

**HEENATIYANA NANDA TISSA THERO AND ANOTHER
v.
WEERAPURA**

COURT OF APPEAL
WIJETUNGA, J. AND
ANANDACOOMARASWAMY, J.
CA NO. 560/83
DC MT. LAVINIA NO. 270/ZL
MAY 03, 16 AND 20, 1991.

Trust – Dedication – Sanghika property.

Held :

Where property purchased for the International Buddhist Centre was by deed, gifted to a Buddhist monk, and the deed itself dedicated and granted the lands and premises to the Buddhist Sasana and the Maha Sangha and referred to the donee as Viharadhipathi of the said International Buddhist Centre

and a dedication ceremony with the appropriate rituals of dedication was held on Duruthu Poya day in January 1966, the property becomes Sanghika. A claim to treat it as a trust on a belatedly executed deed cannot prevail once the property became Sanghika in January 1966.

Cases referred to :

1. *Wijewardene v. Buddharakkita Thero* (1957) 59 NLR 121.
2. *Wickramasinghe v. Unnanse* (1921) 22 NLR 236.

APPEAL from the judgment of the District Judge of Mt. Lavinia.

A. C. Gooneratne, Q.C. with P. A. D. Samarasekara, P.C. and M. B. Peramuna for substituted 1A defendant-appellant and 2nd defendant-appellant.

H. L. de Silva, P.C. with Gomin Dayasiri for plaintiff-respondent.

Cur. adv. vult.

October 11, 1991.

WIJETUNGA, J.

The plaintiff, claiming to be the trustee of the International Buddhist Centre, Wellawatta, sued the original 1st defendant Rev. Heenetiyana Dhammaloka Maha Thero and the 2nd defendant, seeking *inter alia* a declaration that the premises described in the schedule to the plaint were the property of the International Buddhist Centre and were vested in the plaintiff as trustee thereof and for the ejection of the defendants from the said premises.

It was averred in the plaint that in the year 1953 M. Podilinu Fernando, M. Somasiri Somaratna, N. Oliver Fernando and H. D. Jinadasa (referred to as the authors of the trust), agreed among themselves to purchase the two lots of land called Maha Wellawatta described in the schedule to the plaint, for the purpose of providing a suitable place of residence for foreign missionaries and students who came to Sri Lanka to study the Buddha Dhamma and for Buddhist monks who came to the city of Colombo for brief periods from different parts of the Island. They engaged the 2nd defendant to bid for this property at the public auction as their agent. The 2nd defendant having been the highest bidder, the two lots of land were accordingly purchased and in furtherance of the aforesaid objectives, the said four persons commenced construction of the International Buddhist Centre building in 1957. With the aid received from the government and the general public and with their own contributions,

the construction work was completed in 1959 and the said property of the International Buddhist Centre, it was claimed, became trust property governed by chapter X of the Trusts Ordinance.

It was further averred that Podilinu Fernando died in 1955, Oliver Fernando in 1958 and Somasiri Somaratna in 1962 and H. D. Jinadasa thus became the sole survivor of the four original authors of this trust. Pending the proper appointment of a trustee, the aforesaid property was conveyed to the 2nd defendant by deeds Nos. 1893 and 1893 dated 8.12.1963 (P28 & P29). Thereafter, on the instructions of the said Jinadasa, the 2nd defendant by deed No. 1060 dated 18th November 1965 (P13) conveyed the legal title of the said property to Rev. Wellawatte Ananda Thero, who with the assistance of the International Buddhist Centre Society, administered the activities of the trust. The said Jinadasa has been functioning as the Treasurer of the Society. Rev. Ananda died on 11th May, 1977 and the trusteeship of the said International Buddhist Centre fell vacant. The plaintiff claims that, taking advantage of this position, the defendants had broken the locks of the said premises and wrongfully obtained possession of the same on 5th November, 1977. The defendants had also filed a plaint against the said H. D. Jinadasa for criminal trespass and insult, but without success. The defendants have also permitted some monks as well as laymen to come into occupation of the said premises and have demolished a wall and made alterations to the buildings to give it the appearance of a vihara. The defendants have also claimed that the premises and the movable property therein are those of a Buddhist vihara and as such sanghika property. The plaintiff also stated that the defendants have removed certain items of movable property from the said premises.

