1921. *Present:* De Sampayo J. and Schneider A.J.

PIYADASA *et al.* *v.* DEEVAMITTA *et al.*

435—D. C. Kandy, 27,910.

Buddhist ecclesiastical law—Sangika property—Priest cannot be ejected from vihare except for some personal cause—Priest claiming a portion of the premises—Right to eject—Right of high priest to give priest a permanent interest to any portion of vihare premises.

A Buddhist priest cannot be ejected from a Buddhist vihare except for some personal cause, irrespective of the rights of property. This right does not mean that an individual priest can select for himself a particular place in the vihare independently of the chief incumbent and against his wishes. Any persistent assertion of and insistence on such an alleged right is a personal cause, for which he may properly be ejected. It is doubtful whether a high priest, though he has control and management of the premises, and might regulate its occupation and use, has any right to give away any part of it or to create an interest therein to last beyond his own tenure of office.

THE facts appear from the judgment.

Bawa, K.C. (with him *D. B. Jayatileke*), for first defendant, appellant.

E. W. Jayawardene (with him *Samarawickreme*), for plaintiffs, respondents.

Cur. adv. vult.

September 15, 1921. DE SAMPAYO J.—

This case involves one or two interesting points regarding the power of the chief incumbent of a Buddhist vihare to create a separate interest in any portion of the premises in favour of an individual priest, and the extent of the right of a priest to continue his residence at a vihare. The first plaintiff is the Maha Nayaka or High Priest of Malwatta Vihare of Kandy, and the second plaintiff is the trustee appointed under the Buddhist Temporalities Ordinance. What is known as the Poya Maluwa Vihare is part and parcel of the Malwatta establishment, and forms the residential quarters of the High Priest. On a part of the ground of the Poya Maluwa Vihare, immediately adjoining the Maha Pansala, there stood a small building used as the residence of a priest or priests of Malwatta. The first defendant, who belongs to the Malwatta establishment, and received his ecclesiastical education there, appears to have been occupying that building, and on August 30, 1917, Galgiriawa Terunnanse, the then High Priest of Malwatta,

gave the first defendant a document, by which, reciting the first defendant's merits as scholar and priest, he authorized the first defendant to put up a new building at his expense, and to use such building as a permanent residence for himself and his pupils. The first defendant, acting under this authority, rebuilt the house and resided there. On January 3, 1920, the first defendant, claiming to be entitled to the house, purported to gift the house to his tutor, the second defendant. This obliged the plaintiffs to come into Court to have it declared that the defendants had no right to the Poya Maluwa Vihare premises, and that the first defendant's deed of gift in favour of the second defendant was null and void. The plaintiffs in their plaint offered to pay the defendants Rs. 300 as compensation for the building, though they said they were not legally obliged to do so. The first defendant, after the institution of the action, revoked the deed of gift, but that makes no material difference with regard to the questions involved in the case.

The first defendant, in the first place, depends on the document granted to him by the High Priest Galgiriawa Terunnanse. The document is an informal non-notarial instrument, and is therefore insufficient to create such an interest in the property as the first defendant claims. Moreover, I doubt whether the High Priest, even apart from the Buddhist Temporalities Ordinance, though he had control and management of the premises and might regulate its occupation and use, had any right to give away any part of it or to create an interest therein to last beyond his own tenure of office. The first defendant, in the next place, falls back upon the general principle that *sangika* property is common to the entire priesthood, and that an individual priest cannot be ejected therefrom. This principle was stated by Cayley C.J. in *Dhammejoty v. Tikiri Banda*[1] as follows: "A Buddhist priest cannot be ejected from a Buddhist vihare except for some personal cause, irrespective of the rights of property." There is no doubt about this Buddhist law, and it is therefore unnecessary to examine further the authorities on that subject. This right of the priesthood, however, surely does not mean that an individual priest can select for himself a particular place in the vihare independently of the chief incumbent and against his wishes. I think that any persistent assertion of and insistence on such an alleged right is a "personal cause," for which he may properly be asked to leave. Such conduct would amount to contumacy, and in the exercise of ecclesiastical discipline and order, the incumbent has, I think, sufficient authority even to eject the offending priest. In this case the first defendant, not only asserted an independent right, but purported to transfer it to another priest. It is unnecessary, however, to pursue this subject, because the District Judge has not ordered the first defendant to be ejected, but following the form of decree in *Hippola v.*

[1] (1881) 4 S. C. C. 121.

1921.

DE SAMPAYO J.

Piyadasa v. Deevamitta

Piyadasa (D. C. Kandy, No. 4,034),[1] he has only ordered the plaintiffs to be put in possession. It is objected on the first defendant's behalf that even this decree is wrong, because the plaintiffs have not specifically prayed for possession. There is no substance in this objection. The plaintiffs prayed for declaration of title and for damages until possession is restored, and that, I think, is sufficient to enable the Court to enter such a decree as the above. I think also that the sum of Rs. 612·24 awarded to the first defendant as compensation for the building is quite ample.

In my opinion this appeal should be dismissed, with costs.

SCHNEIDER A.J.—I agree.

Appeal dismissed.