

Morawaka v. Dhammaratna Thero

COURT OF APPEAL.

SOZA, J. AND VICTOR PERERA, J.

C. A. (S.C.) 172/71 (F)—D. C. COLOMBO 12432/L.

NOVEMBER 9, 10, 27, 28, 1978.

Buddhist Ecclesiastical Law—Transfer of land by Viharadhipathi of temple to third party—Claim by succeeding Viharadhipathi against transferee on basis that land was sangika property—Character of the property—Burden of proof.

The plaintiff as the Viharadhipathi of a Buddhist temple filed this action against the defendant seeking a declaration of title to a land on behalf of the said temple. The defendant claimed title on the basis of a transfer to him for valuable consideration by the predecessor of the plaintiff as Viharadhipathi of the said temple. The defendant's position was that the land in question was the *pudgalika* property of the plaintiff's predecessor as Viharadhipathi while the plaintiff himself claimed that it was *sangika* property. The land in dispute had been sold to Madiwala Dhammatilaka Therunnnanse the plaintiff's predecessor in office on deed No. 5647 of 27.8.38 by two persons D. J. Ramanayake and M. S. Perera. The learned District Judge had held that the land in the hands of the said two vendors had not been *sangika* property although it had been urged on behalf of the plaintiff that it was and that the said vendors had been holding the said premises in trust for this temple as there had been an assignment of a decree in favour of an earlier Viharadhipathi to these vendors. The terms of the deed itself did not indicate that it was purchased with temple funds or that the plaintiff's predecessor even purported to purchase the land in 1938 as Viharadhipathi.

Held

It was for the plaintiff to prove that on the transfer by Ramanayake and Perera to Dhammatilaka Thero the property became temple land or acquired the character of *sangika* property.

The learned trial Judge was wrong in holding that merely because Dhammatilaka Therunnanse who officiated as controlling Viharadhipathi possessed the land for over 30 years until he sold the same to the defendant, he had acquired a title to this land as *sangika* property by prescription. If he had possessed the land in this way and prescribed against his vendors this possession would enure to the benefit of his transferee the defendant; but in the absence of proof that the land was purchased with temple funds, that the income derived by leasing the land was utilized for the temple or in the absence of any gift or dedication to the temple the finding that the land became *sangika* property could not be upheld.

Cases referred to

- (1) *Marshall's Judgments*, 649.
- (2) *C. R. Kegalla Case No. 2743, Perera's Armour* 51, 52.
- (3) *Ratnapala Unnanse v. Cader and Another*, (1882) 5 S. C. C. 61.
- (4) 32 *D. C. Matara, Morgan's Digest*, 282.
- (5) *C. R. Kegalla, 2743, Solomon's C. R. Appeals, Pt. 1*, 10.
- (6) *D. C. Kandy 67849, (1877) Ramanathan Reports* 182.
- (7) *Ranasinghe v. Dhammananda*, (1935) 37 N.L.R. 19.
- (8) *Wickremasinghe v. Unnanse*, (1920) 22 N.L.R. 236.
- (9) *Dhammananda v. Ranasinghe*, (1937) 39 N.L.R. 567 (P.C.).
- (10) *Dhammananda Nayaka Thero v. Piyaratna Nayake Thero*, (1958) 59 N.L.R. 412.
- (11) *Dhammananda Nayake Thero v. Pannasekera Nayake Thero and Others* (1963) 65 N.L.R. 196 (P.C.).
- (12) *Dharmakeerthi Thero v. Jinasiri Thero*, (1978) 79 (2) N.L.R. 86.
- (13) *Saranankara Unnanse v. Indajothi Unnanse*, (1918) 20 N.L.R. 385.
- (14) *Wijewardena v. Buddharakkita Thera*, (1957) 59 N.L.R. 121.

APPEAL from the District Court, Colombo.

C. Ranganathan, Q.C., with *E. S. Amerasinghe, M. B. Peramuna* and *I. (Hassen)*, for the defendant-appellant.)

H. W. Jayewardene, Q.C., with *Walter Wimalachandra* and *Lakshman Perera*, for the plaintiff-respondent.

Cur. adv. vult.

January 24, 1979.

VICTOR PERERA, J.

