

1959

Present : Basnayake, C.J., and Pulle, J.

SARANAJOTHI THERA, Appellant, *and* DHARMARAMA THERA
Respondent

S. C. 615—D. C. Balapitiya, 482/L

Buddhist ecclesiastical law—Incumbency of a temple—Proof of robing and ordination of incumbent—Documentary evidence not essential—Buddhist Temporalities Ordinance, s. 41.

In this action instituted by the plaintiff for a declaration that he, and not the defendant, was the lawful Viharadhipathi of a temple which was governed by the rule of *Sisyanu Sisya Paramparawa*—

Held, that the mere fact that the Upasampada Register and the register maintained under section 41 of the Buddhist Temporalities Ordinance were not produced did not afford sufficient ground for rejecting the evidence of the plaintiff's witnesses that the plaintiff was duly robed and ordained.

“ The Buddhist Temporalities Ordinance does not declare that the register maintained thereunder is the only evidence of the robing or ordination of a bhikkhu, nor does the fact that an Upasampada Register is maintained by a Nikaya exclude the proof, by other evidence, of the fact that a bhikkhu obtained the higher ordination. The failure to produce documentary evidence of the robing or Upasampada of a bhikkhu does not render oral evidence of any of those events liable to be rejected on that ground alone. ”

APPPEAL from a judgment of the District Court, Balapitiya.

N. E. Weerasooria, Q.C., with *B. S. C. Ratwatte* and *W. Wimalachandra*, for Plaintiff-Appellant.

Sir Lalita Rajapakse, Q.C., with *K. Herat, C. G. Weeramantry* and *R. I. Obeyesekera*, for Defendant-Respondent.

May 13, 1959. BASNAYAKE, C.J.—

This is an action by Pitigala Saranajothi Thera against Parutota Dharmarama Thera for a declaration that the plaintiff is the lawful Viharadhipathi of the temple called Indipalegoda Sri Visudharamaya and that he be restored to the possession of the incumbency of the Vihare, and that the defendant be ejected therefrom. The plaintiff's case is that Konwewe Ratanamoli Thera was the founder of the Vihare and was its chief incumbent up to the time of his death in 1940. On Ratanamoli's death his only pupil Walagedera Jinalankara Thera succeeded to the incumbency of the temple and exercised his rights as Viharadhipathi up to the time of his death on 14th October 1952. On the death of Walagedera Jinalankara, the plaintiff succeeded to the office of Viharadhipathi as his sole surviving pupil. His right to the office he claimed was confirmed by the Maha Sangha Sabha on 11th November 1952. The plaintiff also avers that the succession to the temple was governed by the rule of *Sisyanu Sisya Paramparawa*.

The defendant denied the averments in the plaint and set up a case in support of his claim to the Vihare, and asked that the plaintiff's action be dismissed. His case is as follows:—Konwewe Ratanamoli Thera who was the absolute owner of the premises referred to in the plaint by right of long and prescriptive possession and planting conveyed the premises by deed No. 996 of 24th May 1933 (P5) to Walagedera Jinalankara Thera and Sri Ratana Tissa Thera whereby they became the owners of the Vihare, and Walagedera Jinalankara Thera by deed No. 1557 of 1st January 1948 (D1) conveyed the Vihare to the defendant whereby he became the owner. He denied that the plaintiff was the owner of the Vihare or that he had any right to it.

At the trial, before the issues were framed, learned counsel for the defendant stated that he did not deny the fact that the premises in question were Sanghika property. The plaintiff's counsel then suggested the following issues:—

- (1) Was Konwewe Ratanamoli the Viharadhipathi of Sri Visudharamaya?
- (2) Was the said Ratanamoli succeeded by his pupil Walagedera Jinalankara as Viharadhipathi of the said temple?
- (3) Did the plaintiff as a pupil of the said Jinalankara succeed to the Viharadhipathiship of the temple?

At this stage learned counsel for the defendant made an admission that the temple was governed by the rule of *Sisyanu Sisya Paramparawa*, and thereupon learned counsel for the plaintiff suggested the further issue:

- (4) Has the defendant any right or title to the Viharadhipathiship of this temple?

The only issue suggested by the defendant's counsel is—

- (1) Is the plaintiff a pupil of Jinalankara Thera?

