

Maung Ba Pe and another, since deceased (now represented by
Maung Aung Thin) - - - - - *Appellant*

v.

Maung Shwe Ba - - - - - *Respondent*

FROM

THE CHIEF COURT OF LOWER BURMA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 22ND MAY, 1928.

Present at the Hearing :

VISCOUNT SUMNER.

SIR JOHN WALLIS.

SIR LANCELOT SANDERSON.

[*Delivered by* SIR LANCELOT SANDERSON.]

This is an appeal by Maung Aung Thin (assignee of Maung Ba Pe and Ma Oh) against the judgment and decree dated the 14th of June, 1922, of the Chief Court of Lower Burma, which reversed a judgment and decree of the District Court of Pegu dated the 3rd of January, 1920, and which decreed the plaintiff's suit.

The suit was brought by Maung Shwe Ba against Maung Ba Pe, Ma Oh, Ma Cho, and Ma Thein Yin.

The plaintiff claimed a declaration that he was the sole heir and legal representative of Ma Ku (deceased) and as such the absolute owner of all the properties left by the said deceased Ma Ku and other consequential relief.

Maung Ba Pe was alleged to be the late agent of Ma Ku—Ma Oh and Ma Cho were sisters of Ma Ku.

Ma Thein Yin alleged that she was the adopted daughter of Ma Ye Ge, who was the adopted daughter of Ma Ku. The claim of Ma Thein Yin may be disposed of at once. Both the Courts in Burma held that Ma Thein Yin was not adopted by Ma Ye Ge, and in view of these concurrent findings of fact no question has been raised in this appeal with regard to Ma Thein Yin's claim.

It was agreed during the argument that the appellant Maung Aung Thin now represented the interests of the sisters Ma Oh and Ma Cho.

The plaintiff's case was based upon the allegation that he was the Keittima (adopted) son of Ma Ye Ge and her husband Po Kha, that the said Ma Ye Ge was the adopted daughter of Ma Ku, a wealthy Burma Buddhist widow, who died intestate at Thantaga village on the 7th of May, 1918, and that as her grandson by adoption he was her sole heir and legal representative.

The following issues were settled by the learned District Judge :—

- (1) Was Ma Ye Ge the adopted daughter of Ma Ku ?
- (2) Is Maung Shwe Ba adopted son of Ma Ye Ge ?
- (3) Is Ma Thein Yin adopted daughter of Ma Ye Ge ?
- (4) Has Maung Shwe Ba lost his right to inherit on account of conduct inimical to Ma Ku ?

It was agreed between the parties at the trial that in issue (4) the words "conduct inimical" should be construed as follows :—

"Keeping away intentionally from his adoptive parents": "not intentionally looking after his adoptive parents during illness," and "any other accounts which, if proved according to Buddhist Law, would disentitle a child to inherit."

It was agreed at the hearing of this appeal that the word "parents" would include Ma Ku, who was alleged to be the plaintiff's grandmother by reason of his adoption by Ma Ye Ge.

No question arises in this appeal upon the first issue; both the Courts in Burma found that Ma Ye Ge was adopted as a Keittima daughter by Ma Ku, and in this appeal the concurrent findings of fact have not been disputed.

It has already been stated that no question has been raised in this appeal as to the third issue. The material issues, therefore, are the second and the fourth.

Upon the second issue the learned District Judge held that the plaintiff was adopted by Ma Ye Ge as an appatitha (or casually adopted) son. He decided that as the plaintiff had based his claim on the allegation that he was a Keittima son (or son adopted publicly with a view to inherit) the plaintiff was not entitled to succeed on the basis that he was an appatitha son. The plaintiff's suit was dismissed for that and other reasons relating to the fourth issue.

On appeal the learned Judges came to the conclusion that the plaintiff's adoption as a Keittima son by Ma Ye Ge and Po Kha had been clearly established, and that this adoption had been made with the consent and active assistance of Ma Ku and her husband Ko Tet Kha.

