

1966 Present : T. S. Fernando, J., and Sri Skanda Rajah, J.

D. SRI DHAMMISSARA THERA, Appellant, and D. SRI
KALYANAWANSA THERA, Respondent

S. C. 275/62—D. C. Galle, 6075/L

Buddhist ecclesiastical law—Incumbency of a temple—Sisyanu sisya paramparawa rule of succession—Succession when incumbent dies leaving no pupils.

Under the *sisyanu sisya paramparawa* rule of succession to the incumbency of a Buddhist temple, if a viharadhipathi dies leaving pupils and also fellow-pupils, the senior pupil succeeds in preference to any of the fellow-pupils. Where the succession by pupils fails and one of the co-pupils of the deceased incumbent has to succeed, "logic must favour the passing of the succession to the senior among the co-pupils".

Plaintiff claimed to be declared the lawful viharadhipathi of a temple. He relied on the *sisyanu sisya paramparawa* rule of succession. Defendant's case was that the appointment of the viharadhipathi was effected by the sangha sabha from among monks belonging to the Kalyanawansa *paramparawa*. The evidence of the principal witness for the plaintiff showed (1) that in 1882 the incumbent, when he died, was succeeded by a brother priest and not by any of the surviving pupils of the deceased, (2) that in 1924, when the incumbent died leaving no pupils, he was succeeded by a co-pupil who was not the senior among the co-pupils.

Held, that the claim of the plaintiff was not maintainable.

APPEAL from a judgment of the District Court, Galle.

H. W. Jayewardene, Q.C., with *S. Wattegama* and *U. A. S. Perera*, for the defendant-appellant.

N. E. Weerasooria, Q.C., with *G. P. J. Kurukulasuriya*, for the plaintiff-respondent.

Cur. adv. vult.

July 5, 1966. T. S. FERNANDO, J.—

In this action the plaintiff claimed a declaration that he is the lawful viharadhipathi of the Buddhist Temple known as Sailabimbaramaya situated at Dodanduwa in the Southern Province and which is said to be the original temple of the Kalyanawansa sect to which both the plaintiff and the defendant belong. The plaintiff's claim was dependent on proof that the viharadhipathiship or incumbency of the said temple was governed by the *sisyanu sisya paramparawa* rule of succession. The defendant denied the application of this rule to this temple, his case being that the appointment of the viharadhipathi was effected by the sangha sabha from among monks belonging to the Kalyanawansa *paramparawa*.

After a very long contest in the District Court, the District Judge held that the *sisyanu sisya paramparawa* rule of succession applied to this temple and that the appointment to the office of viharadhipathi was not by selection by a sangha sabha as claimed by the defendant. He held also that the viharadhipathiship passed to the plaintiff on the death of the previous incumbent and ordered the ejection of the defendant from the said office. It is not disputed that the defendant, being a monk of the Kalyanawansa *paramparawa*, is entitled to the right of residence at this temple and to the other rights which monks of the *paramparawa* have in relation thereto. Those rights therefore were unaffected by the judgment of the District Court.

The defendant claimed to have been appointed as viharadhipathi by the sangha sabha at a meeting held at this very temple on the 30th August 1952 and, although we have heard argument by counsel appearing for him before us, we are unable to say that the learned District Judge was wrong in the conclusion he reached that those assembled in meeting on the 30th August 1952 could not have made a valid appointment or election of a viharadhipathi for this temple.

Learned counsel for the defendant has, however, advanced a strong argument against the finding that the *sisyanu sisya paramparawa* rule governed succession to the incumbency of this temple and we have therefore to consider the validity of that argument.

