BALAPITIYA GUNANANDA THERO
v.
TALALLE METHANANDA THERO

SUPREME COURT.
G. P. S. DE SILVA, C.J.,
RAMANATHAN, J. AND
DR. BANDARANAYAKE, J.
S.C. APPEAL NO. 12/96.
C.A. NO. 571/89(F).
D.C. PANADURA 18331/L.
MARCH 4, 18 AND 26 AND APRIL 4, 1997.

Buddhist Temporalities – Claim to be Viharadhipathi – Sisyanu Sisya Paramparawa rule of succession – Seniority by robing – Expulsion – Admission of documents – Cursus curiae.

The priest who was robed first where the robing was on the same day, is senior and is entitled to succeed to the Viharadhipathyship.

Where a document is admitted subject to proof but when tendered and read in evidence at the close of the case is accepted without objection, it becomes evidence in the case. This is the *cursus curiae.*

As it was proved that the plaintiff was robed first, he is entitled to succeed to the Viharadhipathiship.

Expulsion of a priest from the Nikaya and priesthood cannot be proved by the mere entries in registers. It was alleged that the priest was unaware of his expulsion. Expulsion can never be a unilateral act in view of the consequences it entails. Expulsion means nothing less than the immediate termination of the priest's life as a Bhikku.

Where there is no proof of charges being preferred, of an inquiry and the observance of the *audi alteram* rule, there can be no valid expulsion.

Cases referred to:

1. *Somaratne v. Jinaratna* 42 N.L.R. 361.
2. *Amaraseeha Thero v. Sasanatilleke Thero* 59 N.L.R. 289, 290 (Last paragraph).
3. *Sri Lanka Ports Authority and Another v. Jugolinija – Boat East* [1981] 1 Sri L.R. 18, 23, 24.
4. *Mahanayake Thero, Malwatte Vihare v. Registrar General* 39 N.L.R. 186.
5. *Sumangala Mahanayake Thero v. Registrar General* 42 N.L.R. 251.
6. *Jananda Therunnanse v. Ratanapala Therunnanse* 61, N.L.R. 273.

APPEAL from judgment of Court of Appeal.

L. C. Seneviratne, P.C. with *Jayantha de Almeida Gunaratne, D. P. M. Gunawardena, H. V. S. Situge* and *Upul Ranjan Hewage* for defendant-appellant.

T. B. Dissanayake, P.C. with *P. M. B. Peramune* for the plaintiff-respondent.

Cur. adv. vult.

May 02, 1997.

G. P. S. DE SILVA, C.J.

The plaintiff instituted these proceedings against the defendant seeking *inter alia* a declaration that he is the Viharadhipathi of the Kettarama Viharaya and the Sudharmakara Pirivena, Pinwatta, Panadura. In the plaint he averred that Devananda Thero was the last Viharadhipathi of this viharaya and that he died on 13.2.83; that he being the senior pupil of Devananda Thero he succeeded to the Viharadhipathiship; that the defendant denies the seniority of the plaintiff and is disputing the plaintiff's right to be the Viharadhipathi. The defendant in his answer denied the plaintiff's claim and pleaded that he is the senior pupil of Devananda Thero and was entitled to a declaration that he is the lawful Viharadhipathi of the Kettarama Viharaya.

After trial, the District Court dismissed the plaintiff's action, and upheld the claim of the defendant that he is the lawful Viharadhipathi of the temple and Pirivena. The plaintiff preferred an appeal to the Court of Appeal which reversed the judgment of the District Court and granted the declaration that the plaintiff is the lawful Viharadhipathi. The present appeal is by the defendant to this court.

The following facts are not in dispute between the parties:

(i) Devananda Thero was the Viharadhipathi till his death on 13.02.1983;

(ii) Both the plaintiff and the defendant are pupils of Devananda Thero;

(iii) Succession to the Viharadhipathiship is governed by the rule of Sisyanu Sisya Paramparawa;

(iv) Both the plaintiff and the defendant were robed by Devananda Thero on the same day, namely 27.06.1968;

The two principal matters which arise for consideration on this appeal are first, whether it is the plaintiff or the defendant who is the senior pupil of Devananda Thero, and secondly whether the defendant was lawfully expelled from the Amarapura Nikaya and the priesthood by the Mahanayake and the Mahasangha Sabhawa of the Nikaya as claimed by the plaintiff (Issues 13 and 14). I wish to add that issues 13 and 14 were answered in favour of the defendant by the District Court but the Court of Appeal reversed this finding and held against the defendant.

