

SANGAPALA THERO
V.
TELWATTE NAGITHA THERO

SUPREME COURT

WIMALARATNE, J., VICTOR PERERA, J. AND COLIN THOME, J.
S.C. APPEAL NO. 37/82; C.A. APPEAL NO. 633/76 (S.C.) AND
D.C. COLOMBO NO. 13788/L
JANUARY 26, 1983.

Buddhist Ecclesiastical Law - Succession to the Viharadhipathiship of a temple.

The Rev. Piyaratana Tissa Thero, who was the first incumbent of the Abinawaramaya (now known as the Gothami Viharaya) as well as the Sailabimbaramaya in Paramparawa rule, robed and ordained two pupils, Rev. Ariyawansa and Rev. Amarawansa, the former of whom was admittedly the senior.

The plaintiff claimed that the said Rev. Piyaratana by an ola leaf writing (P 17A) nominated Rev. Amarawansa to succeed him as incumbent of Abinawaramaya, and that according to the Sissyanusisya Paramparawa rule of succession, he, the plaintiff, has succeeded as Viharadhipathi of the said temple.

The defendant stated that P17A is not a nomination of Rev. Amarawansa as successor and that Rev. Ariyawansa, as the senior pupil of Rev. Piyaratana succeeded him and the said Ariyawansa by a deed of 1951 appointed Rev. Seelawimala to succeed him, and that on the death of the said Rev. Seelawimala in 1972, the defendant became the rightful Viharadhipathi.

Whether P17A was a valid nomination of a successor or merely the expression of a wish, was the main deciding factor of the case —

Held —

P17A is only an arrangement for the better management of the temples during Rev. Piyaratana's lifetime, and Rev. Ariyawansa as the senior pupil who succeeded Rev. Piyaratana as Viharadhipathi of the Abinawaramaya resided at the said temple and functioned as Viharadhipathi after Rev. Amarawansa's death and appointed Rev. Seelawimala to succeed him, and from Rev. Seelawimala the office has devolved on the defendant.

Case referred to :

(1) *Baddegama Ratnasara Thero v. Basheer* (1964) N.L.R. 433.

APPEAL from an order of the Court of Appeal

A.C. Gooneratne Q.C. with *C. Ganesh* and *Mrs. H. Jayalath* for the Plaintiff—Appellant.

J. W. Subasinghe S. A. with *W. Rajapaksa* and *Miss E.M.S. Edirisinghe* for the Defendant-Respondent.

Cur. adv. vult

February 16, 1983

WIMALARATNE, J.

The Abhinawaramaya in Borella (now known as the Gothami Viharaya) was founded in the year 1905 by a pious and devout Buddhist lady, the late Appolonia Soysa. It has been decided by the Supreme Court in S.C. 159/61 D.C. Colombo 8741/L that there had been a dedication of this temple to the Sangha on the Wesak full moon day, 1905. Admittedly the Rev. Piyaratana Tissa Thero was the first incumbent of the temple as well as of the Sailabimbaramaya in Dodanduwa and the rule of succession is the Sissyanusisya paramparawa rule. He and his co-pupil Rev. Saralankara, who was the resident priest at Mangalaramaya in Beruwela, jointly robed and ordained two pupils, Rev. Telwatte Ariyawansa and Rev. Telwatte Amarawansa, the former of whom was admittedly the senior. At the time of dedication both these priests resided with Rev. Saralankara at Beruwela, whilst Rev. Piyaratane resided at Dodanduwa.

It is the case of the Plaintiff that Rev. Piyaratana by an ola leaf writing dated 15.1.1907 (P17A) nominated the Rev. Amarawansa to succeed him as incumbent of Abhinawaramaya, and that according to the Sissyanusisya Paramparawa rule of succession he, the Plaintiff, has succeeded as Viharadhipathi of the Abhinawaramaya:

The case for the Defendant is that P17A is not a nomination of Rev. Amarawansa as successor, and that Rev. Ariyawansa, as the Senior pupil of Rev. Piyaratana succeeded him on his death in May 1907. The Defendant claims that Rev. Ariyawansa by a deed of 1951 appointed Rev. Seelawimala to succeed him, and that on the death of Rev. Seelawimala in 1972 the Defendant became the rightful Viharadhipathi.

