APPELLATE CIVIL.

Before Mr. Justice Mya Bu and Mr. Justice Baguley.

U AHSAYA AND ANOTHER
v.
U PYINNYA AND ANOTHER.*

1928
Sep. 10.

Ecclesiastical Jurisdiction—Dispute between residents of a kyaungtaik *as to the extent of land each is entitled to—Jurisdiction of Civil Courts in Upper Burma—Rights of monks resident in a* kyaungtaik.

Held, that a dispute between monks resident in a *kyaunglaik* as to the extent of land each was entitled to occupy in the *kyaungtaik* is one of purely an ecclesiastical nature.

Held, also, that the *phongyis* inhabiting a *kyaungtaik* are not co-owners or co-parceners or tenants in common or any other form of ownership known to the ordinary Civil Law and that their rights *inter se* being entirely governed by the ecclesiastical law, the Civil Courts in Upper Burma have no jurisdiction over disputes relating to these rights.

U Teza v. *U Pyinnya*, 2 U.B.R. (1892-96) 59; *U Te Zeinda* v. *U Teza*, 2 U.B.R. 1892-96) 72; *U Thadama* v. *U Meda*, 2 U.B.R. (1897-01) 42; *U Wayama* v. *U Ahsaya*, 2 U.B.R. (1902-03) B.L. Ecclesiastical law, 1—*followed*.

Tha Gywe for the appellants.

Aung Thin for the respondents.

MYA BU, J.—This is an appeal made from the judgment in Civil Second Appeal No. 105 of 1927, on a certificate issued under clause 13 of the Letters Patent.

The grounds of appeal are numerous; but putting the appellants' case before us in a nutshell, it is that the Civil Courts have no jurisdiction to decide the dispute between the parties to the case.

The parties are Buddhist monks who occupy the monasteries shown on the map (Exhibit A), at Pakôkku, in Upper Burma, and the dispute between them is concerning monastic land. The question

* Letters Patent Appeal No. 11 of 1928 (at Mandalay).

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for determination is whether the dispute is of the nature cognizable by the Civil Courts.

The appellants before us were the appellants in the Second Appeal, in which it appears that they did not make a point of assailing the judgment of the Court of first appeal on the ground of want of jurisdiction. In view of the ruling of their Lordships of the Privy Council in *Ram Lal Hargopal* v. *Kishanchand and others* (1), however, the appellants are not precluded from raising this question now.

The Court of first instance, the Court of first appeal and this Court in second appeal, all have regarded the plaintiff-respondents' suit as one for enforcement of an arbitration award.

The plaint in the case is somewhat vague in its indication as to the nature of the suit: the heading shows that it was a suit for setting up stone-pillars along the red dotted line shown in the map annexed to the plaint.

It is set out in the plaint that the plaintiffs (respondents) and the defendant U Ahsaya (appellant No. 1), had a dispute over the boundary line of their monasteries and had in consequence appeared before the *Thamati Gaingok Pondawgyi* U Kyi, who, with the consent of the plaintiffs and the defendant, demarcated the boundary on the 1st October 1923 by setting up stone-pillars and writing a memorandum to that effect; and that, however, in *Tabaung* 1286 B.E. (February and March 1925), the two defendants (the appellants) removed the stone-pillars, with the result that the parties had to approach *Sayadaw* U Pyinnya of Mahawithutarama Taik in *Wazo* 1288 B.E., who declared the demarcation made by U Kyi as correct, but the defendants would not abide by

(1) (1924) 51 Cal. 361.

the decision and prohibited the plaintiffs from setting up stone-pillars and the 1st defendant also wrote to the plaintiffs protesting against the setting up of stone-pillars. The plaintiffs, therefore, prayed that the suit be decreed with costs "allowing the setting up of stone-pillars along the red dotted line as shown in the map according to the decision of the *pongyis*."