The plaintiff further claims that the sole surviving author of the trust H. D. Jinadasa and the legal representatives of the late Rev. Wellawatte Ananda Thero who are Algina Fernando (his mother) Mahinda Weerapura, the plaintiff (his brother) and Muriel Wickremasinghe (his sister) have under section 75 of the Trusts Ordinance, by deed No. 674 dated 3rd May, 1978 (P35) appointed the plaintiff to be the trustee of the said International Buddhist Centre and consequently the property of such trust has been vested in the plaintiff. The plaintiff further pleads that a cause of action has thus accrued to him to sue the defendants *inter alia* for the reliefs aforesaid.

The original 1st and 2nd defendants filed answer denying the existence of a trust and stating that by reason of deed No. 674 dated 3rd May, 1978 (P35), the plaintiff acquired no rights to the premises in suit or that the grantors of that deed had any right to appoint a trustee in respect of the International Buddhist Centre. They further claimed that the said land and premises were, from November, 1965, Sanghika property and were for a period of more than 10 years prior to the date of action the property of the International Buddhist Centre which is a place of Buddhist worship and thus belonged to the said temple. The said temple was exempt from the provisions of section 4 (1) of the Buddhist Temporalities Ordinance and was in charge of the 1st defendant as the lawful Viharadhipathi. The defendants have further averred that in or about 1953, a society was formed for the purposes aforementioned and the land in question was purchased in the name of the 2nd defendant, the major part of the consideration having been furnished by the mother and the brothers of the 2nd defendant and the balance having been obtained through the collection of funds. A Buddhist temple by the name of International Buddhist Centre, it is claimed, had thereafter been established with Rev. Wellawatte Ananda as the Viharadhipathi. By deed No. 1060 dated 18th November, 1965 (P13) the land and buildings standing thereon have been given over to Rev. Ananda for the use and benefit of the Maha Sangha and such property had been sanctified as Sanghika property at a special pinkama which had been held thereafter. On the death of Rev. Ananda in 1977, without pupils, the 1st defendant was appointed in his place as Viharadhipathi by the Amarapura Nikaya and thus the sole management of the lands and buildings mentioned in the plaint were vested in him as the controlling Viharadhipathi of the temple. The defendants claim that after the death of the Rev. Ananda, the plaintiff and some others, without any manner of right, have been attempting to obstruct the use of the said land and buildings as property of the said temple and to prefer a claim to the said sanghika property with a view to obtaining the same for personal benefit. They also plead that deed No. 674 (P35) has been fraudulently executed with a view to instituting these proceedings. They have accordingly sought a dismissal of the plaintiff's action.

The case went to trial on a number of issues and the learned District Judge entered judgment in favour of the plaintiff declaring him the trustee of the premises in suit and thereby being entitled to the

reliefs prayed for in the plaint. He also awarded the plaintiff the costs of action. It is from this judgment and decree that the defendants have appealed to this Court.

It was the submission of learned counsel for the appellants that the property in question was sanghika property and that Titus Fernando by deed No. 1060 dated 18th November, 1965 (P13) had in clear and unmistakable terms dedicated and granted the said lands and premises to the Buddha Sasana and the Maha Sangha. This had been followed by a formal dedication ceremony. Deed No. 674 dated 3rd May, 1978 (P35), he submitted, was executed after the death of Rev. Ananda and gave the plaintiff no title. The very claim of a trust which was made for the first time in 1978 through P35 is destroyed by P13 which recognises Rev. Ananda as the Viharadhipathi of the International Buddhist Centre and not as its trustee. Rev. Ananda not having had any pupils, the property reverts to the Maha Sangha on his death. There was also no reference whatsoever in the minutes of meetings of the International Buddhist Centre (P23) to a trust. It was his submission that the assumption of a trust by the learned trial Judge was, therefore, incorrect and the Court had misapplied to this case the rules regarding trusts and consequently the judgment should be set aside.