The case therefore revolves around the interpretation of P17A. If it is a valid nomination of a successor, the Plaintiff has established his case. If it is not a nomination of a successor, the Plaintiff's case fails. P17A consists of the last two pages in a book P17 known as the "Prathi Mokshaya" written by Rev. Piyaratana at Dodanduwa. The book consists of a sheaf of loose ola leaves bound together between two thin strips of wood with a cord. The writing is in the Pali language by a process of inscribing with a panhinda (a pointed object). The book had been sent by Rev. Piyaratana to Rev. Saralankara, and preserved in the library of the Mangalaramaya. It was produced in court by a priest of that temple, and a presumption of its genuineness had been drawn by the District Judge. P17A was translated from Pali to the Sinhala language by an erudite bhikkhu, the Rev. Dambulumeye Gnanarathana, a lecturer in Pali at the Vidyalandara University. The authenticity of P17, and the particular translation which has been marked as P17B has not been challenged before us. P17B reads as follows:—

මුදුරුසාණන් වහන්සේට නමස්කාර වේවා”.

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උගය ප්‍රාඨිමොක්‍ෂයෙන් යුත් වේ පොත බෙහෝ දිනක් මා වෙත විය; ආයුෂ්මතුන්ට එය දෙවීමට නොහැකි වීමයි පලකා ඉඩ ලැබුණු අවස්ථාවෙහි එවමි. තවද මෙහිදීම තවත් කරුණක් දැක්වීමට කැමැත්තෙමි. මම දැන් අසූ වයස් වූයේ ජරාවෙන් දිරාපත් වූයේ බෙහෙවින් මම මොබ හැසිරීමට නොහැක්කෙමි. කොළඹ නගරය වෙත වැලිකඩ තමින් දන්තා පෙදෙසෙහි අභිතවාරම නම් විහාරය අප විසින් පිලිගෙන ඇත යන මෙකරුණ ආයුෂ්මතුන්ට ප්‍රකාශය. එහි අප කෙරේ බොහෝ කලක සිට පැහැදි සිටින අපලෝකිය සොයිසා නමැති මහොපාසිකාවගේ සෙසු දායකයන්ගෙන් මහත් ශ්‍රද්ධාවක් ඇත. ඔවුන් තුළ ලොකු උනන්දුවක් ද දන්තා ලැබේ. ඔවුහු විවිධාකාර තෙවසික හිඤ්ඤාවක් ලැබ මහත් ලාභයකට පැමිණෙන්නයි සිතමි. මහොපාසිකාවද යම් ප්‍රතිබල හිඤ්ඤාවක් ප්‍රධාන තෙවසික වශයෙන් ප්‍රාඨනා කරයි; අපගේ ප්‍රිය ශිෂ්‍යවූ වාක්ත ප්‍රතිබල අමරවංශ හිඤ්ඤාව ඒ අභිතවාරමයේ අධිපති භාවයෙන් විසීමට සමත් වෙයි මට වැටහේ. එහෙයින් මගේ වචනයෙන් අමරවංශ හිඤ්ඤාව ඒ ආරාමය පාලනය කිරීමට යවන්න; එයින් ඒ ආරාමය නොබෝ කලකින් වෘද්ධියට විරුද්ධයට විපුලාවයට පත්වනු ඇත. අපගේ ප්‍රිය ශිෂ්‍ය වූ දක්‍ෂ වූ පැවිත වූ අරියවංශ හිඤ්ඤාව මේ ශෛලබ්මබ විහාරයේ වෙසෙමින් කළයුතු දේ සංවිධානය කිරීමට සුදුසුයි. එයින් මම වරින් නිදහස්ව පහසු සේ විසීමට හැකි වන්නෙමි. එහෙයින් අරියවංශ හිඤ්ඤාව මෙහි ඊමට මෙහෙයවන්න.