There is no doubt that the plaintiff was adopted by Ma Ye Ge and her husband Po Kha in the year 1893, with the consent of the plaintiff's surviving parent. The question is, what was the nature of the adoption ?

The following material facts on this part of the case may be mentioned :—

In 1888 Ma Ye Ge was married to Po Kha.

In 1893 the plaintiff was adopted by Ma Ye Ge and her husband. The plaintiff was then 3, 4 or 5 years old, and he went to live with his adoptive parents in the house of Ma Ku at Thantaga.

In 1897 Ma Ku and her husband erected a library at Saingdi. On a tablet in the library, reference was made to the adoptions of Ye Ge and the plaintiff as daughter and grandson.

In 1899 Ma Ku's husband died, and in 1901 the erection of a "Thein" was begun. It was completed in 1905.

In the records of the family set up in the building the plaintiff was mentioned as a grandson.

In 1903 Ye Ge died.

Shortly after her death the plaintiff was initiated into a religious order. The initiation took place at Pegu. Invitations for the ceremony were issued by Ma Ku and Po Kha.

In the invitation the plaintiff was referred to as the grandson of Ma Ku and the "beloved son of Po Kha and deceased daughter Ma Ye Ge."

In *Ma Ywet v. Ma Me*, 36 I.A. 192, it was held that, according to the law of Burma, no formal ceremony is necessary to constitute adoption. The fact of adoption may be inferred from a course of conduct inconsistent with any other supposition; but in that case the publicity or notoriety of the relationship must be satisfactorily proved.

The above-mentioned incidents, two of which occurred during the life of Ye Ge, go to show that the relationship between Ye Ge and the plaintiff, as her adopted son, must have been notorious and publicly known.

The learned Judges who heard the appeal in Burma referred in their judgment to other facts material to this issue, the details of which, in their Lordships' opinion, it is not necessary to mention.

It is sufficient to say that their Lordships are of opinion that there was ample evidence to justify the conclusion of the learned Judges, and they agree with their finding that the plaintiff was adopted by Ma Ye Ge and her husband as a Keittima son with a right to inherit.

The following facts are material with regard to the fourth issue :—

In 1909 the plaintiff eloped with Ma Saw Yin. Apparently the plaintiff and his wife returned to Ma Ku's house and lived there, but Ma Saw Yin died after a few months of married life.

In December, 1910, the plaintiff, with the consent of Ma Ku, married Ma Kin Mya.

Ma Ku gave valuable presents on the marriage and the plaintiff and his wife lived with Ma Ku until 1911.

The plaintiff and his wife then went to live in the house of his wife's parents, which was in the same town.

The learned Judges of the Chief Court in Lower Burma held that, for a young man on his marriage to go and live with his parents-in-law was strictly in accordance with the Burmese custom, and that the plaintiff's departure was with the consent and approval of Ma Ku.

This finding was not seriously contested, and, in their Lordships' opinion, the mere fact that the plaintiff left Ma Ku's house in the circumstances of this case was not conduct which would disentitle him from inheriting.

In 1912 there was a quarrel between Ma Ku and Po Kha. Ma Ku discovered that Po Kha had been transferring some of her lands into his own name and some of the lands into the names of Po Kha and the plaintiff.

Apparently there was a safe, in which documents were kept, in a room of which Po Kha had the key. In his absence Ma Ku collected a certain number of persons, broke into the room in their presence, opened the safe, removed the documents, and took them with her from Ohne, where she had been living, to Thantaga, where she took up her residence with her sister Ma Oh.

There was a complete break in the relations between Ma Ku and Po Kha, and Po Kha instituted criminal proceedings against Ma Ku and others in respect of the breaking into the room and the removal of the documents. The case was dismissed, and it was alleged that the plaintiff was guilty of conduct inimical to Ma Ku in connection with these proceedings.

The learned Judges of the Chief Court stated that there was nothing to show that the plaintiff took any part in the criminal case beyond attending the Court.