This action for a declaration of title is in respect of the land called Waljambugahawatte filed by the Viharadhipathi of Wijayasiriwardhanaramaya claiming the land to be Sangika property. It will be necessary to set out the documentary evidence in chronological order before the matters in dispute are considered. The original owner of this land was one Morawakage Bastian Perera who by Deed No. 3696 dated 24th November, 1908, (D2) sold the same to Mirihane Aratchige Sadelis Appu who by Deed No. 4070 dated 30th January, 1918, (D1) sold the same to one Henry Alexander Silva. Henry Alexander de Silva by Deed No. 281 dated 17th July, 1930 (P7) mortgaged this land together with two other lands on Deed No. 281 dated 17th July, 1930, to Talapathpitiya Pematatana Therunnanse, *Incumbent of Wijayasiriwardhanaramaya* for Rs. 3,500 being money lent and advanced to him by the said Talapathpitiya Pematatana Therunnanse. The

said Alexander de Silva in terms of the said deed engaged and bound himself to repay the said sum of Rs. 3,500 to the said *Talapathpitiya Pematatana Therunnanse or his heirs, executors, administrators and assigns* and until such repayment to pay interest at 13 per cent per annum from the date of the said mortgage. The said *Thalapathpitiye Pematatana Therunnanse*, Incumbent of *Wijayasiriwardhanaramaya* as plaintiff filed case No. 52308 in the District Court of Colombo against Alexander de Silva on 31st March, 1933, for the recovery of Rs. 4,732.32, interest and costs due on the said mortgage bond and for a hypothecary decree. In paragraph (2) of the plaint (P8) he the defendant bound himself to pay the plaintiff, namely, *Talapathpitiya Pematatana Therunnanse or to his heirs, executors, administrators and assigns* the sum of Rs. 3,500 and interest at 13 per cent per annum. Decree was entered in the said action on 21st July, 1933, (P9), that the defendant do pay the plaintiff the sum of Rs. 4,732.32 with interest on Rs. 3,500 at 13 per cent per annum from 31.3.1933 up to the date of decree and thereafter with interest at 9 per cent per annum till payment in full and costs of suit but that if the defendant pays a sum of Rs. 4,500 on or before 30th November, 1933, then satisfaction of decree was to be entered. Thereafter *Thalapathpitiya Pematatana Therunnanse*, Incumbent of *Wijayasiriwardhanaramaya* by Deed No. 851 dated 25.8.1934 (P11) purported to assign the decree for Rs. 5,000, to (a) Don James Ramanayake and (b) *Mirihanage Sadiris Perera*.

The recitals in the said Deed No. 851 are as follows :—

“Whereas the said *Talapathpitiya Pematatana Therunnanse* obtained judgment and decree dated 21st July, 1933, in action No. 52308 etc. and whereas the said *Talapathpitiya Pematatana Therunnanse* has agreed with Don James Ramanayake and *Mirihanage Sadiris Perera* for the absolute assignment *unto them* the amount due and recoverable under the said judgment and decree for a sum of Rs. 5,000.”

The operative part of the Deed of Assignment is as follows :—

“Now Know You and These Present Witness that the said *Thalapathpitiya Pematatana Therunnanse* in pursuance of the said agreement and for and in consideration of the sum of Rs. 5,000 well and truly paid to him by the said *Don James Ramanayake and Mirihanage Sadiris Perera* at the execution of these presents (the receipt whereof he doth hereby admit and acknowledge) doth hereby transfer, assign, set over and assure unto the said *Don James Ramanayake and Mirihanage Sadiris Perera, their heirs, executors, administrators and assigns, etc.*”

The Habendum clause in the deed reads as follows :—

To have Hold receive and Take the said moneys hereby assigned and every part thereof unto the said Don James Ramanayake and Mirihanage Sadiris Perera and their afore-written for *their own use and benefit absolutely*”.

However, the attestation states that for the consideration of Rs. 5,000 a Promissory Note of the same date was given by the assignees in favour of the assignor. The note has not been produced and no positive evidence has been led to prove whether the money was received by or paid to Premaratana Therunnanse.

