

1971 Present : G. P. A. Silva, S.P.J., and Samerawickrame, J.

ESWATTE DHAMMATILAKA THERO, Appellant, and  
DOMPE DHAMMARATANA THERO, Respondent

S. C. 588/69 (F)—D. C. Gampaha, 13934/L

*Buddhist ecclesiastical law—Two temples belonging to one Viharadhipati—Incumbency of one of the temples held by a different pupil priest and his line of successors for generations—Inference of abandonment of rights to that temple by the original Viharadhipati and his successors—Requirement that intention of abandonment should clearly appear from the facts and circumstances—Rule of sisyanu sisya paramparawa—Scope of its applicability.*

Dangalla Attadassi Thero, who was the Viharadhipati of two temples (Varana Vihare and Dangalla Vihare), died on 18th September 1889. He left a Last Will which was capable of the interpretation that Sumangala and Sunanda, his two senior pupils, could by mutual agreement be the Viharadhipati of one temple each and that the rule of sisyanu sisya paramparawa should follow them. Accordingly, Sumangala, who was admittedly senior to Sunanda, possessed and enjoyed Dangalla Vihare only and was quite content to have Sunanda as the incumbent of Varana Vihare without any interference whatsoever. By this arrangement Sumangala impliedly at least renounced any rights that he may himself have had in respect of Varana. From this time there were two lines of succession at the two temples, namely, Sumangala and his pupils at Dangalla and Sunanda and his pupils at Varana.

In the present action the plaintiff, claiming to be in Sumangala Thero's line of succession, prayed for a declaration that he was entitled to the incumbency of Varana Vihare as against the defendant who was in Sunanda Thero's line of succession. He averred that the temple belonged originally to Attadassi Thero after whose death it devolved on his senior pupil Sumangala. He claimed therefore that he was the lawful Viharadhipati of it according to the sisyanu sisya paramparawa rule of succession. Defendant, however, claimed that he should be declared entitled to the temple because Sumangala Thero had renounced his rights to it and that it had devolved on him from Sunanda Thero and his line of successors under the rule of sisyanu sisya paramparawa.

All the evidence, both documentary and oral, and the facts and circumstances present at the crucial stages, considered in their totality, showed clearly that, after the death of Sumangala Thero, Sunanda Thero was acknowledged by everyone concerned, including the Sangha Sabha, as Viharadhipati of Varana without question and that he and those claiming under him had held the office for over 50 years.

*Held*, that, although Attadassi Thero was the original Viharadhipati of Dangalla Vihare as well as Varana Vihare, Sumangala Thero himself, his senior pupil, had abandoned or renounced any claim he had to Varana Vihare during his lifetime itself and Sunanda Thero and his pupillary line of successors for generations functioned as Viharadhipatis not merely *de facto* but *de jure*. The evidence satisfied conclusively the principle laid down in *Jinaratana Thero v. Dhammaratana Thero* (57 N. L. R. 32) and *Dhammavisuddhi Thero v. Dharmadassi Thero* (57 N. L. R. 469) on the question of renunciation or abandonment. Accordingly, the claim of the defendant, who was in Sunanda Thero's line of succession, to be Viharadhipati of Varana Vihare should be upheld.

LXXVI—I

*Per G. P. A. SILVA, S.P.J.—*

“The strict rule of *sisyanu sisya paramparawa* as we understand today came to be accepted with greater rigidity only after the rule was judicially interpreted in the second and third decades of this century. It will not be correct to say that there was inflexible adherence to this rule prior to this interpretation and we might mislead ourselves if we apply the rule as interpreted without exception to the past not taking into account the facts and circumstances of each case. One might say that, even after such judicial interpretation, instances of a departure from the ordinary rule are found occasionally in respect of certain temples.”

**A**PPEAL from a judgment of the District Court, Gampaha.

*C. Ranganathan, Q.C.*, with *Eric Amerasinghe, S. Wattegama* and *M. Sivarajasingham*, for the plaintiff-appellant.

*H. W. Jayewardene, Q.C.*, with *L. C. Seneviratne, Ben Eliyatamby* and *D. C. Amerasinghe*, for the defendant-respondent.

*Cur. adv. vult.*

October 8, 1971. G. P. A. SILVA, S.P.J.—

The plaintiff-appellant instituted this action against the defendant-respondent, praying—

- (a) for a declaration that the plaintiff is the Viharadhipati of the Varana Raja Maha Vihare and that he is entitled to possession thereof,
- (b) that the defendant-respondent be ejected therefrom,
- (c) that the plaintiff-appellant be quieted in possession thereof, and
- (d) for a permanent injunction restraining the defendant from interfering with the plaintiff and the performance of the plaintiff's functions as Viharadhipati.

The defendant filed answer denying the averments in the plaint and prayed—

- (a) that the plaintiff's action be dismissed with costs,
- (b) that defendant be declared the lawful Viharadhipati of the said Varana Temple,
- (c) for a declaration that the said Varana Temple including the Mangalagiri Pirivena is vested in the defendant,
- (d) for a declaration that the defendant as the lawful Viharadhipati is entitled to administer the temporalities of the said Varana Temple including the Mangalagiri Pirivena, and

- (e) that the plaintiff be ejected from the said Varana Temple including the Pirivena and from the temporalities of the said Varana Temple.

The devolution of title to this Temple according to the plaintiff's case was from Dangalla Attadassi Thero who died on 18th September, 1889, leaving a last will dated 10.9.1880. He was succeeded by his senior pupil Eswatte Sumangala Thero who died on the 25th March, 1908, and was in turn succeeded by his senior pupil Diddeniya Piyaratana Thero. The latter passed away on 22nd August, 1935, and was succeeded by the plaintiff who was his senior pupil. The defendant, while accepting that Attadassi Thero was the original Viharadhipati, asserted that he was succeeded by Bomiriye Gunaratana Sunanda Thero who died in 1911 and was followed by Kossinne Pannananda Thero on whose death the defendant was entitled to succeed both as the pupil and in terms of his last will. As the defendant was a minor however and was without means to establish his claim immediately, he was prevented by Keppitiwalane Vipassi Thero from succeeding to the incumbency during the lifetime of the latter. The defendant however was the senior pupil of Vipassi Thero too and claimed that, on the latter's death, he was entitled to the incumbency, both as his pupil and as the pupil of Kossinne Pannananda Thero.