මෙය, බේරුවල මංගලාරම විහාරයේ වෙසෙන ප්‍රියශීලී සාරාලංකාර ආයුෂ්මතුන්ට භාග්‍යවත් සම්බුදුන් වහන්සේ පිරිනිවන් පෑමෙන් මතු දෙදහස් සාරසිය පණස් වන වසරෙහි දුරුතු පුර පසළොස්වක් ලත් ඉරිදා දෙදිනකදී වෛල බ්මබාරාමයෙන් ආචාර්ය පියරත්න නිසස සිටවිරයන් විසින් එවන ලදී.”

ඉහත සඳහන් අංක 1 දරන පාලි පාඨයේ නිවැරදි සිංහල අනුවාදය අංක 2 දරණ පාඨයෙන් සාවද්‍යතා බව මගේ දැනුම පරිදි මෙයින් සහතික කොට ප්‍රකාශ කරමි.

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දමුණුමායේ ආණරතන ස්ඵටීර (පණ්ඩිත, ඇම්.ඒ),
 සුනෙහාරාමයේ අධිපති, විද්‍යාලංකාර මණ්ඩපයේ බෞද්ධ
 අධ්‍යක්‍ෂවරයාගේ නවකාවරය.

The translation of P17B from Sinhala to English, as accepted by the Court of Appeal, is as follows :—

“This book containing ‘Prathi Mokshya’ has been with me for a long time and I was unable to send it to you until I got this opportunity. I would also like to mention another matter here. I am now 80 years of age and am infirm and feeble and cannot get about. You are well aware that we have accepted Abhināwaramaya Vihara at Welikade Colombo. The Chief laywoman Appolina Soysa and the other ‘Dayakayas’ have shown us great devotion for a long time. They take a keen interest (in the temple). I think that they will be greatly benefited if they get a prudent resident Bhikkhu. The chief laywoman wishes to have an efficient priest as the chief resident Bhikkhu. I think that our dear pupil Amarawansa Bhikkhu who is learned, efficient and eloquent will be suited to reside as the Viharadhipathi of Abhinawaramaya. Therefore take my word and send Amarawansa Bhikkhu to manage that temple. By doing so the temple will be improved in no time. Our dear pupil, the efficient and erudite Bhikkhu Ariyawansa is suited to reside at this Sailabimbaramaya Temple and to organise what has to be done there. By doing this, I will be free of burdens and could lead a peaceful life. Therefore make arrangements to send Bhikkhu Ariyawansa here. This is sent by Piyaratana Tissa Thero the tutor priest at Sailabimbaramaya Vihara Dodanduwa to Saralankara Residing at Mangalaramaya Temple, Beruwela. This Sunday Duruthu Full Moon Day in the year 2450 after the Parinibbana of Lord Buddha”.

Both the District Judge and the Court of Appeal have interpreted this document to be a mere expression of a wish by Rev. Piyaratana in regard to the management of the Abhinawaramaya (and of Sailabimbaramaya) and not as a permanent appointment of Rev. Amarawansa to succeed him as Viharadhipathy of Abhinawaramaya.

Mr. Gooneratne for the Plaintiff-Appellant has posed the question as to why a mere temporary arrangement regarding the management of a temple for a short period of time

(Rev. Piyaratana was then 80 years of age) should have been incorporated in a formal document such as an ola leaf "Prathi Mokshaya". He also emphasises the significance of the words used such as අධිපතෙටත (Adipachchena) in reference to Rev. Amarawansa in the original Pali; and of the words අධිපති හටයෙන් විසීමට (Adhipathi Bhawayen Visimata) in the Sinhala translation.

Mr. Subasinghe for the Defendant-Respondent has emphasised the background to the writing of P17A. It was written at a time, soon after the dedication in 1905, and the desire of Rev. Piyaratana would have been to see that an efficient priest acted as incumbent during his old age. It would therefore have been natural for him to have made a temporary arrangement in respect of Abhinawaramaya, and at the same time he directed that his senior pupil should assist him at Sailabimbaramaya. He expressed his wish in these terms:— "Therefore take my words and send Amarawansa Bhikkhu to manage that temple (Abhinawaramaya)". This, contends counsel, was by no means a nomination by Piyaratana of Amarawansa to succeed him after his death. If it was meant to be a nomination it is more likely that it would have been communicated directly to Amarawansa and would also have been couched in unambiguous terms.