The said Don James Ramanayake and Mirihanage Sadiris Perera thereafter on 1.10.1934 applied to the District Court in case No. 52300 (Colombo) to have themselves substituted in place of the plaintiff (execution creditor) and moved for an order to sell the three mortgaged properties. Thereafter the mortgaged properties were sold. At the sale the two substituted execution creditors purchased two of the three lands on Deed No. 919 dated 30th July, 1935 (P12) while the 3rd land was purchased by a third party. The substituted execution creditors had drawn the sum of Rs. 500 being the proceeds of sale deposited in Court. It would thus appear from the documents that the said Don James Ramanayake and Mirihanage Sadiris Perera had obtained credit in Rs. 3,250 and obtained cash Rs. 500 on the sale in execution. The said Pematana Terunnanse died on 27.3.1937 according to the Death Certificate (P1).

The next document in the chain of title is Deed No. 5647 dated 27.8.1938 (P13) by which Don James Ramanayake and Mirihanage Sadiris Perera sold *one of two lands purchased by them on Deed 919*, namely the land which is the subject matter of this action to *Madiwala Dhammatilaka Therunnanse of Wijayasiriwardhanaramaya* for Rs. 2,500 (well and truly paid to them by the purchaser). In the attestation the Notary certified that Rs. 500 was paid in cash in his presence and Rs. 2,000 was acknowledged to have been received earlier. On the same date the said Madiwala Dhammatilaka Therunnanse of Wijayasiriwardhanaramaya borrowed Rs. 500 on Deed No. 5648 dated 27.8.1938 (D3) from the Withanage Carolis Perera and the attestation states that Rs. 500 was paid in cash in the presence of the Notary. The discharge of this bond has been registered on 5.4.1939.

Thereafter according to the documents produced at the trial Madiwala Dhammatilaka Maha Isthavira, the Viharadhipathi of Wijayasiriwardhanaramaya, leased this land for Rs. 5,000 for 5 years to Carolis Perera Morawaka the defendant-appellant in

this action on Deed No. 8287 dated 1.1.1960 (P17). Again by lease Bond No. 12639 dated 17.1.1965 (D4) the said Madiwala Dhammatilaka Maha Thera leased the said land for a further period of 5 years from 8.1.1965 for Rs. 5,000 to this defendant-appellant and according to the attestation this sum was paid before the Notary.

The said Madiwala Dhammatilaka Isthavira having possessed the said premises from 1938 by himself and through his lessees did by Deed No. 14558 dated 17th May, 1967 (P14) sell the said land to the defendant-appellant for Rs. 25,000. The deed describes Madiwala Dhammatilaka Isthavira, the Chief Incumbent of Wijayasiriwardhanaramaya. In the attestation the Notary certifies that Rs. 15,000 was paid in his presence and that Mortgage Bond No. 14559 of even date was given for the balance of Rs. 10,000. The Mortgage Bond No. 14559 had been produced as D7 and the deed states that the defendant-appellant had mortgaged the said land to Madiwala Dhammatilaka Thero, the Viharadhipathi of Wijayasiriwardhanaramaya with a promise to pay the said sum of Rs. 10,000 to him, his heirs, executors, administrators and assigns with interest at 2 per cent per annum. This money due on this Bond had been paid to the said Dhammatilaka Therunnanse and discharged (D7A). The next document produced is an affidavit dated 2nd July, 1967 (D5) given by Madiwala Dhammatilaka Thero, the Viharadhipathi of Wijayasiriwardhanaramaya to the effect that he sold the said land for Rs. 25,000 of his own free will.

The said Madiwala Dhammatilaka Thero died on 30th May, 1968, at the age of 80 years according to the Death Certificate (P3).

On a bare analysis of the above documents and the recitals contained therein there is a total absence of any evidence that this land was at any time purchased with temple funds or that the income from the lands were appropriated by or used for the temple.

On the 4th of July, 1969, the Rev. K. Dhammaratana Thero, the plaintiff-respondent filed this action as controlling Viharadhipathi of Wijayasiriwardhanaramaya against the defendant-appellant challenging the validity of the sale of the land in dispute on Deed No. 14599 dated 17th May, 1967, (P14) seeking a declaration of title to the said land on behalf of the said Temple on the basis that the purported conveyance by his tutor Dhammatilaka Thero was not valid and of no force or effect in law as the property at all material dates belonged to the said Temple.

