1938 *Present:* **Abrahams C.J. and Soertsz J.**

DIAS *v.* RATNAPALA TERUNNANSE.

98—D. C. Galle, 34,685.

Buddhist temporalities—Temple not exempted from operation of Ordinance—Right of incumbent to vindicate title to temple land—Ordinance No. 19 of 1931, s. 4 (1).

The incumbent of a Buddhist temple, which is not exempted from the operation of section 4 (1) of Ordinance No. 19 of 1931, is not entitled to vindicate title to land belonging to the temple.

APPEAL from a judgment of the District Judge of Galle.

N. Nadarajah, for defendant, appellant.

M. T. de S. Amerasekere (with him *Barr Kumarakulasingham* and *Jayasundara*), for plaintiff, respondent.

Cur. adv. vult.

January 31, 1938. SOERTSZ J.—

It is with some regret that I reach the conclusion that this appeal must be allowed, for on the substantial question whether the land in suit belongs to the Andugoda Temple or to the defendant, the learned trial Judge has given very cogent reasons, for holding in favour of the temple. In fact, Counsel for the appellant admitted that it would be impossible for him to ask us to set aside the findings of the trial Judge on the questions of title and possession. But, he maintained that he was entitled to succeed in his appeal for the reason that the plaintiff has no status to maintain this action and that it should have been dismissed on that ground.

The plaintiff came into Court averring in paragraph 3 of his plaint that "this land is Sanghika property belonging to the Andugoda Temple". He sought to vindicate title to it in his capacity of incumbent. He has established satisfactorily that he is the incumbent. The sole question is whether the incumbent of this temple can maintain an action for declaration of title to "property belonging to or in anywise appertaining to, or appropriated to the use of the temple".

The Ordinance that applies in this case is No. 19 of 1931. That is an amending and consolidating Ordinance and applies to every temple in the Island other than those that may be exempted by the Governor by proclamation, either wholly or partially. In this instance, it is not claimed that there has been any exemption by proclamation.

The Ordinance proceeds to enact in section 4 (1) that the management of the property belonging to every temple "shall be vested in a person or persons duly appointed trustee under the provisions of the Ordinance", unless any particular temple is exempted from that requirement, and in section 4 (2) that if a temple is exempted from the necessity to have the management of its property vested in a trustee or trustees, the management of the property of such a temple shall be vested in the Viharadhipathi, that is to say, in "the principal Bhikshu of the temple" who in that capacity is known as the "controlling Viharadhipathi".

There is nothing to show that this temple has been exempted from the operation of section 4 (1) and consequently it is a temple, in regard to which the management of its property is to be vested in a trustee or trustees. Section 20 of the Ordinance takes the matter a stage further. It vests all property, movable and immovable, not merely the management of such property, in the trustee or trustees in those instances in which trustees are required to be appointed or nominated under the provisions of the Ordinance, and in instances in which there is exemption from section 4 (1) in the controlling Viharadhipathi.

In regard to the institution of actions for the recovery of any property belonging to a temple, section 18 of the Ordinance enacts that the trustee can sue as trustee where the law required a trustee, that is to say where exemption has not been obtained under section 4 (1), and that the controlling Viharadhipathi can sue as trustee where exemption from section 4 (1) has resulted in the Viharadhipathi being vested with the *management* of the property under 4 (2), and with *the property itself* under section 20.

The present plaintiff is not a nominated or appointed trustee. He cannot claim to be the controlling Viharadhipathi because he has not shown that the temple has been exempted from section 4 (1). It seems clear, therefore, that the plaintiff as incumbent pure and simple cannot maintain this action. His Counsel, however, urged that it would be a great hardship if an incumbent is not able to sue in this manner in regard to temples for which trustees had not been appointed, and he cited the cases of *Siddhartha Unnanse v. Udayara*[1] and *Ranasinghe v. Dhammananda*[2], and claimed that the plaintiff is the *de facto* trustee of the land in question and, as such, entitled to maintain this action. For my part, I think it is a sufficient answer to this argument to say that the Ordinance does not provide for a *de facto* trustee suing in any circumstances.

