

**WEERAPURA**  
**v.**  
**HEENATIYANE NANDA TISSA THERO AND ANOTHER**  
**(INTERNATIONAL BUDDHIST CENTRE CASE)**

**SUPREME COURT.**

**M. D. H. FERNANDO, J.,**

**KULATUNGA, J., AND**

**WADUGODAPITIYA, J.,**

**S.C. APPEAL NO. 4/92**

**C.A. NO. 560/83**

**D.C. MT. LAVINIA NO. 270/ZL**

**APRIL 27 AND 28, 1992.**

*Buddhist Ecclesiastical Law - Trust - Constructive trust - Charitable trust - Charitable purpose - Sanghika property - Requisites for creation of a trust - Trusts Ordinance.*

Mrs. Podileenu Fernando had 3 sons: Oliver Fernando, Somasiri Somaratne, and Titus Fernando, the 2nd defendant and two daughters. One daughter was married to H. D. Jinadasa. The other daughter had two sons - the plaintiff-appellant and Rev. Wellawatte Ananda - and a daughter. Mrs. Fernando and Oliver, Somasiri and Jinadasa (referred to as the four founders) decided to establish a Buddhist Centre to serve as a residence for foreign priests and students coming to Sri Lanka and for outstation priests who wished to study Buddhist philosophy. At an auction sale under the Entail and Settlement Ordinance, the 2nd defendant was the highest bidder and (after a long delay) on 08.12.63 obtained conveyances in his name from the heirs of the owner. By this time the sole surviving founder was Jinadasa.

Although on the face of the deeds, the 2nd defendant became the absolute owner, it was common ground that the 2nd defendant held the property subject to a constructive trust in terms of section 84 of the Trusts Ordinance in favour of the four founders.

In October 1954 an Association was formed with a set of rules under the name International Buddhist Centre. Its objects were to put a building in Colombo with a resident priest in charge to train bhikkus to propagate the Dhamma, accommodate in the Centre foreign missionaries and students of diverse beliefs who come to Sri Lanka to study Buddhist philosophy and to run a Sunday school for teaching the Buddha Dhamma and the Buddhist way of life. On 23.01.59 the Minister of Finance declared the International Buddhist Centre an approved charity for income tax purposes. Several foreign and local leaders and dignitaries visited the Centre and the invitation for these functions went out from "the President and Members of the International Buddhist Centre" and not by the founders or by any trustees.

On 18.11.1965 the 2nd defendant by Deed No. 1060 transferred the lands to Rev. Ananda describing him as the Viharadipathi of the International Buddhist Centre and declaring the dedication of the premises to the Sasana and the Maha Sangha. There was some evidence that on 6.1.66 the land and buildings had been dedicated to the Maha Sangha.

Rev. Ananda died unexpectedly at the early age of 42 on 11.05.77 without pupils. The Amarapura Nikaya to which Rev. Ananda belonged appointed Rev. Nanda Tissa Thero the 1st defendant, who had been Rev. Ananda's tutor. Disputes arose and Jinadasa and some members of the families of the founders were excluded from the management of the Centre. On 03.05.78 Jinadasa, Rev. Ananda's mother, brother (plaintiff) and sister executed Deed No. 674 claiming that Jinadasa was entitled under section 75 of the Trusts Ordinance to appoint a trustee to fill the vacancy resulting from Rev. Ananda's death.

**Held:**

Under Section 6 of the Trusts Ordinance a trust is created when the author of the trust indicates with reasonable certainty by words or acts –

- (a) an intention on his part to create thereby a trust,
- (b) the purpose of the trust,
- (c) the beneficiary,
- (d) the trust property, and

(unless the trust is declared by will or the author of the trust is himself to be trustee) transfers the property to the trustee.

A trust is "an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner".

There is no evidence that the founders reposed any such confidence in the 2nd defendant, or that he accepted the same. Jinadasa made no such claim.

The conduct of the four founders establishes that they had in mind a purpose which fell within the category of the "advancement of religion and the maintenance of religious rites and practices", and possibly also "the advancement of education and knowledge". Their purpose was charitable. But although the purpose is charitable, there is no charitable trust necessarily created.

