot take place until the Court has granted a decree for the administration of the estate.

The principal assets of the estate consists of the following sums of money :—(1) Rs. 4,000, *plus* profits, due on a policy of life insurance taken out by the deceased ; (2) Rs. 2,778-2-0 due to him by the Rangoon Municipal Co-operative Credit Society, Limited, and (3) Rs. 5,595-8-0 standing to his credit in the books of the provident fund of the Corporation of the City of Rangoon. On the 8th of May, 1928, the deceased signed an endorsement on the insurance policy by which he purported to assign to his minor daughter, Ma Saw Shin, the benefit of all moneys payable under the policy. The consideration was expressed to be natural love and affection. By the same endorsement he purported to appoint the plaintiff the guardian of Ma Saw Shin. On the 1st of March, 1929, the deceased executed a document under which he nominated Ma Saw Shin as the person entitled to receive his provident fund moneys in the event of his death. On the 2nd of April, 1929, he executed a similar form of declaration in favour of Ma Saw Shin in respect of the moneys due to him by the Rangoon Municipal Co-operative Credit Society, Limited. The plaintiff in her plaint challenges the validity of these transactions, but here again the Court is precluded from considering their validity at her instance until she has established her claim to be an heir of the deceased and has obtained a decree for the administration of the estate.

The learned advocate for the plaintiff has rightly conceded that the deceased divorced Ma Khin Aye in the year 1912, and that on the divorce taking place the plaintiff went with her mother. He further

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admits that the divorce involved an interruption in the relations between father and daughter, but contends that the plaintiff subsequently resumed filial relations with her father. It is on this basis that the plaintiff claims to be entitled to a share in the inheritance. Before considering the evidence bearing on the question with regard to the relations between the plaintiff and her father after he had divorced her mother, it is necessary to pause to consider what are the rights under Burmese Buddhist law of the children of divorced parents so far as inheritance is concerned. These rights have been frequently discussed in the Courts of this Province and there are reported decisions extending over half a century, but the principles involved have at times been lost sight of.

It must be borne in mind that Burmese Buddhist law gives full recognition to parental authority. While a child of Burmese Buddhist parents is born with the right to inherit their property, or to share in the inheritance if there are other children of the marriage, it is within the power of the parents to take away this right by giving the child to another person in *keittima* adoption. In the same way the children are bound by the arrangements made by their parents in the event of a divorce taking place. It is for the parents to say how their property shall be divided and with whom the children shall go. The parents have an unfettered discretion in this respect. *Manukye*, Chapter XII, section 3; *Mi Thaik v. Mi Tu* (1); *Mi San Mra Rhi v. Mi Than Da U* (2); *Ma E Me v. Maung Po Mya* (3); *Ma Yi v. Ma Gale* (4); *Ma Tin U v. Ma Ma Than* (5); see also May Oung's "Leading Cases on Buddhist Law," page 293.

(1) (1872-92) S.J. 184.

(3) (1905) 11 B.L.R. 316.

(2) (1900-02) 1 L.B.R. 161.

(4) (1912) 6 L.B.R. 167.

(5) (1927) I.L.R. 5 Ran. 359.

The general rule is that on a divorce taking place the daughters go with the mother and the sons with the father. *Mannkye*, Chapter XII, section 3; *Mi Thaik v. Mi Tu* (1) and *Ma Tin U v. Ma Ma Than* (2).

If the parents decide that the daughters shall go with the mother and the sons shall go with the father and the arrangement is carried out, it follows that so far as the daughters are concerned they lose their right to succeed to their father's property and so far as the sons are concerned they lose their right to succeed to their mother's property.

The lost right may be regained by what is usually described as the resumption of filial relations. It is, however, necessary to bear in mind what is to be implied by the use of these words. The right can only be regained if the parent from whom the child was separated so wills it. A daughter who has lived with her mother since the divorce of the parents is not to be regarded as an heir of her father merely because she and her father have remained on terms of affection and she has continued to visit him. If at the time of the divorce the daughter lost the right to inherit her father's estate the right can only be regained by the father taking her back into his family and accepting her as one of his heirs. In other words the governing factor is not the will of the daughter, but the will of the father. There are some very apposite remarks in the judgment of Burgess J.C. in the case of *Ma Sein Nyo v. Ma Kywe* (3) from which I quote the following :

"The mere visiting of her father by plaintiff would not be enough to establish the continuance of the filial relation of an heir. There would be no reason why all natural affection

(1) (1872-92) S.J. 184.