It was urged on behalf of the appellant that the learned Judges had made a mistake in this respect, and that it had been proved that in two instances at least the plaintiff had accompanied the process server for the purpose of identifying the person who was to be served with a summons to attend the Court as a witness.

The plaintiff denied having accompanied the process server.

In view of the finding of the Chief Court their Lordships are not prepared to hold that the plaintiff took any part in the criminal proceedings beyond attending the Court, and they agree with the learned Judges that in the circumstances of this case such conduct on his part was not necessarily unfilial or inimical towards Ma Ku.

Subsequently Ma Ku filed a civil suit against Po Kha and Shwe Ba, the plaintiff in the present case.

The plaintiff took no part in these proceedings except that he filed a written statement, which he said was done under his father's instructions. This is more than likely. He was made a defendant, and it would be natural for his father to insist on his filing a written statement.

Ma Ku succeeded in the civil proceedings.

Their Lordships' attention was drawn to the pleadings in

the civil suit, and the judgments of the Trial Judge and of the Judges who heard the appeal.

Apparently Po Kha sought to establish a title to some of the lands in suit, and reliance was placed upon an alleged pooling arrangement, under which the lands were to be put into the names of Ma Ku, Po Kha and his son Shwe Ba.

The learned Judge who tried the suit stated that he found that one of the matters relied upon by Po Kha raised a difficult question, and that he could find no ruling exactly in point.

He held that Po Kha had made out his claim to items 8 and 9 of Schedule A.

The learned Judges who heard the appeal held that Po Kha had not made out his title to any of the lands as purchaser, and they decided against the alleged pooling arrangement.

Consequently they allowed Ma Ku's appeal and dismissed the appeal of the defendants, with the result that Ma Ku's claim was decreed.

Their Lordships are by no means satisfied that the case put forward by Po Kha was frivolous or vexatious, and they are of opinion that Shwe Ba took no part therein beyond filing the written statement.

The learned Judges of the Chief Court came to the conclusion that Ma Ku entertained no ill-feeling against Shwe Ba, and that she did not wish that he should be dragged into the litigation—but that she was advised that he was an essential party as some of the lands were in his name. Their Lordships see no reason for differing from the conclusion of the Chief Court in this respect.

It was further alleged that the plaintiff had interfered with Ma Ku's tenants and had been working in the interests of his father and against the interests of Ma Ku.

The evidence in respect of this allegation shows that the interference, if any, was at or about the time of the litigation, to which reference has been made, and in which Po Kha was claiming title to or a share in the lands. As already stated, in their Lordships' opinion it has not been established that Po Kha's claim was frivolous or vexatious and without any foundation, and the alleged interference with the tenants, if any, being undoubtedly in consequence of such claim, must be considered as having been in pursuance of a *bona fide* claim of right made by his father.

