

KEVITIYAGALA ANANDA THERO
v.
PULIYANKADUWALA WIMALASARA THERO

COURT OF APPEAL.
WIGNESWARAN, J. AND
JAYAWICKREMA, J.
C.A. NO. 386/87 (F).
D.C. ANURADHAPURA NO. 9832/L.
NOVEMBER 04, 1997.
DECEMBER 18, 1997.
NOVEMBER 04, 1998.

Buddhist Temporalities Ordinance – Viharadhipathy – Rule of succession – Priest allowed to reside temporarily – Leave and licence – State land – Is it Sangika?

The plaintiff-respondent averred that the temple was a Purana Rajamaha Vihare and that the rule of succession is by the Rules of Sisyanu Sisya Paramparawa, and that he was in the line of succession and that the temple belonged to the Malwatte Chapter of the Siyam Nikaye. It was his further position that the defendant-appellant had originally come to the temple with the leave and licence of one Rev. Ratnajothi (earlier incumbent) and that he was interfering with the administration of the temple and its temporalities.

The defendant-appellant averred that the land is State land, and the people of the surrounding colonies rehabilitated the temple and on their invitation he came to reside in the said temple. It was his position that, a declaration that the plaintiff-respondent is the controlling Viharadhipathy of a temple in a State land is not possible under the law, and that the State land is not Sangika; and challenged the *locus standi* of the plaintiff-respondent.

Held:

1. At the meeting of the Temple Development Society held on 13.6.1978, presided over by the defendant-appellant, his utterances as recorded clearly establish that the defendant-appellant had come to reside in this temple only for the purpose of his employment as a Teacher, and upto that date he had never claimed any right or title to the Viharadhipathiship of the temple or its property.

2. The Government Agent had made an order to the District Land Officer to issue a permit. The permit was required only regarding an encroachment and not for the temple itself; therefore, the position that the temple was situated on a State land cannot be accepted.
3. The letter of appointment of the defendant-appellant by the Sasanaraksaka Samithiya and Mahanayake of the Ramagnna Nikaya contradict each other as regards to the appointing authority, these documents do not state on what right the appointment was made; and no evidence was led on this issue.

APPEAL from the judgment of the District Court of Anuradhapura.

Cases referred to:

1. *Sumanasara v. Gunaratna* – 8 CLW 69.
2. *Pema v. Jinalankara Thero* – 31 CLW 43.
3. *Punchirala v. Dharmananda Thero* – 48 NLR 11.
4. *Dharmarakkita v. Wijitha* – 41 NLR 401.
5. *Dhammaloka Thero v. Saranapala Thero* – 57 NLR 518.
6. *Jinaratana Thero v. Dharmarathana Thero* – 57 NLR 372.
7. *Nandarama v. Rathanapala Thero* – 57 NLR 445.
8. *Thoma Perera v. Premananda Thero* – 52 CLW 14.
9. *Okandeyaye Wangeesa Thero v. Mulkirigalla Sunanda Thero* – 65 NLR 388.

N. R. M. Daluwatte, PC, with *Gamini Silva* for defendant-appellant.

D. R. P. Goonetilleke with *S. Suraweera* for substituted plaintiff-respondent.

Cur. adv. vult.

January 21, 1999.

JAYAWICKREMA, J.

This is an appeal from the judgment of the learned District Judge of Anuradhapura dated 20.10.1987 entering judgment in favour of the plaintiff.

The original plaintiff Dutuwewa Ratanasara Thero instituted this action against the defendant-appellant claiming that he was the

controlling Viharadhipathy of the temple called Galmaduwa Sailabimbaramaya Purana Rajamaha Viharaya and ejection of the defendant therefrom. The plaintiff-respondent averred that the temple was a Purana Rajamaha Viharaya dated from the time of Sinhalese kings and that the rule of succession to this temple was governed by the Rules of Sisyanu Sisya Paramparava and that he was in the line of succession and that the temple belonged to Malwatta Chapter of the Siyam Nikaya.

