

BANDATTARA JANANADA MAHA THERO
V.
DEVINUWARA SIRI SUNANDA THERO

COURT OF APPEAL

GOONEWARDENE J. & VIKNARAJAH J.

C.A. NO. 58/79 (F)

D.C. MATARA NO. L/3856

FEBRUARY 23, 24, 25 and 29 and MARCH 01, 1988.

Buddhist Ecclesiastical Law — Viharadhipathiship — Succession — Rule of sisiyanu sisiya paramparawa — Succession by nomination or gift — Ras judicata — Estoppel — Abandonment.

The founding priest of the Amarapura Siri Dhammarakahita Wansa Maha Nikaya by his testament of 1837 appointed his eight pupils whom he named to succeed him, in order of seniority. He had a 9th pupil but that was after he had made his testament.

The last holder of the Viharadhipathiship on the basis of the founder priests nomination was Ratnajothi who by deed 7767 of 1897 appointed Jambuwatte Piyaratne to succeed him. Piyaratne was not a pupil of Ratnajothi by robing or ordination but had received instruction from him. Ratnajothi died in 1902 and Piyaratne succeeded as Viharadhipathy. Piyaratne by deed No. 4212 of 1927 (P37) appointed his pupil Sirinivasa to succeed him and on Piyaratna's death on 16.2.1928 Sirinivasa succeeded him. Sirinivasa by deed No. 1031 of 1955 appointed the defendant to succeed him and on Sirinivasa's death on 27.6. 72 the defendant succeeded to the Viharadhipathyship and functioned as such.

The plaintiff claimed on the basis that he was the senior pupil of Ratnajothi's successor Beragama Dhammananda (on the application of the rule of *sisiyanu paramparawa*.)

In Case No. 17548 D.C. Matara the plaintiff had on 26.5.1947 conceded the right of Piyaratne's successor Sirinivasa to be Viharadhipathy in a case seeking the relief of maintenance. In Matara D.C. 7624 Beragama Dhammananda had claimed maintenance on the footing that Piyaratne was the Chief Incumbent. In Matara D.C. Case No. 22604 plaintiff had given evidence on the same basis. The plaintiff also claimed on the basis of appointment by his nikaya also i.e. by the mahanayake thero and karaka sabha.

Held:

(1) The appointment of Jambuwatte Piyaratne by Ratnajothi on Deed No. 7767 of 14.11.1897 was lawful and valid and Piyaratne functioned as de jure Viharadhipathy. The appointment of Sirinivasa and thereafter of the defendant is also valid.

(2) The cause of action in both cases 7624 and 17548 is the refusal to pay maintenance. Therefore the present action is not barred by the principle of res judicata.

(3) The plaintiff is estopped from maintaining a claim to the Viharadhipathiship in view of his conduct in Case Nos. 17548 and 22604

(4) The plaintiff had abandoned his claim to the Viharadhipathiship.

Cases referred to

1. *Dhammajoti v. Sobita* 16 NLR 408
2. *Gunananda Unanse v. Dewarakkita Unanse* 26 NLR 257, 273, 275
3. *Terunanse v. Terunanse* 31 NLR 161, 163
4. *Saranankara Unanse v. Indajothi* 20 NLR 385
5. *Pannaloka Thero v. Colombo Saranankara Thero* [1983] 1 Sri LR 332, 339
6. *Visvalingam v. Liyanage* [1983] 1 Sri LR 203, 209
7. *Dhammaratne Unanse v. Sumangala Unanse* 14 NLR 400

APPEAL from judgment of the District Judge of Matara.

L. C. Seneviratne P.C. with *Lakshman Perera* for plaintiff-appellant

A. C. Gooneratne Q.C. with *T. B. Dissanayake P.C.* and *Mrs. H. Jayalath* for defendant-respondent.

Cur. adv. vult.

April 29, 1988

VIKARAJAH, J

The plaintiff-appellant instituted this action against the defendant-respondent for a declaration that

- (a) the plaintiff is the lawful Viharadhipathi of Parama Vichitrarama Rajamaha Vihare;
- (b) for ejection of the defendant and all those holding under him from the said temple;
- (c) for damages.