The case went to trial on the following issues :—

- (1) Was Eswatte Sumangala Thero the senior pupil of Dangalle Attadassi Thero ?
- (1)A. Did Eswatte Sumangala Thero succeed Dangalle Attadassi Thero ?
- (2) Was Diddeniya Piyaratana Thero the senior pupil of Eswatte Sumangala Thero ?
- (2)A. Did Diddeniya Piyaratana Thero succeed Eswatte Sumangala Thero and function as incumbent of the said Vihare ?
- (3) Is the plaintiff the senior pupil of Diddeniya Piyaratana Thero ?
- (3)A. Did the plaintiff succeed Diddeniya Piyaratana Thero as incumbent of the said Vihare ?
- (4) If issues 1, 2 and 3 are answered in the affirmative, is the plaintiff the lawful Viharadhipati of the said Varana Rajamaha Vihare in accordance with the sisyanu sisya rule of succession ?
- (4)A. If issues (1)A, (2)A are answered in the affirmative, is the plaintiff the lawful Viharadhipati of the Vihare in the sisyanu sisya paramparawa rule of succession ?
- (5) Has the defendant whilst denying the plaintiff's rights and title to the said Viharadhipatiship been guilty of contumacious conduct as averred in paragraph 6 of the plaint ?

- (6) If issues 4 and 5 are answered in the affirmative—
- (a) Is the plaintiff entitled to the declaration of his status as Viharadhipati of the temple in suit ?
  - (b) Is the defendant liable to be ejected from the said temple and premises ?
- (7) Did Bomiriye Gunaratana Sunanda Thero succeed and function as Viharadhipati of the Varana Rajamaha Vihare as set out in paragraph (4)A of the answer ?
- (8) Did Eswatte Sumangala Thero renounce and abandon the Varana Rajamaha Vihare and forfeit for himself and his pupils all rights to the said Vihare ?
- (9) Did Diddeniya Piyaratana Thero abandon the Varana Rajamaha Vihare and forfeit for himself and his pupils all rights to the same ?
- (10) Did Kossinne Pannananda Thero succeed the said Bomiriye Gunaratana Sunanda Thero and/or function as the incumbent of the said Varana Temple ?
- (11) Did Kossinne Pannananda Thero by his Last Will No. 1613 dated 23rd March, 1928 appoint the defendant as Viharadhipati of the Varana Temple ?
- (12) Did the defendant as the sole pupil of Kossinne Pannananda Thero succeed him as Viharadhipati of the said Vihare ?
- (13) Is the Mangala Pirivena a temporality of the said Varana Temple and/or subject to the lawful control and administration of the Viharadhipati of the said temple ?
- (14) Are the Varana Temple, the plaintiff and defendant subject to the jurisdictional control of the Malwatte Chapter ?
- (15) Did the defendant petition the Sanga Sabha of the Malwatte Chapter against the plaintiff requesting that the defendant be declared the Viharadhipati of the Varana Temple ?
- (16) Did the Sangha Sabha of the Malwatte Chapter by its order dated 6.1.67 declare the defendant the Viharadhipati of the said temple ?
- (17) Is the order and judgment of the Malwatte Chapter—
- (a) res judicata between the plaintiff and defendant ?
  - (b) binding on the plaintiff ?
  - (c) estop the plaintiff from claiming the Office of Viharadhipati of the Varana Temple as set out in paragraph 12 (1) of the answer ?

- (18) If issues 14, 15, 16 and 17 are answered in favour of the defendant is the defendant entitled to a declaration that he is the Viharadhipati of the temple ?
- (19) If issues 11 and or 12 are answered in favour of the defendant is he entitled to a declaration that he is the Viharadhipati of the temple ?
- (20) If issues 18 and/or 19 are answered in favour of the defendant is the defendant entitled to have the plaintiff ejected from the Office of the Parivenadhipathi and from the Pirivena buildings and the temporalities and premises of the said Varana Vihare ?
- (21) Was the alleged order dated 5th January, 1967 in fact a decision of the Sangha Sabha ?
- (22) Was the said petition referred to in issue 15 regularly and properly inquired into by the said Sangha Sabha ?
- (23) Was the said order influenced by bias and/or improper conduct on the part of any one or more of the members of the said Sangha Sabha ?
- (24) If all or any one or more of the issues 21, 22 and 23 are answered in the affirmative is the said order binding on the plaintiff in any manner whatsoever ?
- (25) Even if issue 24 is answered against the plaintiff is the said order of the Sangha Sabha—
  - (a) res judicata
  - (b) binding
  - (c) operate as estoppel against the plaintiff on the claim based in the title set out in his plaint in this action ?
- (26) In any event can the defendant maintain his claim set out in his answer to have the plaintiff ejected from the Mangala Pirivena and/or the Office of Viharadhipati ?
- (27) Is the relief claimed by the defendant formulated in issues 18 and 19 barred by the provisions of the Prescription Ordinance ?
- (28) Is the plaintiff's action barred by prescription ?
- (29) Even if issue 1 and/or 2 and/or 3 is answered in the affirmative and issues (1)<sub>A</sub>, (2)<sub>A</sub>, and (3)<sub>A</sub> or any one of them is answered in the negative, is the plaintiff the Viharadhipati of the Varana Rajamaha Vihare and/or entitled to a declaration as such ?
- (30) Does the decree in D. C. Colombo Case No. 615 operate as res judicata against the defendant in respect of his claim to the office of Viharadhipati of the said Varana Rajamaha Temple ?
- (31)<sub>A</sub> Is the plaintiff a privy to any party in Case No. 615 ?

(31)<sub>B</sub> If not, is the plaintiff's plea of *res judicata* if any entitled to prevail ?

After trial the learned District Judge on the 14th November, 1969 delivered his judgment dismissing plaintiff's action with costs and entered judgment in favour of the defendant in terms of paragraphs *b*, *c*, *d* and *e* of his prayer.

Even though a large number of issues was raised in this case, it seems to me that the crucial question falls within a somewhat narrow compass. Assuming that the *sisyanu sisya paramparawa* rule governed the succession to this temple and that Eswatte Sumangala Thero was the lawful successor of Attadassi Thero, if, as the learned District Judge held, Gunaratana Sunanda Thero became the Viharadhipati of Varana either within the lifetime of Sumangala Thero itself or upon his death, the right of succession of Kossinne Pannanda and the subsequent devolution of title on the defendant is in my view established. The vital question therefore is whether the District Judge arrived at the correct conclusion when he held that Gunaratana Sunanda Thero at some stage succeeded as the lawful Viharadhipati of Varana to the exclusion of Eswatte Sumangala Thero or that the latter had renounced his right in favour of the former. I shall examine this question bearing in mind the decisions of this Court which counsel for the appellant has cited in support, particularly the cases of *Jinaratana Thero v. Dhammaratana Thero*,<sup>1</sup> 57 N. L. R. 372, and *Dhammavisuddhi Thero v. Dhammadassi Thero*,<sup>2</sup> 57 N. L. R. 469, in which the principle was laid down that an intention to renounce the right to be Viharadhipati will not be inferred unless such intention clearly appears from the facts and circumstances and that from mere residence, whatever its duration may be, a monk does not acquire a right to the incumbency as against the lawful Incumbent.

