

1978 Present : Samarakoon, C. J., Ismail J. and
Sharvananda, J.

REV. OLUWAWATTE DHARMAKEERTHI THERO,
Defendant-Appellant

and

REV. KEVITIYAGALA JINASIRI THERO
Plaintiff-Respondent

S. C. 423/73 (F)—D.C. Kandy 8319/L

Buddhist Ecclesiastical Law—Action for declaration that plaintiff Viharadhipathi of a temple—Whether Sangika or Pudgalika property—Proof of dedication essential—Does declaration lie if no such evidence.

The plaintiff instituted this action against the defendant praying for a declaration that he was the lawful Viharadhipathi of a temple called Rama Vihara and for ejection of the defendant therefrom. While the plaintiff claimed that the property was *Sangika* the defendant claimed it as *Pudgalika* property belonging to him. It was submitted on behalf of the defendant, in appeal, that there was no proof in this case that the premises in question was *Sangika* property.

Held :

- (1) That the plaintiff could not succeed in this case unless he proved that the premises in question was *Sangika* as he could not claim to be Viharadhipathi of *Gihi Santhaka* lands.
- (2) That dedication is a *sine qua non* for premises to become *Sangika* and the mere fact that a temple has been given to the Sangha does not make it *Sangika*. It must be dedicated in the manner prescribed by the Vinaya to become *Sangika*.
- (3) That there was no proof of such dedication in this case and the plaintiff's action must therefore fail.

Cases referred to :

- Saranankara Unnanse vs. Indajoti Unnanse*, 20 N.L.R. 385.
Wickramasinghe vs. Unnanse, 22 N.L.R. 236.
Wijewardena vs. Buddharakkita Thero, 59 N.L.R. 121.

APPEAL from a judgment of the District Court, Kandy.

H. W. Jayewardene, Q.C., with T. B. Dissanayake and Miss B. Walles, for the defendant-appellant.

C. R. Gunaratne, with Bimal Rajapakse, for the plaintiff-respondent.

Cur. adv. vult.

May 25, 1978. SAMARAKOON, C.J.

The plaintiff-respondent instituted this action against the defendant-appellant praying for a declaration that he is the lawful Viharadhipathi of a temple called Rama Vihare, situated in Kandy and for ejectment of the defendant-appellant from the premises. The plaintiff claimed that the property was *Sangika*. These premises were first acquired by Suriyagoda Sonuththra Thero on a Crown Grant No. 9503 of 30th March, 1883, for Rs. 75. By D1 the land is granted and assigned to Sonuththra Thero, his heirs and assigns and the Crown *intér alia* reserved the power to resume possession of any part of the said land if the necessity arose. Title plan 126169 dated 13th February, 1883, is annexed to the deed. Sonuththra Thero died in 1896. The plaintiff alleged that Sonuththra Thero founded thereon a Buddhist temple, which was consecrated about 70 years prior to the date of action and that this Rama Vihare has existed as *Sangika* premises for a period "beyond the memory of any living person". He states that Sonuththra Thero thereby became the first Viharadhipathi. He was succeeded by his senior pupil Kalutara Sudhamma and on the latter's death in 1940 by his senior pupil Diyapaththugama Dharmakeerthi. The plaintiff claimed to have succeeded to the incumbency as senior pupil of Dharmakeerthi. He stated that the defendant was disputing his rights and asked that he be declared the Viharadhipathi and that the defendant be ejected from the premises.

The defendant denied that these premises were *Sangika* or that there was any place of worship on the land called Rama Vihare. He stated that it was the *puḍgalika* property of Sonuththra Thero and after his death his lay heirs transferred this land to Kotigala Sumanatissa Thero and Kalutara Sudhamma Thero upon Deed No. 657 dated 9th September, 1903 (D6). Sumanatissa Thero by Deed No. 4280 dated 27.12.1956 gifted a half share of the premises to the defendant. The defendant also claimed that after the death of Sudhamma Thero, Sumanatissa Thero became entitled to the entirety. He further stated that in 1938 a private chapel was constructed on the land. The learned Judge has held that these premises were *Sangika* and entered

judgment for the plaintiff. From this the defendant appeals and counsel appearing for him confined his argument to this question only. He stated that there was no proof that the premises were Sangika and readily conceded that if there was such proof the plaintiff was entitled to judgment. The learned Judge has referred to certain documents wherein Sonuththra Thero, Sudharma Thero and Sumanatissa Thero are referred to as Viharadhipathi of Rama Vihare. In some one or the other priest refers to himself as Viharadhipathi. They could not in any way be proof of dedication. The issues on this point are as follows :—