The conduct of the founders from 1954 up to 1965 at least, is quite inconsistent with an intention to implement their purpose through a trust imposed on the 2nd defendant. Instead they consciously decided to achieve their objectives through an association subject to rules which set out those objects.

An intention to create a charitable trust or any trust (apart from a constructive trust under section 84) has not been established.

The 2nd defendant held the property subject to a constructive trust in favour of the four founders; he had therefore to restore the property to them, or to deal with it in accordance with their directions. The association had no right or interest in regard to the title to the property; their object was "the putting up of a building"; nothing was stated about the subsequent management or administration of the building or the activities conducted therein. The conveyances by the 2nd defendant to Rev. Ananda was in accordance with the terms of the constructive trust by which he was bound.

The property was Sanghika.

**Cases referred to:**

1. *Wijewardena v Buddharakkita Thero*, (1957) 59 NLR 121, 124
2. *Wickremasinghe v Unnanse*, (1921) 22 NLR 236.
3. *Murugesu v. Chellah*, (1956) 57 NLR 463.
4. *Mailvaganam v. Ramanatha Aiyar*, (1933) 57 NLR 289.
5. *Doraiswami Kurukkal v Thambipillai*, (1949) 53 NLR 323.

**APPEAL** from judgment of the Court of Appeal

*H. L. de Silva, P.C.* with *Gornin Dayasiri* and *N. M. Musafar* for plaintiff-appellant.

*A. C. Gooneratne, Q.C.* with *P. A. D. Samarasekera, P.C.*

*M. B. Peramuna* and *Keerthi Gunawardena* for defendant-respondent.

*Cur adv vult.*

July 31, 1992.

**FERNANDO, J.**

Mrs. Podileenu Fernando had three sons : Oliver Fernando, Somasiri Somaratne, and Titus Fernando, the 2nd Defendant – Appellant-Respondent ("the 2nd Defendant") and two daughters. One daughter was married to H. D. Jinadasa; the other daughter had two sons the Plaintiff-Respondent-Appellant, ("the Plaintiff") and Rev. Wellawatte Ananda – and a daughter. Rev. Ananda had been ordained prior to 1953. He had interests and influence outside Sri Lanka; he made regular trips abroad to create awareness and understanding of Buddhist thought and philosophy, and was at one time a visiting lecturer at an University in Los Angeles.

In 1953, Mrs. Fernando, Oliver, Somasiri, and Jinadasa (collectively referred to as "the four founders") decided to purchase land "for the purpose of establishing a Buddhist Centre in order to provide residential facilities for missionaries of diverse beliefs and

students who come to Ceylon to study Buddhist philosophy as well as for Bhikkus from various parts of Sri Lanka visiting the city of Colombo for short periods". (This averment in the plaint, was admitted in the answer). They provided the consideration and authorised the 2nd Defendant to make the purchase. Two allotments of land were put up for sale on 10.10.1953, consequent to a Court order upon an application made under the Entail and Settlement Ordinance; the 2nd Defendant was the highest bidder, and was declared the purchaser; he paid the necessary deposit, and conditions of sale were duly executed and attested. The sale was confirmed by the Court on 15.11.53, but for some unexplained reason the owner refused to execute the conveyances; she died in October 1963, and her heirs executed conveyances in favour of the 2nd Defendant on 8.12.63. Although on the face of those deeds, he became the absolute owner, it is common ground that the 2nd Defendant held the property subject to a constructive trust in terms of section 84 of the Trusts Ordinance in favour of the four founders. There is some evidence, and in the circumstances it is probable, that the 2nd Defendant knew the purpose which the four founders had in mind. The Plaintiff's position is that the property was also subject to a charitable trust, but it is not clear whether the trustee of that trust was the 2nd Defendant.

Mr. H. L. De Silva, P.C., for the Plaintiff, conceded that there was no direct evidence as to the establishment of a charitable trust in 1953; it was his contention that the subsequent events, and the conduct of the parties concerned, upto about 1965, establish that the intention of the four founders was to create a charitable trust; the trust property, the purpose, and the beneficiaries, were clear; accordingly, there was a valid charitable trust. It is therefore necessary to refer to subsequent events up to 1965, and even thereafter up to the institution of this action.

