

APPELLATE CIVIL.

Before Mr. Justice Baguley, and Mr. Justice Mosely.

1937

May 5.

DAW HLA OHN v. MA NYUN AND OTHERS.*

Burmese customary law—Joint property—Division on divorce and on inheritance—Death of husband with two wives—Share of second wife—Property jointly acquired—First and second covertures.

The rule as to division of joint property on divorce is applicable to partition of it on inheritance in Burmese customary law. On the death of the husband the second wife, being an equal heir with the first wife to the husband gets one-third of the property jointly acquired in the first coverture and half of the property jointly acquired in the second or double coverture.

C.T.P.V. Chettyar Firm v. Maung Tha Hlaing, I.L.R. 3 Ran. 322; *Maung Po Nyun v. Ma Saw Tin*, I.L.R. 3 Ran. 160; *S.P.L.S. Chettyar Firm v. Ma Pu*, I.L.R. 14 Ran. 697; *S.P.L.A.A. Chettyar Firm v. Ma Pu*, Civil 2nd Appeal No. 158 of 1936, H.C. Ran., referred to.

G. R. Rajagopaul for the appellant.

Aye Maung for the 1st respondent.

MOSELY, J.—The plaintiff-first-respondent, Ma Nyun, sued the present appellant-first-defendant, Daw Hla Ohn, (and three others, now respondents, as purchasers of part of the estate), for a declaration that she was the legal second wife of the deceased, Tha Hpo, (whose first wife was the appellant Daw Hla Ohn), and for recovery of her share of this property. She claimed a two-fifths share in three items of immovable property in her schedule A, valued at Rs. 4,580, which she said were acquired during the deceased's coverture with his first wife, Daw Hla Ohn, and a one-half share in the remaining property, consisting of immovable property to the value of Rs. 9,790 and moveable property to the value of Rs. 10,290.

In Daw Hla Ohn's written statement, (paragraph 9), she admitted the existence of the estate as alleged in

* Civil First Appeal No. 106 of 1936 from the judgment of the Assistant District Court of Pyapôn in Civil Regular No. 1 of 1935.

paragraph 8 of the plaint, but denied that the plaintiff was entitled to any share in the said estate, because she was not a recognized lesser wife, (paragraph 8 of the written statement).

The plaintiff's claim was that she married Tha Hpo in or about the year 1286, or 1925. An issue was framed in the following terms :

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" Whether the plaintiff was the second wife of U Tha Hpo, deceased?

The trial Court found against the plaintiff on this issue and dismissed the suit. On appeal to this Court, in Civil First Appeal No. 163 of 1935, that decision was reversed by a Bench consisting of the same two Judges as have now heard the present appeal, and it was found that Ma Nyun was U Tha Hpo's second wife. It was implied that she was a wife with full powers of inheritance and not a lesser wife, though the words, " junior wife ", were actually used by this Court in describing her status, or rather merely the precedence of the dates on which they married. In the course of argument in that case Ma Nyun's advocate admitted that she could not prove that the marriage took place earlier than November 1932, and it was therefore held by this Court that the marriage dated from that date. Tha Hpo had lived with Daw Hla Ohn before then for, it is said, fifty years. The suit was then remanded to the trial Court for determination on the other issues, issue No. 3 being :

" What share, if any, is the plaintiff entitled to in the admitted estate of the said U Tha Hpo."

It is clear that it was merely the corpus of the estate that was admitted, and not the date of acquisition of any part of it, for Daw Hla Ohn's defence was that there never was any coverture of Tha Hpo with Ma Nyun,

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and that therefore no property could have been acquired during that alleged second coverture.

A date was given by the lower Court for the parties to adduce further evidence, and on the date fixed both declined to do so, though in view of the finding of this Court that the marriage to Ma Nyun was of so recent a date, (U Tha Hpo died a year later,—1933), evidence was obviously necessary. The trial Court in its judgment assumed, quite wrongly, that because the plaintiff had been found to be a second or a junior wife, therefore she was an inferior or lesser wife living with her husband. It relied on the cases of *Ma Gun v. Ma Gun* (1) and *Ma Thein Yin v. Maung Tha Dun* (2) and held that she was entitled to two-fifths of the entire estate, and that the sale of certain properties to defendants 2 to 4 was only valid in respect of Daw Hla Ohn's three-fifths share.

It is suggested if I understand aright, in Mr. E Maung's "Burmese Buddhist Law", at page 142, that this two-fifths, (which is given on the authority of the "Digest" section 276; *Manugye* X, 42; *Attasankhepa*, 227), should be two-fifths of the husband's share; see "May Oung's" Buddhist Law p. 238.

However that be,—and it has not, of course, been held that Ma Nyun was an inferior wife—, the share of two wives in the property acquired by the husband in the covertures with each of them has been settled by the decision of this Court in *Maung Po Nyun v. Ma Saw Tin* (3), which was a case dealing with partition between two wives and the husband on divorce. It was held that the second wife gets one-sixth of the property jointly acquired in the first coverture and one-third of the property acquired in the second or double coverture. The husband gets two-sixths of the property jointly

(1) (1872-1892) S.J. 33.

(2) (1924) I.L.R. 2 Ran. 62.

(3) (1925) I.L.R. 3 Ran. 160.

acquired in the first coverture and one-third of that acquired in the second coverture, so that on this calculation, if the rule be extended to inheritance on the death of the husband, the second wife, being an equal heir with the first wife to the husband gets one-third of the property jointly acquired in the first coverture and half of that jointly acquired in the second coverture. I would agree with Carr J.'s remark in *C.T.P.V. Chettyar Firm v. Maung Tha Hlaing* (1) that the rule as to division of joint property on divorce should be extended to partition of it on inheritance. The same case is authority for holding that the wives share equally in the *lettetpwa* of the second coverture. These rulings have since been followed in *S.P.L.S. Chettyar Firm v. Ma Pu* (2) and in *S.P.L.A.A. Chettyar Firm v. Ma Pu* (3).

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I therefore hold that Ma Nyun's share in the property jointly acquired during the first coverture is one-third and in the property acquired in the second coverture one-half.

The decree of the trial Court is, therefore, set aside. There must be a remand under Order 41 rule 25. The issue to be decided is "What part of the estate of U Tha Hpo deceased was acquired prior to his marriage with the plaintiff Ma Nyun, (which for this purpose must be considered as dating from November 1st 1932), and what part of that estate was acquired subsequent to that marriage.' The trial Court will take such evidence as is required, and return it with its findings to this Court within two months of to-day.

BAGULEY, J.—I agree.

(1) (1925) I.L.R. 3 Ran. 322, 347.

(2) (1936) I.L.R. 14 Ran. 697.

(3) Civ. Sec. Ap. No. 158 of 1936, H.C. Ran.