(2) (1927) I.L.R. 5 Ran. 359.

(3) (1892-96) 2 U.B.R., Buddhist Law, Inheritance, 159 at pp. 166 and 167.

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should be extinguished between parent and child because there had been a separation of the parents, but that is a different matter from the maintenance of the family bond constituting the title to inherit . . . Now, it appears to be clearly a principle of Buddhist law that the child who is to inherit must aid and cherish the parent, and live with him or under such circumstances as to show that filial duty is discharged according to his wishes and that the family tie is kept unbroken. In a country where testamentary rights have not been generally recognized, and where the same man or woman frequently forms and dissolves more than one matrimonial union, it is a necessary consequence that the continuance of the family relation intended to give a right of inheritance should be manifested by outward and visible symptoms sufficient to leave no reasonable doubt of the true position of affairs. If Maung Myat No, the father of Ma Sein Nyo, the plaintiff, had wished to show that she retained her right of inheritance as a daughter, he would have had no difficulty in making this plain to his own family and to the world in general by having her to live with him or by otherwise treating her as one of his heirs. The fact that he did not do so implies that he considered that her relation to him in respect of inheritance had been finally settled by the divorce with her mother."

Where a daughter, on the divorce of her parents, has lost her status as an heir so far as her father's estate is concerned and she is claiming to have regained her right in that respect, her conduct towards her father has, of course, to be taken into consideration in deciding whether her claim is a valid one, but her attitude towards her father is not the most important consideration. Before a daughter can succeed in such circumstances she must satisfy the Court that the father regarded her as an heir after the divorce. In the absence of the proof of a declaration by the father that he did so regard her, she must adduce evidence from which the Court is justified in arriving at a conclusion in her favour.

In the case before me there can be no doubt that there was a definite break in the relations between the plaintiff and her father when the latter divorced her mother. On the divorce taking place she went to live with her mother at a house in the Yegyaw Quarter of Rangoon. The house belonged to the deceased, who apparently handed it over to Ma Khin Aye at the time of the divorce. According to the evidence of Daw Thaw, an elder sister of the deceased, Ma Khin Aye lived in this house for two or three years after the divorce. The house, however, was mortgaged to a Chettiar who brought it to sale. After it had been sold Ma Khin Aye went to live with the plaintiff and has lived with her ever since. The plaintiff married Khoo Soo Ee, a Chinaman, shortly after the divorce of her parents, but up to the time of her marriage she continued to live with her mother and never again lived with her father. In her evidence the plaintiff at one time endeavoured to make out that her marriage took place before the divorce, but this was not her case as stated to the Court by her advocate, who admitted that his client was in error in this respect. The plaintiff's husband was in Court throughout the case instructing the plaintiff's advocate.

Before his marriage to Daw Hla Dwe the deceased signed a written declaration to the effect that he had no "chief wife" and no heirs. This document clearly shows that he regarded the plaintiff no longer as an heir. He had divorced her mother and the plaintiff had passed out of his family. The plaintiff admittedly did not visit her father at the houses in which Daw Hla Dwe from time to time lived with U Nyein, but there is evidence that she used to visit him after he had acquired

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a rubber factory in Kemmendine in 1922. He built a small house near this factory and there installed Ma Hta Kin. I accept the plaintiff's statement that she visited her father from time to time after he had built the house just referred to, and that she was on affectionate terms with him. The fact that in the endorsement on the life policy the deceased nominated the plaintiff as the guardian of Ma Saw Shin certainly shows that he had confidence in the plaintiff. But this is not sufficient for the plaintiff to succeed. She must show that the relations were such that the Court is justified in holding that he accepted her as an heir subsequent to his divorce from Ma Khin Aye. The evidence does not justify any such conclusion. On the contrary, I consider that in assigning the life policy to Ma Saw Shin and nominating her to receive his provident fund moneys and the amount standing to his credit in the Rangoon Municipal Co-operative Credit Society, Limited, the deceased clearly indicated that he did not regard the plaintiff as an heir. If he had intended her to succeed to part of his estate on his death he would not have purported to make Ma Saw Shin the recipient of practically all he possessed. Moreover it is significant that Ma Khin Aye who is living with the plaintiff has not been called as a witness.

For the reasons stated I hold that the plaintiff is not an heir of the deceased and that she is not entitled to a decree for the administration of his estate. The suit must be dismissed with costs in favour of the first and fifth defendants, and I award special advocate's costs of five gold mohurs a day for four days.