

APPELLATE CIVIL.

Before Mr. Justice Mya Bu, and Mr. Justice Mosely.

MA HNIN YI v. MAUNG THIN.*

1939

Mar. 1.

Buddhist law—Inheritance—Out-of-time grandchild—Condition of sharing with uncle or aunt in grandparents' estate—Child's parent eldest child of grandparents—No necessity of predeceased parent being orasa.

Under the Burmese Buddhist law an out-of-time grandchild or out-of-time grandchildren who are entitled to an equal share with an uncle or aunt in the division of the estate of the grandparents are the child or children of the eldest child of the grandparents. It is not essential to the success of their claim to such a share that their parent who predeceased either one or both of the grandparents was the *orasa* child, and all that is necessary to show is that their parent was the eldest child of the grandparents.

Maung Thein v. U Tha Byaw, [1939] Ran, 341, followed.

Ma Saw Ngwe v. Ma Thein Yin, 1 L.B.R. 198; *Ma Su v. Ma Tin*, 6 L.B.R. 77; *Maung Po Au v. Ma Dwe*, I.L.R. 4 Ran. 184; *Maung Thein Maung v. Ma Kywe*, I.L.R. 13 Ran, 412; *Po Zan v. Maung Nyo*, 7 L.B.R. 27, referred to.

Sein Tun Aung for the appellant.

U Kyaw (2) for the respondent.

MYA BU, J.—This appeal arises out of a suit for administration of the estate of one U Maung Gyi, who died in January 1938. The defendant-respondent is the only surviving child of U Maung Gyi, and is the younger of the two sons of U Maung Gyi and his first wife, Daw May Pu. The respondent's elder brother was Maung Thein Maung, the eldest son of U Maung Gyi and Daw May Pu. Daw May Pu died in 1914 while Maung Thein Maung was still a minor. After Daw May Pu's death Maung Thein Maung married, and had the plaintiff-appellant, Ma Hnin Yi, as his only daughter. Maung Thein Maung himself predeceased his father U Maung Gyi. The plaintiff-appellant claims, as an

* Civil First Appeal No. 5 of 1939 from the judgment of the District Court of Hanthawaddy in Civil Regular No. 12 of 1938.

This is the judgment referred to in the preceding case.—*Ed.*

out-of-time grandchild of U Maung Gyi, one-half of the estate of U Maung Gyi on the footing that she, being the only child of the eldest child of U Maung Gyi and Daw May Pu, is entitled to an equal share with her uncle, the respondent.

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The legal basis of the claim is not quite clearly expressed in the plaint, where it is stated :

"The plaintiff claims one-half of U Maung Gyi's estate as his *orasa* grandchild."

The learned District Judge considered that Daw May Pu having died during the minority of Maung Thein Maung, Maung Thein Maung could not claim to be the *orasa* son of U Maung Gyi and Daw May Pu, and, consequently, held that the plaintiff-appellant, not being the child of an *orasa* child, was not entitled to an equal share with her uncle in the division of the estate of her grandparent. This decision cannot be supported, because under the Burmese Buddhist law an out-of-time grandchild or out-of-time grandchildren who are entitled to an equal share with an uncle or aunt in the division of the estate of the grandparents are the child or children of the eldest child of the grandparents. It is not essential to the success of their claim to such a share that their parent who predeceased either one or both of the grandparents was the *orasa* child, and all that is necessary to show is that their parent was the eldest child of the grandparents. There is sufficient indication of this state of the law in the judgment of my learned brother Mosely in Civil Reference No. 4 of 1938, which, in my opinion, coincides with the view which I have always held. The views expressed by my learned brother are well founded upon the observations made in *Ma Saw Ngwe v. Ma Thein Yin* (1),

(1) 1 L.B.R. 198.

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Maung Po An v. Ma Dwe (3) and *Maung Thein Maung*
v. Ma Kywe (4).

For these reasons this appeal must be allowed.

The preliminary decree granted by the District Court is varied by declaring the plaintiff to be entitled to a half share in the estate of U Maung Gyi, deceased, and directing a partition accordingly. The costs of this appeal, calculated *ad valorem* on the three-eighths of the estate, which is the difference between the fractional share allowed by the trial Court and that allowed by this Court, shall be borne out of the estate.

MOSELY, J.—I agree.

(1) 6 L.B.R. 77, 84.

(2) 7 L.B.R. 27, 30.

(3) (1926) I.L.R. 4 Ran. 184, 199.

(4) (1935) I.L.R. 13 Ran. 412, 445.