The plaintiff-respondent made this claim on the basis that Pematatana Therunnanse had lent Temple Money on Mortgage Bond No. 281, that as Viharadhipathi he obtained a hypothecary decree in case No. 52308 of the District Court of Colombo, that as Viharadhipathi he assigned the said Decree to Don James Ramanayake and M. A. Sadilis Perera in trust for him as Viharadhipathi, that the assignees obtained the Secretary's transfer No. 919 for this land in their name and in pursuance of the said Trust conveyed the same on Deed No. 5647 dated 27th August, 1938, to Madiwala Dhammatilaka Thero who had succeeded Pematatana Therunnanse as Viharadhipathi of the Temple.

The defendant-appellant filed answer denying the averments that the mortgage No. 281 was executed with temple funds, denying the alleged Trust and pleaded that the land in dispute was the *pudgalika property* of Madiwala Dhammatilaka Thero and that he had lawfully bought the same from him. He further pleaded that he was a bona fide purchaser for value without notice of the alleged trust. The defendant-appellant had admittedly paid Rs. 25,000 to Dhammatilaka Therunnanse for a land which he had bought for Rs. 2,500.

At the trial the following issues were raised :—

- (1) Is the plaintiff the controlling Viharadhipathi of Wijayasiriwardhanaramaya ?

Is the said temple exempted from the operation section of the Buddhist Temporalities Ordinance, Chapter 318 ?

- (2) Was Talapathpitiya Pematatana Thero, Viharadhipathi of the said temple at the material dates ?
- (3) Did the said Pematatana Thero advance from temple funds a sum of Rs. 3,500 to Alex de Silva on mortgage bond No. 281 of 17.7.1930 ?

(It is admitted that the mortgage bond decree was entered on the said bond in case No. 52308 of this Court in a sum of Rs. 4,732.32).

- (4) Was the assignment of the said decree by Deed No. 851 of 1934 by the said Pematatana Thero, in trust for him as Viharadhipathi ?
- (5) Did the said assignees on the conveyance to them on deed No. 919 of 1935 hold the said premises in trust for the said temple ?
- (6) Did Dhammatilake Thero succeed Pematatana Thero as Controlling Viharadhipathi ?

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- (7) Was the conveyance on deed No. 5647 of 27.8.38 to Dhammatilake Thero in pursuance of the said trust ?
 - (8) Was the conveyance by Dhammatilake Thero on Deed No. 14558 of 17.5.67 for any consideration ?
 - (9) (a) Did the said Dhammatilake Thero have any legal title to the said premises ?
(b) Was the said premises by reason of the facts averred in paras (2) to (7) of the amended plaint in the hands of Dhammatilake Thero, *Sangika Property* ?
(c) Were the said premises possessed by Dhammatilake Thero as Viharadhipathi of the said Temple ?
(d) Did the temple acquire prescriptive title thereafter ?
(e) Was the said Deed No. 14558 of 1967 executed by the said Dhammatilake Thero, acting in collusion with the defendant with the object of depriving the said temple of the said premises ?
 - (10) Did the said deed No. 14558 convey any title to the defendant and or was it valid or of any legal effect ?
 - (11) What damages, if any is the plaintiff entitled to ?
 - (12) Was the defendant bona fide purchaser for value of the said premises without notice of the alleged trust referred to in the plaint ?
 - (13) Did the said Dhammatilake Thero the grantee on deed No. 5649 of 1938 referred to in para (7) of the amended plaint hold the property in trust for the said temple as alleged by the plaintiff ?
 - (14) Even if issue 9 (b) and/or issues 12 and 13 are answered in the affirmative, is the defendant bound by the alleged trust ?

The plaintiff-respondent called as his witnesses Don James Ramanayake, Prematilaka Wijesiri, D. S. Ranasinghe and he himself gave evidence.

The defendant-appellant called as his witness H. W. Gunasekera, the Notary who attested the deed in his favour and also gave evidence himself.

After the addresses of the respective Counsel who appeared at the trial, the learned District Judge gave judgment on the 16th March, 1971, answering issues 1, 2, 3, 6, 8 in the affirmative, issues 4, 5, 7 in the negative. In regard to issue 9 he answered issue 9 (a), (b) and (e) in the negative namely that this property was not *Sangika Property* and issue 9(d) in the affirmative and entered judgment for the plaintiff.