I shall first of all enumerate the facts and circumstances relating to the occupation of Varana Vihare by Bomiriye Gunaratana Sunanda Thero which are relevant to the consideration whether he was or was not the lawful Viharadhipati of the temple and for this purpose I shall begin with the first document produced by the plaintiff himself, namely the Last Will of Dangalle Attadassi Thero dated 10th September, 1880, marked P1. A reading of clause 2 of P1 shows that Attadassi Thero himself and one Pugoda Sumangala Therunnanse had a common teacher, Pugoda Devarakkhita High Priest, who was the incumbent of two temples, Anuragoda Vihare situated at Ganagoda pattu and Dangalle Vihare. Even though, according to ordinary rules of *sisyanu sisya paramparawa* as they are understood today after receiving judicial interpretation during the early part of this century, either Attadassi Thero or Pugoda Sumangala Thero, whoever happened to be the senior pupil of Pugoda Devarakkhita High Priest, would have succeeded to both these temples, what is stated in this clause is that Anuragoda Vihare was possessed and

<sup>1</sup> (1955) 57 N. L. R. 372.

<sup>2</sup> (1955) 57 N. L. R. 469.

improved by Pugoda Sumangala Thero whose pupils "inherited" that temple by virtue of pupillary succession while Dangalle Vihare was improved and possessed by Attadassi Thero and he desired that it should devolve on his existing seven pupils and any pupils robed subsequently. The necessary implication of this clause is that neither Attadassi Thero nor Pugoda Sumangala Thero had a desire to dethrone the other from the temple which he possessed and enjoyed but accepted the position that each of them inherited one of the two temples. For, in the second paragraph of this clause Attadassi Thero has been careful to mention that the respective resident priests of each temple, one of them being his own Dangalle Vihare, should not encroach on the rights of the residents of the other temple, *as has been the practice hitherto* (the italicising is mine). Although this fact by itself is an inconclusive guide to infer that Attadassi Thero would therefore have had the same type of succession in mind so far as his temples were concerned, the fact that he was himself heir to this pattern of succession gives rise at least to the probability that he may well have contemplated a similar type of succession to his temples when he executed his Last Will. That this mode of succession may have influenced him is rendered even more probable when one reads paragraph 4 of P1 where he expressed the wish that among the seven pupils enumerated in paragraph 2 Eswatte Sumangala Thero and Bomiriye Gunaratana Thero who had been rendering assistance with due obedience to him shall possess and enjoy certain properties referred to in that clause (without specifying which property was to be possessed by which of them) *residing wherever they liked* (the italicising is mine) and that after their demise the same shall devolve by pupillary succession. The phraseology of this clause in which special mention has been made by him of these two admittedly senior pupils, Sumangala being presumably the senior of the two having regard to the order in which the names have been mentioned, reminds one at once of the type of succession that he himself shared with Pugoda Sumangala Therunnanse in relation to the two temples of which their common teacher was the Viharadhipati, and at least gives the impression that Eswatte Sumangala and Bomiriye Sunanda were allowed the choice of the temple in which each one was to reside and the properties referred to in that clause which each one was to possess, and that such properties were thereafter to devolve on pupils by pupillary succession. It is very significant that a specific direction is given that both these senior pupils should possess and enjoy without making special mention of any one of them or the senior among them and that the devolution on pupils by pupillary succession also has been set out without specifying that pupils of any one of them shall succeed. It is also significant that in respect of both Dangalle and Varana he has mentioned the devolution on the seven pupil monks and others to be robed thereafter but not nominated any one of the two senior pupils. Whenever he did mention any pupils with any particularity in the Will however he mentioned both Sumangala and Sunanda, the only exceptional instance being that he mentioned only Sunanda at the beginning in clause 6 ; but this was for the special reason that he was allowed to possess a

half share of the property referred to because he planted it. On two occasions in clauses 4 and 8, Sumangala Thero and Sunanda Thero have been specifically mentioned and on both occasions they have been given the option of choosing their residence and the devolution after their demise has been laid down as being on the pupils by pupillary succession. When the choice of residence is mentioned, it is reasonable to think that the residences contemplated were the two vihares which Attadassi Thero possessed, namely, Dangalle and Varana. These facts which emerge from the Last Will form a useful background in which the other evidence relevant to the questions at issue can be considered.

The two next important documents produced by the plaintiff P2 and P3, both being letters written by Bomiriye Gunaratana Sunanda Thero, have reference to the death of Eswatte Sumangala Thero and pertain to arrangements consequent on that event. It is noteworthy that the letter P2 was addressed to the Sangha Sabha on April 2, 1908, which was just one week after the death of Sumangala Thero. The promptness of the letter itself—the lapse of one week being probably accounted for by the performance of duties connected with the funeral of the deceased Thero—and the fact that it is addressed to the Sangha Sabha the membership of which would have comprised all those interested in the succession to the two temples, are matters which should be kept in the forefront in considering the rights of succession. For, if any claim made by Gunaratana Sunanda Thero was in dispute the appropriate Sangha Sabha was given the opportunity to contest it at the earliest possible stage. In the letter P2 Sunanda Thero stated categorically that on the death of Attadassi Thero who was Viharadhipati of Dangalle and Varana, out of his four existing pupils, Sumangala Thero and he (Sunanda Thero) were appointed to the chief position in the two vihares and that as Sumangala Thero was the senior he (Sunanda Thero) placed Sumangala Thero in the chief position. He also enumerated various matters that had to be attended to at the Dangalla Temple and requested the Sabha for directions as to what course he should take in connection with those matters thereafter. He added that both Sumangala Thero and he himself had separate pupils both ordained and not ordained (novices).