I shall deal first with the question of seniority. Since both the plaintiff and the defendant were robed on the same day the true question that arises for decision is whether it was the plaintiff or the defendant who was **robed first** on 27.06.1968. The party who was robed first will be entitled to succeed to the Viharadhipathiship. (See *Somaratne v. Jinaratna* [1]).

The plaintiff in his evidence claimed that at the robing ceremony held on 27.06.1968 he was robed first and that the defendant was robed thereafter. Plaintiff's oral evidence was supported by the oral testimony of Dadalle Gnanaloka Thero who was the Parivenadhipathi and a member of the Karaka Sangha Sabha. Likewise the defendant gave evidence and asserted that it was he who was robed first and not the plaintiff. The claim of the defendant was supported by the oral evidence of an ex-priest named Rupasiri. Both Mr. L. C. Seneviratne, for the defendant-appellant and Mr. T. B. Dissanayake for the plaintiff-respondent addressed us at length on the contradictions and other infirmities in the oral evidence adduced by each party. Had the case rested solely on the oral testimony placed before the District Court there would have been much force in the submission of Mr. Seneviratne that the Court of Appeal should not have interfered with the finding of fact arrived at by the trial judge.

There are however other relevant considerations, namely, the documentary evidence relied on by each party in support of his case. Apart from the oral evidence, the District Judge has found support for his finding that the defendant was the senior pupil on the documents V16 and V29. V16 is the report of the accounts relating to the expenses incurred and donations received for the funeral of Devananda Thero. V29 is also a similar document. On a consideration of these documents the District Judge has found that the defendant has functioned as the Viharadhipathi after the death of

Devananda Thero. It seems to me, however, that V16 and V29 are documents of an equivocal nature, since the defendant admittedly was the pupil resident at the Viharaya and in the normal course of events he would have kept the accounts in respect of the funeral expenses. It is not a circumstance which even tends to support his claim to be the senior pupil of Devananda Thero (see *Amaraseeha Thero v. Sasanatilleke Thero*[2]).

Mr. Seneviratne placed much reliance on the writing (last will) marked V27 upon which the defendant claimed that he was appointed by Devananda Thero to be his successor to the Viharadhipathiship of the temple. This was a document which was very much in controversy at the trial but the Court of Appeal has not granted leave to appeal to this court on the question of an appointment upon V27. The relevance of V27 as corroboration of the defendant's claim to be the senior pupil would not in my view arise for consideration in this appeal. It would then appear that the case for the defendant rests largely, if not entirely, on the oral testimony.

On the other hand, it is contended on behalf of the plaintiff that his oral evidence is supported by the documents P3, P4 and P5. P3 and P4 are obituary notices in respect of the funeral of Devananda Thero. Both P3 and P4 have been signed by the plaintiff and defendant as "pupils" but the point relied on is that the plaintiff's name appears **first** and the defendant's name appears thereafter. Mr. T. B. Dissanayake submitted that the order in which the names appear in P3 and P4 is a pointer to the fact that the plaintiff is the senior pupil of Devananda Thero. Mr. Seneviratne, however, strenuously contended that the order in which the names appear in P3 and P4 is according to seniority by ordination (Upasampada). It is to be noted that there was no suggestion put to the plaintiff **with reference to P3 and P4** that the order in which the names appeared was according to seniority by Ordination. It is true that the plaintiff when questioned as to how the priests take their seats at various ceremonies did say that it was in the order in which they were ordained but this was not with reference to P3 and P4. As pointed out by Mr. Dissanayake, if the names in P3 and P4 were according to seniority by ordination, the name of Dadalle Gnanaloka should have appeared first for he would have been ordained much earlier than either the plaintiff or the defendant. Moreover, it is upon the death of the Viharadhipathi that the question of succession to the Viharadhipathiship arises and

therefore the publication of the obituary notices is an occasion of significance; it is an occasion on which the question of seniority assumes importance. I hold that the order in which the names of the plaintiff and the defendant appears in P3 and P4 is a circumstance which **tends** to support the plaintiff's claim that he is the senior pupil.

