PRIVY COUNCIL.

P.C.*
1909
June 30;
July 9.

MA YWET

v.

MA ME.

[On appeal from the Chief Court of Lower Burma at Rangoon.]

Burmese Law—Adoption—Evidence of adoption—Adult niece claiming to be adopted daughter of childless uncle, and entitled to his estate—Proof of publicity of relationship and notoriety essential—Inferences from past statements and conduct.

According to the law of Burma, by which no formal ceremony is necessary to constitute adoption, the fact of adoption can either be proved as having taken place on a distinct and specified occasion, or may be inferred from a course of conduct which is inconsistent with any other supposition. But in either case publicity must be given to the relationship, and the amount of proof of publicity required will be greater in cases of the latter category when no distinct occasion can be appealed to.

In the case of a child leaving its natural parents and being brought up in the house of another person who treats it as a father would a child, the inference of the relationship existing, and the publicity of the relationship may naturally be drawn from the facts of the lives of the parties, apart from their verbal statements. But in the case of an adult adoption where the inferences to be drawn from "bringing up" are necessarily absent, it is especially requisite to insist on adequate proof.

In this case an orphan adult niece claimed the estate of a childless uncle, with whom it was only natural she should live, on the ground that she had been taken by him as his adopted daughter when she was over 30 years of age, the evidence of the publicity of the relationship alleged depending upon the testimony of the claimant herself, and the statements of the deceased uncle spoken to by witnesses, and the consequence of upholding the adoption being the disinherison of those entitled to succeed:—

Held, that the evidence was not sufficient to establish the adoption.

Where parties might have precluded the raising of subsequent questions by means of an actual, though not ceremonial, adoption in the presence of witnesses, and they had not done so, but had left the fact of adoption to be inferred from past statements and conduct, adequate proof of publicity and notoriety of the relationship should be insisted on.

* *Present:* LORD MACNAGHTEN, LORD DUNEDIN, LORD COLLINS, SIR ANDREW SCOBLE and SIR ARTHUR WILSON.

1909

MA YWET v. MA ME.

APPEAL from a judgment and decree (12th March 1907) of the Chief Court of Lower Burma in its appellate jurisdiction, which reversed a judgment and decree (1st May 1906) of the same Court in its original jurisdiction.

The defendant was the appellant to His Majesty in Council.

U Mya, a Burman Buddhist, died at Rangoon on the 19th April 1905, leaving the appellant who claimed to be his adopted daughter, and two sisters, the respondents. The appellant was the daughter of U Nyein who died in 1896, and Ma Ka who died in November 1900. Ma Ka was U Mya's sister, and the appellant's case was that, during Ma Ka's last illness, she asked her brother to take care of the appellant, and that he promised that he would look after her as his daughter; that after Ma Ka's death he did in fact treat her in every way as his daughter; that he gave up his own house in Rangoon and lived with her, up to the time of his death, in her house; and that he informed a number of people that she was his daughter or adopted daughter.

On 25th May 1905, the respondents applied to the Chief Court for Letters of Administration to the estate of U Mya as being his sisters and sole heirs. On 9th June 1905, a caveat was filed on behalf of the appellant, and on 19th June 1905, the Court ordered the matter to be tried as a suit that being the ordinary procedure in such cases.

On 4th July 1905, the appellant applied that Letters of Administration might be granted to her, and on 10th July 1905 the Court ordered the two cases to be tried together. The only issue was—"Is defendant (appellant) the adopted daughter of the deceased?"

The Court (BIGGE J.) held that the adoption was proved and ordered Letters of Administration to be issued to the appellant.

The Appellate Court (IRWIN and HARTNOLL JJ.) reversed the decision of the first Court on the ground that though no particular ceremony was required for adoption among Burman Buddhists, yet some overt act or speech on the part of the person

1909

MA YWET v. MA MI.

adopting was necessary, and that the fact of the adoption must be shown to the public and notorious, and that in this case there was no proof of any overt act or of notoriety. The Appellate Court accordingly ordered that Letters of Administration should be granted to the respondents.