Before passing on to other matters, I should like to dispose of the question of seniority as between the two monks Eswatte Sumangala and Bomiriye Sunanda. The order in which their names have recurred in the Last Will P1 in several places and the admissions made in P2 and P3 by Sunanda leave no room for any inference other than that Sumangala was, and accepted by Sunanda himself as, the senior of the two. However the deliberate distinction made in P1 between these two monks and the rest of Attadassi's pupils and the repeated references to these two in a bracket as it were on various occasions in this Last Will make it highly probable to my mind that Attadassi's intention was either that Sunanda should follow Sumangala as Viharadhipati of these two vihares or that the two should by mutual arrangement be the Viharadhipati of each



temple and that the rule of *sisya paramparawa* should follow them. Such an arrangement of course is not clearly laid down, but when he had two large temples, Dangalla and Varana, and he allowed the two senior pupils the option to reside wherever they pleased and also laid down the succession as a *sisya paramparawa*, the fact of the two of them residing at Dangalla and Varana respectively cannot be explained on any reasonable hypothesis other than by an arrangement between the two. The fact of actual residence by them in the two places without evidence of any dispute and the succession that followed in each place confirm further that the Last Will P1 was acted upon in that way. One has always to bear in mind, as I have already referred to earlier in passing, that the strict rules of *sisyanu sisya paramparawa* as we understand today came to be accepted with greater rigidity only after the rule was judicially interpreted in the second and third decades of this century. It will not be correct to say that there was inflexible adherence to this rule prior to this interpretation and we might mislead ourselves if we apply the rule as interpreted without exception to the past not taking into account the facts and circumstances of each case. One might say that even after such judicial interpretation instances of a departure from the ordinary rule are found occasionally in respect of certain temples. I cannot escape the feeling in these circumstances that the two pupils Sumangala and Sunanda fully appreciated the intentions of their teacher as expressed in the Last Will and acting in perfect harmony Sumangala possessed and enjoyed Dangalla Vihare and Sunanda possessed and enjoyed Varana Vihare. Sunanda in his own mind considered Sumangala as his senior and gave him precedence whenever the necessity arose while Sumangala, although he was senior, was quite content to have Sunanda as the incumbent of Varana without any interference whatsoever and thereby impliedly at least renouncing any rights that he may himself have had in respect of Varana. As I shall have occasion to go into greater detail later on in this judgment, this is the only basis on which it is possible to explain how it was that after the death of Sumangala Thero when both the occasion and opportunity arose for any claimants to advance their claims to Varana, if indeed Sumangala Thero was the lawful incumbent at the time of his death, there is no evidence of any pupil monk of Sumangala Thero even pretending to put forward any such claim. This circumstance clearly points in my view to the acceptance by the entire Sangha Sabha, which met after the death of Sumangala Thero, of Sunanda Thero as the lawful successor of Varana at least and perhaps even Dangalla; for the documents indicate that the successor to be in charge of Dangalla was appointed at the instance and with the consent of Sunanda Thero.

In this context the two letters P2 and P3 were of the utmost propriety and significance. Sunanda Thero in these letters admitted that Sumangala Thero was the senior pupil of Attadassi Thero; indicated to the Sangha Sabha the original intention of Attadassi Thero to appoint both of them as the Chief of the two vihares; disclosed to the Sangha Sabha that he had conceded the seniority of Sumangala Thero and, without arrogating

to himself the right of succession at Dangalla too which he may well with reason have done, requested the Sangha Sabha for directions. This was not all. He also informed the Sangha Sabha that Sumangala Thero too had his own ordained pupils thereby almost suggesting to the Sangha Sabha to appoint one of Sumangala's pupils to Dangalla. That such a suggestion was implicit in this letter is confirmed by his statement in the letter P3 of 17th May, 1908—the date is important as it is so close to the death of Sumangala Thero—to the Director of Education that Dangalla Dhammananda Thero was appointed by the Sangha Sabha as the chief of Dangalla Vihare with his consent. The place where the Sangha Sabha was held in order to consider these matters is also material to this question. The letter P2 is of course not addressed to a particular place. In the body of the letter however there are two references one of which at least clearly points to the venue of the Sangha Sabha being Dangalla Vihare. Although it is not brought out in the translation the original of P2 commences with the Sinhala words මෙහි දන්වලලේ විහාරේ which means “in this Dangalla Vihare” with reference to Sumangala Thero having held the office of Viharadhipati before his death. In the second paragraph of this letter the same word is used with reference to certain articles and books on religion kept at Dangalla. Thirdly, it is most probable that Eswatte Sumangala Thero died at the Dangalla Temple where he admittedly resided and that the body was lying-in-state at that temple and that Sunanda Thero and all the monks who attended the funeral who were interested in the succession and connected questions would have assembled there for the Sangha Sabha.

It is relevant to consider now what would have transpired at this meeting and what decisions would have been arrived at had the position been as asserted by the plaintiff. According to the plaintiff the rightful successor to both Dangalla and Varana would have been Diddeniye Piyaratana Thero. If that were so one would expect Piyaratana Thero who, according to D18, admittedly lived at Dangalla at the time, to have put forward his claim at this Sangha Sabha to the office of Viharadhipati of both Dangalla and Varana; for the Sangha Sabha to have decided accordingly and for Piyaratana Thero as successor to have assumed that role and to have resided at one or other of those two places in that capacity and then onwards to assert his authority in some way or even if he chose to live in any place other than these two vihares, to indicate his authority in some way at least on occasions when such authority was called for. But instead what does the available evidence disclose? The document P3 dated 17th May, 1908, from Sunanda Thero shows that, at some stage even prior to the date of that letter, which would be shortly after the death of Sumangala Thero, Dangalla Dhammananda Thero had been appointed to be the chief of Varana with his (Sunanda's) consent. Document D18 dated 12th May, 1908, from Piyaratana Thero and Saranapala Thero proves—

- (a) that the appointment of Dhammananda Thero as chief of Varana took place even before the 12th May;

- (b) that the appointment was not opposed by Piyaratana Thero ;
- (c) that Piyaratana Thero himself acknowledged Dhammananda Thero as the chief of Dangalla ; and
- (d) that Piyaratana Thero along with his co-pupil Ratanapala Thero residing at Dangalla desired that Dhammananda Thero be appointed also as the Manager of the school conducted at Dangalla.

It is also not unreasonable from these documents, in the absence of any evidence to the contrary, to infer that the Sangha Sabha—including Piyaratana Thero, alleged by the plaintiff to have been the rightful successor of Sumangala Thero—acknowledged Sunanda Thero as having a right to the succession not only of Varana but of Dangalla and that a pupil of Sumangala Thero was appointed as chief of Varana because Sunanda Thero himself suggested or consented to that course. One is here reminded of the fact which I referred to earlier, namely, that this succession, the pupil of Sumangala Thero succeeding him at the temple where he resided leaving the other temple Varana to Sunanda Thero and his pupil, followed the same pattern of succession that Attadassi Thero had in contemplation in his Last Will. Although I will not say that these documents by themselves support a renunciation of the rights over Varana by Sumangala Thero in favour of Sunanda Thero, the participation of Piyaratana Thero in the appointment of Dhammananda Thero as the Manager of the school and his admission that Dhammananda was already the chief of Dangalla seem to me to be strong presumptive evidence of the renunciation by him of the rights, if he had any at all, to succession of Dangalla Vihare. The oral evidence which I shall refer to later, far from improving his position, only confirms the defendant's case. Furthermore, document P18 in which he joins Saranapala Thero in stating to the Director of Education, so soon after Sumangala Thero's death, that Dangalla Dhammananda "is presently the Chief Priest of this Vihare" without any further qualification makes the conclusion almost irresistible that two monks junior to Dhammananda were sending a communication to the Department of Education expressing their support to the senior monk's appointment as Manager of the school at Dangalla Vihare. Had that not been the position and Piyaratana Thero was senior to Dhammananda, I would have expected him to write a letter on his own, without any association with Saranapala Thero, explaining that for some reason he has consented to the appointment of Dhammananda Thero as chief of Dangalla Temple as he was himself unable to function and requesting Dhammananda's appointment also as Manager. Without doing so and particularly by joining Saranapala Thero in writing this letter I cannot help thinking that he has placed himself in the same category as Saranapala Thero, a mere resident pupil of Dangalla Vihare, as both of them indeed described themselves in the letter. This circumstance again lends support for the contention of the defendant that Dhammananda and not Piyaratana was the senior pupil of Sumangala Thero, based, among other items of evidence, on the order

