

1906.*Present: Layard C.J. and Wood Renton J.*

GONAMERUWEWA CASE.

152—D. C. Anuradhapura, 436.

Reference under the Waste Lands Ordinance—Priest claiming lands on behalf of temple—Trustee appointed under Ordinance No. 5 of 1889 refusing to act—Power of Supreme Court in appeal to allow a new trustee to intervene.

Upon a reference under the Waste Lands Ordinance plaintiff, as priest of Gonumeruwewa pansala, claimed on behalf of the temple the land in dispute.

A trustee was duly appointed under the provisions of the Ordinance No. 5 of 1889, but he refused to act.

Held, that the plaintiff could not maintain this action; but the Supreme Court gave an opportunity to the committee of appointing a trustee for intervening in these proceedings.

THE facts are set out in the judgment.

Dornhorst, K.C. (with him *E. W. Perera*), for appellant.

C. M. Fernando, C.C. for the Crown, respondent.

January 19, 1906. LAYARD C.J.—

In this case, upon a reference under the Waste Lands Ordinance, the plaintiff, as the priest of Gonumeruwewa pansala, claimed on behalf of the temple an extent of over 2,462 acres of land under and by virtue of a sannas.

The learned District Judge rejected the plaintiff's claim, on the ground that the claim to the land in dispute was settled by the Commissioners of Temple Lands under Ordinance No. 10 of 1886, and that the register made by them shows that the lots now in dispute were claimed from the temple land, and that such exclusion bars the claim made by the plaintiff on behalf of the temple.

I am inclined to think that the District Judge has taken a right view of the provisions of that Ordinance; but as the plaintiff is not the trustee of the temple's lands, and has no legal title to the lands claimed, I think it would be undesirable for this Court to decide that question until the person interested in protecting the right of the temple has been made a party to this suit.

It appears from the judgment of the District Judge that a trustee has been duly appointed under provisions of the Ordinance No. 5 of 1889, but has refused to act. That Ordinance provides that on the appointment of a trustee all property belonging to the temple vests in him, and directs that such trustee may sue, under the name and style of trustee of the temple for which he has been appointed, for the recovery of any property vested in him as such trustee under the Ordinance.

It further provides for the election by the committee forthwith of a fresh trustee, in the event of any person elected as trustee refusing to accept office, and in case of necessity enables the committee to make provisional arrangements for the performance of the duties of the office pending the election of a successor to the person refusing to accept office.

The District Judge treats the Ordinance as "moribund," whatever that may mean, and says such being the case the plaintiff had a right to protect the interests of the temple. I cannot find any law to support this proposition, and the counsel who appeared before us were unable to cite any authority in support of it. It is obvious that the plaintiff cannot maintain this action, having no legal estate in the land claimed by him. We think, however, that the committee should be allowed the opportunity of appointing a trustee to represent the interest of the temple before the declaratory decree in favour of the Crown is affirmed by this Court.

Counsel for the Crown seemed to doubt whether we could, in appeal, make an order such as we now propose doing. Sub-section (2) of section 18 of the Waste Lands Ordinance, under which we are hearing this appeal, appears to give us power to make such order as we consider the justice of the case may require, and in view of the provisions of section 6 of the Waste Lands Ordinance, it is clear that the officer sending a reference to the District Judge may not only in such reference mention the name of the claimants or claimant, but may also include therein the name of any person whom he thinks has any interest in the land the subject of his reference. It is true that such officer did not think it necessary to name the trustee of the temple; he undoubtedly, however, could have done so had he wished. We do not think we would be doing justice in this matter unless we gave the committee the opportunity of appointing a trustee should they desire to do so, and on such trustee being elected, giving him the right, should he be advised so to do, of substituting himself as plaintiff in this matter, and being heard in support of the present plaintiff's claim in this action.

We therefore make the following order: that the decree of the District Judge declaring the lots which are the subject of the reference to him to be the property of the Crown be affirmed, unless within six months from the date of this order a duly appointed trustee intervenes in this reference, and moves to be substituted for the present plaintiff. In the event of a duly constituted trustee being substituted for the plaintiff, the District Judge must proceed to hear this reference *de novo*.

The plaintiff must pay the Crown all costs to date, and a decree must be entered declaring that he has no interests or title in the lands the subject of this reference.

WOOD RENTON J.—I concur.