It has not been the Plaintiff's case that by P17A Rev. Piyaratana renounced his right to officiate as Viharadhipathi of Abhinawaramaya. The office of Viharadhipathi is inalienable, and a priest on whom this office has devolved, whether according to the rule of Sissyanu Sisyā Paramparawa or by appointment, holds it in his lifetime to pass it according to law to his senior pupil or to such other pupil as he may select.

It is quite usual however for a Viharadhipathi to appoint another pupil to manage the temple during his absence or illness. By such an appointment the Viharadhipathi does not abandon his rights as *de jure* Viharadhipathi. His rights enure for the benefit of his successor. Such an arrangement for the management of a temple during the incapacity of a Viharadhipathi is quite different from the nomination of a

successor. When an incumbent or Viharadhipathi wishes to deviate from the normal rule of pupillary succession by nominating a priest who would not otherwise have succeeded him, the intention to nominate must be clear and unambiguous. There should be no room to doubt that the nomination is that of a successor. It is not necessary to use words such as "I nominate my pupil to succeed me as Viharadhipathi" if a clear intention could be gathered that the nomination was to be of a person to be the Viharadhipathi. The case of *Baddegama Ratanasara Thero v. Basheer*⁽¹⁾ is a good illustration of the intention to nominate a successor being gathered although direct words of nomination were not used. The Rev. Baddegama Dharmaratana Nayaka Thero appointed his obedient pupil the Rev. Baddegama Ratanasara Thero as Adhikari of the Kovilkanda Purana Viharaya in Matara, with power of management of the temple and with an order that he should not assign or hand over the viharaya to anyone "who does not belong to our succession". T. S. Fernando, J. took the view that "such an injunction had no place in a deed of appointment of a mere manager. It was more appropriate in a deed appointing a person to perform all the functions customarily informed by the monk who is now commonly known as the Viharadhipathi" **at 436.**

Can an intention to appoint or nominate Rev. Amarawansa "as successor" be gathered from P17A? They are the last two pages of the 'Prathi Mokshaya', which is generally not meant for recording such nominations. Rev. Piyaratana wants to **inform** (දැන්වීම) a certain matter which he says he has not recorded earlier. It contains no order or direction (අණකිරීමක්). The dayakayas would, he says, benefit if they get a prudent resident bhikkhu; and also the donor Mrs. Soysa wished to have an efficient priest as Chief resident bhikkhu. Rev. Piyaratana **thinks** that Rev. Amarawansa is suitable to reside as Viharadhipathi, and therefore **requests** Rev. Saralankara to send Rev. Amarawansa from Beruwela to manage Abhinawaramaya, as by doing that the temple would be improved in no time. At the same time he requested that Rev. Ariyawansa be sent to Sailabimbaramaya to organise what has to be done there. If those two requests were fulfilled he would be free of burdens **and could lead a peaceful life.**

It seems to me that Rev. Piyaratana, realising his incapacity through age to manage the two temples, desired that he should be assisted by his two pupils to manage them **during his lifetime**. It would be quite unsafe to infer from the wording of the document, and from the surrounding circumstances a selection of a successor. This writing is only an arrangement for the better management of his temples during his lifetime; which arrangement he communicated to his co-pupil with whom his two pupils were residing at Beruwela. The Rev. Piyaratana remained Viharadhipathi until the time of his death; and on his death according to the rule of succession his senior pupil Rev. Ariyawansa succeeded him as Viharadhipathi of the Abhinawaramaya.

Rev. Ariyawansa as the senior pupil did not forfeit his right to the incumbency by residing at Sailabimbaramaya after the death of Rev. Piyaratana, for that temple was a temple of the same paramparawa. He resided there in deference to the wishes of his tutor. No sooner Rev. Amarawansa died he started functioning as Viharadhipathi, notwithstanding the fact that there were other pupils of Rev. Amarawansa. Not only did he reside at the Gothami Viharaya, but he also nominated Rev. Seelawimala to succeed him, and from Rev. Seelawimala the office has devolved on the defendant.

I am therefore of the view that the District Judge and the Court of Appeal were correct in dismissing the plaintiff's action. This appeal is accordingly dismissed with costs.

VICTOR PERERA. J., — I agree

COLIN THOME. J., — I agree

Appeal dismissed.