of numbering in the Lekammitiya, D22 referring to Dangalla Samanera and D44 referring to Diddeniye Samanera. It is noteworthy in this connection that there is no reference anywhere in the evidence to a samanera from Dangalla other than Dhammananda and one from Diddeniye other than Piyaratana who are connected with Attadassi or Sumangala Thero and whose names are mentioned in these documents. I may also say that these circumstances considerably weaken the argument of appellant's counsel that there is no proof either that Dangalla samanera refers to Dhammananda or that the numbers in the Lekammitiya maintained at Malwatte followed the order in which samaneras were presented for ordination. In the first place the probabilities are that any institution worthy of the name would have been inclined to maintain some order in assigning these numbers in a matter which would assume great importance when a question of seniority and succession had to be decided at some future date. If the numbers are entered at random without any order, such a procedure would defeat the very object for which such numbers are assigned. The order of numbering would therefore help to decide the question of the seniority as between Dhammananda and Piyaratana. Further the contents of Piyaratana's subsequent letter D18 which leads to a possible inference that he was junior to Dhammananda also renders more probable that the numbering in D22 and D44 followed the order of seniority at the ordination and the documents in my view support each other in arriving at a conclusion that Dhammananda was senior to Piyaratana. It was submitted by counsel for the appellant that the learned District Judge was in error in commenting or on deciding on this matter of Dhammananda's seniority which was irrelevant. I am altogether unable to agree with this submission. One of the issues that arose in the case for active consideration was whether Piyaratana Thero was the senior pupil of Sumangala Thero and whether Piyaratana Thero succeeded Sumangala Thero. It was highly relevant to this issue to show that, far from Piyaratana succeeding Sumangala Thero, another pupil of Sumangala Thero, namely Dhammananda, succeeded at least at the Dangalla Temple where Sumangala Thero resided before his death and that Piyaratana Thero not only did not succeed but expressed his approval of Dhammananda's appointment. This the defendant sought to prove by the necessary implication contained in D18 in which Piyaratana Thero joined Ratanapala Thero to request the Director of Education to appoint Dhammananda Thero who was "presently" the Chief Priest of Dangalla as the Manager of the school to succeed Sumangala Thero who was Manager. The decision on this matter was relevant not only in regard to this issue but at the same time answered the other issue as to whether, even if Piyaratana Thero was the senior pupil and had a right to succeed Sumangala Thero, he abandoned such right.

A close study of the Last Will P1 coupled with P2 leads to two possible views. One is that Attadassi Thero desired that the two pupils should be joint incumbents of the two temples after him and the other is that

Sunanda Thero should follow Sumangala Thero, the first of them of course being the more probable because, while these two senior pupils are clearly distinguished from the rest of his pupils, no distinction is made as between these two except in the order in which the names appear. The order of mention of the names read with the statement in P2 however in which Sunanda Thero acknowledges the seniority of Sumangala Thero leads to the other possible implication that Attadassi Thero intended that Sunanda Thero should succeed Sumangala Thero. Else there is no escape from the conclusion that they were nominated in P1 as joint incumbents. Even if that were so, in practice of course one could have assumed control only after the death of the other or could have shared the temples by arrangement. The one conclusion that is not possible from the Last Will either from express words or by necessary implication is an intention on the part of Attadassi Thero that Sumangala Thero should succeed him to the exclusion of Sunanda Thero and that Sumangala Thero's pupils should succeed Sumangala Thero. The course of events that followed subsequently which are highly material if not conclusive on this matter may be summarised as follows:—

- (1) The immediate assumption of powers of Viharadhipati by Sunanda Thero after Sumangala Thero's death.
- (2) The prompt communication to the Sangha Sabha by Sunanda Thero regarding the work that remained to be done at Dangalla and Varana and the request for a decision regarding certain articles at Dangalla.
- (3) The action taken by the Sangha Sabha as well as the dayakayas (lay devotees) of the four quarters as evidenced by the letter P3, namely, that Dhammananda was appointed as chief of Dangalla at the request of Sunanda Thero.
- (4) The express acceptance of this appointment by Piyaratana who, if he had a right to succeed Sumangala Thero at least at Dangalla, even if he did not assert his right or protest against the appointment could have remained silent and thereby given at least an impression of disapproval or disagreement with Dhammananda's appointment and Sunanda Thero's right to initiate action thereon.
- (5) The total absence of any interference with the exercise of the rights of Viharadhipati by Sunanda at Varana or even Dhammananda, his nominee, at Dangalla.
- (6) The absence of any claim to the office of Viharadhipati of Varana being put forward on the happening of the next important event, the death of Sunanda Thero.
- (7) The absence of interference on the part of any pupil of Sumangala Thero during the regime of Pannananda who was admittedly Sunanda Thero's pupil and succeeded him at Varana, and

- (8) The absence of any claim to Varana at any stage by Dangalla Dhammananda after his appointment to Dangalla on the only basis that he was the senior pupil of Sumangala Thero.

The totality of these events and circumstances are inconsistent in my view with any reasonable hypotheses other than the following :—

- (1) That everyone concerned with the succession to Sumangala Thero comprising the Sangha Sabha and any others present at Dangalla after the death of Sumangala acknowledged Sunanda Thero as Viharadhipati of Varana without question and perhaps recognised even the right of Sunanda Thero to succeed Sumangala Thero at Dangalla.
- (2) That the question of renouncing any claim to Varana by any pupil of Sumangala Thero did not even arise.
- (3) That if anyone had a claim it had been renounced or abandoned, and
- (4) That if there was something in the nature of a renunciation or abandonment of any right it was only associated with Dangalla to which Sunanda Thero may be considered to have abandoned his claim, when he had Dhammananda appointed as the chief priest and also gave reasons for his inability to function there, namely, distance and ill-health.

