

**JAYARATNE
v.
REV. GUNARATHANA THERO**

COURT OF APPEAL
WEERASURIYA, J., AND
DISSANAYAKE, J.
CA NO. 453/89 (F)
DC PANADURA NO. 18846/L
JUNE 14, 2000

Civil Procedure Code s. 392 – Action based on personal rights – Declaration of a status – Does it abate upon proof of disrobing – Ecclesiastical demise.

The plaintiff-respondent instituted action seeking a declaration of his alleged status as incumbent. Trial commenced on 12. 02. 1986, concluded on 3. 3. 1989 and judgment was delivered on 26. 9. 1989 in favour of the plaintiff-respondent. Before the judgment was delivered the plaintiff-respondent had given up robes.

Held:

- (1) It is manifest that this action being an action to establish personal right to an office abates upon proof of disrobing.
- (2) The subsequent proceedings of continuing with the action and the delivery of the judgment is not permissible for want of jurisdiction – Subsequent proceedings constitute an illegality and not a mere procedural irregularity.

APPEAL from the judgment of the District Court of Panadura.

Cases referred to:

1. *Punnananda v. Weliwitiye Soratha* – 51 NLR 372 at 376.
2. *Ramasarup Das v. Rameshwar Das* – 1950 AIR (Patna) 134.
3. *Deerananda Thero v. Rathanasara Thero* – 60 NLR 7.

*P. A. D. Samarasekera, PC with Kirthi Sri Gunawardane for defendant-appellant.
Plaintiff-respondent – absent and unrepresented.*

Cur. adv. vult.

October 07, 2000

WEERASURIYA, J.

Learned President's Counsel appearing for defendant-appellant submitted that the plaintiff-respondent had given up robes and ceased to be a Buddhist monk from 02. 05. 1989 and since that date living as a layman. A certified copy of the declaration regarding *upasampada* of the plaintiff-respondent has been produced marked X. In cage 23 thereof there is a remark to the effect that the said declaration had been amended upon intimation by the Mahanayake Priest that Moratuwe Gunarathana Thero gave up robes on 02. 05. 1989 and became a layman.

Trial in this case which commenced on 12. 02. 1986 was concluded ¹⁰ on 03. 03. 1989 and the judgment was delivered on 26. 09. 1989 in favour of the plaintiff-respondent. However, in terms of the extract of the *Upasampada* declaration marked X, the plaintiff-respondent had disrobed on 02. 05. 1989 as evidenced by the entry in cage 23 thereof. Therefore, before the judgment was delivered on 26. 09. 1989, the plaintiff-respondent has disrobed.

It was observed in *Punnananda v. Welivitiye Soratha*⁽¹⁾ that –

"Disrobing with the intention of giving up the priesthood, is the equivalent, ecclesiastically, of personal demise, and it does not entail, any more than death entails, an abandonment of rights, but ²⁰ merely incapacity to exercise them. These rights can accordingly descend to a pupillary successor."

In terms of section 392 of the Civil Procedure Code which provides for continuation of actions after alteration of a party's status, the death of a plaintiff or defendant shall not cause the action to abate if the right to sue on the cause of action survives. Therefore, conversely if the right to sue or the cause of action does not survive on the death of either the plaintiff or the defendant, it would cause the action to abate.

The following observations in the Indian case *Ramasarup Das v. 30 Rameshwari Das*⁽²⁾ are relevant in examining this question:

"If a plaintiff is suing to establish his right to a certain property in his own rights and not by virtue of his office, certainly the cause of action for the suit will survive, and his legal representative can continue the suit on the death of the original plaintiff, either during the pendency of the suit or of the appeal. But, where the plaintiff's suit is primarily to establish his personal right to an office which would entitle him to possession of the property in question, on his death, either during the pendency of the suit or during the pendency of 40 the appeal, the right to sue would not survive, and the suit will therefore abate."

In the instant case, undoubtedly action was instituted based on personal rights seeking a declaration of his alleged status as incumbent and the claim for the ejectment of the defendant was purely incidental to the question of incumbency.

Therefore, the question to be examined relating to the effect of disrobing by the plaintiff-respondent is two-fold namely, whether the action abated in terms of section 392 of the Civil Procedure Code and whether the proceedings thereafter constituted an illegality and 50 not a curable procedural irregularity.

It is manifest that this action being an action to establish personal right to an office abates upon proof of disrobing by the plaintiff-respondent which is equivalent to ecclesiastical demise. The subsequent proceedings of continuing with the action and the delivery of the judgment is not permissible for want of jurisdiction. In the circumstances, subsequent proceedings constitute an illegality and not a mere procedural irregularity. (*vide Deerananda Thero v. Rathanasara Thero*⁽³⁾).

Therefore, I proceed to set aside the judgment delivered on 60 26. 09. 1989.

DISSANAYAKE, J. – I agree.

Appeal allowed.