The plaintiff-respondent averred that the defendant had no title to the temple, that he had originally come into occupation of the temple with the leave and licence of one Kokmaduwa Ratanajothi Thero, the earlier incumbent of the temple and that he was now interfering with the administration of the temple and its temporalities. The plaintiff-respondent further averred that Watawana Indragupta Thero was the Viharadhipathy of the said temple and thereafter it devolved on Palugollagama Gunaratna Thero who by deed No. 3403 of 3.8.1963 appointed Kokmaduwa Ratanajothi Thero to manage the temple on his behalf and to succeed him as Viharadhipathy. Thereafter, Gunaratne Thero and Ratanajothi Thero by deed No. 1407 on 14.02.1972 (P2) appointed the plaintiff as Controlling Viharadhipathy of the said temple. The plaintiff pleaded that the said Ratanajothi Thero permitted the defendant to reside temporarily from 31.7.77 when he came as a teacher in a school in the area and since the middle of 1978, the defendant claimed rights and ownership and took the income from the temple and its appurtenant temporalities.

The defendant denied that he ever came on the invitation or permission of Kokmaduwe Ratanajothi Thero and stated that the land described in the answer was a State land and the people of the surrounding colonies rehabilitated the temple and on their invitation he came to reside in the aforesaid temple.

The original plaintiff died and his pupil Puliyankaduwa Wimalasara Thero was substituted. It is admitted that the plaintiff and the defendant belonged to two separate Nikayas, the plaintiff to the Malwatta Chapter of the Siyam Nikaya and the defendant to the Ramagnna Nikaya, respectively.

The learned President's Counsel for the appellant submitted that the land described in the schedule which is the subject-matter of this action was a State land and that even the original plaintiff made an application to the Government Agent, Anuradhapura on 15.10.80 asking for a permit (V4). He further contended that from the evidence it was elicited that it was a State land and although the documents V4 and P2 referred to a Sannasa, no evidence was led in that respect. Therefore, he contended that the position of the plaintiff as regards a dedication in favour of Indragupta Thero by a Sannasa has not been proved.

The learned President's Counsel for the appellant further submitted that a declaration that the plaintiff is the controlling Viharadhipathy of a temple in a State land is not possible under our law. State land is not Sangika. He further contended that the plaintiff and the substituted plaintiff have no *locus standi* to institute and maintain this action and that a Viharadhipathy cannot effectively appoint another to be Viharadhipathy in his place in his lifetime.

The learned President's Counsel for the appellant contended that the trial Judge was in error when he held that the defendant cannot question the title or the devolution of title of the plaintiff. The learned President's Counsel for the appellant submitted that temples do not belong to any Chapter, but priests in a temple may come under a Nikaya or a Chapter of a Nikaya, and that temples do not come under a Nikaya.

He further contended that a Sangika temple is dedicated to the entirety of Sangha from the four corners so that no Nikaya can claim proprietary rights. But, the monks to whom it is dedicated on behalf of the Sangha can belong to a particular Nikaya.

The learned District Judge held that the temple belonged to the plaintiff according to Sisyanu Sisya Paramparawa. Further, he held that the defendant had come to the temple not as of right but on leave and license of the plaintiff as he had come to that area for employment as a teacher.

Historically, Purana (ancient) Viharas were built on State land on grants by the King. In fact, in certain areas there are not only Buddhist temples but even Churches, Kovils and Mosques built on State land on the basis of 99-year lease from the State.

History apart, in the instant case the contents of the documents produced by the defendant as "V1, V2 and V3" are revealing. The documents 'V1, V2 and V3' are minute books of the Sasana Araksaka Samitiya of Galmaduwa temple. These minutes have been maintained since the inauguration of the Society from 1961 onwards.