In this connection I must say that while the plaintiff relies on P3 to establish the admission by Sunanda Thero of Sumangala Thero being the chief Priest of Varana and Dangalla during his lifetime, one cannot overlook however that this document also contains in it some strong support for the defendant's case in Sunanda Thero's assertion that he was the rightful successor to both temples Dangalla and Varana after Sumangala Thero's death, that by virtue of that right he had taken some action in the period that elapsed between P2 and P3 to have Dhammananda appointed as chief priest of Dangalla and that he was further taking action with the Education Department, as Viharadhipati of both Dangalla and Varana, to have Dhammananda appointed as Manager of the Buddhist school. This action by Sunanda Thero and the assertions in P3, which are not contradicted by any other evidence, reinforce the conclusions that one is necessarily compelled to draw from the totality of the circumstances which I have endeavoured to enumerate above. A word of explanation is perhaps necessary as to why I say that some action was taken by Sunanda Thero to have Dhammananda appointed in the period that elapsed between P2 and P3. P2 does not speak of succession but only of the disposal of certain articles and books lying at Dangalla. P3 speaks only of the appointment of Dhammananda as Manager of the school at Dangalla but significantly refers to Dhammananda as having been appointed with his consent. As to when this consent was given is not to be found in any document produced by either party. From the date on P3 it must probably have been given

at the Sangha Sabha held at Dangalla some time after P2. This is confirmed by D18 of the 12th May, 1908, which shows that Dhammananda Thero was the chief priest of Dangalla at that date and that Piyaratana and Saranapala Thero wanted him appointed as Manager of the school in the vacancy created by the death of Sumangala Thero. It is reasonable to infer then that the appointment of Dhammananda was made between the 2nd April, 1908, when P2 was written and the 12th of May, which is the date of D18 which is chronologically the first document regarding the appointment of a Manager for the Buddhist school at Dangalla. The letter P3 by Sunanda Thero also reaffirms that he was considered the chief priest of both Varana and Dangalla after Sumangala Thero's death. Otherwise it is not understood how he, residing at Varana Temple, had any right to nominate a Manager for the Dangalla Buddhist School in his letter to the Director of Education. However, the evidence does not indicate that Sunanda Thero had any aspirations to succeed at Dangalla due perhaps to the practice or the pattern of succession that obtained earlier, the result being that Sumangala Thero's pupils succeeded at Dangalla left by Attadassi Thero and Sunanda Thero's pupils succeeded at Varana.

The answer of counsel for the appellant to the occupation of Varana by Sunanda Thero followed by Pannananda Thero and thereafter by Vipassi Thero is that none of them was a *de jure* incumbent. His submission is that the possession of a temple by a monk, however long continued that may be, does not give him any right to the office of Viharadhipati as against the lawful Viharadhipati. While conceding therefore that Sunanda and thereafter Pannananda and thereafter Vipassi were resident at Varana and occupied the position of Viharadhipati and may even have been recognised as such, he submits that they were only Viharadhipatis *de facto* and the *de jure* Viharadhipatis were always the pupils in the line of succession of Sumangala Thero. In order to succeed in this argument, he has to establish that Sumangala Thero was the original *de jure* Viharadhipati and, secondly, that even if that were so there was no renunciation or abandonment of his right to be Viharadhipati of Varana by him. As I have pointed out earlier a possible view on the document P2 read by itself is that Sumangala Thero functioned as the *de jure* Viharadhipati not only of Dangalla but also of Varana. But when it is read together with P1 which preceded it and P3 which followed it and also in the light of Sunanda Thero's occupancy of Varana, one has necessarily to pause before coming to a conclusion solely on P2. When further P3 is read in conjunction with D18 and the admitted succession of Pannananda Thero at Varana sometime after the death of Sunanda Thero, three years after Sumangala Thero's death, Pannananda being a pupil only of Sunanda Thero and having no connection with Sumangala Thero, this possible construction on P2 is completely rebutted giving way to the conclusion that there was some agreement between Sumangala Thero and Sunanda Thero to be Viharadhipatis of Dangalla and Varana respectively and that Sumangala Thero's pupils being aware of the

arrangement did not challenge or dispute the succession of Pannananda at Varana. This is not all. Pannananda thereafter admittedly functioned as Viharadhipati till he died in 1930 without any challenge or obstruction by any pupil of Sumangala Thero. Pannananda was again succeeded by Vipassi who had no claim whatsoever in the line of succession of Sumangala Thero and held the office for some 30 years. Whether Vipassi Thero rightly or wrongly succeeded Pannananda Thero *vis a vis* the defendant, not being a pupil of Pannananda Thero but a co-pupil of Sunanda Thero with Pannananda, is not relevant to the immediate question which I am now discussing. What is important is that, although Vipassi functioned as Viharadhipati for 30 years, no pupil in the line of succession of Sumangala Thero laid any claim to the incumbency during this very long period. That item of evidence is even by itself sufficient to support a *prima facie* case that Sunanda Thero and those claiming under him had held the office for over 50 years for the good reason that Sunanda Thero was accepted as Viharadhipati by virtue of the Last Will of Attadassi Thero and any subsequent arrangement there may have been. It also gives rise to a strong presumption of abandonment of the right to the office by Sumangala Thero and thereafter by Dhammananda and/or Piyaratana, even if any of them had a right. When the matter was thus left for only a presumption to be drawn, the plaintiff's own conduct at this stage furnished the vital decisive factor from which there is no escape. What does plaintiff do? Calling himself a pupil of Dangalla Dhammananda, Viharadhipati of Dangalla, and Diddeniye Piyaratana, Viharadhipati of Dangalla, in his Upasampada Declaration, he resided at Varana and conducted the Mangala Pirivena. The documents produced by the plaintiff himself P12, P13, P14, P29, P30, P37 and the defendant's documents D23 to D35, D37, D40 relative to this period furnish abundant proof that the plaintiff acknowledged Vipassi as the Viharadhipati *while living under the same roof*, consented to an appointment as trustee of the Vihara by Vipassi, or at least on the recommendation of Vipassi in his capacity as Viharadhipati, as required by the Buddhist Temporalities Ordinance; and that he consented to be adopted by Vipassi as the latter's pupil and in fact claimed under him in previous cases the records of which have been produced in this case. This conduct of the plaintiff, from whatever angle one may consider it, is totally inconsistent with any claim of his to the office of Viharadhipati through Sumangala Thero and his pupils which is the basis on which he has come to court and it is only consistent with his acceptance of Vipassi as the *de jure* Viharadhipati of Varana. Vipassi's claim is based on a succession which recognises the right of Sunanda Thero to have been the Viharadhipati on his own right to the exclusion of any pupils of Sumangala Thero.

