

CIVIL REVISION.

*Before U Aung Tha Gyaw, J.*H.C.
1948

Aug. 26.

NAW JESSIE (APPLICANT)

v.

NAW HELEN (RESPONDENT).*

Shan States Manual, s. 12—Succession Act—Orders under orders by Assistant Superintendent, Civil Justice, Taunggyi—Appellate Tribunal—To whom appeal lies.

Application to set aside an *ex-parte* order passed under Indian Succession Act for issue of Succession Certificate was dismissed by the Assistant Superintendent, Civil Justice, Taunggyi. An appeal was filed to the Court of the Resident, Southern Shan States and the appeal was successful.

Held: That Assistant Superintendent of Civil Justice acts in the place of a District Court in Shan States when he acts under s. 384 (1) of the Succession Act and appeal from his order therefore lies to the High Court and not to the Court of the Resident.

Kyaw Khin for the applicant.

Lynsdale for the respondent.

U AUNG THA GYAW, J.—The applicant Naw Jessie applied for issue of a succession certificate in respect of debts due to the estate of one Dr. Samuel, deceased, in Civil Miscellaneous No. 46 of 1946-47 of the Court of the Assistant Superintendent for Civil Justice, Taunggyi. The respondent Naw Helen contested the applicant's claim for the certificate applied for, alleging that the latter was not the legally married wife of the deceased and that she, the respondent, as the deceased's legal wife, was entitled to the issue of the certificate. On the date fixed for the hearing of the matter, the 17th December 1947, the respondent

* Civil Revision No. 41 of 1948 against the order of the Resident's Court, Southern Shan States, Taunggyi, in Civil Misc. Appeal No. 1 of 1947-48, dated the 25th February 1948.

Naw Helen failed to attend the Court and, in consequence, the hearing proceeded *ex-parte* against her and orders were duly passed granting a certificate to the applicant. It appears from the diary of the record that two of the respondent's witnesses were present, but were not examined by the learned Assistant Superintendent.

The respondent thereupon applied to the Court of the Assistant Superintendent for setting aside the *ex-parte* order on the ground that she did attend the Court on the day on which the hearing was fixed, but that she was late owing to her services being required to attend a confinement case. The reason advanced by her was found to be insufficient to excuse her absence from Court, and accordingly her application was rejected.

The respondent thereupon filed an appeal in the Court of the Resident, Southern Shan States, against the order of the Assistant Superintendent. This appeal found favour with the learned Resident, who held that the circumstances explained by the respondent in explanation of her non-attendance at the hearing of the matter would justify the setting aside of the *ex-parte* order complained against. It is against this order of the learned Resident that the present application in revision has been made.

The only ground on which the said order of the learned Resident has been attacked is that no appeal properly lay from the Court of the Assistant Superintendent, Civil Justice, Taunggyi, to the Court of the Resident, Southern Shan States, as the Assistant Superintendent, in dealing with applications for succession certificates, acted in the capacity of a District Judge, and, as such, appeals from his orders would rightly lie only to the High Court under section 384 (1) of the Succession Act. In the schedule

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appended to section 12 of the Shan States Manual setting out the enactments extended to the Shan States, it appears in the third column at page 25 of the Manual that the Indian Succession Act, 1925, was extended to those areas in the Federated Shan States which have been, or may hereafter be, notified under section 210 of the Burma Municipal Act, 1898, subject to the substitution of the words "Assistant Superintendent" in place of the words "District Judge" wherever they occurred in that Act. The provisions of the Indian Succession Act, 1925, is presumed to have been extended to the Taunggyi municipal area, and it has been contended that the Assistant Superintendent, being the District Judge for the purposes of the Indian Succession Act, any orders passed by him could only be interfered with either on appeal or in revision by the High Court and not by the Resident, who, it is urged, has not been duly empowered in that behalf. The Shan States Manual contains no relevant provision to furnish an adequate answer to this objection. Accordingly, the order passed by the learned Resident setting aside the order of the learned Assistant Superintendent, Civil Justice, in this matter must be held to have been done without jurisdiction and is liable to be vacated.

This application is accepted with costs, three gold mohurs. The order of the Resident will be set aside and that of the Assistant Superintendent restored.