Learned counsel for the respondents, on the other hand, submitted that deed No. 674 of 3.5.78 (P35) was not the trust deed. H. D. Jinadasa was one of the original authors of the trust. Titus Fernando was not the absolute owner of the property in suit as the consideration had been provided by the authors of the trust and under section 84 of the Trusts Ordinance he was therefore holding the said property as a trustee. It was his submission that the objective was not to set up a temple and that section 107 of the Trusts Ordinance infers in these circumstances that there exists a trust. In the absence of evidence of the formal constitution of a trust, one has to consider whether under section 3 of the Ordinance, the property was free from obligation. Titus Fernando who had only nominal ownership had accepted that obligation. The admissions recorded on 27.9.79 made it clear that the lands in question had been purchased in the name of the 2nd defendant for the achievement of the objectives referred to in paragraph 2 of the plaint. The absence of a deed or writing for the creation of a trust, he submitted, was therefore immaterial.

He also commented that the alleged dedication ceremony by which the said property is said to have become sanghika property received no publicity. In any event, the question also arose whether such dedication was legal and valid. The first matter to be determined is whether the donor had the capacity or title to make such a dedication, which in his submission the donor did not have. The 2nd defendant did not give evidence. It was Werapitiya alone who gave evidence in regard to the dedication ceremony but the trial Judge was not satisfied with that evidence. In these circumstances, counsel submitted that the learned trial Judge was right in regard to his conclusions and the appeal should, therefore, be dismissed.

It has been held in *Wijewardene v. Buddharakkhita Thero*, ⁽¹⁾ that the property given to the Sangha must be dedicated in the manner prescribed in the 'vinaya' and then only can it become 'sanghika' property. Basnayake, C.J. quoting from *Wickremasinghe v. Unnanse*, states that "for a dedication to the Sangha there must be a donor, a donee and a gift. There must be an assembly of four or more bhikkus. The property must be shown; the donor and donee must appear before the assembly and recite three times the formula generally used in giving property to the Sangha with the necessary variation accordingly as it is a gift to one or more. Water must be poured into the hands of the donee or his representative. The Sangha is entitled to possess the property from that time onwards. No property can become sanghika without such a ceremony. Sometimes there is a stone inscription recording the grant or a deed is given".

His Lordship observes that the procedure laid down in that case for giving property to the Sangha is in accord with the Vinaya (Cullawagga Sixth Khandhaka, sections 2, 4 and 5).

The judgment of the Supreme Court in *Wijewardena v. Buddharakkhita Thero (supra)* ⁽²⁾ was upheld in appeal by the Privy Council – vide 62 NLR 49.

Before I examine the question of dedication, let me deal with the relevant transfers of the property in suit in the instant case.

Paragraph 7 of the plaint states that the 2nd defendant, acting on the instructions of the sole surviving author of the said trust, H. D. Jinadasa by deed No. 1060 dated 18.11.1965 transferred the

legal title of the lands described in the schedule to the plaint, to Rev. Wellawatte Ananda Thero as trustee. This deed has been marked P13.

But, that deed specifically states that Titus Fernando " doth hereby offer, dedicate and grant by way of gift unto Reverend Wellawatte Ananda the Vihara Adipathi of the International Buddhist Centre for the benefit of the Maha Sangha and the use of the Buddhist priests arriving from the four directions and for other religious purposes, the lands fully described in the First and Second Schedules..... to have and to hold the said lands hereby offered, dedicated and granted to the Buddha Sasana and Maha Sangha." The acceptance by Rev. Wellawatte Ananda too is on behalf of the Buddha Sasana and the Maha Sangha.

It is significant that the words used are in the traditional form of a gift to the Buddha Sasana and the Maha Sangha and Rev. Ananda has been described as ' Viharadhipathi '. Nowhere in that deed is there a reference to any trust or to Rev. Ananda being a trustee of the said institution.

Deed No. 674 dated 3.5.1978 (P35) by which H. D. Jinadasa as ' sole surviving author of the trust ' and Algina Fernando, Mahinda Weerapura and Muriel Wickremasinghe as ' Legal Representatives of the late Reverend Wellawatte Ananda ' purported to appoint Mahinda Weerapura (the plaintiff) as trustee of the International Buddhist Centre states that : ' on the instructions of the authors of the trust the said Moratuwage Titus Fernando executed deed No. 1060 dated 18th November, 1965' (P13) conveying the said parcels of land etc. to Rev. Ananda ' to be held by him as Trustee and Director of the International Buddhist Centre, Wellawatte for the benefit of the Maha Sangha and Buddhist priests coming from the four directions and for other religious purposes' and that Rev. Ananda Thero ' accepted the aforesaid appointment as trustee and functioned as such until his death on the 11th May, 1977 '.