As if all this evidence was not sufficient to establish the point, the Upasampada Declaration furnished by the plaintiff, P 7 A, has an amendment dated 1954 in cage 19 to the effect that Vipassi was the Viharadhipati of Varana. This being a document prepared and submitted



by the plaintiff containing this admission by him it must necessarily have the effect of contradicting further the plaintiff's case and strengthening the case of the defendant. I think that the submissions of counsel for the appellant in the face of this evidence that Pannananda and Vipassi must be considered as only *de facto* Viharadhipatis while the *de jure* Viharadhipatis were those in the pupillary succession of Sumangala Thero and Piyaratana Thero is wholly untenable and the documents of the plaintiff have only succeeded in demolishing his own case and proving conclusively the defendant's case. Having regard to these violently contradictory positions that the plaintiff has endeavoured to take advantage of in this court and in his earlier litigation or his reference of the dispute to the Malwatte Chapter, he could not have brought this action with any hope of success.

As I have referred here to the Upasampada Declaration of the plaintiff I wish to deal with another aspect of the documents P7 and P7A which are relied upon by the plaintiff. The Declaration P7A sets out in cage 7 that Dangalla Dhammananda was the Viharadhipati of Dangalla only, no mention being made of Varana, and that Diddeniye Piyaratana was the Viharadhivasi of Dangalla and proceeds to contradict this in cage 19 by describing Diddeniye Piyaratana as Viharadhipati of Dangalla. Quite independently of the defendant's documents which point to the seniority of Dhammananda over Piyaratana therefore, the plaintiff has, by the admissions contained in documents P7 and P7A, cast serious doubts as to whether Dhammananda or Piyaratana was the senior monk. Secondly, by his significant omission to mention in the relevant cages of these documents that either Dhammananda or Piyaratana was the Viharadhipati or even the Viharadhivasi of both Dangalla and Varana and by mentioning Dangalla in one instance and Dangalla and Bodhimalu Vihare in the other, he has compelled the inference that neither Dhammananda nor Piyaratana had a claim to Varana. His claim being based on Piyaratana's right to be the *de jure* Viharadhipati, according to the averments in the plaint, that claim too must necessarily fail. While I am on this point of the Upasampada Declaration, several of which were produced by the plaintiff and relied on by counsel for the appellant to support the holding of the office of Viharadhipati of Varana by Sumangala Thero, I should like to observe that the material contained in these two all-important declarations have been proved to be so undependable that it is unsafe to rely on the information contained even in any others for the purpose of establishing the status of a monk who has been described as the tutor of the monk in respect of whose ordination the declaration has been made. The Upasampada Declaration would at best be evidence of the status of the bhikkhu furnishing it and of his pupillage. To rely further on these declarations in order to prove the right of the tutor to be Viharadhipati of a particular temple would be altogether unsafe, particularly when there is a dispute in regard to that very matter. Secondly, there is the point which was repeatedly stressed by counsel for the appellant in regard to the distinction to be

drawn between a *de jure* Viharadhipati and a *de facto* Viharadhipati. A person filling the form of declaration may not give his mind at all to such a distinction and, even if he does, he can only state his impression or understanding of the position which may be found quite incorrect upon examination. Thirdly, there is a further possibility to which our attention was drawn by counsel for the respondent, namely, that these declarations started coming in after Ordinance No. 19 of 1931 by which time certain disputes as to the right to be Viharadhipati of Varana had already arisen and the information contained should therefore be treated with great caution as it may be supplied by interested and self-serving sources. I think there is substance in this submission and the amendments contained in P7A which I have referred to already illustrate the correctness of this caution. I do not consider it necessary to examine these declarations in detail as they constitute at best, as counsel for the appellant himself agreed, supporting evidence to buttress or contradict other important items of evidence.

Thus the documentary evidence which I have detailed above and the facts and circumstances present at the crucial stages, considered in their totality, are so overwhelmingly decisive against the case that plaintiff set out to establish. Independently of this, the oral evidence which was elicited in the examination of the plaintiff and his witness Jinaratana Thero supplied the necessary material to show that after Sumangala Thero, Sunanda Thero was in control of Varana ; that Sumangala Thero was resident at Dangalla, that he died there and that there was a meeting of the Sangha ; that Dangalla Dhammananda succeeded Sumangala Thero as chief priest and resided at Dangalla after the death of Sumangala Thero ; that Diddeniye Piyaratana resided in Eswatte Temple which was a small village temple of Sumangala Thero and that he died there and that he did not succeed Sumangala Thero at Varana nor did any pupil of Piyaratana Thero succeed at Varana after his death ; that Kossinne Pannananda Thero was in control of the affairs at Varana as a pupil of Sunanda Thero after the latter's death ; that Vipassi Thero succeeded him ; that the plaintiff went to Varana in 1936 when Vipassi Thero was Viharadhipati and, having been adopted by the latter as his pupil, founded the Mangalagiri Pirivena of which he was Parivenadhipati. It also transpired in this evidence that Kossinne Pannananda left only one pupil, namely, the defendant, who was very young at the time of his death and that Vipassi came to the temple and started administering it and that there was a dispute between Vipassi Thero and the defendant which was settled by the Sangha and the Dayaka Sabha by appointing Vipassi to look after the temple. It also appeared from the evidence that Sumangala Thero's line of successors succeeded at Dangalla after his death, namely, Dhammananda and after him Jinaratana claiming to be a pupil of Dhammananda. The plaintiff's evidence also established that from the 23rd December, 1961, the defendant who was living elsewhere before that came into residence of Vipassi Thero's avasa and refused to leave ; that he was prosecuted by the plaintiff for criminal trespass

and, though he was convicted in the lower court, the conviction was set aside in appeal. His evidence also revealed the inconsistent position he had taken up in the Bodiyaendeniye Temple case having regard to the basis of his claim in the instant case as a pupil of Diddeniye Piyaratana. Having conceded at the earlier stage that Vipassi Thero was the lawful Viharadhipati of Varana his subsequent position was that he himself was the Viharadhipati of Varana as the pupil of Piyaratana Thero. At one stage he was compelled to say that he was the Viharadhipati of Dangalla too and that Jinaratana was functioning as such with his consent, which was not the position taken up by Jinaratana Thero. These inconsistent positions do not bear examination quite independently of the conflicting documentary evidence. It would thus appear that not only are there inherent inconsistencies in the plaintiff's evidence itself but also material conflicts between his evidence and that of Jinaratana Thero. In whichever way one looks at all the evidence, both documentary and oral, one is left with no other choice than to hold that after the death of Sumangala Thero there was not even an attempt by his pupil to advance any claim to Varana and, if there was any legal claim, that it was abandoned. My own view, as I have indicated before, is that Sumangala Thero himself had abandoned or renounced any claim he had to Varana during his lifetime itself and that Sunanda Thero functioned as Viharadhipati not merely *de facto* but *de jure*. The pattern of the succession in each place, Dangalla and Varana, confirms such abandonment, Sumangala being followed at Dangalla by Dhammananda and Jinaratana while Sunanda was followed at Varana by Pannananda and Vipassi. The evidence available thus satisfies the principle laid down by the judgments cited by counsel for the appellant in support of his submission on the question of renunciation or abandonment.

