

that the plaintiff have judgment against the first defendant for his costs before the District Judge and in the High Court, and against the second defendant for his costs before the District Judge; and that the third, fourth and fifth defendants have their costs in the Courts below and the whole costs of this appeal before their Lordships. Their Lordships do not consider that the joinder of the first defendant has increased the costs of the appeal.

Their Lordships will further recommend that the cause be remitted to the High Court at Rangoon to act in accordance with these directions, with liberty to the parties to apply as they may be advised.

Solicitors for Appellant—*Brammal and Brammal.*

Solicitors for Respondents—*Waterhouse & Co.*

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VERTANNES
AND
OTHERS
v.
ROBINSON
AND
ANOTHER.

APPELLATE CIVIL.

Before Mr. Justice Heald and Mr. Justice Cunliffe.

V.R.M.A.L. CHETTYAR FIRM

v.

MAN HAN.*

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April 6.

Chinese Buddhist wife's interest in property of the marriage—Burmese Buddhist law applicable—Partnership—Liability to joint debts.

Held, that the rule of Burmese Buddhist law that the husband and the wife are partners in practically all the business of the marriage and that the acquisitions of either or both are partnership property is applicable to Chinese Buddhists in Burma.

Held, accordingly, that the property of the marriage partnership would be liable for all partnership debts, whether the marriage has been dissolved or not, and whether the decree was obtained against one or both of the couple.

In re Ma Yin Mya and one v. Tan Yank Pyn, 5 Ran. 406; *Ma Paing v. Shwe Hpaaw*, 5 Ran. 296—*followed*.

* Letters Patent Appeal No. 55 of 1926.

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V.R.M.A.L.
CHETTYAR
FIRM.
v.
MAN HAN.

This is a Letters Patent appeal arising out of the decree of this Court in Special Civil Second Appeal No. 205 of 1925, which is reported in this series at page 110 of the 4th volume.

Aiyangar with *Halker*—for the Appellants.

Janab Ali—for the Respondent.

HEALD, J.—In Suit No. 929 of 1923 in the Sub-divisional Court of Pyu the present appellant obtained a money decree for about Rs. 2,000 against one Han Chin Ya, a Chinaman, and in execution of that decree he applied in Execution Case No. 368 of 1923 in the same Court for execution of his decree by the attachment and sale of a house and its site and appurtenances, which, he said were already mortgaged to him by two deeds, one for Rs. 3,000 dated the 4th of July 1921, and the other for Rs. 1,500 dated the 17th of July 1922, the mortgage debt amounting at the time of the application to over Rs. 5,200.

The present respondent, who was Nan Chin Ya's wife and is half Chinese and half Burmese and was born in Rangoon, filed the present suit for a declaration that the properties which had been attached were her absolute properties and were not liable to attachment in execution of any decree against Nan Chin Ya. It may be noted that in her plaint she made no mention of the mortgages alleged by appellant in his application for attachment. She said that she and Nan Chin Ya were divorced on the 5th of June 1922, and that at the partition of properties, which was then made between them, she received the properties in suit as her share. She also pleaded that, apart from the divorce, she was entitled in her own right to a half interest in the properties because they were acquired by herself and Nan Chin Ya jointly with the money and earnings of both.

Appellant replied that the divorce and partition were a mere fraudulent device on the part of respondent and Nan Chin Ya to defeat their creditors, that the deed of divorce, being unregistered, could not affect title to immovable properties, that a Chinese wife cannot own property during her marriage, that respondent was not entitled in her own right to a half interest in the properties, and that the properties belonged solely to Nan Chin Ya.

The trial Court held that the divorce between respondent and Nan Chin Ya was proved, that the fraud alleged by appellant was not established, that the reason of the divorce was that Nan Chin Ya was leaving Burma for Singapore and respondent was unwilling to go with him, that Nan Chin Ya had left Burma, that the deed of divorce could not affect title to immovable properties, but that respondent had in her own right a half interest in the properties, in suit. It accordingly gave respondent a decree declaring that respondent had a half interest in the properties.

The first Appellate Court held that respondent, being subject to the Chinese customary law as applied in Burma, could have no interest in the properties whilst she was married to Nan Chin Ya, that she acquired no title to the properties by the deed of divorce, and that she had no interest in the property. It therefore dismissed the suit.

It is to be noted that respondent did not appeal against the trial Court's decree in so far as it dismissed her claim in respect of a half interest in the properties.

Respondent appealed against the lower Appellate Court's decree dismissing her suit in its entirety, and the learned Judge of this Court who dealt with the case in second appeal came to the following

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conclusions, namely that the case should be decided on considerations of justice, equity and good conscience, and not of the rules or supposed rules of the Chinese Customary law, that as a matter of fact the property was acquired with the moneys of both respondent and Nan Chin Ya, that therefore respondent and Nan Chin Ya were joint owners of the property, that the partition of properties, which took place at the time of the divorce, was valid without registered deed, and that thereby respondent became sole owner of the properties then allotted to her. He accordingly gave respondent a declaration that she was the absolute owner of the whole of the properties and that they were not attachable in execution of any decree against Nan Chin Ya.

Appellant applied for a certificate that the case was a fit one for a further appeal and the learned Judge gave such a certificate.

The appeal was therefore heard by this Bench, but we deferred passing judgment until the decision of a Full Bench Reference in which the question of the application of what is known as Chinese Customary Law to Buddhists of Chinese nationality living in Burma was to be considered. In that case [*In re Ma Yin Mya and one v. Tan Yauk Pyu* (1)], the question which was under consideration was what law regarding marriage is applicable to Chinese Buddhists, and it was decided that the Burmese Buddhist law regarding marriage is *primâ facie* applicable to Chinese Buddhists as being the *lex loci contractus*, and that in order to escape from the application of the Burmese Buddhist law regarding marriage a Chinese Buddhist must prove that he is subject to a custom having the force of law in Burma and that that custom is opposed to the provisions of

Burmese Buddhist law applicable to the case, and if the wife is a Burmese Buddhist woman, the Chinese husband must show further that the application of that custom will not work injustice to her.

It is part of the Burmese Buddhist law of marriage that husband and wife are partners in practically all the business of the marriage and that the acquisitions of either or both are partnership property. Such a partnership is dissolved by divorce, and a partition of the partnership property follows as a matter of course and would have legal effect without any registered conveyance of the property from the partnership to the individual partners. But every partner is liable for all debts and obligations incurred while he is a partner in the usual course of business and the dissolution of the partnership would not affect his liability. The property of the partnership whether before or after dissolution of the partnership would be liable for the partnership debts. In the present suit it is the wife's own case that the properties were joint property, but she claims that the share which she received on divorce is not liable to be taken in satisfaction of the decree which was passed against her husband only. That is not the view which was taken in the full bench case of *Ma Paing v. Shwe Hpaw* (2). The conclusion which I draw from the judgments in that case is that ordinarily a decree against either husband or wife, who are subject to the Burmese Buddhist law of marriage and are consequently partners, can be executed against any part of the partnership property, that is the property of the marriage.

I accept that view and as there is nothing to take this case out of the ordinary rule, I would hold that the appellant's decree could be executed by

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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.*

1927

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.