

due to the partnership without joining the legal representatives of the deceased partner.

It, therefore, follows that a Buddhist wife can maintain a suit in respect of a partnership asset in her capacity as surviving partner without any reference to her succession to the interest of her husband in the asset or debt due to them jointly.

As this is the sole point on which the learned Judge of the Small Cause Court dismissed the case I set aside his decree and remand the case for disposal on the merits.

1929
 DAW YWET
 v.
 KO THA
 HTUT.
 CHARI, J.

APPELLATE CIVIL.

Before Mr. Justice Brown.

MAUNG TIN

v.

KYINNAHON.*

1929
 Aug. 30.

Suit of a Small Cause nature—Trial by Township Judge as such, though invested with powers of a Small Cause Court—character of suit not altered by the mistake—no appeal to District Court.

Where the same judge presides over a Small Cause Court and a Township Court and tries by mistake as Judge of the Township Court a case of a Small Cause nature, the mistake does not alter the character of the suit and no appeal lies from the decree to the District Court.

Nga Shwe Tha v. Nga Po, 2 U.B.R. (1907-09) Small Cause, 1—referred to.

Gutha for the applicant.

Hock for the respondent.

BROWN, J.—The respondent brought a suit against the petitioner for recovery of Rs. 181-6, the value of damage which he alleged was caused to his paddy by the petitioner. The trial Court held that it had

* Civil Revision No. 65 of 1929 from the judgment of the District Court of Tharrawaddy in Civil Appeal No. 120 of 1928.

1929
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not been proved that the damage was caused by the petitioner and dismissed the suit. The respondent appealed to the District Court. The District Court held that, from the facts proved, it could safely be presumed that the damage to respondent's paddy was due to the action of the petitioner, and gave the respondent a decree for Rs. 139. The petitioner has come to this Court in revision on the ground that no appeal lay to the District Court.

The suit was of a Small Cause nature and cognisable by a Court of Small Causes; and the Judge of the Township Court of Gyobingauk, who tried the present case, has been vested with the power of a Small Cause Court up to Rs. 200. It is suggested on behalf of the respondent that the Judge of the Township Court has not been vested with Small Cause Court power by name. It may be the case that the Judge has not been appointed by name but only by virtue of his office as Judge of the Township Court. But no authority has been cited to me for the view that the Judge has, therefore, not the power of a Small Cause Court.

The damages claimed were less than Rs. 200 and the suit was therefore within the competence of the Small Cause Court: and under the provisions of section 16 of the Provincial Small Cause Courts Act it was not cognisable by any other Court. In the case of *Nga Shwe Tha v. Nga Po* (1) it was held that, where the same Judge presided over a Small Cause Court and a District Court, and tried by mistake as Judge of the District Court a case of a Small Cause nature, the mistake did not alter the character of the suit, and that no appeal lay from the decree. The decision of the High Court of Bombay in the case of *Shankarbhai & Ors. v*

(1) 2 U.B.R. (1907-09) Small Cause, 1.

Somabhai & another (1) was followed. The same principle seems to me to apply to this case. * The suit must be treated as though it had been tried by a Court of Small Causes and no appeal lay. The orders passed by the District Court are therefore illegal.

I therefore set aside the decree of the District Court and restore that of the trial Court dismissing the suit of the plaintiff-respondent. The plaintiff-respondent will pay the costs of the defendant-petitioner in all three Courts.

1929
MAUNG TIN
v.
KYINNAHON.
BROWN, J.

APPELLATE CIVIL.

Before Mr. Justice Chari and Mr. Justice Brown.

MA KIN

v.

MAUNG PO MYIT AND OTHERS.*

1929
Sept. 2.

Buddhist Law—Inheritance—Nephews—Children of elder brother not excluded by children of younger brother.

Held, that whilst a younger brother of the deceased Buddhist would exclude an elder brother, if they survive him, a nephew by the elder brother would not be excluded by a nephew by the younger brother, where no brother or sister of the deceased survives him.

Ma Kyaw v. Ma Pu, 2 U.B.R. (92-96), 189; *Maung Ba Gon v. Ma Pwa Thit* 5 Ran. 747; *Maung Po Thu Daw v. Maung Po Thau*, 1 Ran. 316—referred to.

Po Han for the appellant.

Ba Maung and *Maung Myint* for the respondents.

CHARI and BROWN, JJ.—The property in dispute in this case is the estate of one Daw Pwa, a Burman

(1) (1900) 25 Bom. 417.

* Civil First Appeal No. 60 of 1929 from the judgment of the Original Side in Civil Regular No. 139 of 1928.