While the evidence in this case satisfied even the requirements laid down in the decided cases, I would however wish to observe that these cases have mostly contemplated instances where a Viharadhipati of many temples places pupils in charge of each of them. In such instances, for whatever duration the pupil functions in that capacity he will have no right to base a claim to the office of Viharadhipati unless a renunciation of the rights of Viharadhipati has been expressly conveyed. Different considerations will however apply in cases where generations of pupils succeed to the office of Viharadhipati of a particular temple according to the *sisyanu sisya paramparawa* even though such temple may have originally been one of several belonging to one Viharadhipati who had placed one of his pupils to look after that temple. In such a case, in consonance with the principle laid down in the cases cited by counsel, namely, that renunciation or abandonment will not be presumed unless it is clearly expressed by facts and circumstances, a court will have to take a close look at the available facts and circumstances and draw a legitimate inference as to whether the line of succession of the original Viharadhipati or the line of succession of the respective pupils who were placed by the original Viharadhipati at the head of each temple has the

rightful claim to succeed to a particular temple. As I have pointed out earlier, the facts and circumstances which emerge from the documentary evidence in this case alone would lead to the irresistible conclusion that, although Attadassi Thero was the original Viharadhipati of Dangalla as well as Varana during his lifetime, there arose after his death two lines of succession at the two temples, namely, Eswatte Sumangala Thero and his pupils at Dangalla and Bomiriye Sunanda Gunaratana Thero and his pupils at Varana. I have first endeavoured in this judgment to show how the inferences from the documentary evidence alone demolish the case of the plaintiff and later to outline some of the main items of oral evidence from the plaintiff and his principal witness which, independently of the documentary evidence, establishes facts and circumstances which destroy the case which the plaintiff set out to prove and only results in building up the case of the defendant. I am therefore of opinion that the learned District Judge arrived at the correct conclusion in dismissing the plaintiff's action and at the same time holding in favour of the defendant's claim. For, the concession by the plaintiff and his witness of Vipassi Thero's succession at Varana, which is inextricably connected with the Last Will of Pannananda Thero D41 coupled with the admission in evidence that the defendant was the only pupil of Pannananda Thero established at once the case of the defendant. The complaint made by counsel for the appellant that the defendant did not give evidence in order to establish his case is therefore without substance. The oral evidence placed by the plaintiff and his witness and the irrefutable evidence provided by his own documents together with the admissions in cross-examination, taken in conjunction with the documentary evidence of the defendant, in my view, proved the case of the defendant so conclusively that it was redundant for him to buttress his claim by his own evidence. He was therefore entitled to succeed without any oral evidence on his part.

In the view I have taken on the evidence before the District Court I feel that it is superfluous to deal with the questions which revolve round the reference of this dispute to the Malwatte Chapter. The question whether the decision of the Malwatte Chapter operates as *res judicata* between the plaintiff and the defendant would in the circumstances be one of academic interest and I do not consider it useful to prolong this judgment further by dwelling on the lengthy arguments of both counsel in regard to that matter. Nor do I consider it necessary to deal with the somewhat obvious question whether the decision in the previous case between Vipassi Thero and the defendant, District Court Colombo Case No. 615, has the effect of *res judicata* as between the defendant and the plaintiff who was not privy to any party in that case. I would only say that the learned District Judge arrived at the right conclusion on this issue as well.

On the issue of prescription raised by the plaintiff in regard to the defendant's claim, the cases cited by counsel for the appellant themselves would operate as the greatest hurdle in his way and would militate

against any theory that the right to the office of Viharadhipati can be prescribed against. Furthermore, the defendant was not in the position of one who renounced or abandoned his right or even slept over it. Despite the handicap of his youth, he resisted Vipassi Thero at the appropriate stage and asserted his right later again when his opportunity arose. The plaintiff cannot therefore succeed in this plea either.

The only question that remains concerns issue 26, as to whether the defendant can in any event maintain his claim to have the plaintiff ejected from Mangalagiri Pirivena. This is a question which has confronted me with a moral but not a legal difficulty of immeasurable magnitude. The learned District Judge who has analysed the mass of oral and documentary evidence in this case with commendable clarity of thought and competence and has reached, in my view, the correct conclusions, expressed his great reluctance to make the order for the ejection of the plaintiff from the Mangalagiri Pirivena which formed part of the Varana Raja Maha Vihare, in view of the long and meritorious services he had rendered to this institution. This is indeed the insuperable difficulty which baffled this Court at various stages of the argument. As comparisons are always invidious, I refrain from expressing my views in regard to the superlative erudition, stature and capabilities of the plaintiff as Parivenadhipathy of the Mangalagiri Pirivena *vis a vis* the defendant in this case. The only course legally available to this Court however does not permit me to translate my feelings into an order which will provide full scope for the continuance of the services which the plaintiff will undoubtedly be able to render. It is perhaps the genuine desire of the plaintiff to continue his selfless devotion to his brain child, the Mangalagiri Pirivena, to which he had dedicated his life that even blinded him to the obvious inconsistencies involved in his present pursuit. It is a regrettable paradox, however, that the very circumstances attendant on this pursuit have brought him legally within the area of contumacious conduct which deprives him of the right to remain in residence at Varana. It is because of this unavoidable conflict between the rigour of the law and the justice of his claim in this respect that, more than once in the course of the argument, this Court suggested to counsel the desirability of a settlement which would have been a happy compromise between two irreconcilable alternatives. The plaintiff, most unfortunately, but perhaps for good reasons of his own, was not agreeable to this compromise and the Court has therefore no alternative but to decide that the law should take its course. The defendant is accordingly entitled to an order of ejection of the plaintiff from the Varana Temple. While I am compelled to make this order, I have no doubt that the Mangalagiri Pirivena will remain as a lasting monument of the plaintiff's services to the Vihare. In concluding this judgment I would express the fervent hope that the defendant will, having contented himself with his victory in this suit, extend to the plaintiff a magnanimous invitation to remain at Varana and to continue his services to the Pirivena and the Buddha Sasana. A failure on the part of the defendant

to adopt such a course would be a poor commentary of his appreciation of the Buddha Dhamma, one of whose fundamental tenets demands forgiveness and compromise.

The appeal has perforce to be dismissed with costs.

This Court is deeply obliged to counsel on both sides for their invaluable assistance.

SAMERAWICKRAME, J.—I agree.

*Appeal dismissed.*

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