APPELLATE CIVIL.

Before Mr. Justice Heald.

1929
Jan. 3.

MA ME HLA
v.
MAUNG PO THON.*

Buddhist Law—Adultery by wife, effect of, on marriage—Divorce for adultery who can grant—Partition on divorce, if effected by mutual consent, whether misconduct of one party relevant.

Held, that there is no authority for the view that adultery on the part of the wife *ipso facto* puts an end to the marriage.

Except when put to an end by mutual consent or as a result of desertion for a certain period, marriage subsists until it is dissolved by the Court; and village elders are, it seems, not competent to effect divorce against the will of one of the parties, on proof of such misconduct as may be sufficient to satisfy them.

If a divorce by mutual consent is proved, partition of property must be on that basis, even if one of the parties had been guilty of misconduct.

So Nyun for the appellant.

S. C. Das for the respondent.

HEALD, J.—Appellant sued respondent for partition of property on the footing of a divorce by mutual consent already effected between them in the presence of elders.

Respondent denied the alleged divorce by mutual consent and said that he had divorced appellant and was entitled to retain all the property by reason of her adultery with a servant of theirs. He also disputed the correctness of the lists of property in respect of which appellant claimed partition.

The trial Court found that a divorce by mutual consent was proved and that the misconduct which respondent alleged was not proved, and accordingly gave appellant a decree for partition.

* Special Civil Second Appeal No. 402 of 1928 from the judgment of the District Court of Tharrawaddy in Civil Appeal No. 51 of 1928.

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Respondent appealed on the grounds that the divorce by mutual consent was not proved, that on a divorce for misconduct there is no right to partition, and that the decision of the trial Court as to the value of the properties to be divided was mistaken.

The lower appellate Court found that adultery on appellant's part was proved, that there was a divorce for misconduct from the moment when respondent discarded appellant for that misconduct, and that appellant was not entitled to partition of the property.

Appellant comes to this Court in second appeal on the ground that adultery was not proved.

I may say at once that I know of no authority for the lower appellate Court's view that adultery on the part of the wife *ispo facto* puts an end to the marriage. The Courts recognise the validity of a divorce by mutual consent effected in the presence of elders, and this Court has recently said that desertion for a certain period *ispo facto* puts an end to a marriage, but so far as I know it has not yet been held that the husband's mere dismissal of the wife for adultery constitutes a valid divorce. Adultery on the part of the wife is of course a ground for divorce, but I doubt whether proof of such adultery sufficient to satisfy village elders entitles those elders to effect divorce against the will of the wife. I think that as the law at present stands the marriage subsists until it is dissolved by the Court, except in the two cases, mentioned above, in which the Courts have recognised the validity of a divorce effected otherwise than by the decree of a Court. I think further that if a divorce by mutual consent is established, it is not open to either party to object to the partition, which such a divorce involves, on the ground of misconduct of the other party.

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His Lordship discussed the evidence and held that a divorce by mutual consent was proved; that adultery was not proved and so allowed the appellant half the share of the property of the marriage.

APPELLATE CIVIL.

Before Mr. Justice Brown.

1929

Jan. 14

MAUNG PO LWIN
v.
MAUNG SEIN HAN.*

Landlord and tenant—Landlord whether possessing a lien on the crops—Landlord's rights against third parties—Specific Relief Act (I of 1877), s. 27 (b)—Transferee of crops otherwise than without notice and for value bound by personal obligation of his transferor.

Where paddy land was leased by a written agreement by which the tenan bound himself not to sell, move or dispose of the crops in any way before paying up the full rent to the landlord,

Held, that it is not correct to say that the landlord has a lien over the crops, as a lien denotes possession in the person having a lien.

Held, however, that the personal obligation on the tenant under the agreement binds a third party who takes the crops unless he has taken the crops for value, in good faith and without knowledge of the original agreement between the landlord and the tenant.

Maung Han and one v. *Ka Ho*, Civil 2nd Appeal No. 298 of 1924 H. C. Ran.—*referred to.*

Myint Thein for the appellant.

Tun Aung for the respondent.

BROWN, J.—The plaintiff-respondent, Maung Sein Han sued one Maung Shwe Hmyin and the appellant Maung Po Lwin for 375 baskets of paddy valued at Rs. 712-8, claimed as rent due for paddy land. He was given a decree against both defendants for 255 baskets or their value Rs. 484-8.

* Civil Second Appeal No. 489 of 1928 from the judgment of the District Court of Bassein in Civil Appeal No. 96 of 1925.