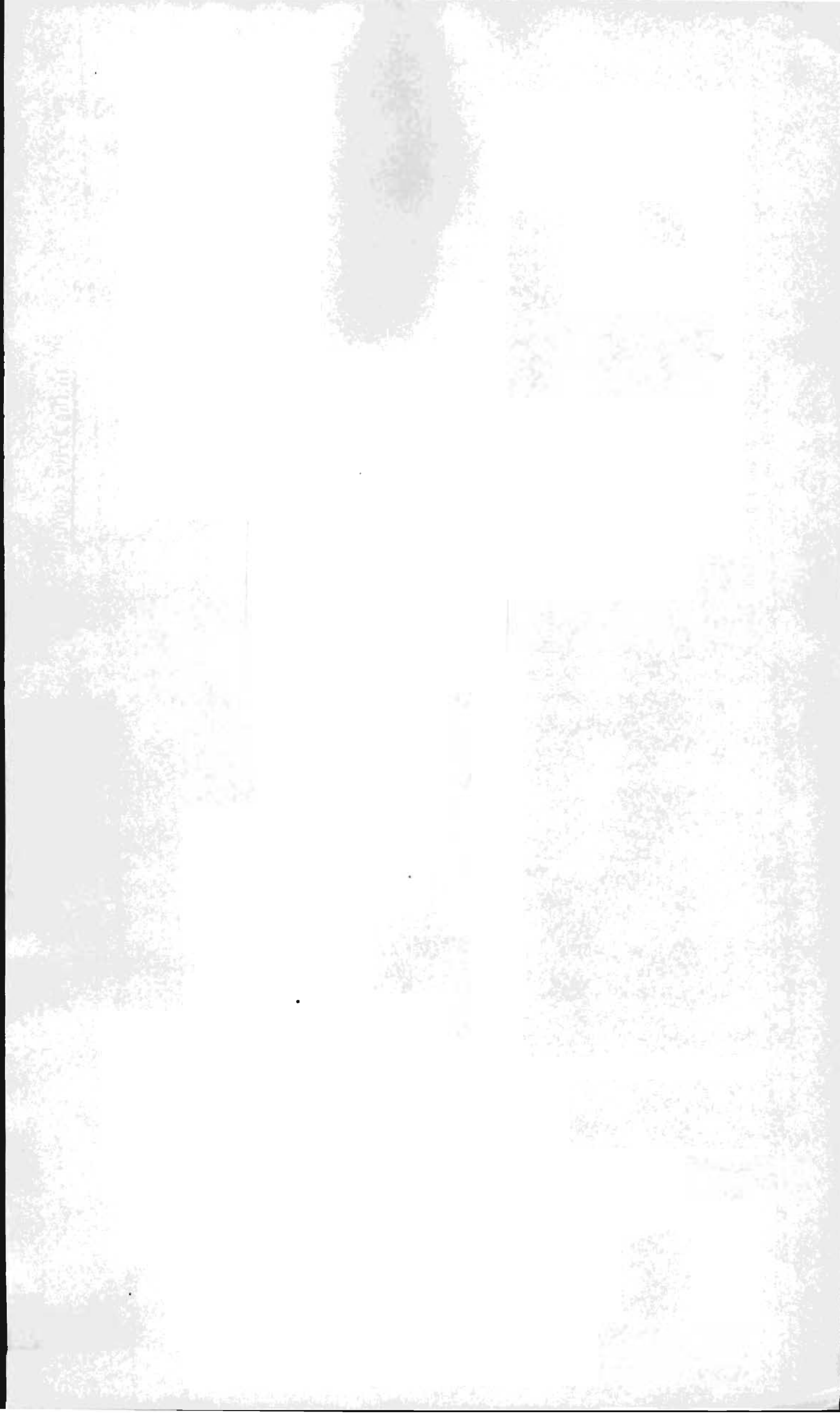
Finally, it was argued on behalf of the appellant that the plaintiff had neglected Ma Ku in her old age and illness and had not taken that part in the funeral ceremonies on her death which he should have done.

It has to be remembered that Ma Ku was a wealthy woman, that she was living with relations, and that there is no suggestion that she did not in fact receive proper attention and care from those with whom she was living. She died in the house of her sister. There would be no necessity for the plaintiff to be in constant attendance on Ma Ku, and there is evidence that the plaintiff did visit Ma Ku during her illness, that he went to the

house and stayed there for the night before she died, and that he did take a part, not unimportant, in the funeral ceremonies.

On the consideration of the whole evidence their Lordships agree with the conclusion of the learned Judges of the Chief Court that it was not established that the plaintiff had been guilty of any unfilial or inimical conduct which would deprive him of his right of inheritance.

For the above-mentioned reasons their Lordships are of opinion that the appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.



In the Privy Council.

MAUNG BA PE AND ANOTHER, SINCE
DECEASED (NOW REPRESENTED BY MAUNG
AUNG THIN)

2.

MAUNG SHWE BA.

DELIVERED BY SIR LANCELOT SANDERSON.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.
1928.