The material portion of the judgment of the Appellate Court was as follows :—

"It was pressed on us at the hearing of the appeal that the judgment of the learned Judge on the Original Side contains no finding or statement as to the time at which the adoption took place. It must be admitted that that is so. The learned Advocate for Ma Ywet met this argument by saying that the adoption took place when U Mya gave up his own house and moved to Ma Ywet's house a few days after Ma Ka's death. His position is that this moving of house was a definite act by which U Mya signified that he was fulfilling the promise which he had made to his dying sister to take Ma Ywet as his own daughter and never to part from her.

"This position is certainly the highest which, on the evidence, Ma Ywet could possibly take up. It seems, however, to entirely nullify the observation made by the learned Judge near the beginning of his judgment that disputes between U Mya and his sisters are of importance as being the foundation of his determination that his sisters should not inherit from him; for the disputes did not arise until some years after the date now fixed for the adoption.

"The learned Judge has found that U Mya spent a very considerable portion of his time after Ma Ka's death at Kawa and Thongwa, and there is no doubt about the fact. Moreover, I think it is certain that when U Mya gave up his own house in Rangoon he removed his furniture not to Ma Ywet's house but to Ma Mi's house at Kawa. The giving up of his own house, therefore, has very little significance; and if his permanent residence was in any one place more than another, it seems to have been at Kawa. But, assuming that his permanent residence was at Ma Ywet's house, I find it very difficult to say that that fact can be regarded as signifying that he had adopted Ma Ywet."

After referring to a case cited before them in which it was stated that the investigation of these claims was commonly undertaken many years after the date of the alleged adoption, the Appellate Court continued :—

"It might be added that the adopted child was usually adopted at such a tender age that he or she could not give any positive evidence of the act of adoption from his own knowledge. In both these points the present case is totally different. Ma Ywet is alleged to have been adopted about five years before the suit and when she was about 30 years of age. The reason, therefore, for not insisting on definite proof of the act of adoption entirely disappears

1909

MA YWET v. MA ME.

After distinguishing the case of *Ma Me Gale* v. *Ma Sayi* (1), which had been referred to in argument, the judgment proceeded :—

"The admitted principle is that the relationship must be public and notorious, and it is only because in most cases the adoption took place many years before the suit and when the person adopted was a child, that definite evidence of the act of adoption is not required. When the alleged adoption was recent and the person adopted an adult, it lies on the person asserting the adoption, in my judgment, to prove it by definite and direct evidence, or to give very substantial reasons for not doing so.

"The finding of the learned Judge on the Original Side is based on the following points which he enumerates—

"1. Ma Ywet's original natural relationship to U. Mya.

"2. His promise to her mother when dying to take and treat her as his own daughter.

"3. His abandoning his own house and going to live with her in the house where Ma Ka had died, and his continuing to live there till he died.

"4. His undoubted affection for her.

"5. His undoubted desire that she should inherit.

"6. His allusions to her as his daughter, and Pongyi U Ne Mein, and Maung Thaw as his adopted daughter.

"Points 1 and 4 require no remark.

"U Mya's promises to Ma Ka do not, I think, amount to a promise to adopt Ma Ywet It was precisely the occasion on which, if adoption were intended, it would have been expressly mentioned ; and it was not mentioned. . . . . Moreover, even a promise to adopt would avail nothing without proof that the promise was carried into effect.

"Point 3 I have already dealt with.

"U Mya's desire that Ma Ywet should inherit was manifested near the end of his life, and the only view I can take of it is that his desires to make a gift, or a will, or to execute a formal deed of adoption, if they have any significance at all, signify that he had not yet adopted her; for if she were adopted nothing more would be necessary to cause her to inherit. I do not lay stress on this, any prudent man might guess that an adoption not effected by deed would be liable to be contested ; but I merely remark that this part of the evidence does not help Ma Ywet's case.

"There remains the evidence that U Mya referred to Ma Ywet as his daughter or adopted daughter. After giving the fullest consideration to the words of their Lordships of the Privy Council above referred to, I think we are at liberty to rely on our own knowledge that Burmans use the words 'father,' 'mother,' 'son' and 'daughter', very loosely, and to say that Mr. Dhar was prefectly correct in saying, —'It would be quite natural for an old man like that to refer to a niece who had lived with him for a long time as his daughter.' This is the evidence of a witness for the respondent.