According to the minutes dated 28th August, 1961 (page 7 of V2) this Society was formed on 7.8.1961 for the development of the Purana Galmaduwa Viharaya. According to the minutes dated 22nd June, 1962 (V1 – page 17) a meeting was held presided over by the plaintiff's predecessor Palugollagama Sri Gunarathanabidana Nayaka Thero of Dutuwewa Rajamaha Viharaya for the purpose of laying the foundation stone for a shrine room. According to these minutes, Dutuwewa Viharadhipathy has stated that this temple was in ruins for over 100 years and thanked the Society for taking steps to rehabilitate it. According to the minutes of 26th December, 1962 (V2 – page 33) this Society with the consent of Dutuwewa Nayaka Thero decided to invite a priest to convert this temple into a Meditation Centre. When one considers the above minutes it is abundantly clear that the Society which was formed by layman to rehabilitate this temple had acted on the guidance and instructions of Dutuwewa Gunarathanabidana Thero who was the predecessor in title of the plaintiff.

Somewhere after 17th May, 1963 (page 58) there seems to have been some dispute between Dutuwewa Nayaka Thero and the Society. The Society thereafter decided to make an application to get a permit from the Government Agent regarding this temple land.

When one considers the minutes of the Vihara Development Society maintained by the Society since its inauguration in 1961, it is very clear that even before the formation of the Society and after its formation the predecessor of the plaintiff had acted as Viharadhipathy of the temple and presided over some of the meetings of this Society.

The Vihara Development Society and Dutuwewa Nayaka Thero have acted in co-operation to develop this temple till upto 1974. According to the minutes of the Society (V1, V2 and V3) there seems to have been some dispute between Dutuwewa temple and the Development Society thereafter on matters regarding the development, rehabilitation and other matters connected to the temple. There had been some dispute between the resident Bhikku of the temple and complaints had been made to Dutuwewa Nayake Thero by the Society. Some of these disputes had been amicably settled by the intervention of Dutuwewa Nayake Thero.

According to the minutes of this Society dated 13th June, 1978 (V9 – page 53 of V3) for the first time the defendant's name appears in the minutes. On that date the Temple Development Society held its meeting presided over by the defendant Kevitiyagala Ananda Thero. In those minutes he described himself as resident Priest (විහාරස්ථානයේ වාසී වහන්සේ) of the temple. The defendant priest had made a speech stating that the meeting was called on his earnest request for the purpose of discussing the objections raised by Dutuwewa Viharadhipathy regarding the defendant being resident in the temple. The defendant in his speech as recorded in the minutes has clearly stated that he came to reside in this temple temporarily until he gets a transfer to another place; that he was residing in the temple at the request of the Dayaka Sabha and that he wished to thank the Dayaka Sabha for that and informed them that he had already decided to leave the temple for another place. Some of his utterances as reported in the minutes are as follows:

“විංචතුන් දන්නවා ඇති එළා මීට ප්‍රථම දුටුවාම විහාරාධිපතිවහන්සේ සාකච්චා රැස්වීමකදී මා මේ කටයුතු කිරීමට විරුද්ධ වූ බව කවුරුත් දන්නවා. මම මේ පන්සල ඇත් යන්නට වැඩ කරනවා නොවෙයි. මා ඉන්නා කාලය තුළදී ප්‍රදේශයට යේවයක් කරන අතරම විහාරස්ථානය දියුණු කළත් මාරුවක් ලැබුණු විට දම්මල යනවා. එතරකට පන්සල මෙහෙ. මම එහෙ. මට මගේ පන්සල් ඕන තරම් ඇති කියලා කිව්වත් ඒ හැමුදරුවෝ එය පිළිගන්නේ නැත. මෙතෙක් කල් සිටියේ මේ දශක මහතුන්ගේ ආරාධනාව පිට විහාරස්ථානයට පැමිණී තිබෙයි. කණහාටුව දහම් පාසල මීට දරුවැරියන්ගේ අනාගතය නැවත අදහර වැටෙනවා සැකයක් නැහැ. මේ ආරාමයේ වෙළී සිටීමෙන් අප කාටත් පසුවට කරදරවලට පැටලෙන්නට සිදුවනවා. ඒ මා තිබෙයි. මම මෙයින් පිට වී මගේ රාජකාරිය කර ගෙන ගියොත් ඒ හැම කරදරයක්ම නැතිවෙනවා.

