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MAUNG TUN SEIN v. KO TU AND FIVE OTHERS.

HEALD AND MAUNG BA, JJ.

claim. We are of opinion that even if the document in question is taken to be the final repository of the terms of the partition, section 91 of the Evidence Act would not exclude oral evidence to prove the fact of partition only. We are fortified in this view by the decision in *Chhotalal Aditram Travadi* v. *Bai Mahakore* (1), where a Bench of the Bombay High Court held that the fact of partition may be proved by oral evidence although the deed embodying the terms of partition cannot be proved for want of registration. Maung Po Dan (1 D.W.) deposes that he was present at the partition, and that a day or two later U Po's children including the appellant's mother were given their shares.

For the above reasons the dismissal of the appellant's claim was justified. We dismiss the appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Heald and Mr. Justice Maung Ba.

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Mar. 1.

MAUNG THEIN MAUNG AND TWO *v.* MA SAW.*

Buddhist Law—Marriage—Marriageable age of a boy.

Held, that at Burmese Buddhist law, a youth is competent to contract a valid marriage at any time after he is physically competent for marriage and no consent of his parents or guardian is necessary for a valid marriage.

Ma E Sein v. *Maung Hla Min*, 3 Ran. 455 ; *Maung Nyein* v. *Ma Hmyin*, 3 U.B.R. 75—*referred to.*

Ganguli for the appellants.

Thein Maung for the respondent.

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(1) (1919) 41 Bom. 466.

* Civil First Appeal No. 176 of 1927.

HEALD and MAUNG BA, JJ.—Respondent sued the first appellant for divorce on the ground that he had deserted her and had married another wife, and for partition of property on the basis of a divorce as by mutual consent. She joined the second appellant, who is the first appellant's other wife, as being interested in the partition of the property, and the third appellant, who is the first appellant's brother-in-law, as claiming to be a purchaser of part of the property of the marriage from the first appellant.

The first appellant's defence was that there was no valid marriage between him and respondent because he was only about 16 years of age when he went through the ceremony of marriage with her. He admitted that after he and respondent parted company he sold a piece of land to the third appellant.

The second appellant's defence was similar and she added that she was not a necessary party to the suit.

The third appellant adopted the first appellant's defence that there was no marriage. He admitted that the first appellant was his brother-in-law and said that he and his wife acted as the first appellant's guardians before he came of age. He said that his purchase of the lands from the first appellant for Rs. 10,500 was a genuine transaction and that the first appellant sold the lands to him in order to pay off debts due by himself and his second wife.

The lower Court held that there was no substance in the first appellant's defence that there was no marriage because he was too young to enter into a contract of marriage, and that respondent was in fact and in law the first appellant's wife. It found that respondent was entitled to divorce as by mutual consent and to partition of property on the basis of

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MAUNG THEIN MAUNG AND TWO v. MA SAW.

HEALD AND MAUNG BA, JJ.

such divorce. It held that in respect of the properties which the first appellant brought to the marriage respondent's share was one-third. As for the land alleged to have been sold to the brother-in-law and so-called guardian, the Court was of opinion that the transaction was not a *bonâ fide* sale by the husband on account of himself and his wife for the purposes of the business of the family, and held that the sale did not affect respondent's right to recover her one-third share of that land.

The three appellants have filed a joint appeal alleging that there was no valid marriage and that the Court was wrong in avoiding the sale to the third appellant. They also pointed out that respondent's plaint was insufficiently stamped.

There is in our opinion no basis for the suggestion that the marriage was invalid because the first appellant was too young to contract a valid marriage. The lower Court has referred to the cases of *Maung Nyein* v. *Ma Hmyin* (1) and *Ma E Sein* v. *Hla Min* (2), in which each member of this Bench separately has expressed the opinion that there is nothing in Burmese Buddhist law which prevents a youth from contracting a valid marriage at any time after he is physically competent for marriage and we are still of the opinion which we expressed in those cases. The first appellant was admittedly at least 16 at the time of the marriage. He admits that there was a marriage ceremony and that there was cohabitation and a child of the union, and we have no doubt that there was a valid marriage.

The only question which remains is the question of the sale of the land to the third appellant. The relationship between the parties to the sale renders it open to suspicion and on a perusal of the evidence

(1) 3 U.B.R. 75. (2) (1925) 3 Ran. 455.

we agree with the lower Court that in the circumstances of the case it is unlikely that the land was sold by the first appellant in good faith in pursuance of the common business of the first appellant and respondent as a married couple. The third appellant knew all the circumstances of the couple and knew that he was buying from a married man who was living separately from his wife.

In these circumstances we see no reason to interfere with the lower Court's finding that the sale did not affect the one-third interest in the land which respondent takes on divorce.

The appeal is accordingly dismissed with costs.

The decree of this Court will not be signed until respondent has paid into Court the deficient court-fee payable in the trial Court in respect of her claim to divorce.

APPELLATE CIVIL.

Before Sir Guy Rutledge, Kt., K.C., Chief Justice, and Mr. Justice Brown.

MIRZA HASHIM MISHKEE

v.

A. A. H. BINDANEEM AND ONE.*

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Mar. 12.

Shiah Mahomedan Law—Gift by way of trust must conform to law relating gifts —Gifts in futuro *when invalid—Gift to unborn person after a life interest and control over corpus, invalid.*

A Shiah Mahomedan lady purported to create a trust by a deed of gift in which she appointed a trustee who was to pay the income of the trust property to herself for life, on her death to pay the income to her husband and on his death to pay the income to her son and daughter and after their death the income was to go to their children, and on attainment of the age of 18 by the youngest grandchild, the property was to be made over outright to the grandchildren. The trustee was to get 15 per cent. of the income by way of commission during the