P5 is the other document relied on by the plaintiff. P5 is a handbill printed by the Dayaka Sabha giving notice of the robing ceremony of the plaintiff and the defendant. The point of relevance is that the plaintiff's lay name appears first and the defendant's lay name appear thereafter. Mr. Dissanayake's submission that the order in which the names are set out in P5 is an indication of the order in which the "novices" are to be robed seems to be well founded. P5, however, was marked in evidence subject to proof and the District Court held that the document was not proved, although P5 was read in evidence at the close of the plaintiff's case without objection. This finding of the District Court was reversed by the Court of Appeal on the basis of the decision in *Sri Lanka Ports Authority and another v. Jugolinija – Boat East*[3]. In that case when P1 was marked in the course of the trial objection was taken but when the case for the plaintiff was closed reading in evidence P1, no objection was taken by the opposing counsel. Chief Justice Samarakoon, expressed himself in the following terms. "If no objection is taken when at the close of a case documents are read in evidence they are evidence for all purposes of the law. This is the *cursus curiae* of the original courts. The contents of P1 were therefore in evidence as to facts therein (*vide* section 457 of the Administration of Justice Law No. 25 of 1975) and it is too late now in appeal to object to its contents being accepted as evidence of facts". Mr. Seneviratne argued that the Court of Appeal was in error in holding that P5 was a part of the evidence in the case because the learned Chief Justice based his decision on the provisions of section 457 of the Administration of Justice Law which was repealed many years ago. I do not agree. The *cursus curiae* of the original courts (a matter on which the learned Chief Justice was eminently qualified to express an opinion) is independent of the reference to the provisions of section 457 of the Administration of Justice Law which appears in parenthesis. I accordingly hold that the ruling of the Court of Appeal in regard to P5 is correct and P5 must be considered as part of the evidence in the case.

On a consideration of the totality of the evidence, I hold that P3, P4 and P5 tend to corroborate the evidence of the plaintiff that it was he who was robed first at the robing ceremony and that the plaintiff is therefore entitled to the declaration that he is the lawful Viharadhipathi of the Viharaya and Pirivena which are the subject-matter of this action (paragraph (a) of the prayer to the plaint).

The aforesaid finding is sufficient to dispose of the appeal. However, since both counsel made submissions at length (orally and in writing) on the question of the expulsion of the defendant, I think it is right and proper to consider that matter as well. It is common ground that the expulsion of the defendant from the Nikaya and the priesthood took place after the action was filed on 13.6.83. The relevant issues (13 and 14) were raised by counsel for the plaintiff after the plaintiff's case was closed and while the defendant was under cross examination. The first question for consideration is whether there is evidence of the alleged "expulsion". The plaintiff relies on the documents P10, P6 and P7. P10 is a letter dated 18.8.83 addressed to the Commissioner of Buddhist Affairs by the Mahanayake of the Nikaya informing him that the defendant had been expelled from the Nikaya and the priesthood. P6 and P7 are certified copies of the defendant's Samanera Bhikku Register and his Upasampada Bhikku Register respectively. In the relevant cages in P6 and P7 there is an entry which reads "expelled from the Nikaya and priesthood in terms of the request of the Mahanayake Thero by his letter dated 16.8.83." This clearly is a reference to P10.

The defendant in his evidence denied that he was ever informed of the alleged expulsion. He testified that no charges were framed against him, no inquiry was ever held and no opportunity was ever given to him to explain the alleged misconduct. Having regard to (a) the defendant's evidence and (b) the fact that the alleged expulsion very seriously affects the rights of the defendant and (c) the wording in the issues 13 and 14, the burden was undoubtedly on the plaintiff to establish the fact of expulsion and the validity of the expulsion. This the plaintiff failed to do; no evidence whatever was led of charges being framed against the defendant, of an inquiry that was held, and the defendant being heard in his defence. The defendant's denial of charges being served on him, of an inquiry being held and an opportunity of being heard in his defence stands uncontradicted. I am in entire agreement with Mr. Seneviratne's submission that none of the documents relied on by the plaintiff prove even the decision to

expel the defendant from the Nikaya and the priesthood, much less a valid decision to expel him. Expulsion can never be a unilateral act in view of the consequences it entails. Expulsion means nothing less than the immediate termination of the defendant's life as a Bhikku.

