APPELLATE CIVIL.

Before Mr. Justice Young and Mr. Justice Carr.

MAUNG PAW THIT AND TWO
v.
MA E YIN.*

1924
July 21.

Buddhist Law—Inheritance—Property inherited by mother during second coverture—Division between second husband, issue of first marriage and issue of the second marriage.

Held, that the rule of division, between the second husband, the issue of the first marriage, and the issue of the second marriage, in the property inherited by the mother during her second coverture is that the husband obtains one half and the issue of the first marriage the other half.

Ma E Hmyin v. *Maung Ba Maung*, 2 Ran., 123 ; *Ma Ein Hlaing* v. *Ma Shwe Kin*, 3 U.B.R., 272 ; *Ma Lay* v. *Tun Shwe*, 10 L.B.R., 10 ; *Maung Gale* v. *Maung Bya*, 4 L.B.R., 189 ; *Mi Chan Mya* v. *Mi Ngwe Yon*, 2 U.B.R., 74 ; *Tun Gyaw* v. *Ma Ba Lo*, U.B.R. (1897-01), II, 66—*referred to.*

May Oung's Leading Cases on Buddhist Law—referred to.

A. B. Banerji—for the Appellants.
Ba Shin—for the Respondent.

CARR, J.—The facts relevant to this appeal are as follows. Ma Nu first married Maung Ne and had by him a son, San Htein. Maung Ne died and Ma Nu then married the first defendant, Paw Thit. By him she had a daughter, Ma The, the third defendant. Next Ma Nu died and Paw Thit married the second defendant.

During her coverture with defendant Paw Thit, Ma Nu inherited certain property from her father, U Shwe Gya.

The only question now to be decided is—To what share in the property so inherited from U Shwe Gya is San Htein entitled?

San Htein has died since the death of his mother, Ma Nu and the plaintiff-respondent is his

* Special Civil Second Appeal No. 470 of 1923 against the decree of the District Court of Insein in Civil Appeal No. 56 of 1923.

1924

MAUNG PAW THIT AND ONE v. MA E YIN.

CARR, J.

widow, but that does not affect the question for decision.

The case is one for which I can find no rule whatever in the *Dhammathats*. Had there been no child by the second marriage it is clear that the inherited property in question would be shared equally by San Htein, the son of the first marriage, and Paw Thit, the second husband. This was the rule adopted in *Tun Gyaw* v. *Ma Ba Lo* (1), and as May Oung remarks (2), it has never been departed from.

It is also clear that if both the parent and the step-parent are dead and there are children by both marriages the property in question would be shared equally between the children of the two marriages—whether *per stirpes* or *per capita* does not now matter—*Maung Gale* v. *Maung Bya* (3).

The question is whether the fact that both a child by the second marriage and the step-parent are living makes any difference to the mode of division. May Oung (4) suggests that it is probable that the surviving parent would take one half and that the other half would be divided equally between the children of the two marriages. On this basis San Htein's share would be one-quarter and not one half, and that is the contention put forward for the appellants in this case. But May Oung cites no authority for the proposition and puts it forward merely as a probable suggestion.

In the case of *Mi Chan Mya* v. *Mi Ngwe Yon* (5), the question was of the division of the *letletpwa* of the first marriage between the children of that marriage on the one side and the second wife and her children by the deceased on other side. It was held

(1) U.B.R., (1897-01), II, 66.
(2) Leading Cases, 255.
(3) (1907-08) 4 L.B.R., 189.
(4) Leading Cases, 258.
(5) (1914-16) 2 U.B.R., 74.

that the division was the same as if there had been no children by the second marriage, and that "the children of the second marriage get nothing because their mother is still living and on her death they get her share."

This was expressly dissented from in *Ma Ein Hlaing* v. *Ma Shwe Kin* (6), which followed *Ma Lay* v. *Tun Shwe* (7).

But a bench of this Court has very recently, in *Ma E Hmyin* v. *Maung Ba Maung* (8), dissented from these two last quoted decisions, and approved that in *Mi Chan Mya's* case.

The question that arose in this case was not as to the division of the estate, but whether the children of the second marriage are heirs of their father while their mother is alive. It was held that they were not, and that one of them was not entitled to claim share during the lifetime of the mother.

This decision is a logical application of that in *Ma Sein Ton* v. *Ma Son* (9), which laid down the general rule, stated on page 125 of the report (of *Ma E Hmyin* v. *Maung Ba Maung*) that the surviving spouse is the sole heir of the deceased husband or wife to the exclusion of their children, except the *orasa*.

Applying this rule Paw Thit would exclude Ma Thi from inheritance and therefore her existence could not logically affect the share to which Paw Thit is entitled.

Thus there seems to be no reason for holding that the decision of the District Judge that San Htein's share is one half is incorrect.

I would therefore dismiss this appeal with costs.

YOUNG, J.—I concur.

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(6) (1917-20) 3 U.B.R., 272.
(7) (1919-20) 10 L.B.R., 10.
(8) (1924) 2 Ran., 123.
(9) (1915-16) 8, L.B.R., 50.