

**CHANDANANDA THERO**

v.

**KANAMEEWELA SUMANAJOTHI THERO**

SUPREME COURT.

WANASUNDERA, J., L. H. DE ALWIS, J. AND H. A. G. DE SILVA, J.

S.C. No. 69/84.

C.A. 7/77/(F).

D. C. KURUNEGALA No. 2571/L.

MARCH 18, 1986.

*Buddhist Ecclesiastical Law—Right of Buddhist monk though not in the pupillary line to reside in a temple and be maintained from temple funds.*

Once a temple is made Sanghika or offered to the Sangha, it belongs to the entire priesthood and any priest can with the consent of the Chief Incumbent remain in the temple though he is not in the line of pupillary succession; but he has no right to be maintained from the temple funds. The right of residence is to reside in the temple in a place allotted by the Chief Incumbent.

**Cases referred to:**

- (1) *Vipulananda Terunnanse v. Sedawatte Pannasara*—20 C.L.W. 119.
- (2) *Paruselle Dhammajothy Unanse v. Tikiri Banda Parenatale—et al* (1881) 4 S.C.C. 121.
- (3) *Piyadasa v. Deevamitta*—(1921) 23 N.L.R. 24, 29.
- (4) *Moratota Sobhita Thero v. Amunugama Ratnapura Thero*—[1983] Bar L.R. 151, 160.
- (5) *V. Dhammaloka Thero v. P. Saranapala Thero*—(1956) 57 N.L.R. 518.

APPEAL from judgment of the Court Appeal.

*Nimal Senanayake, P.C.* with *K. Gunaratne* and *Miss S. M. Senaratne* for plaintiff-appellant.

*Everard Ratnayake* for defendant-respondent.

*Cur. adv. vult.*

April 30, 1986.

**H. A. G. DE SILVA, J.**

In this case the plaintiff-appellant instituted this action against the 1st defendant and the 2nd defendant-respondent to have himself declared the lawful Viharadhipathi of a temple called Sudharmaramaya at Galyaya, to have the defendants ejected therefrom and for damages. After trial judgment was entered for the plaintiff as prayed for. The 1st defendant had died during the pendency of the action and the 2nd defendant appealed from the judgment of the District Court. The Court of Appeal dismissed the appeal of the 2nd defendant with costs. In the course of its judgment the Court of Appeal has gone on to state:

“But however the order of the learned District Judge ordering the ejection of the defendant is not to be construed as an order ejecting the defendant from the temple itself to reside wherein, the defendant as a monk has an inherent right”.

It is from this part of the judgment of the Court of Appeal that the plaintiff has appealed to this Court.

Admittedly this is a temple exempted from the provisions of section 4 of the Buddhist Temporalities Ordinance (Cap. 318) and succession to its incumbency is governed by the system of succession known as Sisyānu Sisyā Paramparawa. It was the contention of the learned

counsel for the plaintiff-appellant that inasmuch as the Court of Appeal has held that the 1st defendant himself was an imposter and the 2nd defendant could not claim any interest from him, the learned Judges of the Court of Appeal were in error when they added a rider that the decree of ejectment should:

“not be construed as an order of ejectment of the 2nd defendant from the temple itself where in the 2nd defendant as a monk has an inherent right”.

Learned counsel conceded that had the 1st defendant been one of the pupils of the plaintiff's tutor. The 2nd defendant being the 1st defendant's pupil, he would have had a right to reside in this temple and be maintained from its funds but since the 1st defendant has been held to be a stranger to the line of pupillary succession, and hence an imposter, neither the 1st defendant nor his pupil the 2nd defendant had the right to continue to reside in the temple once the plaintiff was declared the lawful viharadhipathi. He relied on the case of *Vipulananda Terunnanse v. Sedawatte Pannasara* (1) to support his contention that a person who is in the line of pupillary succession would be entitled to be maintained out of the funds of the temple, for this case held inter alia that the pupil of the deceased senior pupil though not entitled to succeed to the incumbency has the right to remain in the temple and be maintained out of its income.

Learned counsel for the respondent on the other hand relied on the dictum of Caley, C.J. in *Parusselle Dhammajothy Unanse v. Tikiri Banda Parenatale* (2) where he stated as follows:

“It has been more than once pointed out by this Court that a Buddhist priest cannot be ejected from a Buddhist Vihare, except, of course, for some personal cause irrespective of the rights of property; for a duly dedicated Vihara is ‘Sanghika’, the common property of the Priesthood. But the incumbency of a Vihara and the control and management of its endowments may undoubtedly be vested in one or more persons to the exclusion of all others.....”

De Sampayo, J. in *Piyadasa v. Deevamitta* (3) refers to the dictum of Caley, C.J. and goes on to say—

“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 an insistence on such an alleged right is a 'personal cause' for which he may be properly 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".

The dicta of Caley, C.J. and De Sampayo, J have been referred to with approval by Samarakoon, C.J. in *Moratota Sobhita Thero v. Amunugama Ratnapura Thero* (4).

It has been held in the instant case that Galyaya Chandrajothi Thero who belonged to the Asgiriya Chapter was at one time the lawful Viharadhipathi of this temple and functioned as such but two priests who belonged to the line of pupillary succession of Chandrajothi Thero had received their higher ordination at the Malwatte Chapter and hence forfeited their rights to the incumbency of the temple which was a temple that belonged to the Asgiriya Chapter. One of the two priests had in addition, by a deed, renounced his claim to the incumbency of this temple in favour of the Maha Nayaka of the Asgiriya Chapter who by a deed executed in 1965 had appointed the plaintiff as Viharadhipathi. This became necessary as the line of pupillary succession had failed and the temple vested in Sangha, or became Sanghika, and the right of appointment of a new Viharadhipathi vested solely in the Maha Nayaka of the fraternity which had jurisdiction over the temple in question. (*V. Dhammaloka Thero v. P. Saranapala Thero*) (5).

In my view, reversion to the Sangha of Sanghika property in this context, is on the extinction of the line of pupillary succession, and enables the Maha Nayaka to make an appointment, but the dictum of Caley, C.J. referred to above still holds good, in that once a temple is made Sanghika or offered to the Sangha, it belongs to the entire priesthood and any priest can with the consent of the chief incumbent remain in the temple though he is not in the line of pupillary succession, but he has no right to be maintained from the income of the temple. (*Vipulananda Terunnanse v. Sedawatta Pannasara* (*supra*)).

In the instant case the evidence is that the priests from whom the 2nd defendant alleges he derived this rights were in possession of this temple for nearly a hundred years and the 2nd defendant himself

succeeded to the 1st defendant who died during the pendency of this action. It is only just and proper that the plaintiff should permit the 2nd defendant to reside, to which he has a right, in an allotted place in the temple, if the 2nd defendant so desires. The appeal is accordingly dismissed. Parties will bear their own costs of this appeal.

WANASUNDERA, J. – I agree.

L. H. DE ALWIS, J. – I agree.

*Appeal dismissed.*

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