1. Did Suriyagoda Sonuththra Thero upon Crown Grant No. W. 4472 dated 20.3.1883 become the owner of the land and premises described in the schedule to the plant ?
2. Did the said Suriyagoda Sonuththra Thero—
 - (a) Restore an ancient Vihare which stood on the said land, and/or
 - (b) Establish a place of Buddhist worship thereon ?
3. If so, did the said Suriyagoda Sonuththra Thero run and/or convert the said land into Sangika property ?

Issue 2 (a) refers to an ancient Vihara which stood on the land and the case of the plaintiff was that he ran the said Vihare as Sangika property. Plaintiff's witness Kevitayagala Dhammasidi Thero stated in cross-examination that he first went to the premises in 1925 and at that time there was an old Vihare there and a Bodhi. In cross-examination he admitted that he could not have gone there before 1930 and what he stated earlier was knowledge gathered from his tutor. His evidence cannot be accepted in proof of the existence of a Vihare in 1883 at the time of the Crown grant or even later up to 1930. The plan P3 made in June 1917, only shows the "site of Rama Vihare", meaning thereby that Rama Vihara once stood there. Further the Crown grant conveys 3 R. of Uduwatte Kelle, a well known forest within the limits of Municipal Council of Kandy. Issue 2(b) read with the second part of issue 3 means that Sonuththra Thero established a place of worship there and converted it into Sangika property. There is not an iota of evidence to support this. In fact in 1917 when Sudharma Thero and Sumanatissa Thero instituted action No. 25444 of the District Court of Kandy (D9) to vindicate a right of way to this land over the defendant's neighbouring land they claimed as owners of Rama Vihara Watta. If the plaintiff is to succeed in his case he must prove that the premises is Sangika. He cannot claim to be the Viharadhipathi of *Gihi Santhaka* lands. Dedication is a *sine qua non* for these premises to become Sangika. "This dedication may take the form of a writing or may be verbal, but in either case it is a formal act, accompanied by a

solemn ceremony in the presence of four or more priests who apparently represent the *Sarva Sanga* or entire priesthood." per Sampayo, J. in *Wickremasinghe v. Unnanse*, 22 N.L.R. 236 at 242. It is "dedicated to the whole order, the Sangha present and future throughout the world, in all directions North, South, East and West" (per Bertram C. in *Saranankara Unnanse v. Indrajoti Unnanse*, 20 N.L.R. 385 at 394) Basnayake, C.J. described the ceremony in more detail as follows:—

—“There must be an assembly of four or more bhikkus. The property must be shown; the donor and donee must appear before the assembly, and three times the formula generally used in giving property to the Sangha with the necessary variation according as it is a gift to one or more. Water must be poured into the hands of the donee or his representative. The Sangha is entitled to possess the property from that time onwards. No property can become *sangika* without such a ceremony. Sometimes there is a stone inscription recording the grant or a deed is given.” (*Wijewardena v. Buddharakita Thera*, 59 N.L.R. 121 at 124.)

The mere fact that a temple has been given to the Sangha does not make it *Sangika*. It must be dedicated in the manner prescribed by the Vinaya to become *Sangika*. There is no proof of such a ceremony in respect of Rama Vihare Watta. The plaintiff therefore fails in his claim. There are other issues based on whether it is *pudgalika* property. No claim in this respect was made in the plaint and I would therefore leave them open for decision in a properly constituted case. Subject to this the appeal is allowed and the plaintiff's action is dismissed with costs in both Courts.

ISMAL, J.—I agree.

SHARVANANDA, J.—I agree.

Appeal allowed.

