

APPELLATE CIVIL.

Before Mr. Justice Maung Ba.

1929

May 1.

MA HPAN AND OTHERS

v.

MA NGWE SA AND ANOTHER.*

Buddhist Law—Inheritance—Polygamous husband—More wives than one at the same time—Inherited property of one wife descends to her own children only—Marriages in succession—Rule of partition—Partition amongst children of different marriages in succession.

Where a Burman Buddhist husband has had more wives than one, all at the same time, property inherited by one of the wives during marriage if still in existence at the death of the husband and wife, descends to the children by that wife, and the children by other wives can lay no claim to succeed to it.

Ma Kin v. Kin Kin, 4 U.B.R. 11—*referred to.*

But this rule will not apply if the husband has married his wives in succession on the death or divorce of a former wife or wives. So where a person dies leaving children by his first and third wives whom he had married in succession, taking a second wife on the death of the first, and taking the third wife after divorcing the second childless wife (and whom he had also divorced subsequently), the ordinary rule of partition between children of different marriages applies, and the children of the first (deceased) wife will have a three-quarters share in the inherited property of their mother and the children of the third (divorced) wife will have a quarter share therein.

Chari for the appellants.

K. C. Bose for the respondents.

MAUNG BA, J.—U Teik Lon, a Burman Buddhist, married three wives in succession. His first wife was Ma Pa and by her he had four children (present appellants). On her death he married Ma Kyaing but he divorced her and married Ma Paw U. He had no children by the second wife but he had two children (present respondents) by the third wife. He divorced Ma Paw U also but her children remained behind with their father. About 13 years

* Special Civil Second Appeal No. 265 of 1928 from the judgment of the District Court of Pynmana in Civil No. 97 of 1928.

afterwards he died leaving children by the first and third wives.

A piece of paddy land was acquired during the first marriage. Respondents claimed a half share in that property. The Subdivisional Judge of Pyinmana gave them two-fifths and the District Judge of Pyinmana on appeal reduced it to one-third. Appellants now contend that respondents are not entitled to any share in that property as it was the property inherited by their mother during her coverture with U Teik Lon. Both the lower Courts have referred to the property simply as the property acquired during the first marriage but they have not considered how it was acquired. Appellants in their written statement clearly stated that it was the inherited property of their mother. I find that appellants also tendered evidence to that effect. That evidence has in no way been rebutted. I will therefore hold that it was the inherited property of the first wife who was the mother of the appellants.

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In an Upper Burma case *Ma Kin v. Kin Kin* (1), Mr. Brown as Judicial Commissioner held that where a Burman Buddhist husband has had more wives than one, property inherited by one of the wives during marriage if still in existence at the death of the husband and wife, descends to the children by that wife, and the children by other wives can lay no claim to succeed to it.

That rule of law applies to a case where a Burman Buddhist husband has more than one wife at the same time. An extract from the *Manugye* in section 207 of Kinwun Mingyi's Digest reads "The rule of partition among several wives who live in the same house and eat out of the same dish with the husband shall apply, *mutatis mutandis* to partition

(1) (1907-08) 4 U.B.R. 11.

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among their sons. So says Rishi Manu." As regards the rule of partition among such wives the extract in section 286 of the same Digest reads—"Several wives live together in the same house and eat out of the same dish with the husband. Each of them shall retain the property brought by her to the marriage or the property acquired by inheritance from her parents subsequent to the marriage or the property given her by the husband as a marriage portion".

In the present case the second wife was married after the death of the first and the third was married after the divorce of the second. The deceased did not have the three wives at the same time. When the appellants' mother died, their father became her heir subject to the claim of an *orasa* daughter, if any. There appears to have been no such *orasa* daughter. On his remarriage the *atet* children became entitled to their mother's share. It would be two-thirds. That right lapsed after 12 years. When the father died a fresh cause of action arose and the rule of partition to be applied is the ordinary rule of applicable to partition between children of different marriages. Section 7 of Book X of *Manugye* says "If the father had property at the time of his marriage and the second wife none and if none has been acquired during their marriage, let the property be divided into four shares; let the son of the first marriage have three, and the son of the second one share. It follows that appellants should get three-fourths and respondents one-fourth.

The decree of the District Court will be modified by reducing respondents' share to one-fourth. Each party to bear its own costs.