The learned District Judge held on the evidence that *there was no trust established by the assignment of the mortgage bond (P11) or on the Secretary's conveyance P (13).*

The learned District Judge, however, proceeded to consider whether the land in dispute could be treated as "Sangika Property" and having considered the submissions made and the evidence came to the finding that the property when it was purchased by Don James Ramanayake and Sadilis Perera on deed No. 919 in execution (P12) *was not "Sangika property"*.

This finding of the learned District Judge on the aforesaid facts cannot be disputed when one examines the documents and the oral evidence. In the first place there is no evidence in the mortgage bond 281 dated 17th July, 1930, (P7) that Pematatana Therunnanse lent temple funds. Three lands were mortgaged. The subsequent hypothecary decree was in respect of *all three lands*. The Secretary's transfer No. 919 dated 30.7.35 (P12) *was in respect of only two lands including the land in dispute* and the 3rd land was sold to a stranger. The said sale by Don James Ramanayake and Sadilis Perera 5647 dated 27.8.38 (P13) is in respect of *only the land in dispute*. These facts clearly indicate that this property alone could not be regarded as temple property while the other two lands went into the hands of outsiders. One land continued to remain in the hands of Don James Ramanayake and Sadilis Perera and the third land was purchased by a third party. The contention that the assignment of the decree, the Secretary's transfer and the subsequent transfer of this *one land alone* to Dhammatilake Unnanse cannot be regarded as an acknowledgement that this was land belonging to the temple while the other lands did not belong to the temple. In spite of the evidence of Don James Ramanayake and the plaintiff, the above documents disprove the assumption that the assignment of the mortgage decree was merely a sham transaction alleging that Pematatana Unnanse who sued on the bond as plaintiff had religious scruples in executing the decree personally in his name. Pematatana Therunnanse was satisfied with the Promissory Note for 5,000. Therefore even if the original investment was out of temple funds, when Pematatana Therunnanse took the Promissory Note he ceased to have any further interest in the land. The learned District Judge was therefore right in holding that when Don James Ramanayake and Sadilis Perera purchased this land and another on Deed 919 (P12) the land did not form land belonging to the temple or form "Sangika Property".

Having disposed of these two contentions the learned District Judge considered the submissions made by the learned Queen's Counsel who appeared for the plaintiff at the trial, namely—

- (i) that the land was regarded and dealt with as "Sangika Property" and
- (ii) that Dhammatilake Thero by possessing it on that basis for the prescriptive period has acquired a title to it as "Sangika Property".

The learned District Judge having held that the land in the hands of Don James Ramanayake and Sadilis Perera on Deed No. 919 of 1935 (P12) was not temple or Sangika Property it was necessary for the plaintiff to prove that when they sold this land on Deed No. 5647 dated 27.8.38 (P13) to Dhammatilake Thero the property became temple land or acquired the character of "Sangika Property". The terms of the deed itself do not indicate that the land was bought with the temple funds or that Dhammatilake Thero even purported to purchase the same as Viharadhipathi. The consideration was Rs. 2,500. Rs. 2,000 was acknowledged to have been paid earlier and Rs. 500 was paid in the presence of the Notary. The defendant-appellant had produced mortgage bond No. 5648 (D3) executed on the same date by which Dhammatilake Therunnanse had borrowed Rs. 500 from one Vithanage Carolis Perera agreeing to pay interest at 16½ per centum and it was this sum of Rs. 500 that was paid on that date when he purchased the property. It is to be noted that in executing this mortgage bond he did not describe himself as the Viharadhipathi and that under this bond he bound himself his heirs, executors, administrators.

The learned District Judge, however, had held with the plaintiff-respondent on these two points merely on the oral evidence of Don James Ramanayake.

At the argument of this appeal Mr. Ranganathan, Counsel for the defendant-appellant, strenuously challenged the learned District Judge's findings on these two points. In regard to Sangika Property he contended that there must be evidence of a formal dedication to the Sangha in order to convert property into Sangika Property and that mere possession of property cannot convert property purchased by a Bhikku into Sangika Property. His contention was that to become Sangika there must be a formal dedication or gift to the Sangha as a whole and that a purchase in favour of any Bhikku whether he was officiating as Viharadhipathi or otherwise could not convert such a property into Sangika and that at most the property will be held by the

individual Bhikku as a trustee in terms of the deed if there were any conditions set out in such a deed. A number of authorities were submitted in which the distinction between 'Pudgalika' and 'Sangika Property' were discussed.