Mr. Dissanayake cited the case of *Mahanayake Thero, Malwatte Vihare v. Registrar General*[4], That was a case where the Mahanayake Thero wrote to the Registrar General that he had removed Ratnajoti Thero's name from his register and requested the Registrar General to make the necessary modification in terms of section 41(5) of the Buddhist Temporalities Ordinance. The Registrar General did not comply with the request and the Mahanayake Thero sought a writ of Mandamus on the Registrar General. Ratnajoti Thero was allowed to intervene in the proceedings and he, by way of an affidavit questioned the motives underlying the application of the Mahanayake Thero. Soertsz J., while expressing the view that "a clear case has been made out for the issue of a writ directing the Registrar General to modify his registers" yet did not ultimately issue the writ in view of the "special circumstances" of the case. Said the learned Judge "Suffice it to say that I am satisfied on the material before me that there is a substantial dispute between the intervenient (i.e. Ratnajoti Thero) on the one side and Morontuduwe Dhammananda Thero and the Mahanayake Thero on the other, for adjudication and determination by a proper tribunal in a regular action. In this state of things were I to make the order for a writ of Mandamus absolute, I feel I should be placing the intervenient **in a position of great disadvantage and even of great danger"** (emphasis added at page 192). Keuneman J., in *Sumangala Mahanayake Thero v. the Registrar General*[5] took a similar view. While refusing to issue a writ of Mandamus on the Registrar-General in the exercise of his discretion, Keuneman, J., observed "I am not satisfied that the real motive of the Mahanayake Thero and of the other members of the Sabha in pressing for a writ of Mandamus is not to obtain a bloodless victory in the matter of the appointment to the office of Viharadhipathi of Sripadasthana. for, as Soertsz, J., pointed out in the previous case, once the intervenient's name is taken off the register, he is liable to prosecution. His position becomes one of great embarrassment and even danger." (at page 256).

Basnayake, C.J., (with Sansoni J., agreeing) in *Jananda Therunnanse v. Ratnapala Therunnanse*[6] considered the scope of section 41(5) of the Buddhist Temporalities Ordinance and stated

"The absence in section 41(5) of any machinery for affording an opportunity of being heard to any person adversely affected by any correction, addition or alteration is a further indication that the corrections etc., which fall within its ambit are only such as are of a routine nature **and are undisputed and do not prejudice the rights of others** ..." at pages 276 and 277 (emphasis added).

Mr. Dissanayake further argued that once the entries in P6 and P7 were made, then in terms of section 41(6) of the Buddhist Temporalities Ordinance those entries are *prima facie* evidence "of the facts contained therein in all courts and for all purposes." Having regard to the facts and circumstances of this case, I do not agree with this submission. It is of the utmost relevance to note that the entries in P6 and P7 were made not only after the dispute as to the succession to the Viharadhipathiship had arisen but also after it had culminated in the present action. In other words, the letter P10 was written and the entries in P6 and P7 were made at a time when the dispute was before court. The defendant has denied any knowledge of the expulsion and has challenged its validity. The plaintiff has not adduced proof of the expulsion: P10 is not a letter of expulsion; no evidence was led of charges being preferred, of an inquiry, and the observance of the *audi alteram partem* rule. In this state of the evidence, I entirely agree with the submission of Mr. Seneviratne that the amendments to P6 and P7 do not constitute *prima facie* evidence "of the facts contained therein" within the meaning of section 41(6) of the Buddhist Temporalities Ordinance.

The Court of Appeal has not correctly addressed itself to these relevant matters. I accordingly hold that the Court of Appeal was in error in concluding that "the defendant had been expelled from the Nikaya after due inquiry in which he participated..." There is a total want of evidence of a "due inquiry."

In view of my finding in favour of the plaintiff on the question of "seniority", the appeal fails and is dismissed, but in all the circumstances, without costs.

RAMANATHAN, J. – I agree.

DR. BANDARANAYAKE, J. – I agree.

Appeal dismissed.