

*Privy Council Appeal No. 38 of 1916.*

**Maung Tun Tha** - - - - - *Appellant,*

*v.*

**Ma Thit and Others** - - - - - *Respondents,*

FROM

**THE CHIEF COURT OF LOWER BURMA.**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 13TH NOVEMBER, 1916.

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*Present at the Hearing :*

THE LORD CHANCELLOR.

LORD SHAW.

LORD WRENBURY.

MR. AMEER ALI.

[*Delivered by* THE LORD CHANCELLOR.]

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The appellant in this case is the plaintiff in certain proceedings which were instituted in the District Court at Thaton, by which he claimed to have one-fourth share of the estate of his father determined and allotted to him. The claim is stated quite clearly, and with commendable brevity, in the plaint, which sets out allegations which are no longer in dispute, namely, that the plaintiff was the eldest son of his father; that his father died on the 19th December, 1906, intestate, and left a widow and certain other sons and daughters him surviving.

The ground upon which that claim was resisted depended in the main upon an allegation that the plaintiff had behaved in an unfilial and illegal way, and, consequently, had forfeited his rights. That defence was disposed of by the learned Judge who heard the cause, who, although he appears to have been greatly embarrassed by the untrustworthiness of the evidence before him, decided that the defendant had not established this allegation.

The only other matter left for decision was one which, according to the defendants' contention, arose upon paragraph 5 of their defence. That paragraph suggested that the plaintiff had not in fact any share in the estate, but that, on the death of his father, he had obtained a right to elect whether he would have that share or no, and that, in the

absence of election within a reasonable time, the claim could not now be brought forward. That view was supported by the Chief Court, and from their decision this appeal has been brought.

The whole of that contention depends, as Mr. Coltman very fairly stated, upon considering the two different rules of the Damathat which are applicable to this case. They are Rule 5 and Rule 14. The first relates to the partition of an estate upon the death of the father, and it is under that rule, and, as their Lordships understand it, under that rule alone, that the right of the plaintiff in this case arises. It is in these words: "When the father has died the two laws for the partition of the inheritance between the mother and the sons are these: Let the eldest son have the riding horse" and certain ornaments, and it then proceeds: "Let the residue be divided into four parts, of which let the eldest son have one, and the mother and the younger children three."

It is said that Rule 14, which deals with the division of the estate on the death of the mother, shows that, if the one-fourth had not been segregated, and paid over to the eldest son after the father's death, and before the mother died, there would be a different method of distribution, one that might be more favourable, or that might be more unfavourable, to the eldest son, but which, certainly, would not be the same as that to which he was entitled under Rule 5.

Their Lordships do not think that it is desirable to express an opinion upon the true construction of Rule 14. It is a matter that may arise for determination hereafter, and its determination is not relevant to the present question because, even assuming in favour of the respondents, that the rights of the eldest son would change in the event of his not having segregated his one-fourth before his mother's death, it by no means follows that the right which he got under Rule 5 was merely the right to elect within a certain limited period of time whether he would take the property or no. Their Lordships can find no ground whatever for the suggestion that he got anything under Rule 5 excepting a definite one-fourth part of the estate, a right which he was at liberty to assert within any period that was not outside the period fixed by article 123 of the Indian Limitation Act as the period within which a claim must be made for a share of property on the death of an intestate.

The respondents have certainly urged before their Lordships all that could be urged in support of their view, but their Lordships find themselves quite unable to accept their arguments or to agree with the view which was formed by the Chief Court in this matter.

Their Lordships will humbly advise His Majesty that this appeal should be allowed, the decree of the Chief Court set aside with costs, and the decree of the District Court restored.

The respondents will pay the costs of the appeal.

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In the Privy Council.

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MAUNG TUN THA

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MA THIT AND OTHERS

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DELIVERED BY THE LORD  
CHANCELLOR.