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of that marriage which were left after the children of that marriage had received their shares.

OTTER, J.—I concur.

APPELLATE CIVIL.

Before Mr. Justice Heald and Mr. Justice Mya Bu.

MAUNG PO MYA v. MA HLA AND OTHERS.*

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Apl. 29.

Buddhist law—Orasa, *who has taken his quarter share on death of one parent—No subsequent right as against* kanitha *children on the death of the surviving parent.*

Held, that the *orasa* who has taken the quarter share on the death of one parent is not entitled as against the *kanitha* children to participate in the division of the estate on the surviving parent's death.

Ma Hnin Bwin v. *U Shwe Gon*, 8 L.B.R. 1 ; *Ma Sein Ton* v. *Ma Son*, 8 L.B.R. 501 ; *Ma Tok* v. *Ma U Le*, 1 Ran. 487 ; *Maung Po San* v. *Maung Po Thel*, 3 Ran. 438—*referred to.*

Maung Hmu v. *Maung Po Thin*, 1 L.B.R. 50—*followed.*

Ba Maw for the appellant.
Po Han for the 1st respondent.
On Thwin for the 2nd and 3rd respondents.

MYA BU, J.—Appellant Maung Po Mya was the eldest born child of a Burman Buddhist couple U Pu and Ma Gyi who had two younger children Ma Hla, the first respondent, and Maung Than, the father of the second and third respondents. U Pyu died in 1920 and Po Mya claimed and obtained his quarter share in the estate of the parents as the *orasa* son. Maung Than died in 1923. In 1928 Ma Gyi died. Maung Po Mya now sues for administration

* Civil First Appeal No. 273 of 1928 from the judgment of the District Court of Hanthawaddy in Civil Regular Suit No. 34 of 1928.

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and partition of the estate of Ma Gyi, claiming 11-24ths share of the estate as against his sister and the children of his deceased brother. The estate left behind by Ma Gyi consists entirely of the joint property of herself and U Pyu. The defence is that as the appellant took his quarter share as *orasa* son on the death of U Pu he is not entitled to claim any share in the estate left by Ma Gyi.

The question for decision is whether an *orasa* son after taking his quarter share on the death of the father retains any right to inherit in the remainder of the estate on the death of the mother. The case of *Maung Hmu* v. *Maung Po Thin* (1) is an authority showing that the *orasa* son in such a case retains no further right, and if it still remains good law, then the question must be answered in the negative. The decision in that case was to the effect that the *orasa* son after having taken his quarter share of the estate of his deceased father retained no right to any further future partition of, or any right in, the remainder of the estate. This decision was based on the *Dhammathats* collected in section 30 of Kin Wun Mingyi's Digest and on the ruling in *Ma On and others* v. *Ko Shwe O and others* (Selected Judgments, page 378), where it was held *inter alia* that on the death of one of the parents the eldest son or daughter may claim his or her share and the remainder of the property vests in the surviving parent for himself or herself and the remaining children. Ma On's case has now been overruled by a Full Bench of the Chief Court of Lower Burma in *Ma Sein Ton* v. *Ma Son* (2), which however, does not deal with the question as to whether and *orasa* son after having taken his quarter share on the death of his father is entitled to claim a further share in the joint property on the death of the mother,

(1) (1900) 1 L.B.R. 50. (2) (1915) 8 L.B.R. 501.

but simply strengthens the widow's right of disposal over the remaining three-quarter share.

In the case of *Ma Toke* v. *Ma U Le* (1), in which the question was whether partition having been effected between the surviving parent and the children on the remarriage of the surviving parent, the children of the first marriage could claim any further share in the *letletpwa* property of the surviving parent and his second spouse, the ruling in *Maung Hmu's* case was referred to. One of the texts collected in section 30 of Kin Wun Mingyi's Digest is an extract from the *Manugye* which corresponds to *Manugye*—Book 10—section 5, which deals with the partition between the mother and sons on the death of the father and states after detailing the personal belongings of the father which go to the eldest son and those of the mother which go to her, " Let the residue be divided into four parts of which let the eldest son have one, and the mother and younger children three ". This clearly indicates that after the *orasa's* claim to a quarter share has been satisfied the only other persons having an interest in the remainder are the mother and children other than the *orasa* although the interests of such children, according to settled law, are not vested until the death of the mother.

Their Lordships of the Privy Council have laid down in *Ma Hnin Bwin* v. *U Shwe Gon* (2) that where the *Manugye* is not ambiguous other *Dhammathats* do not require to be referred to, and I do not think that it is necessary for the purpose of the present case to refer to the other *Dhammathats* in section 30 of the Digest which I may, however, say do not introduce anything inconsistent with the rule enunciated by *Manugye*, Book 10, section 5. Further support to the view that the *orasa* son having taken his

(1) (1923) 1 Ran. 487. (2) (1914) 8 L.R.B. 1.

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quarter share on the death of the father is not entitled to a further share on the death of the mother, is gained from the section 155 of the *Attasankhepa Vannana Dhammathat* compiled by the Kinwun Mingyi who was also the author of the Digest and who during the régime of the last two Burmese Kings and for many years after the annexation until his death was the greatest living authority on Burmese Law and Literature and whose opinion is therefore very reliable.

For these reasons it is in my opinion safe to uphold the ruling in *Maung Hmu's* case except where it speaks of the right of pre-emption, which is contrary to the ruling of the Full Bench of the Chief Court of Lower Burma in *Maung Ye Nan O's* case (1).

The learned counsel for the appellant relies on the *obiter dictum* in *Maung Po San* v. *Maung Po Thet* (2) which is to the effect that even if the *orasa* has taken his quarter share on the death of one parent or on the remarriage of the surviving parent, he is still entitled to claim a share on the death of the surviving parent or on the death of the step-parent, unless separation from the family is proved or is to be presumed.

According to my experience of the modern practice an *orasa* child who has taken a quarter share on the death of the parent of the same sex does not usually act up to the old notions of continuing in the family looking after the family estate and the younger children; and there is no reason why an *orasa* child who has actually taken a quarter share from the surviving parent and lives separately as in this case, should not be regarded as having been separated from the surviving parent and the younger children. It is contented that the *orasa* child gets his or her quarter share on the death of the parent of the same sex because of the special and outstanding position

(1) (1915) 8 L.B.R. 466. (2) (1923) 3 Ran. 438.

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that such child occupies in the family, and therefore such share should be regarded as a reward and should not be taken into consideration in the final division of the estate on the death of the surviving parent. Bearing in mind the fact that the *orasa* child is given the right to claim a quarter share on the death of the parent of the same sex while other children are not entitled to claim anything till the death of the surviving parent, which is in itself a special privilege, the contention that the actual share—not merely the right—is given as a reward appears to me to be quite untenable. The learned counsel points out that according to the texts mentioned in section 149 and the allied sections of the Digest, the *orasa* child has a right to participate in the inheritance along with other children on the death of the surviving parent. But there is nothing to show and it does not appear that the references to the *orasa* in the texts relate to the *orasa* child who has taken a quarter share on the death of one of the parents.

It is possible that in spite of the fact that an *orasa* child has obtained a quarter share of the parental estate from the surviving parent on the death of the parent of the same sex, he or she may be allowed to inherit on the death of the surviving parent where no other child survives. But it is in my opinion clear that where there is a child of the family surviving the last dying spouse the *orasa* who has taken a share of the parental estate from the surviving parent on the death of the parent of the same same sex, does not retain any right to a further share in the partition of the remainder of the estate on the death of the surviving parent.

For these reasons I would dismiss the appeal with costs.

HEALD, J.—I concur.