It is true that in the earlier of the cases cited, de Sampayo J. held that the incumbent of a vihare who had proved actual possession of a land by him for a great many years and recent ouster, is entitled to maintain a possessory action. If I may respectfully say so, it seems to me that in that instance the learned Judge appears to have relaxed the law in order to give relief in what he considered was a deserving case. In *Terunnanse v. Don Aron*[3], Dalton and Drieberg JJ. held that the incumbent of a Buddhist Temple has no right to maintain an action to recover possession of property which is vested in trustees under section 20 of Ordinance No. 8 of 1905. Drieberg J. commented on the submission made in that case as follows:—"Mr. Weerasooria contended that the Court could recognize the right of the first appellant to maintain such an action as this on the ground that he was the "*de facto* trustee". It is not easy to see how, when by statute certain property is vested in trustees with adequate provision for succession and for provisional trustees during such intervals as there are no elected trustees, the right of any others to act as trustees can possibly be recognized". Drieberg J. sought to distinguish the case he was considering from the case of *Siddhartha Unnanse v. Udayara* (*supra*), on the ground that in the case just named, no trustee had

[1] (1919) 6 C. W. R. 29.
[2] (1935) 37 N. L. R. 19.
[3] (1932) 14 N. L. R. 348.

actually been appointed at the time the priest sued, whereas in the case under consideration trustees had been appointed under the Ordinance. I am not sure that this was a sufficient reason for saying that the ruling in *Siddhartha Unnanse v. Uḍayara,* did not apply to the case before Drieberg J. In a similar manner, that case can be distinguished from the present on the ground that that case was a possessory action in which a person who had long been in possession of a land and had been ousted was put back into possession as *de facto* trustee of the land for the temple. The present is an action for declaration of title. But I prefer not to seek to distinguish the two cases in that way but to say that there appears to be a conflict between the decisions (*Siddhartha Unnanse v. Udayara* and *Terunnanse v. Aron*), and that I would follow the decision in *Terunnanse v. Don Aron.*

It does not seem to me to matter whether trustees have been appointed or not. So long as trustees are required by the Ordinance but do not exist, I am unable to see how property destined by the Ordinance to vest in trustees, can be said to vest in persons not contemplated by the Ordinance.

In regard to the case of *Ranasinghe v. Dhammananda* (*supra*), I do not think it has a direct bearing on the point that has arisen in this case. In that case duly appointed trustees were suing to recover temple property relying on the fact that several incumbents of the temple had been in possession of it and had acquired a prescriptive title for the temple. For the defence, it was argued that a temple was not a *persona* and was therefore, unable to acquire a prescriptive title. If an incumbent acquires a prescriptive title, he acquires it for himself. He is not a trustee for the vihare. The person who succeeds to the incumbency is not a successor-in-title of the previous incumbent. This Court held that the incumbents were *de facto* trustees of the temple and that their possession enured to the benefit of the temple. The evidence showed that these incumbents had avowedly possessed the land for the temple. They were the agents of the temple, and their possession enured to the benefit of the temple, and was possession on which duly appointed trustees could rely when they were seeking to vindicate the title of the temple. The case is clearly different from the present case, and would hardly have been cited in this case but for the fact that expressions like *de facto* trustee, and trustee *de son tort,* had been used somewhat inaptly if I may say so with great respect. The argument of hardship to the temple if it is not permitted to a person in the position of the plaintiff to maintain an action in default of trustees, is not impressive. It seemed to me that plaintiff's Counsel was shedding crocodile tears. But yet, by way of comforting him, I would point out that there is balm in Gilead. There are liberal provisions in the Ordinance to meet such contingencies, for instance, sections 9, 10 and 11. It is still open to the temple to avail itself of those provisions and to bring a properly constituted action. I would allow the appeal and dismiss the plaintiff's case with costs in both Courts.

ABRAHAMS C.J.—I agree.

Appeal allowed.