In October 1954 an association was formed with the name "International Buddhist Centre"; its objects were **"the putting up of a building** in Colombo which shall be in charge of a resident priest who shall with the help of other priests train bhikkus to propagate the Dhamma, the accommodation in the Centre of foreign missionaries and students of diverse beliefs who come to Ceylon to study

Buddhist philosophy, and the opening of a Sunday school to teach the children the Buddha Dhamma and to lead them in the Buddhist way of life." The rules of the association were drafted by Oliver Fernando, who was a Proctor. There is no evidence of any attempt to prepare a trust deed.

The minutes of that association up to 27.4.63 have been produced; there is not a single reference therein to a trust (charitable, constructive or otherwise) or to trustees. Apart from Mrs. Fernando, the other three founders, as well as the 2nd Defendant and Rev. Ananda, held various offices in that association. On 2.1.58 the association decided to open a bank account and to collect funds from the public for the construction of the proposed buildings; commencing from 11.2.58 funds were collected for that purpose. Prime minister Nehru of India had laid the foundation stone on 19.5.57. Mrs. Sirimavo Bandaranaike was invited for the ceremonial tiling of the roof on 22.11.58. Prime Minister Bandaranaike was invited for the unveiling of the pinnacles on 23.2.59. President Rajendra Prasad of India visited the Centre and gifted a Buddha statue on 16.6.59. One Witkowsky, President of the Paderewski Foundation of the U.S.A., was invited for the opening ceremony on 18.10.59. For all these functions invitations were issued by "the President and members of the International Buddhist Centre", on behalf of the Centre, and not by the founders or by "any trustees".

On 23.1.59 the Minister of Finance by order published in the Gazette declared various public charitable trusts and institutions, including the "International Buddhist Centre", to be "approved charities" for the purpose of the Income Tax Ordinance. There is no evidence that there was any entity by that name other than the association formed in 1954; in particular, there is no evidence that there was a charitable trust by the same name, or that the trustees of such a trust applied to the Minister for such approval. That order therefore must be taken as referring to that association. That association was a charitable **institution**, and accordingly that order cannot be taken to mean that it was a charitable **trust**.

The association started a Sunday school, and commenced training bhikkus for the propagation of the Dhamma. At a meeting

held on 10.8.62, Somaratne is recorded as having exhorted the members that "in spite of all these setbacks they should strive at all costs to carry on the objects of the Centre as laid down in the Constitution". Looking at the period from 1954 to 1963, the picture that emerges is that this is what they were striving to do; nowhere does the idea of a trust emerge.

Three of the founders died before the conveyances were obtained: Mrs. Podileenu Fernando on 15.9.55, Oliver Fernando in 1958, and Somaratne in 1962. The sole surviving founder was Jinadasa. After conveyances were executed in favour of the 2nd Defendant, the question arose as to how the property should be dealt with; a draft prepared by the 2nd Defendant contained the following provisions:

"the said (2nd Defendant) do hereby offer, dedicate and grant unto the said SASANA AND MAHA SANGHA the lands and premises fully described ... now called 'INTERNATIONAL BUDDHIST CENTRE' and do hereby appoint Rev. Wellawatte Ananda to be VIHARADIPATHI of the said lands and premises hereby dedicate now called the 'INTERNATIONAL BUDDHIST CENTRE' to which the Rule of Succession the Sisyanu Sisya Paramparawa shall apply.

TO HAVE AND TO HOLD the said lands and premises hereby offered, dedicated and granted to the BUDDHA SASANA and MAHA SANGHA.

AND it is further Witnesseth that the said Rev. Wellawatte Ananda doth accept on behalf of the Sasana and Maha Sangha the said lands and premises.