මා මෙයින් ගිණය කියලා අපගේ පුහුණුව මා මේ ප්‍රදේශයේ ඉන්නා තෙක් පවතිනවා. එය එයේම වේවා යයි ප්‍රාර්ථනා කරනවා. මම වෙන තැනක් යොකා කමට තීරණය කරලා අවසානයේදී මේ පිංචතුන්ට ආයුර්වේදයේ කිවේ අදහස ඇතුළත් වීමේ රැස්වීම කැඳවීමට ඉල්ලා සිටියේ.

The above statement of the defendant clearly establishes the fact that he had come to reside in this temple only for the purpose of his employment as a teacher. Upto that date (ie 13.6.1978) he had never claimed any right or title to the Viharadhipathiship of the temple or its property. The above statement is a clear admission by the defendant that he came to the temple on a temporary basis for the purpose of employment.

Apart from the above statement there had been heated argument among the members of the Dayaka Sabha at that meeting and a number of members had severely criticized Dutuwewa Nayake Thero and it was unanimously decided to appoint the defendant priest as the Viharadhipathy of this temple. The defendant accepted it and thereafter according to the minutes of this Society, the Society and the defendant decided to face any consequences arising from this act and made various representations to the Government Agent for a permit and even retained lawyers to assist the defendant. Due to these actions of the defendant and the Temple Development Society the plaintiff filed this action in 1980 to vindicate his rights to the temple. In paragraph 12 of his plaint the plaintiff averred that the defendant disputed his title from 13.11.1979 and this fact is clearly established by the defendant's documents marked as 'V3' and referred to above.

When one considers the above facts which were elicited from the documents marked by the defendant, it is abundantly clear that till about 1978, the defendant had no right nor any claim to the temple which is the subject-matter of this case. It also very clearly establishes the fact that the plaintiff and his predecessor in title were in control of this temple.

Apart from the above facts the plaintiff himself had marked some very old documents which substantiate the fact that the plaintiff and his predecessor were in control of this temple. 'P1' dated 3rd August,

1963, 'P2' dated 14th February, 1979, are deeds on which the plaintiff asserted his rights as Viharadhipathy of this temple; 'P3' dated 3rd December, 1955, which is the Samanera Declaration; 'P4' dated 30th June, 1959, which is the Upasampada Declaration; 'P5' which is a notice of a religious ceremony dated 11th May, 1945; 'P6' dated 2nd March, 1932, which is a Upasampada Declaration; 'P11' dated 28th November, 1979 which is a Samanera Bhikku Declaration refer to the temple as belonging to the plaintiff and his predecessors in title. Documents 'P3, P4, P6, P8, P9 and P11' are certified copies of the documents maintained under section 41 of the Buddhist Temporalities Ordinance.