Plaintiff pleaded in his plaint that the founder of the Parama Vichitraramaya was Attudawe Dhammarakkhita Thero the founder of the Amarapura Siri Dhammarakkhita Wansa Maha

Nikaya and that he by his testament dated 18th March 1833 (P2) appointed his eight pupils to succeed him in their order of seniority viz. (1) Sumana (2) Sugunna (3) Indasara (4) Dhammaratne (5) Sarananda (6) Ratnajothi (7) Ratnasara and (8) Pannasara.

On the death of said Dhammarakkhita Thero in 1834 the incumbency devolved on the said Sumana and Sumana was succeeded by Suguna and he was succeeded by Ratnajothi on 18.04.1862. Indasara and Dhammaratne had died earlier and Pannasara had disrobed. Sarananda died on 17.4.1862. Ratnasara died in 1867. Parties are agreed that Ratnajothi was the lawful successor when Suguna died on 18.04.1862 and that Ratnajothi was the last of the 8 pupils nominated by the founder Dhammarakkhita Thero to succeed in order of seniority.

At the time the founder Dhammarakkhita Thero wrote his testament in 1833 he had only 8 pupils and he appointed all his eight pupils to succeed to the incumbency in order of seniority.

Although in the plaint the plaintiff has pleaded that Dhammarakkhita had only 8 pupils, the evidence is that he had nine pupils and the ninth pupil was robed after Dhammarakkhita wrote his testament P2. The 9th pupil is Kirilarela Saranapala. This is conceded by Counsel for appellant. In fact on the evidence the finding of the District Judge is that Saranapala is the 9th pupil.

Ratnajothi before he died in 1902 had by deed No. 7767 of 1897 (P11) appointed Jambuwatte Piyaratne to succeed him on his death and Piyaratne succeeded Ratnajothi in 1902 and functioned as such. It is admitted that Piyaratne is a pupil of Saranapala the 9th pupil of the founder Dhammarakkhita. Saranapala predeceased Ratnajothi. Piyaratne is a pupil of Ratnajothi only by instruction but not by robing or ordination.* It is also admitted that Ratnajothi had two pupils Mirissa Gunaratne and Beragama Dhammananda. Plaintiff's case is that Beragama Dhammananda succeeded to the incumbency on Ratnajothi's

death as the senior pupil Gunaratne had abandoned his rights to this Vihara because he became Viharadhipathi of another temple viz Galgama Vihara. It is also admitted that Beragamma Dhammananda had two pupils viz Beragamma Kadvidaja and the plaintiff.

Plaintiff had pleaded in the plaint that he succeeded to the Viharadhipathiship on Beragamma Dhammananda's death on 31.1.1939 (P5).

On Ratnajothi's death in 1902 Piyaratne succeeded and functioned as Viharadhipathy by virtue of the deed of appointment P11 of 1897.

By deed No. 4212 of 1927 (D23) Piyaratne appointed his pupil Sirinivasa and on Piyaratne's death on 16.2.1928 Sirinivasa succeeded and functioned as Viharadhipathy. Sirinivasa by his deed No. 1031 of 1955 (D38) and No. 15530 of 10.4.72 (D39) appointed his senior pupil the defendant as the Viharadhipathy.

When Sirinivasa Thero died on 27.06.72 (P12 - Death Certificate) the defendant succeeded him and functioned as Viharadhipathy.

It is admitted that after Ratnajothi's death in 1902 neither Beragamma Dhammananda nor the plaintiff functioned as Viharadhipathy of this temple.

The main submission of Counsel for appellant is that the appointment by Ratnajothi of Jambuwatte Piyaratne to the Viharadhipathiship of the temple by deed No. 7767 of 14.1.1897 (D2 or P1.1) is invalid for the reason that Piyaratne is not a pupil of Ratnajothi either by robing or ordination and it violates the tenure of succession which is the sisyanu sisya paramparawa.

Counsel for appellant further submitted that when Dhammarakkhita Thero the founder appointed by his testament P2 his eight pupils to succeed to the incumbency in order of seniority this mode of succession is sisyanu sisya paramparawa.