This was not acceptable to Jinadasa, who testified that he had wanted the property transferred to Rev. Ananda as Director of the Centre, and that he (as well as the others, including Rev. Ananda) had objected to dedication to the Maha Sangha and to the Sisyanu Sisya Paramparawa rule. Finally, the 2nd Defendant conveyed the land and the buildings, by deed No. 1060 dated 18.11.65, to Rev. Ananda, whose acceptance appears on the deed:

"WHEREAS substantial buildings have been erected on the said lands with the funds provided by (the four founders) and by the public with the intention and purpose *inter alia* for use as a Buddhist Centre for the Buddhist Priests arriving from all over the world to assemble for religious discourses.

AND WHEREAS it is now the intention of the (2nd Defendant) to give dedicate and grant unto the Sasana and Maha Sangha the lands fully described ... for the benefit of the Maha Sangha and the use of the Buddhist Priests arriving from the four directions and for other religious purposes.

NOW KNOW YE AND THESE PRESENTS WITNESS that in consideration of the aforesaid premises the (2nd Defendant) doth hereby offer dedicate and grant by way of gift unto REVEREND WELLAWATTE ANANDA the Viharadipathi of the International Buddhist Centre for the benefit of the Maha Sangha and the use of the Buddhist Priests arriving from the four directions and for other religious purposes the lands fully described ...

TO HAVE AND TO HOLD the said lands hereby offered dedicated and granted to the BUDDHA SASANA AND MAHA SANGHA.

AND it is further witnesseth that the said Reverend Wellawatte Ananda doth hereby accept on behalf of the Sasana and Maha Sangha the said lands fully described ..."

Jinadasa testified that he (and the others) had objected to this as well, as he had wanted Rev. Ananda appointed **as a trustee**; that he had suggested litigation, and had obtained legal advice that the 2nd Defendant had no power to execute such a deed.

There is some evidence that on 6.1.66 the land and the buildings had been dedicated to the Maha Sangha. A newspaper notice appeared on 5.1.66 setting out the programme of activities of the Centre for Duruthu Poya day (6.1.66), including "11 a.m. *Sanghika* Dana and the offering of the International Buddhist Centre to the Maha Sangha". One witness, Werapitiya, testified in regard to the ceremonies that took place on 6.1.66. That evidence was not acted upon by the learned District Judge (for reasons which the Court of

Appeal found to be unacceptable). In coming to that conclusion the learned District Judge did not assess the evidentiary value of that newspaper notice, or of a notice sent by Rev. Ananda in November 1966 (convening a meeting to reorganise the Dayaka Sabha), in which he had referred to the Centre as *Sanghika* property, or of a letter dated 20.4.66, signed by Rev. Ananda, addressed to the Editor of the Daily News stating that:

"The International Buddhist Centre ... was held in trust by (the 2nd Defendant) as part of the **private personal property** of the Family. It was on Duruthu Poya day this year that the Centre was formally **dedicated to the Maha Sangha** with him as Viharadhipati and Director of the Centre."

Jinadasa testified that this letter had been prepared and kept in the Centre because Rev. Henpitagedera Gnanaseeha, a regular preacher at the Centre, had been arrested on suspicion of conspiracy against the State; because of his links with the Centre, it was feared that the Government might acquire the Centre; accordingly in that letter Rev. Ananda had sought to explain that Rev. Gnanaseeha's connection was purely religious, and had falsely asserted that the Centre had been dedicated to the Maha Sangha to prevent acquisition; the letter had not been sent to the addressee, but had been kept in the premises in case the Police came to investigate. Although the aforesaid newspaper notice indicated that he was scheduled to deliver a sermon at 7.00 p.m., Rev. Gnanaseeha testified that he had no recollection of being invited for, and did not attend, any dedication ceremony on 6.1.66; despite the fact that he was normally invited to all important functions at the Centre.

It appears to me that either there was some uncertainty as to the original intention of the founders, or their original intention had undergone some changes. The objects of the association formed in 1954 include the training of bhikkus to propagate the Dhamma and the opening of a Sunday school; but make no reference to the accommodation of bhikkus from the outstations. The 1965 deed recited that the original intention was that the Centre should be used for bhikkus arriving from all over the world to assemble for religious



discourses, but made no reference to the accommodation of missionaries of diverse beliefs, of students wishing to study Buddhist philosophy, or of outstation bhikkus. Whatever the original intention, that deed sets out the 2nd Defendant's intention, at that point of time, as being to dedicate the property to the Sasana and the Maha Sangha. The question arises whether that intention was shared by Jinadasa and the other three founders at any stage prior to 1965, and I will refer to that later.