A volume of evidence was led by the plaintiff in support of his claim that he was a pupil of Jinalankara and that Ratanamoli was Jinalankara's tutor. Among his witnesses were Welitara Uttamagnana Thera, the Anu Nayaka of the Chula Ganti Nikaya, and Welitara Guanawimala Thera, the Mahā Nayaka of the Amārapūra Chula Ganti Nikaya. These witnesses, who are persons of standing in the Sangha, deposed to the fact that they were present at the robing and ordination of the plaintiff, who was robed by Jinalankara. The defendant in his examination-in-chief admitted that Jinalankara whom he knew even before 1947 was the Viharadhipathi of this temple when he first came there in that year on his invitation, but he denied that the plaintiff was the pupil of Jinalankara. He also admitted that Ratanamoli was Jinalankara's tutor and the Viharadhipathi of this temple and that he obtained his claim to the ownership of this temple on the deeds P5 and D1. In cross-examination he stated "In my answer there is only one deed in my favour. I don't hope to claim on that deed. I don't claim this temple on that deed now. I cannot remember whether my Proctor explained the answer to me. I cannot remember whether my Proctor explained it to me or not." When he was asked to explain his claim he said "I cannot say how in paragraph 4 (b) of my answer it is stated that the premises in question is not Sanghika property. The Proctor has made that error. I know Mr. R. Piyadasa de Silva. He is one of the most senior Proctors of this Court." He further said "I claimed these premises on a particular deed I claimed these premises on a number of deeds in my answer. I have not only claimed these premises on some deeds, but on some other facts also."

"Q. What are the other facts on which you claimed these premises in your answer ?

"A. I cannot understand what the other facts are, apart from the deeds."

The learned District Judge appears to have been carried away by the failure of the plaintiff to produce the Upasampada Register and the registration under the Buddhist Temporalities Ordinance, and he has disbelieved the evidence of Gnanawimala, the Maha Nayaka Thera, and that of Uttamagnana, the Anu Nayaka Thera, who deposed to the fact that they were present at the robing and ordination of the plaintiff. Apart from the evidence of the Nayaka Theras there was the evidence of three other witnesses who claimed to be present at the robing and ordination ceremony of the plaintiff. We are unable to find any justification for the rejection by the learned District Judge of the evidence of the Anu Nayaka and the Maha Nayaka Theras and the other witnesses, and for his conclusion that the plaintiff is not the pupil of Jinalankara. The mere fact that the Upasampada Register and the register maintained under section 41 of the Buddhist Temporalities Ordinance have not been produced does not afford sufficient ground for rejecting the evidence of the plaintiff's witnesses.

The Buddhist Temporalities Ordinance does not declare that the register maintained thereunder is the only evidence of the robing or ordination of a bhikkhu, nor does the fact that an Upasampada Register is maintained by a Nikaya exclude the proof, by other evidence, of the fact that a bhikkhu obtained the higher ordination. The failure to produce documentary evidence of the robing or Upasampada of a bhikkhu does not render oral evidence of any of those events liable to be rejected on that ground alone.

It is not at all clear why the learned District Judge gave a negative answer to issue No. 1, viz., that Konwewé Ratanamoli was not the Viharadhipathi of Sri Visudharamaya, in the teeth of the defendant's admission that he was the Viharadhipathi. The learned Judge holds that Jinalankara was the pupil of Ratanamoli but he holds that the plaintiff did not succeed Jinalankara. We are unable to reconcile this finding with the evidence in the case and we therefore think that the judgment of the learned District Judge cannot be sustained.

The learned District Judge seems to have been influenced by many irrelevant matters that were introduced into the case. They relate to the previous history of the temple and the Chula Ganti Nikaya. They were not the subject matters of the pleadings, nor were there any issues in regard to them. Under our system of Civil Procedure it is well established that what the Court has to determine is the case set up by the pleadings of the parties. The learned Judge has proceeded to decide an entirely different case without amending the pleadings. The plaintiff claimed that he was entitled to the temple by virtue of pupillary succession, and the defendant claimed it by virtue of ownership. The defendant admits that both Ratanamoli and Jinalankara were owners. P5 recites that Ratanamoli Tissa Maha Thera was the Viharadhipathi of Sri Visudharamaya and in D1 Jinalankara Nayaka Thera describes himself as "of Sri Visudharamaya Temple in Indipalegoda in Pitigala". On the entire evidence in the case including the admissions of the defendant the conclusion that Ratanamoli Thera was the Viharadhipathi of the temple, that Jinalankara was his successor, and that the plaintiff as the pupil of Jinalankara was entitled to the incumbency, is inescapable.

There is a further aspect of this matter. The defendant came to the Vihare in dispute with the leave and licence of Jinalankara, the person in possession of it, and the law does not permit him to deny that Jinalankara his invitor had a title to such possession at the time when he was invited. (s. 116 Evidence Ordinance).

We therefore allow the appeal with costs both here and in the Court below, and declare that the plaintiff is the lawful incumbent of the Vihare known as Indipalegoda Sri Visudharamaya, and order that he be restored to possession thereof and that the defendant be ejected therefrom.

PULLE, J.—I agree.

Appeal allowed.