

CIVIL REVISION.

Before Mr. Justice Mosely.

MAUNG PO HTWA AND ANOTHER

vs.

MA NGWE ZIN.*

1937

Mar 30.

Burmese Buddhist law—Joint property of husband and wife—Death of one spouse—Succession by inheritance, not by survivorship—Widow's suit for recovery of debt due to husband—Succession certificate necessary—Time to be allowed for obtaining succession certificate—Appellate Court's powers—Provisional decree or suspension of decree—Succession Act (XXXIX of 1925), s. 214.

According to Burmese Buddhist law on the death of one spouse the surviving spouse takes the interest of the deceased in the joint property by inheritance and not by survivorship. A widow must therefore take out a succession certificate before a decree could be granted to her in her suit for recovery of a debt due to her husband.

N.A.V.R. Chettyar Firm v. Maung Than Daing, I.L.R. 9 Ran. 524; *Ma Naw Za v. Ma Thei Pon*, P.J. 334, followed.

Daw Ywet v. Ko Tha Htut, I.L.R. 7 Ran. 806; *Ma Paing v. Maung Shwe Hpaaw*, I.L.R. 5 Ran. 296, dissented from.

An appellate Court can give a provisional decree or suspend its decree until a succession certificate has been obtained, and has the power to direct the trial Court to grant a decree for the debt on production of the succession certificate for obtaining which a reasonable time should be allowed to the plaintiff.

C.A.M. Chetty v. Maung Po Yan, Civil Rev. No. 67 of 1913, Ch. Ct. L.B.; *Chaing Na v. Shwe Ok*, 13 B.L.T. 233, referred to.

Ma Sein Nyo v. Ma Mai Tu, 2 L.B.R. 164, dissented from.

Leong for the appellant.

Kale for the respondent.

MOSELY, J.—The plaintiff-respondent, Ma Ngwe Zin, sued, as the legal representative of her husband, the defendant-appellants to recover a debt due to her husband. She obtained a decree, which was confirmed on appeal; and the only ground now argued in this application in revision is that she should have been

* Civil Revision No. 423 of 1936 from the judgment of the District Court of Myingyan in Civil Appeal No. 53 of 1936.

made to take out a succession certificate first before a decree could be granted,—*vide* section 214 (1) (a) of the Succession Act.

The trial Court held that it was bound by *Daw Ywet v. Ko Tha Htut* (1), a ruling which has not yet been formally overruled, and that therefore no certificate was necessary. This ruling relies on *Ma Paing v. Maung Shwe Hpaaw* (2), where it was held that a Burmese Buddhist husband and wife were partners.

Ma Paing's case (2) was, of course, overruled in *N.A.V.R. Chettyar Firm v. Maung Than Daing* (3) where it was said that on the death of one spouse the surviving spouse takes the interest of the deceased in the joint property by inheritance and not by survivorship. The lower appellate Court has misunderstood this ruling. The authorities which existed before *Ma Paing's* case (2) must therefore be followed. The earliest one is *Ma Naw Za v. Ma Thet Pon* (4). It is clear, and admitted here that the plaintiff must take out a succession certificate.

In *Ma Sein Nyo v. Ma Mai Tu* (5) it was held, dissenting from *Ma Naw Za's* case (4), that a provisional decree could not be passed by an appellate Court allowing the production of a succession certificate within a reasonable time. This was again dissented from in *Chaing Na v. Shwe Ok* (6), following an unreported case, *C.A.M. Chetty v. Maung Po Yan* (7).

In the last mentioned case the objection was not taken in the Court of first instance. In the suit before me it was. I do, however, consider, especially considering the lack of present authority on the point, that

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(1) (1929) I.L.R. 7 Ran. 806.

(4) P.J. 334.

(2) (1927) I.L.R. 5 Ran. 296.

(5) 2 L.B.R. 164.

(3) (1931) I.L.R. 9 Ran. 524, 537.

(6) 13 B.L.T. 233.

(7) Civil Rev. No. 67 of 1913, Ch. Ct. L.B.

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such an opportunity should be given to the plaintiff to produce a succession certificate. I see little difference between an appellate Court giving a provisional decree and an appellate Court suspending its decree until the succession certificate has been obtained. There is no doubt that the latter course is within its power, but I think that the former course is also within its power and in accordance with the intention of section 214 of the Succession Act.

It will, therefore, be ordered that the plaintiff's suit be decreed with costs by the trial Court if she obtains a succession certificate within a reasonable time to be fixed by the trial Court. But the parties must pay their own costs in the lower appellate Court and in this Court (where I fix the advocate's fee at two gold mohurs). If the plaintiff-respondent fails to obtain a succession certificate within a reasonable time the suit will be dismissed with costs throughout.