For eleven years thereafter neither Jinadasa nor any of the heirs of the deceased founders challenged the 1965 deed, or complained that the original purposes had been wrongfully or improperly subverted or whittled down, or asserted that Rev. Ananda held the property as a trustee, charitable or otherwise. Rev. Ananda died unexpectedly, at the early age of 42, on 11.5.77, without pupils. The Amarapura Nikaya to which he belonged, appointed as Viharadipathi the 1st Defendant, who had been Rev. Ananda's tutor and who had resided at the Centre for many years. Within six months disputes arose between him and Jinadasa, in consequence of which Jinadasa and some members of the families of the founders were excluded from the management of the affairs of the Centre. On 3.5.78 Jinadasa (as "sole surviving author of the Trust"), and Rev. Ananda's mother, brother (the Plaintiff), and sister (as his sole heirs or legal representatives), executed deed no 674:

"WHEREAS (the four founders) desired to purchase the two said parcels of land for the purpose of establishing thereon a Buddhist Institute called and known as the International Buddhist Centre for the benefit of Buddhist priests arriving from all over the world to assemble for religious discourses and for study, and appointed (the 2nd Defendant) as their agent to bid for the said parcels of land at the public auction;

AND WHEREAS (the 2nd Defendant) became the successful bidder ... and the two parcels of land aforesaid were conveyed and transferred to (the 2nd Defendant who) thus became the holder of the legal title to the said parcels of land, as constructive trustee for the authors of the Trust; ...

AND WHEREAS on the instructions of the authors of the Trust (the 2nd Defendant) executed deed No. 1060 .... conveying the said parcels of land together with the buildings and other improvements standing thereon to Reverend Wellawatte Ananda Thero to be held by him as Trustee and Director of the International Buddhist Centre, Wellawatte, for the benefit of the Maha Sanga and Buddhist priests coming from the four directions and for other religious purposes;

AND WHEREAS Reverend Wellawatte Ananda Thero accepted the aforesaid appointment as Trustee and functioned as such until his death on the 11th May of 1977."

Although at first sight, the phrase "on the instructions of the authors of the Trust" seems to suggest that all four founders had been alive in 1965 and had given such instructions, yet it is also reasonably capable of meaning that even the three deceased founders had, prior to death, concurred in instructing the 2nd Defendant to convey the lands to Rev. Ananda on the terms later embodied in deed No. 1060. Certainly, it suggests that Jinadasa (whatever his previous reservations) had accepted the terms of deed No. 1060, and this may explain his apparent acquiescence for over eleven years.

The learned trial Judge, having referred to the evidence in great detail, held that:

- (a) the four founders had decided to establish a residence for foreign priests and students coming to Sri Lanka to study Buddhism, and for outstation priests:
- (b) an application had been made under the Entail and Settlement Ordinance "for the purchase of land to commence the building and also for the appointment of (the 2nd Defendant) to purchase the land in his name for this purpose"
- (c) the land had been so purchased, and therefore it was held by the 2nd Defendant to put up a building for that purpose;

- (d) section 99(1) (c) of the Trust Ordinance includes a trust for the advancement of religion, and the aforesaid intention of the authors "of this movement" would fall within section 99(1) (c), and "could be called a charitable trust with (the 2nd Defendant) as the trustee of the land purchased";
- (e) the 2nd Defendant had by the 1965 deed purported to convey property held by him "in his name as the trustee of the charitable trust" to Rev. Ananda, although "he could only convey his legal right which is his trusteeship";
- (f) the Rev. Ananda also held the property as trustee;
- (g) on the death of the Rev. Ananda, the 1978 deed executed by the sole surviving author of the trust (Jinadasa) "was valid in law to convey the rights of trusteeship in the said premises to the Plaintiff";
- (h) the Gazette notification made in 1959 shows that "the Minister of Finance has declared the Centre a charitable trust and approved charity"; and
- (i) Rev. Gnanaseeha had described what ceremonies were necessary for dedication, that the only evidence as to ceremonies actually performed was given by Werapitiya, but he was not "prepared to accept the bare oral evidence of this witness on this point when considering the other evidence (not specified) in the case", and accordingly that the property was not *sanghika* property.