According to the precepts of the Buddhist Law a man by becoming a priest loses all rights of inheritance to the property of his parents (see Perera's Armour, p. 51). This rule appears to have become a dead letter, for the rights of priests to possess, inherit and succeed to property have been acknowledged by our Courts of Law. "The situation of Priest in Ceylon" says Hardy, "is at the present very different to that which was intended at the commencement of this Order by its Founder" (1).

In a case No. 2743 C. R. Kegalla (2) a priest was non suited on the ground that being a priest he could not possess property, the Commissioner no doubt, proceeding on the old rule laid down in (Sawers Digest, p. 7) "that to take the robes was to resign all earthly wealth". The Supreme Court, however, in setting aside the order sent the case back for hearing and judgment remarking that the Ceylon Courts of Law have consistently held that priests have the same rights as laymen.

In a case reported in 1882 (3), in an action by a Buddhist priest upon a mortgage in favour of the plaintiff's predecessor in the incumbency of a Pansala to recover the money due on the bond, the plaintiff claimed that the deceased priest had acquired the money advanced on the mortgage by the sale of the coffee grown on the Pansala Land. The Commissioner dismissed the suit holding that the mortgage passed not to the mortgagee's spiritual successor but to his temporal representative. The Supreme Court upheld the decision of the Commissioner by stating that a temple incumbent holds temple's lands subject to the duty of making provision out of the revenues for the maintenance of the temple. Anything which he saves out of the revenue and dies possessed of passes to his legal representatives, that is the person who would be his legal representative were he a layman. Clarence J. stated "in my opinion the current of modern decisions points to that conclusion" and referred to cases (4) and (5).

In a Kandy case D.C. 67849 (6), the Supreme Court held as follows:—

"The plaintiff sues as a pupil of a deceased priest on a bond and Promissory Note granted by the defendant in favour of the deceased priest. The parties intervene in the case, one calling himself a pupil of the deceased priest and the other his brother and there is no doubt that if the Bond and

Promissory Note are not temple property the brother would be the party entitled to them. The two documents on the face of them are a Bond and a Promissory Note in favour of the deceased priest. *There is nothing in them to show that they are trust property which would go to the heirs and we think the District Judge was right in holding that they were the private property of the deceased priest*".

But temples in Ceylon were possessed of extensive tracts of land most of them granted by ancient kings and chiefs as offerings to the Buddha (see Tennent, Vol. I, pp. 363, 374, 406) (Marshall's Judgments, p. 382). On the death of the Incumbent, if the temple is held in Sisyanu Sisya Paramparawa (pupillary succession) the property descends on his pupils who thereupon assume the entire control and management of it.

It is in this context, that landed property of each temple was from the ecclesiastical point of view Sangika, that is regarded as dedicated to the whole body of priests at large even where there was no deed of dedication for the practical purposes of municipal law it was possessed by the Incumbent for the time being of the Vihare to which the landed property appertained or was appropriated. There was no conversion of private property into Sangika Property but merely a possession for or on behalf of the temple which though in law was not a juristic person was regarded as an Institution.

This was the position till the enactment of the Buddhist Temporalities Ordinance No. 8 of 1905 which became law on 25th August, 1905. Section 20 vested in elected Trustees all property movable and immovable belonging to in *any wise appertaining to or appropriated to the use of any temple* together with all the issues, rents and profits of the same. Where an Incumbent of a Vihare to which no Trustee was appointed possessed lands not expressly gifted or dedicated to the Vihare he was in the position of a de-facto trustee for the Vihare *Ranasinghe v. Dhammananda* (7). It was in this background that the Supreme Court held that such a de-facto trustee could acquire title by prescription for the benefit of a Vihare. But it did not hold that there was a conversion into Sangika Property.