Counsel for respondent submitted that the mode of succession which the founder had laid down is by appointment by deed and that Ratnajothi the last of the 8 pupils had a right to appoint Piyaratne who was a pupil of Saranapala the last pupil of Dhammarakkhita Thero. Counsel for respondent further submitted that Dhammarakkhita Thero when he wrote his testament P2 intended that all his pupils should succeed to the incumbency but as Saranapala became a pupil after Dhammarakkhita wrote his testament P2, he could not have included him in this testament and therefore Ratnajothi appointed Piyaratne a pupil of Saranapala who had by then predeceased Ratnajothi. Piyaratne was not an outsider.

I shall now consider the validity or otherwise of the deed of appointment No. 7767 of 14.1.1897 (P11) which is the main point of issue in this case.

By this deed P11 Ratnajothi states that as he is of old age and it is necessary to appoint a chief or president (ඉගුරුවා) and of his two pupils Mirissa Gunaratne had become chief or president (ඉගුරුවා) in Galgama Vihara and is residing there and the other pupil Beragamma Dhammananda who is residing in this temple is young, he is appointing Jambuwatte Piyaratne who is his pupil by instruction as the chief to remain in the temple and look after the affairs of the temple and to administer the temple. The date of P11 is 14th January 1897. Prior to this deed of appointment P11 is the testament of the founder Dhammarakkhita P2 by which he appointed all his eight pupils to succeed to the incumbency in order of seniority. P2 is dated 1833. In P2 also the word Viharadhipathy is not used. But all the functions of the Viharadhipathy have been vested in the person appointed as 'chief'. I do not think the word Viharadhipathy was in use during the time P2 and P11 was drawn up in 1833 and 1897.

Dhammarakkhita Thero by his testament P2 of 1833 appointed his 8 pupils to succeed in order of seniority and Ratnajothi was the last of the pupils to succeed under the testament P2 and he did succeed and function as Viharadhipathy.

The Supreme Court has consistently interpreted the words 'Sishiyanu sishiya' to mean from pupil to pupil. That is to say on the death of the first Viharadhipathi he is succeeded by his own senior pupil and the succession continued in that manner as long as such succeeding Viharadhipathi leaves a pupil or pupils.

In Dhammajothi v. Sobita (1) it was stated as follows:—

"According to the sisyanu sisya paramparawa rule of descent on the death of a priest the incumbency devolves by operation of law on his senior pupil unless he has by will or deed appointed any particular pupil as his successor".

In Gunananda Unanse v. Dewarakkita Unanse (2) Jayawardene A. J. states as follows:—

"The rule requiring the transmission of the incumbency from senior pupil to senior pupil produces certainty and creates a sort of 'primogeniture' which is easily understood and applied".

As an incumbent's choice is limited to his pupil it follows that he may not by will or deed transfer his rights to the incumbency to a stranger to the exclusion of the direct line of succession (see *Terunanse v. Terunanse (3)*).

When a bequest is made by a founder priest to all his pupils such a bequest is strictly not the tenure of sisyanu sisya paramparawa.

When by P2 Dhammarakkita Thero made a request to all his pupils directing that succession be by order of seniority the mode of succession is not sisyanu sisya paramparawa.

In the case of *Saranankara Unanse v. Indajothi (4)* it was held that the office of incumbent is a single office and cannot be held jointly and consequently a claim to a 'share' of an incumbency

cannot be maintained. At page 398 Bertram C. J. states as follows:—

"The office of *adhikari* is however single and indivisible. He is indeed *primus inter pares* but his rule is monarchical. The office cannot be held jointly and consequently there is no such thing as 'share in an incumbency'. As was said by Perera J in *Dhammajothi v. Sobita* 'the idea of a joint incumbency can hardly be entertained'. An *adhikari* may it is true nominate all his pupils to succeed him but they can only succeed one at a time."

For this view Bertram C. J. relied on the opinion of the priests of the Malwatte College in *Danture Unanse v. Government of Ceylon*. The opinion is as follows:—

"If the priest declares his request common to his pupils they will all become entitled thereto one of them being elected to the superiority, the others only participating in the benefits. When the superior dies the one next in rank will succeed to the superiority and the superiority will devolve in this way until the last survivor *who will have the power to make a gift in favour of any other person*".