Reference was also made to section 107 of the Trusts Ordinance, but he did not, in all the circumstances of the case, form and express the opinion that a charitable trust either in fact existed or ought to be deemed to have existed.

On appeal, the Court of Appeal referred to the 1978 deed and the plaint wherein it was alleged that by the 1965 deed the property was conveyed to Rev. Ananda as trustee. Relevantly observing that

nowhere in the 1965 deed was there a reference to a trust or a trustee, and that the 1978 deed recited that the 2nd Defendant conveyed the property on the instructions of the "authors of the Trust", the Court of Appeal held that it was not open to Jinadasa, and to the Plaintiff who derived title from Jinadasa (by the 1978 deed), to claim that the 1965 conveyance was subject to a trust. The Court followed *Wijewardena v. Buddharakkita Thero*,<sup>(1)</sup> where Basnayake, C.J., having referred to *Wickremasinghe v. Unnanse*,<sup>(2)</sup> held that property given to the Sangha would become *sanghika* property only if dedicated in the manner prescribed in the *vinaya*:

"for a dedication to the Sangha there must be a donor, a donee, and a gift. 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 recite 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 the representative. The Sangha is entitled to possess the property from that time onwards. No property can become *sanghika* without such a ceremony. Sometimes there is a stone inscription recording the grant or a deed is given."

According to Werapitiya's evidence, all the necessary ingredients of a proper dedication existed. The Court of Appeal observed that "other than the bare suggestion that was put to (Werapitiya) in cross-examination that he was telling an untruth .... no serious attempt had been made to test (his) veracity", and the learned trial Judge gave no acceptable reason for not acting on his evidence, particularly in the light of the documentary evidence (to which I have already referred), and held that the property was *sanghika*.

The Plaintiff appealed to this Court with special leave. It was the submission of Mr. H. L. de Silva, P.C., that the property was admittedly held by the 2nd Defendant subject to a constructive trust in favour of the four founders; that it was also subject to a charitable trust; that section 107 of the Trusts Ordinance required the Court to hold that in all the circumstances of the case there was a valid

charitable trust; that there was no valid dedication to the Sangha by means of the 1965 deed and the subsequent ceremony on 5.1.66; that if the 1965 deed did convey title to Rev. Ananda, then in his hands it continued to be subject to the same charitable trust; and that upon the death of Rev. Ananda the surviving author (Jinadasa) was entitled, under section 75 of the Trusts Ordinance, to appoint a trustee to fill the resulting vacancy.

Section 6 of the Trusts Ordinance provides:

"Subject to the provisions of sections 5 and 107, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts –

- (a) an intention on his part to create thereby a trust,
- (b) the purpose of the trust,
- (c) the beneficiary,
- (d) the trust property, and

(unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust property to the trustee."

I will assume that the transfer of the property to the 2nd Defendant satisfied the last of these requirements, and that there was no uncertainty as to the purpose. A trust is "an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner ..." There is no evidence that the four founders reposed any such confidence in the 2nd Defendant, or that he accepted the same. Jinadasa made no such claim. The conduct of the four founders establishes that they had in mind a purpose which fell within the category of "the advancement of religion and the maintenance of religious rites and practices", and possibly also "the advancement of education and knowledge". Their purpose was therefore charitable. The learned District Judge wrongly assumed that if the purpose was charitable, then necessarily there was a charitable trust; he erred in thinking that the application under the