As regards the submission made on behalf of the appellant that this temple is situated in a State land, the document marked as 'V4' clearly proves that the Government Agent had decided to issue a permit on the application of the plaintiff. 'V4' dated 15.10.1980 is an application by the plaintiff priest made to the Government Agent of Anuradhapura claiming his title to this temple on a grant by King Keerthi Sri Rajasinghe and stating that the temple was under the control of his predecessors since 1774, and that it is depicted in plan No. 1549 of 1972. Although these documents were not produced at the trial the Government Agent seems to have accepted this position taken up the plaintiff priest as shown by the minutes made by the Government Agent. The Government Agent had made an order to the District Land Officer to take necessary steps to issue a permit. On his direction a file had been opened and necessary steps had been taken to verify these facts. In the mean time the Temple Development Society had made objections to the issue of such a permit and thereafter no steps were taken regarding this matter as this case was instituted by the plaintiff against the defendant. According to the document marked as 'V6', which is a letter addressed to the Government Agent by the Superintendent of Surveys, Anuradhapura, dated 3.10.1984, the land which the plaintiff has claimed as belonging to the temple is referred to as "FVP No. 1549 lot No. 219; extent five acres and 27 roods". The Superintendent of Surveys describes this land as an "encroachment by Galmaduwa Buddhist Temple and premises Chief Incumbent P. Sri Gunarathana Thero". This clearly

proves the fact that the Chief Incumbent of Galmaduwa Buddhist Temple was the plaintiff's predecessor in title P. Sri Gunarathana Thero. The permit was required only regarding an encroachment and not for the temple itself. In view of this, the submission that the temple was situated on a State land cannot be accepted. According to the minutes of the Temple Development Society, there had been disputes regarding the cultivation of lands and paddy-fields which belong to this temple which were in fact encroachments made by some of the members of the Dayaka Sabha. According to the plaint the subject-matter of this action is 'Dutuwewa Galmaduwa Sri Sylabimbaramaya Purana Rajamaha Viharaya' and according to the answer it is 'Galmaduwe Purana Rajamaha Viharaya'. 'V6' produced by the defendant states that Gunarathana Thero was the Chief Incumbent of Galmaduwa Buddhist Temple.

Against all the above evidence in favour of the plaintiff, the defendant's evidence regarding his claim is only subsequent to year 1978. As stated above according to 'V9' the defendant was appointed as the Viharadhipathy of this temple by the 'Sasanaraksaka Samithiya' on 13th June, 1978. Subsequent to that appointment the defendant was again appointed as Viharadhipathy of Galmaduwa Purana Rajamaha Vihara by the Ramagnna Nikaya (V11) on 22 March, 1983. The Maha Nayake of Ramagnna Nikaya issued a letter marked 'V12' dated 19.2.1986 stating that the defendant is the Viharadhipathy of this temple. These two documents (V9 and V11) contradict each other as regards to the appointing authority. 'V9' and 'V11' are not only contradictory in nature as the defendant's appointment as Viharadhipathy, had been made by two different authorities, these documents do not state on what right the appointment was made. The only conclusion, one can arrive at is that there had been no proper legal appointment as far as the defendant was concerned. Against these two documents the plaintiff produced the letter marked 'P13' dated 5th January, 1979, issued by Maha Nayaka of Malwatte Chapter of the Siyam Nikaya certifying that Dutuwewa Galmaduwe Sri Sailabimbarama Purana Rajamaha Viharaya belongs to the Malwatte Chapter of Siyam Nikaya and that Sri Gunarathana Thero was the Viharadhipathy of the temple. No evidence had been led by the

defendant to prove whether the Dayaka Sabha or the Sasanaraksaka Samithiya of the temple or even the Mahanayaka Thero of the Ramagnna Nikaya had any right to confer on him the Viharadhipathyship of the temple.

When one considers on a balance of probabilities the above facts elicited from the evidence led in this case, it is abundantly clear that the plaintiff and his predecessors were appointed as Viharadhipathies of this temple and were in control of the property of this temple.

The mode of succession to Viharadhipathy is governed by Buddhist Ecclesiastical Law as there are no statutory provisions regarding the mode of succession to Viharadhipathy of a temple. The question as to who succeeds to a Viharadhipathy is answered by reference to the Buddhist customs recognised as Sisyanu Sisya Paramparawa. According to this rule the eldest pupil priest succeeds the master unless a contrary rule is shown to be applicable. (vide *Sumanasara v. Gunaratna*⁽¹⁾). If at the original dedication no provision was made for regulating the mode of succession to the incumbency, this rule would apply and the person who dedicated the temple and the grantors cease to have any rights over the incumbency. (vide *Pema v. Jinalankara Thero*⁽²⁾).