Mr. Ranganathan, Q.C., cited the case of *Wickremasinghe v. Unnanse* (8), where the Supreme Court held that it is by a gift that a temple or any other property can become "Sangika Property" and that the very conception of a gift requires that there should be an offering or dedication. Until a dedication takes place the temple remains "gihi Santaka" (lay property). This dedication may take the form of a writing or may be verbal

but in either case it is a formal act, accompanied by a solemn ceremony in the presence of four or more priests who represent the Sarva Sangha or the entire priesthood. A dedication may be presumed in the case of a temple whose origin is lost in the dim past. That was an action in which the plaintiff was claiming a declaration that certain premises in the Fort of Galle which had for some years been used as a Buddhist temple and called Sudharmalaya were not "Sangika Property". The evidence led in the case was that in 1887 a Society under the name of Sudharmarana Sangamaya was formed for the purpose of the promotion of Buddhism generally and particularly for the establishment of a place of worship in the Fort of Galle. By a process of gradual evolution the premises in dispute devolved into the character of a temple through the efforts of this Society which acquired a building there. In spite of the fact that the place became a centre of religious worship, the Supreme Court held that these premises never became 'Sangika Property'.

In the case of *Runasinghe v. Dhammananda* (7) earlier referred to, there was an appeal which was filed from the Supreme Court judgment. The Privy Council judgment is reported (9), and it was there decided that the lands had been acquired by the Incumbent of the temple on Crown grants and Certificates of Quiet Possession and the Court held that on the death of the Incumbent the title was transmitted to the succeeding Incumbent.

In *Dhammananda Nayake Thero v. Piyaratana Nayake Thero* (10) the Supreme Court and later on an appeal therefrom to the Privy Council (11), the Court was called upon to examine the case in which by a deed executed in 1876 a land was dedicated to a Buddhist priest named Sri Sumangala for the establishment on it of a Pirivena for the teaching of the principles and precepts of the Buddhist faith "subject always to the protection and orders" of a certain Sabha. The deed further stated that Sri Sumangala as the Principal of the Pirivena had agreed "to accept this as a deed of trust subject to all the aforesaid directions, stipulations and conditions." The institute established upon the land was known as the Vidyodaya Pirivena and also sometimes Maligakanda Temple. The Privy Council agreed with the finding of the Supreme Court that the Institution was from its original dedication and had always remained essentially a Pirivena, an educational establishment and held that the Institution was governed by the Trusts Ordinance and not by the Buddhist Temporalities Ordinance.

However, the point stressed by Mr. Jayewardene, Q.C., at this appeal was that here was a type of land which was regarded

as Sangika Property though there was no temple and that the succession to Sangika Property (whether temple or not) may be governed by the terms of the act of dedication to the exclusion of the Buddhist Rules of succession.

After the conclusion of the submissions, Mr. Ranganathan, Q.C., cited a recent unreported judgment of Samarakoon, C.J., Ismail, J. and Sharvananda, J. (12), with notice to Mr. H. W. Jayewardene. This case was decided on 25th May, 1978. The plaintiff-respondent in that case instituted an action against the defendant-appellant for a declaration that he was the lawful Viharadhipathi of a temple called Rama Vihara situated in Kandy. The plaintiff claimed the property as Sangika. The defendant claimed that the property was Pudgalika. The premises were first acquired by one Suriyagoda Sonuththra Thero on a Crown Grant dated 30.3.1883. According to the evidence a temple was constructed on this land. The Court following the judgments of the Supreme Court (8), (13), (14), referred to earlier, held that the mere fact that a temple has been given to the Sangha does not make it Sangika and that it must be dedicated in the manner prescribed by the Vinaya to become Sangika.

However, in the present case, the learned District Judge having clearly held that the land in dispute was not Sangika property in the hands of the Dhammatilake Therunnanse has mis-directed himself by assuming that merely because Dhammatilaka Therunnanse who officiated as controlling Viharadhipathi and possessed the land for over 30 years till he sold the same there was a conversion in the character of the property and that he had acquired a title to the said land as '*Sangika Property*' by prescription. If Dhammatilaka Therunnanse possessed the land for over 30 years, he would have prescribed against his vendors Don James Ramanayake and Sadilis Perera and that possession would ensure to the benefit of his transferee the defendant-appellant. But in the absence of any proof that the land was purchased with temple funds, that the income derived by leasing the land was utilized for the temple, in the absence of any gift or dedication to the temple, there was no justification for the learned District Judge holding that the land in dispute became '*Sangika Property*'.

I therefore allow the appeal of the defendant-appellant, set aside the judgment of the learned District Judge and dismiss the plaintiff-respondent's action with costs. The defendant will be entitled to costs of the appeal.

SOZA, J.—I agree.

Appeal allowed.