

1927

V.R.M.A.L.  
CHETTYAR  
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MAN HAN.  
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attachment and sale of the property in suit in spite of the fact that it was received by the wife as her share of the partnership property, and that therefore the suit was rightly dismissed in the first Appellate Court.

I would accordingly set aside the decree of this Court in Special Civil Second Appeal No. 205 of 1925 and restore the decree of the District Court of Toungoo in Civil Appeal No. 169 of 1924, with costs for appellant throughout; advocate's fee in this appeal to be five gold mohurs.

CUNLIFFE, J.—I concur.

## APPELLATE CIVIL.

*Before Mr. Justice Pratt.*

MA GUN BON

*v.*

MA ME MI.\*

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Mar. 22.

*Buddhist Law—Inheritance—Wives of a polygamous husband whether entitled to inherit in one wife's ancestral property—Husband's vested right in such inherited property not heritable.*

*Held*, that though at Burmese Buddhist law, the husband has a vested share in the inherited property of his wife, on his death his other wives do not take any interest in that property; it reverts to that wife, whose inherited property it originally was.

*C.T.P.V. Chetty v. Maung Tha Hlaing*, 3 Ran. 322—*distinguished*.

*Mitter*—for the Appellant.

*Ko Ko Gyi*—for the Respondent.

PRATT, J.—Plaintiff Ma Gun Bon obtained a decree ejecting defendant Ma Me Mi from the house of which she claimed to be sole owner but the decree was reversed on appeal to the District Court.

\*Special Civil Second Appeal No. 160 of 1926.

Plaintiff married Maung Myin in 1885 and inherited the house, in which she and her husband were residing, from her parents in 1920.

In 1922 Maung Myin married a junior wife Ma Me Mi, the defendant.

In 1924 defendant left the house but returned just before Maung Myin's death in 1925 and refused to leave, when requested by plaintiff.

The trial Court held that the house was the *thinthi* or separate property of Ma Gun Bon and was not *hnapazon* and gave judgment accordingly in favour of plaintiff.

The District Court held on the authority of *C.T.P.V. Chetty v. Maung Tha Hlaing* (1), that property inherited by a wife from her parents during marriage becomes joint, and that the husband acquires a vested interest to the extent of one-third.

On Maung Myin's death therefore this one-third would have to be divided between the wives.

On this view defendant had an interest in the house by inheritance from her husband and would be entitled to possession jointly with plaintiff.

It seems to my mind somewhat inequitable to press the decision in *C.T.P.V. Chetty* so far as to hold that, when a husband, who has a senior and a junior wife dies, the junior wife will be entitled to inherit a portion of the property inherited after marriage by the senior wife because her husband had a vested interest in it.

In the case quoted the husband married two wives and inherited immoveable property from his father after the second marriage.

It was held by the full bench that the two wives acquired a vested interest between them to the

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extent of one-third from the date on which it was inherited by the husband.

The two cases are not therefore parallel as in the present instance the party inheriting the property from her parents has not died, but her husband has, and it is held that the lesser wife inherits a share in the property inherited by the head wife through the husband of both.

For the cases to be parallel it should have been the wife, who inherited the property, who died, when the other wife's claim to inherit from her would not be easy to sustain.

The decision of the learned District Judge is not in my opinion in accordance with the spirit of Buddhist Law.

In Section 286 of the Digest, dealing with the partition between wives living with the husband, *Manugye* is cited to the effect that, where several wives live together in the same house and eat out of the same dish as the husband, each shall retain the property acquired by inheritance from her parents subsequently to the marriage.

I have no doubt this is sound law.

Even conceding that defendant was living with the husband and had not broken off conjugal relations at the time of his death, she would have no interest in property inherited by the senior wife during coverture.

This certainly appears the equitable view.

Defendant has, however, consented to leave the house, if no order for costs is passed against her, and plaintiff has agreed to these terms.

By consent the decree of the District Court is set aside and plaintiff is granted a decree ejecting defendant from the house in suit.

Each party to pay their costs throughout.