Bertram C. J. accepted this opinion of Malwatte College and held that there is no such thing as joint incumbency or share in the incumbency and that if a bequest is made to two or more pupils each will succeed in order of seniority.

This mode of succession has been expressly set out in the testatment P2 and Ratnajothi was the last to succeed. On the above opinion of the Malwatte College "the last survivor had the power to make a gift in favour of any other person". Ratnajothi in pursuance of this power appointed Jambuwatte Piyaratne who is not a stranger but a pupil of Saranapala who is the 9th pupil of the founder Dhammarakkhitha Thero.

Counsel for appellant relied on the following passage from the judgment of Jayawardene A. J. in the case of *Gunananda Unanse v. Dewarakkhita Unanse (supra)*:—

“He can appoint by will or deed more than one pupil to succeed him; in such a case these pupils, although called jointly, succeeds singly in rotation according to seniority. The pupil who succeeds last can appoint one of his pupils and in the absence of such an appointment his senior pupil will succeed him to the exclusion of the pupils of the previous incumbents”.

On the basis of this dictum Counsel for appellant submitted that Ratnajothi had no right to appoint a person who is not his pupil and that according to the rule of *sisyanu sisya paramparawa* Ratnajothi's pupil should succeed to the incumbency and accordingly Beragamma Dhammananda succeeded to the incumbency and thereafter his pupil the plaintiff succeeded to the incumbency.

Jayawardene A.J. did not refer to any authority for his opinion and in fact this opinion is obiter.

In the course of his judgment Jayawardene A.J. at page 266 refers to the opinion of the Malwatte College which I have referred to earlier with approval. According to this opinion of Malwatte College the last survivor has the power to make a gift in favour of any other person. Bertram C.J. also refers to this opinion of the Malwatte College at page 261 with approval.

According to D11 which is a plaint filed in the District Court Matara 17548 by the plaintiff in this case against Sirinivasa Thero on 9.2.1946, the plaintiff is claiming maintenance from 1st defendant Sirinivasa Thero who was functioning as Viharadhipathy of the temple. Sirinivasa Thero is the pupil of Piyaratne and Sirinivasa Thero succeeded Piyaratne as Viharathipathy. In this case No.17548 on 26.5.1947 plaintiff in evidence stated as follows:—

“The 1st defendant is the Viharadhipathy by a deed and not according to the pupillary succession. I refer to him as a

Viharadhipathy: I have no objection or claim to his right as Viharadhipathy. He is entitled to it now in addition by prescription".

This case was then settled as follows:—

1. Plaintiff admits that the 1st defendant (Sirinivasa) is the controlling Viharadhipathy of the temple in question and has such rights and such control of the temple as a Viharadhipathy is entitled to. Plaintiff agrees to abide by such control.

The rest of the settlement was as regards maintenance.

It would appear that in 1947 the plaintiff conceded the right of Piyaratne's successor Sirinivasa to be the Viharadhipathy.

It is Piyaratne's appointment by deed P11 that Counsel for plaintiff appellant strongly urged was illegal. It was also submission of Counsel for appellant that the sisyanu sisya rule of succession applied to the temple.

Piyaratne appointed his pupil Sirinivasa by deed D23 of 1927 and Sirinivasa by deed D38 and D39 appointed his senior pupil the defendant.

Thus after Piyaratne, the appointments do not conflict with the sisyanu sisya paramparawa rule.

The plaintiff himself who had given evidence in D.C. Matara case No. 22604 in which case he was the defendant claiming Viharadhipathiship for Galgane temple in Dondra states as follows:

Succession to the Dondra Raja Maha Viharaya is not according to sisyanu sisya paramparawa. Succession is according to seniority".

According to plaintiff on Ratnajothi's death the Viharadhipathyship devolves on his pupil Beragama Dhammananda. But it will be seen that on 22nd February

1917 the same Beragama Dhammananda had instituted action against the 1st defendant a trustee and the 2nd defendant Piyaratne for maintenance. In the plaint Dhammananda had accepted the position that Piyaratne is the Viharadhipathy of this temple and Dhammananda's Counsel stated in Court (D8) that plaintiff i.e. Dhammananda as a pupil of Ratnajothi has a right to reside in the temple and to perform certain duties dictated by the 2nd defendant Piyaratne and also a right to maintenance whilst he remains in the temple.