It was common ground that the original incumbent of this temple was Koggala Dhammasara Thera whose death occurred in the year 1855. The incumbency then passed to Sumanatissa Thera, his principal pupil, who held that office till his own death in 1882 when Dodanduwe Piyaratana Thera became the incumbent. This last-named monk was a co-pupil of Sumanatissa Thera, both being pupils of the original incumbent Dhammasara Thera. The plaintiff sought to establish that Piyaratana Thera was a pupil also of Sumanatissa Thera, but even on an assumption that he was such a pupil, it was not disputed that the senior pupil of Sumanatissa Thera was one Sobita Thera. It was not clear on the evidence why Sobita did not succeed on the death of Sumanatissa Thera in 1882 if the *sisyanu sisya paramparawa* rule applied, but the possibility of Sobita's death before 1882 could not be ruled out. Counsel for the plaintiff suggested that there was nothing in the nature of an obligation on the senior pupil of a deceased incumbent to accept office. Whatever the reason might have been, Piyaratana Thera did become incumbent, and that fact, as I have stated above, was not in dispute at the trial. This monk held office till 1907, and on his death his senior pupil Seelakkanda Thera succeeded him, and the incumbency fell vacant again only in 1924 in which year Harumalgoda Sumangala Thera became the incumbent. Sumangala Thera was not a pupil of Seelakkanda. Indeed, Seelakkanda left no pupil. Sumangala was a pupil of Dodanduwe Piyaratana Thera aforesaid and a co-pupil of Seelakkanda. Piyaratana Thera had left a number of pupils of whom it is necessary for the purpose of this appeal to notice only the 7th pupil Telwatte Ariyawansa Thera,

the 9th pupil Harumalgoda Sumangala Thera (who was incumbent from 1924 to 1952), the 10th pupil the defendant and the 12th pupil the plaintiff. The monk who succeeded Seelakkanda was, therefore, his 9th pupil Sumangala although a pupil senior to Sumangala was alive.

It has been argued on behalf of the defendant that, if the *sisyanu sisya paramparawa* rule was in operation here, Ariyawansa Thera should have succeeded. On behalf of the plaintiff it has been suggested that Ariyawansa Thera was not resident at this temple and had become the incumbent of a temple in Colombo and had probably abandoned any claim to succeed as viharadhipathi here. Such an abandonment was, however, not pleaded by the plaintiff; and even if it had been, it is pertinent to observe that Ariyawansa Thera's conduct at a meeting held in 1952 shortly after Sumangala Thera's demise was quite inconsistent with an abandonment of that nature. The evidence demonstrates that Ariyawansa Thera claimed at the meeting in question that the viharadhipathiship had devolved on him and that the plaintiff, although present at that meeting, neither demurred nor made a claim for himself as senior pupil of the deceased incumbent, Sumangala Thera.

Even if the defendant has been unsuccessful in satisfying the court of his appointment or election as viharadhipathi in 1952, the plaintiff himself cannot maintain the judgment and decree in his favour if he is shown not to have made good his own contention that the rule of succession applicable to Sailabimaramaya was that of *sisyanu sisya paramparawa*.

It is unnecessary to examine the entire mass of evidence led at the trial as, in holding for the plaintiff, the learned trial judge has purported to base his decision mainly on the evidence of Buddhadatta Nayaka Thera and the material contained in the book P1 entitled "Kalyani Sasana Wansaya", a history of the Kalyana Wansaya Sect compiled by this Nayaka Thera himself. He reached the decision that the officiating viharadhipathis of this temple were Dhammasara Thera, Sumanatissa Thera, Piyaratana Thera and Seelakkanda Thera in direct pupillary line of succession and that the succession of Sumangala Thera as viharadhipathi was not in conflict with the principle of pupillary succession. Learned counsel for the defendant has drawn our attention to certain evidence elicited during the cross-examination of Buddhadatta Nayaka Thera. This evidence is of the utmost importance in examining the maintainability of the plaintiff's contention and, surprisingly enough, appears to have escaped the attention of the learned trial judge. The most material part of this evidence is reproduced below in question and answer form as it appears in the record of the court below :—

Pages 110–111—

" Q. Rev. Dodanduwe Piyaratana was not a pupil of Rev. Sumanatissa by ordination ?

A. Yes—nor by robing.

At page 127 of P1 I have stated that Rev. Piyaratana (same as Piyaratana) was a pupil of Rev. Sumanatissa.

Q. Rev. Dodanduwe Piyaratana could not have called himself a pupil of Rev. Sumanatissa according to law ?

A. Yes.

After the death of Rev. Sumanatissa Rev. Dodanduwe Piyaratana was the viharadhipathi. That was not in accordance with the rules of *sisyanu sisya paramparawa*.

