

APPELLATE CIVIL.

Before Mr. Justice Heald and Mr. Justice Lentaigue.

1924

Jan. 21.

MA SEIN

v.

MA PAN NYUN AND TWO.*

Chinese Buddhist Law—Application of, to a Burmese wife of a Chinese Buddhist husband—The status of a Chinese Buddhist, how acquired.

Held, that where the evidence shows that a Burmese woman married to a Chinese Buddhist regarded herself throughout life as a Chinese Buddhist and attached herself to the Chinese Community, adopting her husband's form of religion, succession to her estate was to be governed by the Chinese Buddhist Law.

Po Maung v. Ma Pyit Ya, (1923) 1 Kan., 161—referred to.

The facts in this appeal will appear from the judgment of the High Court reported below.

Burjorjee—for the Appellant.

Giles & Ormiston—for the Respondents.

HEALD, J.—The parties are children of a Chinaman, Sit Shan, who died many years ago, and of a Burmese woman, Ma Myit, who was his wife.

Appellant, Ma Sein, sued her brothers, Sit Paung and Sein Don, and her sister, Ma Pan Nyun, for her share in her mother's estate. She alleged that the share to which she was entitled was one-fourth, and she asked for the appointment of a Receiver and the administration of the estate by the Court.

The sister did not contest the claim, but gave evidence for appellant.

The two brothers filed a written statement, in which they denied that Ma Myit was Burmese Buddhist at the time of her death, or that she left any estate, or that if she left any estate appellant was entitled to

* Civil First Appeal No. 93 of 1921 against the judgment and decree of the District Court of Pyayôn passed in its Civil Regular No. 1 of 1921.

a one-fourth share of it or to have it administered by the Court. They said that their father, Sit Shan, was a Chinese Buddhist, that he married Ma Myit about 1881, that he subsequently married a Chinese wife Kyi Ya, that he died intestate in 1902, leaving Ma Myit as one of his two widows with five children by her and Kyin Ya as his other widow with one child by her and another whom they had adopted, that after his death there was a partition of his estate in accordance with Chinese Customary Law, the three sons being allotted equal shares while the widows and daughters got nothing, that the adopted son of the Chinese wife actually took away his share, and their shares remained undivided in the hands of their mother and were managed by her as they were minors, that the property of which their mother died possessed represented their two shares of their father's estate, that Ma Myit was a Chinese Buddhist, and that, therefore, even if she left property, being sons, they would inherit to the exclusion of appellant, who was a daughter.

The District Court held that the partition of Sit Shan's estate between the three sons to the exclusion of the widows and daughters was proved, and that, even if Ma Myit died possessed of any property, Chinese Customary Law would apply, so that only her sons would inherit. Appellant's suit was accordingly dismissed with costs.

Appellant appeals on the ground that Ma Myit was a Burmese Buddhist for the purposes of succession to her estate, and that, therefore, appellant was one of her heirs.

It was recently held in this Court in the case of *Po Maung v. Ma Pyit Ya* (1) that the rule of inheritance under Chinese Customary Law is that, when a man dies, all his property real and personal, is divided

(1) (1923) 1 Ran., 161.

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equally among all his sons, that daughters succeed only when there are no sons, and that the widow succeeds only when there are neither sons nor daughters. If there are sons or daughters, the widow has only a right to administer the estate and to be maintained out of it and a claim for provision for her funeral.

Sit Shan was undoubtedly a Chinese Buddhist, so that Chinese Customary Law would regulate the succession to his estate, and the presumption that that law would be applied renders the story of the partition told by the two sons probable.

The evidence seems to me to make the matter certain; appellant's own witness U Po, an Honorary Magistrate, said that the partition, which was made by the Chinese elders after Sit Shan's death, was made according to Chinese custom, and that the two widows and the daughters were excluded, the three sons sharing the estate equally.

The Chinese widow swore that Sit Shan's estate was divided by Chinese elders into three shares, that Ma Myit's two sons got a share each and her son got the other share. She herself claimed a share, but it was refused, and neither Ma Myit's daughters nor her daughter received a share, but she got some gold, probably for her daughters.

The Chinese son, Pwin Lip, also gave similar evidence

I think, therefore, that it is proved that Ma Myit did not inherit any part of Sit Shan's estate, but remained in possession of that part of it which was allotted to her two sons as manager.

It seems probable, therefore, that she left no estate of her own; but I do not think it necessary to decide that question because I am of opinion that the lower Court was right in holding that Chinese Customary Law would apply to her estate also, so that, as there

were sons, appellant being a daughter, could not inherit.

I do not of course suggest that the Chinese Customary Law applies to the estate of every Burmese woman who was married to a Chinaman. In many cases, I have no doubt the wife remains a Burmese Buddhist, so that Burmese Buddhist Law would apply to her estate, but it seems not unlikely that in some cases, the wife adopts her husband's form of religion, becoming, to all intents and purpose, a Chinese Buddhist, and the evidence seems to me to show that this was such a case.

The matter is one of fact rather than of law.

There can be no doubt that Ma Myit continued to follow Chinese customs after Sit Shan's death. She mourned for him for the period of three years prescribed by Chinese custom, and she put her children, as well as herself, into the mourning dress which is customary among Chinese and not among Burmese. She did not marry again, the second marriage of widows, though permitted, being regarded as disreputable by the Chinese. She sent both her sons to China to be educated. She married one of her two daughters to a Chinaman and she refused her consent to appellant's marrying a Burman. When she died, she was buried in the Chinese cemetery in a grave of Chinese pattern and with the usual Chinese monument, although her husband had had to be buried in a Burmese cemetery because there was no Chinese cemetery in existence at Pyapôn at the time when he died there. It is true that her burial in the Chinese cemetery may not have been due to any wish she had herself expressed, but it seems to me to show that she was regarded by the Chinese community at Pyapôn as one of themselves. Her adoption of the Chinese form and period of mourning, and her sending

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her sons to China to be educated seems to me to show that after her husband's death, she still attached herself to the Chinese community, that she regarded herself practically as a Chinese woman, and that she desired her sons to be regarded, and to regard themselves, as Chinamen.

There is little evidence, and, so far as I am aware little is known as to what are the particular religious observances of Chinese Buddhists, and how they differ from those of Burmese Buddhists. It is natural that Chinamen who are Buddhists, living in Burma, should, to some extent, observe the religious usage of their Burmese Buddhist neighbours and much more natural that their Burmese wives should do so. There can be no doubt that both Sit Shan and Ma Myit did observe both Burmese and Chinese religious customs, but that fact clearly did not prove that Sit Shan had forsaken his Chinese Buddhist religion, since it is admitted that he died a Chinese Buddhist; and I do not think that under the circumstances, it goes far towards showing that Ma Myit had not adopted the Chinese form of the Buddhist religion.

Appellant's own admission as to her mother's mourning, as to her having sent her sons to be educated in China, as to her continuing to live with those sons who were admittedly regarded as Chinamen and with the daughter whom she had married to a Chinaman, as to her refusal of her consent to appellant's marrying a Burman, and as to her having been buried in the Chinese cemetery, seem to me to be sufficient to show that Ma Myit regarded herself as a Chinese Buddhist and attached herself to the Chinese community, to which her husband and her sons and the son-in-law, with whom she lived, admittedly belonged, and I would hold that the Chinese Customary Law should be applied to her estate.