As stated above, the reference to Rev. Ananda as ' trustee ' is contrary to what is stated in P13, in that the said deed refers to him as the ' Vihara Adipathi ' of the International Buddhist Centre. The deed P35 acknowledges that Titus Fernando (the 2nd defendant-appellant) executed P13 ' on the instructions of the

authors of the trust ' H. D. Jinadasa who had described himself as the ' sole surviving author of the trust ' is the principal signatory to P35. It cannot, therefore, now be claimed that the gift to Rev. Ananda was not as Viharadhipathi or that the grant was not to the Buddha Sasana and the Maha Sangha.

Thus, the very basis of the plaintiff's claim to be the trustee of the International Buddhist Centre is negated by P13 which recognizes Rev. Ananda as the Viharadhipathi, P35 is clearly a belated attempt by the plaintiff and the others behind him to clothe this institution with a trust when in fact there was none.

No doubt the property so conveyed does not become Sangika property unless the donor had the capacity to make such dedication and the rituals of dedication referred to above have been observed.

On the plaintiff's own pleadings, the property in question has been purchased by Titus Fernando on deeds Nos. 1892 and 1893 dated 8.12.1963, P28 and P29. On the face of the deeds, the consideration had been paid by him and legal ownership of the property was therefore vested in him. Accepting that the consideration for the same was furnished by the ' authors of the trust ', the grant of the said premises by way of gift to Rev. Ananda by Titus Fernando was on their instructions, as acknowledged in P35. The donor, therefore, had the title and the capacity to make such dedication.

One must then consider whether such dedication was as prescribed by the rules of ' Vinaya '. Werapitiya, in his evidence, gives a detailed description of the dedication ceremony that took place on 6.1.66, the ' Duruthu Poya ' day. All the necessary ingredients of a proper dedication to the Sangha, referred to in 22 NLR 236 (supra), had been present at that ceremony for the property to become ' sanghika '. Although the learned trial Judge had chosen not to act on the evidence of Werapitiya in regard to the dedication ceremony, he has given no acceptable reasons therefor. Other than the bare suggestion that was put to this witness in cross examination that he was telling an untruth when he spoke of this dedication ceremony, no serious attempt has been made to test the veracity of his evidence in this regard.

One cannot in this context ignore the report appearing in the "Times of Ceylon" dated 5.1.66 (V1) where the 'Duruthu Poya' programme at the International Buddhist Centre has been set out in detail, commencing with 'Atasil' at 6 a.m. and ending with 'Pirith' and meditation at 8.15 p.m. That programme specifically refers to the offering of the International Buddhist Centre to the Maha Sangha, which was to follow the 'Sanghika Dana' at 11 a.m. Werapitiya's evidence is thus amply supported by V1. The document V37, which is a list of office-bearers, said to be in the handwriting of Rev. Ananda, shows that Werapitiya was an important office bearer, vis. the Honorary General Secretary at the relevant time, as claimed by him in his evidence. The letter written by Rev. Ananda to the Editor, "Ceylon Daily News" dated 20.4.66 (V30) states that "it was on Duruthu Poya day this year that the Centre was formally dedicated to the Maha Sangha, with me as the Viharadhipathi and Director of the Centre."

Against the backdrop of this evidence, there was no justification for the learned trial Judge to have acted in disregard of the evidence of Werapitiya as regards the dedication ceremony.

Once the aforesaid evidence is accepted, it must follow that the property in question has to be considered as having become 'sanghika' in January, 1966. The plaintiff's claim to be the trustee of the said International Buddhist Centre thus fails and he is consequently not entitled to sue the defendants for the reliefs aforesaid.

I would, therefore, allow this appeal and dismiss the plaintiff's action with costs in both Courts.

ANANDACOOMARASWAMY, J. – I agree.

Appeal allowed.