

APPELLATE CIVIL.

Before U Thein Maung, Chief Justice, and U San Maung, J.

MA MYA SEIN (APPELLANT)

v.

MAUNG SO MYINT (TAN) AND TWO OTHERS
(RESPONDENTS).*

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1948

June 21.

Application for letters—S. 23, Probate and Administration Act—S. 218, Succession Act—Findings in Administration suit—Binding nature.

Held: Where as between rival claimants for letters of administration, title of none of the applicants is admitted, the court must determine the status of the Applicant before Letters are granted.

Maung Ba Han and one v. Maung Tun Yin, (1934) 12 Ran. 629, referred to.

Where a widow of a Burman Buddhist made an announcement in a newspaper concerning divorce, it will be for her to prove that there is no divorce and her son will have to prove that he has maintained filial relations with his father till his death and therefore entitled to inherit.

The findings of fact in an application for letters of administration will constitute a bar to subsequent declaratory suit.

• *Maung Hmat v. Ma Htay*, (1923) I.L.R. 1 Ran. 253, referred to.

Ma Tok v. Ma Thi, 5 L.B.R. 78, distinguished.

Hla Gyaw for the appellant.

H. Subramanyam for respondents 1 and 2.

P. K. Basu for respondent No. 3.

U THEIN MAUNG, C.J.—We shall in this order deal with Civil First Appeals Nos. 61, 62 and 63 of 1947 as they are connected with one another.

All these appeals have arisen out of applications by Ma Mya Sein, Ma Chan Mya and Maung So Myint for letters of administration in respect of the estate of the

* Civil First Appeals Nos. 61, 62 and 63 of 1947 against the decree of the District Court of Insein in Civil Suits Nos. 6, 7 and 8 of 1947, dated the 8th September 1947.

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late Tan Site Wan who died intestate at Taikkyi on or about the 9th January 1947.

Ma Mya Sein claims that she is the sole widow of Tan Site Wan as Ma Chan Mya divorced him by mutual consent on the 1st June, 1946. She admits that Maung So Myint and Maung E Cho are the sons of Tan Site Wan by Ma Chan Mya but she does not admit that Maung So Myint is the *orasa* son nor does she admit that Maung So Myint and Maung E Cho are entitled to inherit the estate of Tan Site Wan. Her application is opposed by Ma Chan Mya, Maung So Myint and Maung E Cho on the ground that she was only a mistress or concubine.

Ma Chan Mya has also applied for letters of administration claiming to be the sole widow of Tan Site Wan and alleging that the advertisement of divorce which she herself had made in the "Sun" was made "through caprice or anger and that it does not in law effect any divorce." Her application is contested by Ma Mya Sein and it is supported by Maung So Myint and Maung E Cho.

Maung So Myint has also applied for letters of administration on the ground that he is the *orasa* son of the deceased. He has done so although he has no objection to the letters of administration being granted to his mother, Ma Chan Mya, with the obvious object of preventing letters of administration being granted to Ma Mya Sein.

The learned District Judge heard all the three applications, which have been turned into regular suits, together, with the consent of all the parties and he has come to the decision on a preliminary issue that it is not necessary to deal with the issues relating to the respective status of Ma Mya Sein and Ma Chan Mya inasmuch as Maung So Myint has been admitted by both of them to be a son of Tan Site Wan. Having

come to that finding he has granted letters of administration to Maung So Myint and dismissed the applications of Ma Mya Sein and Ma Chan Mya. So Ma Mya Sein who is a party to all the applications has filed these appeals making Ma Chan Mya, Maung So Myint and Maung E Cho parties-respondents thereto.

The sole question for consideration in these appeals is whether the learned District Judge was right in disposing of the applications on the preliminary issue as he has done. In *Maung Ba Han and another v. Maung Tun Yin* (1) to which the learned District Judge himself has referred in the course of his judgment, it has been held that "where as between the rival claimants *inter se* the claim of none of the claimants is admitted by the other claimants, the Court must determine the status of the applicant before letters of administration are issued to him." Now, the learned District Judge himself has observed in the course of his judgment that there is no admission by Ma Mya Sein that Maung So Myint is an heir to the estate and that she has merely conceded that he is a son of Tan Site Wan by his divorced wife, Ma Chan Mya. That being so, this is not a case in which the claim of Maung So Myint to be an heir is admitted and the learned District Judge should have proceeded to determine the respective status of the rival claimants in accordance with the said ruling. We cannot agree with him that "Ma Chan Mya must be deemed to be a widow of the deceased unless and until the contrary is proved." She has admittedly made an announcement in a vernacular newspaper and it will be for her to prove that there was no divorce as a matter of fact or as a matter of law in spite of her own announcement. Nor can we agree with him that "she (Ma Mya Sein)

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will further have to establish that Tan So Myint who she has admitted is a son, is not an heir." If there has been a divorce between Ma Chan Mya and Tan Site Wan, Maung So Myint will have to prove that in spite of the divorce between his parents he has maintained filial relations with his father till his death and that he is accordingly entitled to inherit his estate.

The learned Advocate for Maung So Myint has invited our attention to *Ma Tok v. Ma Thi* (1). The headnote thereof reads :

"When an application for letters of administration is made by a person who is by admitted natural relationship entitled under section 23 of the Probate and Administration Act to make it, and whom the Court considers to be otherwise a proper person to administer the estate, the Court ought not to allow the proceedings to become protracted and costly by entering into disputed points such as questions of adoption of other persons by the deceased, which questions could be fought over again in suits for administration or for possession of the estate."

However, the ruling relates to the case of an application by a person who is by admitted natural relationship entitled under section 23 of the Probate and Administration Act (now section 218 of the Succession Act) to make it; and a person who is entitled to make it under the said section is a person who according to the rules for the distribution of the estate, applicable in the case of the deceased, would be entitled to the whole or part of the estate. In the present case, Maung So Myint cannot yet be regarded as such a person for the reasons which we have already stated. Besides, that case was decided at a time when, as the authorities stood then, the findings of fact arrived at on an application for letters of administration would not operate as *res judicata* in a subsequent suit for

possession of the property or a share of the property comprised in the estate concerned; and it has been held since then in *Maung Hmat v. Ma Htay* (1) that such findings will constitute a bar to a subsequent declaratory suit.

We accordingly set aside the judgments and decrees on all the three applications, which have been converted into suits as required by law and allow the appeals of Ma Mya Sein with costs. Advocate's fee for each appeal five gold mohurs. Costs in the District Court shall abide by the final result of the applications therein. The proceedings will be returned to the District Court, Insein, to be determined according to law in the light of the above observations.

U SAN MAUNG, J.—I agree.

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