The issues which relate to the appointment of Piyaratne by Ratnajothi and the right of the plaintiff to Viharadhipathship are

- 3(a) Is the alleged appointment and deed No. 7767 of 14.1.1897 by Devinuwara alias Angahawatte Ratnajothi lawful?
- (b) Did any title, right or privilege devolve upon Jambuwatte Piyaratne Thero upon the said deed No. 7767?
4. Upon the death of the said Devinuwara alias Angahawatte Ratnajothi Thero did the Viharadhipathship devolve on Beragama Dhammananda Thero?
5. Upon the death of the said Beragama Dhammananda Thero did the said Viharadhipathship devolve on the plaintiff?
6. If issues 1—5 particularly issues 3, 4 and 5 are answered in favour of the plaintiff is the plaintiff the lawful Viharadhipathy of the said temple?
7. Did the said Devinuwara alias Angahawatte Ratnajothi Thero by and upon his deed No. 7767 dated 14.1.1897 appoint Jambuwatte Piyaratne Thero as Viharadhipathy of the said temple?
8. On the death of the said Ratnajothi Thero did Jambuwatte Piyaratne Thero become the lawful Viharadhipathy upon deed No. 7767 dated 14.1.1897?

The Judge answered issues 3(a) and (b) and 17 and 18 in the affirmative and issues 4 and 5 in the negative. Thus the issues were answered against the plaintiff.

I hold that the appointment of Jambuwatte Piyaratne by Ratnajothi by deed No. 7767 of 4.11.1897 is lawful and valid and that Piyaratne functioned as de jure Viharadhipathy. As Piyaratne's appointment is valid the appointment of Sirinivasa and thereafter of the defendant is also valid. Sisyana sisyu rule of succession will apply after Piyaratne's appointment.

The learned Judge has answered the above issues correctly.

Counsel for appellant submitted that the judgment or decree in D. C. Matara case No. 7624 and/or D. C. Matara 17548 are not res adjudicata between the parties in this action.

Issues 27 and 28 relate to this submission and the learned District Judge has held that it is res adjudicata.

D. C. 7624 is an action filed by Beragama Dhammananda against 1st defendant who is a trustee of the temple in suit in this action and the 2nd defendant is Piyaratne the Viharadhipathy of this temple. The plaintiff Beragama Dhammananda is claiming arrears of maintenance in this action. In the plaint it is pleaded that Piyaratne is the chief incumbent of the temple. Dhammananda's Counsel has stated to Court in this case that Beragama Dhammananda as a pupil of Ratnajothi has a right to reside in the temple and to perform certain duties dictated by the 2nd defendant Piyaratne (vide D6 and D8).

D. C. 17548(D11) is an action filed by the plaintiff in this case against Sirinivasa Thero as Viharadhipathy of the temple. This action is for maintenance. In this action plaintiff gave evidence and he accepted Sirinivasa as Viharadhipathy of this temple (D16a). One of the terms of settlement in this case D14 is that plaintiff admits that Sirinivasa Thero is the controlling Viharadhipathy of the temple in question and has such rights and such control of the temple as a Viharadhipathy is entitled to and plaintiff agrees to abide by such control.

The cause of action in both these cases 7624 and 17548 is the refusal to pay maintenance. The cause of action in the instant case in appeal is defendant's denial of plaintiff's status and office of Viharadhipathi. The *facta probanda* to establish the ingredients of the cause of action in each case are different and the right as claimed in the two sets of actions are not the same.

The bar does not operate when the cause of action in the subsequent suit is not the same as the previous action. (See *Pannaloka Thero v. Colombo Saranankara Thero (S. C.) (5)* .)

In my view the District Judge misdirected himself in law in holding that the judgment and decree in case Nos. 7624 and 17548 operated as *res judicata* against the plaintiff and precluded him from maintaining this action. The judgment and decree in case Nos. 7624 and 17548 do not operate as *res judicata* against the plaintiff.

Issues 29, 30 and 31 relate to estoppel and abandonment.