The defendants in their written statement denied having agreed to submit themselves to the authority either of U Kyi or U Pyinnya or that either of them made the decisions alleged by the plaintiffs. They also pointed out that they objected to the plaintiffs setting up stone-pillars in their (defendants') *kyaung* compound; that the land in dispute belonged to them and not to the plaintiffs, and that as the case was between monks it should be referred for decision to the *Thathanabaing*. Thus, even in their written statements the appellants did raise the question of jurisdiction of the Civil Courts to decide the matter in dispute in the suit. But the Court of first instance framed only three issues:—

(1) Whether the suit is maintainable for the enforcement of the award without agreement for reference.

(2) Whether the alleged decision was arrived at by *Pongyi* U Pyinnya; and

(3) If so, is the award valid or not?

The learned Judge of the Court of first instance held on the first issue that the plaintiffs failed to prove that both parties agreed to refer the matter in dispute to U Pyinnya for decision, and also held on the third issue that the award was invalid as not having been duly stamped, and dismissed the suit accordingly.

The plaintiff-respondents then appealed to the District Court, pointing out in the memorandum of

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appeal that the issue as to whether the award was enforceable or not was misconceived : that they had only mentioned that the reverend ecclesiastics to whom the matter was referred with the consent of the parties set up the demarcation posts, but that the trial Court had wrongly framed and determined the case as if it were one for enforcement of the award. It was further stated in the memorandum, that the reference in the plaint to the decision of U Pyinnya was made merely to show that the latter had made the decision as an ecclesiastical authority ; and that, therefore the question of whether the award was enforceable or not was irrelevant.

These are the materials from which the nature of the dispute is to be ascertained.

Somehow or other, the Court of first appeal considered that what was relied on as the award was the decision of U Kyi and not the decision of U Pyinnya, and accordingly framed certain issues which were considered necessary for the determination of the question as to the validity of the award of U Kyi and remanded the case to the Court of first instance for evidence on those issues. The trial Court having, in obedience of the order of remand, given its findings on such issues, the District Court confirmed them, and the plaintiff-respondents' suit was decreed. Thus arose the second appeal from which the present one has arisen.

It appears to me that the suit was not one for enforcement of an award, and it was not one of a mere boundary dispute between the *pongyis* holding adjacent plots of monastic land. It is quite evident that the land occupied or claimed by the two respondents on the one hand and by the 1st appellant on the other formed one monastic compound and was held as one piece of monastic property, commonly

known as a *Kyaunglaik*; and that recently, the plaintiff-respondents and the first defendant-appellants tried to break up this *Kyaunglaik*, to have separate holdings, with the result that the dispute arose as to the extent of land to which each party was entitled to occupy, and, therefore, when the plaintiff-respondents attempted to set up boundary pillars, the defendant-appellants objected. In my opinion, therefore, the suit relates to the nature and extent of the rights of the monks in question to use and occupy monastic land which is religious property and that, consequently, the dispute involved in the suit is purely an ecclesiastical matter.

In the *Sanad* granted to the *Thathanabaing*, it is provided that the Civil Courts will, within the limits of their jurisdiction, give effect to the orders of the *Thathanabaing* and of the *Gainggyoks*, *Gaingoks*, *Gaingdauks* and other ecclesiastical authorities duly appointed by him, in so far as those orders relate to matters which are within the competence of those authorities (1). In *U Thadama and one* v. *U Meda and one* (2), where the plaintiffs sued for a declaration of their right to the ownership of a monastery and certain land appertaining to it, and it was found that the *Thathanabaing* had declared the monastery to be *theinghika* property and had forbidden the plaintiffs to interfere with it, it was held that the dismissal of the suit without a decision on the merits of the case was correct: reliance was placed on the earlier rulings in *U Teza and one* v. *U Pyinnya* (3) and *U Te Zeinda* v. *U Teza and one* (4), which laid down that the orders and proceedings of the Buddhist ecclesiastical authorities so long as they keep within

(1) *See* U Tha Gywe's Treatise on Buddhist Law, Vol. I., p. 234, at 235.

(2) 2 U.B.R. (1897-01) 42.