In *Punchirala v. Dharmananda Thero*⁽³⁾ a plaintiff who was not in the line of pupillary succession from the original incumbent nor a pupil of the last incumbent, but had been placed in charge of the temple by the last incumbent who had then disrobed himself was not allowed to maintain an action for a declaration of title to property belonging to the temple. This decision proceeded on the basis that an incumbent cannot grant the right of succession to a stranger. In *Dhammarakkita v. Wijitha*⁽⁴⁾ it was held that the pupils of a deceased incumbent have the right to elect one of their own number other than the senior pupil as incumbent when the senior pupil consents to or acquiesces in such election. In *Dhammaloka Thero v. Saranapala Thero*⁽⁵⁾ it was held that upon the extinction of the line of the pupillary succession to a Buddhist temple governed by the rule of succession known as Sisyanu Sisya Paramparawa, the temple vests in the Sangha and the right of

appointment of a new Viharadhipathy vests in the Mahanayaka of the fraternity which has jurisdiction over it. The fact that a stranger has functioned as Viharadhipathy for a long period does not entitle him to defeat the Mahanayaka's right of appointment, which is a right that cannot be lost by prescription (vide *Jinarathana Thero v. Dharmarathana Thero*⁽⁶⁾; *Nandarama v. Rathanapala Thero*⁽⁷⁾).

In *Thoma Perera v. Premananda Thero*⁽⁸⁾ it was held that the term "Viharadhipathy" in section 4 (2) of the Buddhist Temporalities Ordinance means the monk who is the Principal Bhikkhu in the line of pupillary succession from the first incumbent of a temple. In that case Sansoni, J. observed: "At no time in the history of a Buddhist temple in this Island has a priest who has no right to incumbency of a temple been invested with the title to or the power to manage, the temporalities of the temple. I am unable to accept the suggestion that the Ordinance of 1931 (cap. 222) had the far-reaching effect of conferring an important legal status on one who may not even claim to be and who is not in law the chief priest of the temple".

Under section 20 of the Buddhist temporalities Ordinance all property belonging to any temple shall vest in the trustee or the controlling Viharadhipathy for the time being of such temple. In *Okandeyaye Wangeesa Thero v. Mulkirigalla Sunanda Thero*⁽⁹⁾ it was held that in view of the lapse of time and the absence of record of the terms by which the succession to the incumbency was regulated by the original dedication, the traditional and customary mode of appointment was for the Maha Sangha Sabha to make the appointment from among the Mulkirigala Paramparawa, a suitable monk being elected irrespective of whether he was a pupil of the last incumbent.

Applying the above principles of law to the facts of this case one can only come to the conclusion, without any shadow of doubt, that the temple which is the subject-matter of this action belongs to the Malwatta Chapter of the Siyam Nikaya and that the plaintiff and his predecessors were entitled and were in control of this temple and its property as controlling Viharadhipathies.

When one takes into consideration the above facts and law it is clear that the learned District Judge had considered all aspects and had come to a correct determination.

We have examined the evidence led in this case, the documents, the written and oral submissions of the counsel and the evaluation of the evidence and the judgment entered by the learned District Judge carefully. We are in agreement with the view taken by the learned District Judge. The learned District Judge had preferred to accept the evidence of the original plaintiff-respondent in preference to the evidence of the defendant-appellant.

We are satisfied that the learned District Judge had considered and evaluated the totality of the evidence in this case and we are in agreement of the conclusion arrived at by the learned District Judge.

Hence, we affirm the findings of the learned District Judge and dismiss the appeal with taxed costs payable by the defendant-appellant to the substituted plaintiff-respondent.

WIGNESWARAN, J. – I agree.

Appeal dismissed.