(1) (1904) I. L. R. 32 Calc. 219 ; L. R. 32 I. A. 72.

1909

MA YWET v. MA ME.

"Mr. Justice Bigge observed,—'One of the difficulties of this case is the obviously simple way in which the word *adopted* can be interpolated into an otherwise correct statement.' I agree with that, and I would go farther and say that this infirmity attaches to the evidence of even truthful witnesses when relating conversations which took place at a time when there was nothing to lead them to attach any importance to the word *adopted*. The infirmity is still greater when the evidence has been recorded by a Judge who is not acquainted with Burmese, and when the Burmese terms used by the witnesses, and translated 'adopt' and 'adopted' have not been recorded.

"The learned Judge rejected, so far as the word *adopted* is concerned, all the evidence of U Mya's statement except that of U Ne Mein and Saya Thaw. Saya Thaw's statement seems to me extremely inconclusive. He begins—'He told me about disputes with his sisters and the adoption of his niece;' but he immediately follows that up by a detailed statement which refers to nothing but the conversation at Ma Ka's death-bed. In cross-examination again he says—'In consequence of this he said he had brought her up as his daughter.' That is quite a different thing from adoption for the purpose of inheritance. It was only when repeatedly pressed in cross-examination that he committed himself to the statement that U Mya said he had adopted her. I think this evidence is worthless.

"But after all, the point is whether the relationship of father and daughter was public and notorious, and there is no evidence that it was. The evidence, such as it is, relates to private conversations between U Mya and the witnesses, and the circumstances under which the statements were made are such that, in nearly every case, the witness seems to have been ignorant of the relationship until it was specially made known to him by a private conversation with U Mya. This seems to me rather to indicate that the relationship was not generally known, and if the evidence is true it merely proves that U Mya made statements which may or may not be true. The statements are admissible under section 32 (5) of the Evidence Act, but their value is not very great, and they tend to disprove, rather than to prove, that the relationship of father and daughter was notorious.

"To sum up:—Though no particular ceremony is necessary for adoption, yet adoption cannot take place without some overt act or speech on the part of the person adopting; and when the person adopted was an adult, and the act of adoption was recent, it lies heavily on the person asserting the adoption to prove the overt act by direct evidence. Even if good cause be shown for dispensing with such evidence, the relationship of father and son, or father and daughter, must at least be proved to have been public and notorious. In this *case there is no evidence whatever of any overt act by which adoption* was effected. There is also no proof of notoriety. The evidence consists only of statements of U Mya, and many of the witnesses say that U Mya said he had adopted Ma Ywet before her mother's death—statements which Ma Ywet is obliged to repudiate because she took out Letters of Administration to her mother's estate.

"The evidence is, in my opinion, altogether insufficient to establish the fact of the adoption. I would, therefore, set aside the decree, and dismiss Ma

Ywet's petition, and declare that Ma Mi and Ma Me are entitled to Letters of Administration to the estate of U Mya."

1909

MA YWET v. MA ME.

On this appeal which was heard *ex parte*,

DeGruyther, K.C., and *E. U. Eddis*, for the appellant, contended that the fact of her adoption was sufficiently established. The evidence was discussed in relation to the points on which the original Court relied which are set out in the judgment of the Appellate Court; and it was submitted that on all those points the probability was that the decision of the Judge who heard the evidence was right; and that what the Appellate Court held to be essential to, but wanting in, the appellant's case, namely, some overt act on the part of the person adopting, and the notoriety of the fact of adoption were satisfactorily proved. Reference was made to *Ma Me Gale* v. *Ma Sayi* (1), *Ma Gun* v. *Ma Gun* (2), *Ma Bwin* v. *Ma Yin* (3), *Maung Aing* v. *Ma Kin* (4), *Ma Mein Gale* v. *Ma Kin* (5), *Ma Gyan* v. *Maung Kywin* (6), *Ma Thine* v. *Ba Pe* (7), *Ma Sayi* v. *Ma Me Gale* (8), *Ma Tai Shwe* v. *Kau Gyi* (9), and Chan Toon's Principles of Buddhist Law.