Entail and Settlement Ordinance specified the purchaser and the purpose. The existence of a charitable purpose or object does not necessarily lead to the conclusion that the founders desired to implement that purpose, or achieve that object, through the instrumentality of a trust. Property can be held, or transferred to another, with a mere wish that it be utilised for a charitable purpose, without any intention to create an obligation to do so *Murugesu v. Chelliah*.<sup>(3)</sup> Intention is a paramount consideration, and must be established. Here the conduct of the founders, from 1954 up to 1965 at least, is quite inconsistent with an intention to implement their purpose through a trust imposed on the 2nd Defendant; instead they consciously decided to achieve their objectives through an association, subject to rules drafted by one of them, which set out those objects. From 1953 until 1978 the question of a charitable trust or trustees never arose. An intention on the part of the founders to create a charitable trust, or any trust (apart from the constructive trust under section 84), has therefore not been established. On the contrary, the documentary evidence, relating to the association and its activities, conclusively establishes that such a trust was not intended. "A trust can be created by any language which is clear enough to show an intention to create it. A trust will not be imposed where the language of the creator expressly negatives any intention to impose a trust" (Halsbury, Laws of England, 4th ed., para 547), and this is equally applicable to the conduct of the alleged author of a trust. This is therefore not a case where there is an absence of evidence of the formal constitution of a trust, but one where there is positive evidence that a trust was not intended; the conduct of all those connected with the Centre, throughout a long period of time, was inconsistent with a charitable trust, and this is thus the converse of the situations in *Mailvaganam v. Ramanatha Aiyar*,<sup>(4)</sup> *Doraiswami Kurukkai v. Thambipillai*,<sup>(5)</sup> *Murugesu v. Chelliah*.<sup>(3)</sup> Section 107 is therefore inapplicable.

Further, the learned District Judge held that by the 1965 deed the 2nd Defendant conveyed his trusteeship to Rev. Ananda. Mr. H. L. de Silva did not seek to support this finding. That deed purported to convey the legal title; that was what the 2nd Defendant and Rev. Ananda intended and understood, and Jinadasa's understanding was the same. The dispute between the parties was not as to

whether that deed conveyed the trusteeship, but rather whether it successfully conveyed legal title, and if so, whether it was also subject to a trust. He submitted that the property was subject to a charitable trust, and, upon transfer, Rev. Ananda, became bound by the same charitable trust; upon his death, the surviving author was entitled to appoint a new trustee. This raises further difficulties; could the 2nd Defendant, if he had been a charitable trustee, have divested himself of his office by such a transfer? Or was he guilty of a breach of trust, necessitating removal by the court? Could the surviving author appoint a new trustee without a court order removing the original trustee? As I hold that there was no charitable trust, it is unnecessary to consider these questions.

The 2nd Defendant held the property subject to a constructive trust in favour of the four founders; he had therefore to restore the property to them, or to deal with it in accordance with their directions. The association had no right or interest in regard to the title to the property; their object was "the putting up of a building": nothing was stated about the subsequent management or administration of the building or the activities conducted therein. By 1963 building activities had been completed and conveyances of the lands obtained. According to the available evidence, there was disagreement as to whether the property should be conveyed to Rev. Ananda as trustee, or dedicated to the Sangha. The 1965 deed was executed on the instructions, or in accordance with the wishes, of the four founders. If, as now submitted, the terms of that deed were contrary to their wishes, it is surprising that Jinadasa and the heirs of the other founders did not protest and perhaps even resort to litigation. I hold that the conveyance by the 2nd Defendant to Rev. Ananda was in accordance with the terms of the constructive trust by which he was bound.

It remains to consider whether the property was *sanghika*. Mr H. L. de Silva, P.C., submitted that although the learned District Judge gave no reason for disbelieving Werapitiya, his evidence was patently unreliable, principally because of one answer in evidence-in-chief: that "Oliver Fernando who gave evidence in this case and members of his family were present" at the dedication ceremony held on 6.1.66. Since Oliver Fernando had died in 1958, he could not have

been present at that ceremony, and therefore, it was submitted, Werapitiya was untruthful. In fact Oliver Fernando's widow had given evidence, and it is quite possible that the witness had referred to the widow, but that his answer had been incorrectly recorded; the matter was not probed at all in cross-examination, and the learned District Judge made no reference to it. I am unable to hold that this was one of his reasons for rejecting Werapitiya's evidence. The Court of Appeal was right in holding that the property was *sanghika*.

I therefore dismiss the appeal with costs.

**Kulatunga, J.** - I agree.

**Wadugodapitiya, J.** - I agree.

*Appeal dismissed.*