(3) 2 U.B.R. (1892-96) 59.

(4) 2 U.B.R. (1892-96) 72.

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their jurisdiction and do nothing contrary to law, cannot be questioned by the Civil Courts. In *U Wayama and others* v. *U Ahsaya* (1), which arose out of a suit for full control by one of the appellants, in trust for the other appellants and respondent, of certain property consisting of *tari* trees situated in the premises of a *kyaungtaik*, on the ground of the first appellant's superior ecclesiastical position, it was held that the question in dispute was purely an ecclesiastical matter and the Civil Courts are bound by the decisions of the Buddhist ecclesiastical authorities in matters within their competence; and also that Civil Courts should abstain from deciding points which fall within the sphere of ecclesiastical jurisdiction.

To my mind, the question in dispute in the present case is purely an ecclesiastical matter, and, therefore, is a matter within the competence of the Buddhist ecclesiastical authorities to decide: consequently, the Civil Courts have no jurisdiction to entertain the dispute; for, if the Civil Courts also exercised jurisdiction while the Buddhist ecclesiastical authorities have jurisdiction to deal with the matter, there is bound to be a clashing of jurisdiction and a grave deadlock will be the inevitable result.

In the result, I hold that the plaintiff-respondents' suit should have been dismissed for want of jurisdition. I would allow this appeal, and direct that the suit be dismissed.

Since the appellants did not raise this question of jurisdiction in their original appeal in this Court, I would direct that each party bear their own costs in this Court. But the plaintiff-respondents should pay the defendant-appellants' costs in the Court of first instance and in the Court of first appeal.

(1) 2 U.B.R. (1902-03) Buddhist Law, Ecclesiastical, p. 1.

BAGULEY, J.—I agree with my learned brother, Mya Bu, J., that the Civil Courts in this case have no jurisdiction, but would like to add a few remarks.

In the first place I would emphasise that this decision applies to Upper Burma only. There is no *Thathanabaing* in Lower Burma and in consequence disputes of this nature if brought before the Civil Courts would have to be settled by them in Lower Burma, there being no ecclesiastical authority having power to decide them.

The question of jurisdiction has to be settled in the first instance on the plaint. In the terms of translation of the plaint we find it headed "Suit for setting up stone-pillars along the red dotted lines shown in the annexed map". The trial Court on the statements given in the plaint looked upon the case as one for enforcement of an award and this view was persisted in by the Courts right up to the second appeal in the High Court, but it must be remembered that the original plaint was filed by U Pyinnya and U Thagaya and, when they lost their case in the trial Court, they came on appeal to the District Court of Pakôkku in Civil Appeal No. 40 and in their grounds of appeal emphasised the fact that they were not suing to enforce an award at all. The first ground of appeal contains the passage: "But the lower Court wrongly framed an issue as to whether the award is enforceable or not". The third ground of appeal contains the passage: "But the lower Court wrongly framed an alternative issue that if the case was one for enforcement of award;" and the fourth ground of appeal contains the passage: "Therefore the question whether the award is enforceable or not is irrelevant."

It is therefore quite clear that the plaintiffs themselves were not basing their case on the award, but

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if they were not basing their case on the award I can see nothing upon which they could base their case, except their right to partition the land which forms the original *kyaungtaik*. There are no rules of civil law by which a *kyaungtaik* could be partitioned. The *pongyis* inhabiting the *kyaungdaik* are not co-owners or co-parceners or tenants in common or any other form of owner known to the ordinary civil law. Their rights *inter se* are entirely governed by ecclesiastical law which must be decided by the ecclesiastical authorities where there are ecclesiastical authorities in a position to do so.

The argument put forwad on behalf of the appellants went so far as to claim that every case between *pongyis* concerning religious property is only to be decided by the *Thathanabaing*. I would not myself accept this statement *in to to* but I agree that in the present case, as the original plaintiffs stressed the fact that they were not basing their claim on an award, the Civil Court must be held to have no jurisdiction.