The issues are as follows:—

29(a) Has the plaintiff acknowledged the defendant's predecessors to be the Viharadhipathi of the said temple in D. C. Matara case No. 17548 and 22604?

(b) Has the plaintiff recovered maintenance from the defendant as trustee and Viharadhipathi of the said temple?

30. If issues 29(a) and/or 29(b) is answered in the affirmative is the plaintiff estopped from denying that the defendant is (a) the lawful Viharadhipathi and (b) the trustee?

31. Has the plaintiff and the plaintiff's predecessor Beragama Dhammananda Thero abandoned their rights to the Viharadhipathiship if any?

D. C. 17548(D11) is an action filed on 9.2.1946 by plaintiff in this case against Sirinivasa Thero as Viharadhipathy of this temple. Sirinivasa Thero is the predecessor of defendant and

the successor of Piyaratne. In the case plaintiff acknowledged Srinivasa Thero as Viharadhipathi and plaintiff did not claim Viharadhipathiship in this action.

D. C. 22604 is an action instituted by Viharadhipathy of Galgama Vihara against plaintiff-appellant who was the defendant in this case. Plaintiff was claiming Viharadhipathiship of Galgama Viharā. He gave evidence in 1956 in this case and produced the decree in D. C. 535. In his evidence he acknowledged Piyaratne as the Viharadhipathi of the temple in dispute and that on Piyaratne's death Srinivasa succeeded him (D5b) and he claimed maintenance on that basis.

Piyaratne became Viharadhipathi in 1902 on Ratnajothi's death. The plaintiff in this case filed action only in June 1975 claiming Viharadhipathiship.

The law of estoppel is satisfactorily stated in *Halsbury's Law of England 2nd Edn Vol 13 para 452 at page 400* in the following words:—

"When one has either by words or conduct made to another a representation of fact, either with knowledge of its falsehood as with the intention that it should be acted upon, or so conducts himself that another would as a reasonable man, understand that a certain representation of fact was intended to be acted on, and that other has acted on such representation and alters his position to his prejudice, an estoppel arises against the party who has made the representation and he is not allowed to aver that the fact is otherwise than he represented it to be".

This passage has been cited with approval by Sharvananda, J., in *Visvalingam v. Liyanage (6)*

I hold that the plaintiff is estopped from maintaining a claim to the Viharadhipathiship in view of his conduct in case Nos. 17548 and 22604.

I also hold that the plaintiff has abandoned his claim to the Viharadhipathiship.

The learned trial Judge has answered issues 29, 30 and 31 against the plaintiff. I see no reason to interfere with those findings.

The plaintiff also relied on an appointment made by the Mahanayake Thero and the Karaka Sanghe Sabha of Amarapura Siri Dhammarakkhita Nikaya. The Karaka Sangha Sabha had appointed the plaintiff a Viharadhipathy of this temple. The appointment letter is dated 8th June 1975 the day previous to plaint being filed in this action. This appointment has been produced marked P8. In P8 it is stated that as Piyaratne who was in the Amarapura Sri Dhammarakkhita Wansa Nikaya has left this Nikaya and joined the Kalyana Wanse Nikaya, he has forfeited his rights to the Viharadhipathiship of this temple and therefore the Karaka Sabha proceeds to appoint the plaintiff as Viharadhipathy. Piyaratne's appointment by deed is not challenged as illegal by the Karaka Sabha. The complaint is that he has joined the Kalyana Wanse Nikaya.

It is only when the succession to a Vihara in sisyanu sisya paramparawa fails that the chapter of the college to which it belongs has the right to appoint (see *Dhammaratne Unanse v. Sumangala Unanse* (7)). It was neither the plaintiff's case nor the defendant's case that the chain of succession failed. In fact the plaintiff is claiming through a chain from Ratnajothe and Beragama Dhammananda and the defendant is claiming from Ratnajothe and Sirinivasa.

Thus the chapter had no right to appoint a Viharadhipathi and no right can be claimed by the plaintiff from the document P8.

I affirm the judgment of the learned District Judge and dismiss the appeal with costs.

GOONEWARDENE, J.

I agree

Appeal dismissed.