The judgment of their Lordships was delivered by

LORD DUNEDIN. The only question in this appeal is whether Ma Ywet, the appellant, has proved that she was the adopted daughter of the late U Mya, who died in 1905. If she was, then she inherits U Mya's estate. If not, that estate is inherited by the respondents, Ma Me and Ma Mi, the sisters of the deceased.

July 9.

Ma Ywet is the daughter of Ma Ka, who was another sister of U Mya.

Ma Ka died in 1900, and up to that time there was no question of adoption, as Ma Ywet took out Letters of Administration to her mother as her child.

(1) (1904) I. L. R. 32 Calc. 219, 228; L. R. 32 I. A. 72, 75.
(2) (1874) 1 Chan Toon's L. C. 147.
(3) (1878) 1 Chan Toon's L. C. 151.
(4) (1893) 1 Chan Toon's L. C. 157, 161.
(5) (1893) 1 Chan Toon's L. C 168, 170, 172.
(6) (1895) 1 Chan Toon's L. C. 393.
(7) (1897) 2 Chan Toon's L. C. 53.
(8) (1901) 2 Chan Toon's L. C. 181.
(9) (1899) 2 Upper Burma Rep. 142.

1909

MA YWET v. MA ME.

The story of the appellant is that, on the death-bed of her mother, her uncle U Mya promised her mother to adopt her, and that after her death he did so. Admittedly there was no specific occasion on which this was done by any quasi-ceremony or in presence of any witnesses or other persons.

It is said, however, that he acknowledged to other persons the fact that he had adopted her, and that his life and conduct in relation to her were consistent with the fact. This is denied by the respondents.

The learned Judge on the Original Side, before whom the suit depended, found that the appellant had sufficiently proved the fact of adoption; but this judgment was reversed on appeal, the learned Judges of the Appellate Court holding that the appellant had failed to make out her case.

It has already been laid down by this Board that, according to the law of Burma, no formal ceremony is necessary to constitute adoption. One may go further and say that, though adoption is a fact, that fact can either be proved as having taken place on a distinct and specified occasion, or may be inferred from a course of conduct which is inconsistent with any other supposition. But in either case publicity must be given to the relationship, and it is evident that the amount of proof of publicity required will be greater in cases of the latter category, when no distinct occasion can be appealed to.

The present case is one of these, and it is on the question of the want of publicity that the learned Judges of the Court of Appeal have differed from the Judge of original jurisdiction.

In many cases the inference of the relationship existing, and the publicity of the relationship itself, may naturally be taken from the facts of the life of the parties apart from the verbal statements of those concerned. Thus when a child who has natural parents leaves those parents and its own home, and is brought up in the house of another who treats it as a father would a child, the inference is not difficult to draw, and the facts from which that inference is drawn are public facts necessarily known to all the person's friends and acquaintances. Some of the decided cases are instances of this sort. In the

present case such considerations are unavailable, because before adoption is alleged to have taken place, Ma Ywet was 30 years old, was an orphan, and, as the niece of a childless uncle, was a natural person to live with him.

Accordingly the evidence of the publicity of the relationship alleged really comes to depend upon the testimony of Ma Ywet herself and the statements of the deceased U Mya spoken to by some of the witnesses. The learned Judges of the Appellate Court have held that the testimony falls short of being satisfactory. Their Lordships are unable to say that, in their opinion, the learned Judges are wrong in this opinion. In the case of an adult, when the inferences to be drawn from "bringing up" are necessarily absent, and where the consequence of adoption is disinherison of those entitled to succeed by law, it is, in their Lordships' view, especially necessary to insist on adequate proof. It would have been easy for the parties, by means of an actual, though not ceremonial, adoption in presence of witnesses, to have precluded the raising of subsequent questions. Where that has not been done, and where the fact of adoption is left to be inferred from past statements and conduct, it is, in their Lordships' opinion, a salutary rule that adequate proof of publicity or notoriety of the relationship should be insisted on.

Their Lordships will, therefore, humbly advise His Majesty that the appeal should be dismissed.

As the respondents have not appeared in the appeal, there will be no order as to costs.

Appeal dismissed.

Solicitors for the appellant: *Sanderson, Atkin, Lee & Eddis.*

J. V.W.