On the death of Rev. Sumanatissa as Rev. Dodanduwe Piyaratana was a priest of that temple he was appointed the viharadhipathi of this temple, and not according to the rules of *sisyanu sisya paramparawa*. Rev. Dodanduwe Piyaratana may have been appointed by the sangha sabha because he was an outstanding priest.....

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At the time there were other pupils of Rev. Sumanatissa. Passing over all of them, Rev. Piyaratana a brother priest was appointed. According to the rules of *sisyanu sisya paramparawa*, if there is a pupil, a brother pupil cannot be appointed. I do not know how Piyaratana was appointed to succeed Sumanatissa. ”

This evidence was that given by the principal witness for the plaintiff. Buddhadatta Thera was the Mahanayake or chief monk of the entire Kalyanawansa Sect. Any statement contained in this book PI that Piyaratana was a pupil of Sumanatissa must undoubtedly be regarded as modified by his testimony in the witness-box. An omission to do so and a reliance only on the statements in the book constitute misdirection of a material nature. The evidence in court was unequivocal in respect of the lack of legality in the claim that Piyaratana was a pupil of Sumanatissa, and the chain of succession appears to have been broken in 1882 which was the year of Sumanatissa Thera's death.

Mr. Jayewardene for the defendant contended that there was another break in 1924 upon the death of Seelakkanda Thera. Seelakkanda Thera left no pupils, but there were several co-pupils, all of them being pupils of Dodanduwe Piyaratana Thera. Sumangala Thera who succeeded to the incumbency in that year was not the senior of these co-pupils. Ariyawansa Thera was senior to Sumangala Thera. No abandonment by Ariyawansa Thera can, as I have indicated above already, be inferred in the circumstances in evidence at the trial. If a co-pupil of a deceased incumbent monk is to succeed in the absence of a pupil, could any co-pupil succeed or must it not be the senior among the co-pupils so long

as they are in the same *paramparawa*? No clear specific precedent was cited before us, but Mr. Jayewardene referred to the dissertation on the *Sisyanu Sisya Paramparawa* by G. W. Woodhouse (1916). At pages 32–33 of this monograph the undermentioned rule of inheritance or succession is quoted :—

“ If an incumbent of a vihare die leaving pupils and also fellow-pupils, the senior pupil succeeds in preference to any of the fellow-pupils. But if he leave no pupils, the senior fellow-pupil succeeds, provided he is in the line of pupillary succession to the vihare.”

The acceptability of the earlier part of this rule is evidenced by many decisions of our courts, e.g., *Gunananda Unnanse v. Devarakkita Unnanse*¹ and *Fernando v. Jinalankara Tissa Thera*². In regard to the latter part of the rule, I have examined the old cases cited by the learned author but am unable to say that this part of the rule as quoted above is culled verbatim from any of them. I am, however, bound to observe that the rule has the virtue of being complementary to the allied rule that the senior of the pupils succeeds to the tutor. Where the succession by pupils fails and one of the co-pupils of the deceased has to succeed, logic must favour the passing of the succession to the senior among the co-pupils. Moreover, there is nothing impractical in the working of a rule such as that as no monk is obliged to accept office. Where the senior is unwilling to accept, the next senior willing to accept will succeed to the office. The second break in the chain of succession is also, in my opinion, established.

The result one had, therefore, to reach on the evidence was that the plaintiff failed to establish the application of the *sisyanu sisya paramparawa* rule to this temple. Such a result received, in my opinion, some support by the conduct imputed to the plaintiff at the meeting proved to have been held at this very temple soon after the death of Sumangala Thera at which, according to Buddhadatta Nayaka Thera himself, one of the matters brought up was the appointment of a viharadhipathi. It remains only to add that there was nothing sufficiently strong in the documents produced at the trial revealing correspondence between the plaintiff and the defendant after the death of Sumangala Thera in 1952 to avert this result.

For the reasons set out above, I would set aside the decree entered in the District Court in favour of the plaintiff and direct that his action be dismissed. Each party will bear his costs in the court of trial, but the defendant is entitled to the costs of this appeal.

SRI SKANDA RAJAH, J.—I agree.

Decree set aside.

¹ (1924) 26 N. L. R. at p. 275.

² (1945) 46 N. L. R. at p. 522.