

SANGAPALA THERO
v.
TELWATTA NAGITHA THERO

COURT OF APPEAL
ABDUL CADER, J., AND L.H. DE ALWIS, J.
C.A. NO. 633/96.
D.C. COLOMBO NO. 13788/L.
MAY 3 AND 4, 1982

Buddhist Ecclesiastical Law – Pupillary succession to Viharadhipathy – Act of appointment – Is informal writing sufficient?

Rev. Piyaratne Thero was the Viharadhipathy of Gothami Vihare and of two other Viharas, namely Mangala Ramaya and Sila Salla Bimba Ramaya. Reverend Piyaratne and his co-pupil Rev. Saralankara robed Telwatte Ariyawansa and Telwatta Amarawansa. Reverends Ariyawansa and Amarawansa robed Buddhapriya Sangapala (appellant) and Seelawimala.

On Reverend Piyaratne's death in 1907 Rev. Ariyawansa succeeded to the Viharadhipathyship in accordance with Sisyanu Sisya Paramparawa. But though Rev. Ariyawansa was de jure Viharadhipathy he resided at Mangala Ramaya while Rev. Amarawansa managed affairs at Gothami Vihare as de facto Viharadhipathy. On Rev. Ariyawansa's death Rev. Seelawimala succeeded him as Viharadhipathy of Gothami Vihare by virtue of Deed No. 432 of 18.1.51.

On Rev. Seelawimala's death in 1972 the respondent a senior pupil should have succeeded as Viharadhipathy of Gothami Vihare. On the other hand appellant claimed that on the death of Rev. Piyaratne Rev. Amarawansa succeeded as Viharadhipathy by virtue of an appointment dated 15.1.1907 which was recorded on an ola leaf. The appellant states that on Rev. Amarawansa's death in 1949 Rev. Buddhapriya succeeded to the Viharadhipathyship and on Rev. Buddhapriya's death in 1955 the appellant as senior pupil succeeded him.

The District Judge held that the ola leaf writing of 15.1.1907 was not a permanent or proper act of appointment but only an expression of a wish by Rev. Piyaratne.

On appeal to Court of Appeal,

Held -

That the District Judge was correct in his finding and that all the circumstances of the case show that appellant had no right to succeed as Viharadhipathy of Gothami Vihare.

Cases referred to:

- (1) *Dhammadaja Thero v. Wimalajothi Thero* (1977) 79 (1) N.L.R. 145
- (2) *Saranapala Therunnanse v. Piyatissa Therunnanse* (1938) 11 C.L.W. 145
- (3) *Rewata Unnanse v. Ratnajothi Unnanse* (1916) 3 C.W.R. 193
- (4) *Dhammajothi v. Sobitha* (1913) 16 N.L.R. 408
- (5) *Saddananda Tissa Therunnanse v. Gunananda Therunnanse* (1938) 11 C.L.W. 142
- (6) *Dhammananda Thero v. Dharmapala Thero* (1939) 41 N.L.R. 285
- (7) *Dhammasiri Therunnanse v. Sudiranando Therunnanse* (1937) 39 N.L.R. 430

APPEAL from judgment of the District Judge of Colombo.

A.C. Gooneratne, Q.C. with *N.S.A. Gunatilleke, S.S. Ratnayake* and *Miss Jayalath*, for the appellant.

G.G. Mendis with *Mrs. Kalyanasundaram* for the respondent.

Cur. adv. vult.

June 29, 1982.

L.H. DE ALWIS, J.

The plaintiff-appellant, Rev. Sangapala, instituted this action for a declaration that he is the controlling Viharadhipathy of Gothami Vihare, Borella and for the ejectment therefrom of the defendant-respondent priest, Rev. Nagitha Thero. The Temple in question is exempted from the provision of Section 4(1) of the Buddhist Temporalities Ordinance of 1931.

It is common ground that Rev. Piyaratne Tissa Nayake Thero was during his lifetime the controlling Viharadhipathy of Gothami Vihare and two other temples, Sailsa Bimbaramaya at Dodanduwa and Mangalaramaya at Beruwela; that he and his co-pupil Rev. Saralankara jointly robed and ordained two pupils, namely Rev. Telwatte Ariyawansa and Rev. Telwatte Amarawansa, of whom the first was the senior pupil; that these two priests jointly robed and ordained Rev. Buddhapriya

Rev. Sangapala (the appellant) and Rev. Seelawimala (the tutor of the respondent), in that order of seniority; and that the rule of succession to the Viharadhipathiship of these temples was by right of pupillary succession (Sisyanu Sisya Paramparawa).

The appellant's case briefly is that Rev. Piyaratne Tissa Nayaka Thero appointed Rev. Amarawansa as the Viharadhipathy of Gothami Vihare by an ola leaf writing dated 15.1.1907 (P 17A) shortly before his death in the same year. On Rev. Piyaratne Tissa Thero's death in May that year, Rev. Amarawansa thus became the Viharadhipathy of Gothami Vihare, while Rev. Ariyawansa, as senior pupil, succeeded to the Viharadhipathiship of the other two temples.

Rev. Amarawansa died in 1949 and his senior pupil Rev. Buddhapriya died in 1955 without any pupils, so that the appellant claims to have succeeded to the Viharadhipathiship of the Gothami Vihare, as the next senior pupil.

The respondent denies the appointment of Rev. Amarawansa as the Viharadhipathy of Gothami Vihare on the ola leaf writing (P17A) and takes up the position that Rev. Ariyawansa as the senior pupil of Rev. Piyaratne Tissa Thero succeeded to the Viharadhipathiship in 1907 on the death of Rev. Piyaratne Tissa Thero. Thereafter he appointed Rev. Telwatte Seelawimala Thero to succeed him as the Viharadhipathy of Gothami Vihare by deed No.482 dated 18.1.51 (D6). Rev. Seelawimala took over the Viharadhipathiship of Gothami Vihare in 1951 and died in November 1972. The respondent states that he, as the senior pupil of Rev. Seelawimala, succeeded to the Viharadhipathiship of Gothami Vihare from that date.

The learned District Judge took the view that the ola leaf writing (P 17A) did not constitute a proper and permanent appointment of Rev. Amarawansa as Viharadhipathy of Gothami Vihare but was only an expression of a wish by Rev. Piyaratne Tissa Thero and held with the respondent. He consequently dismissed the appellant's action and it is from that judgment that the appellant now appeals.

The whole case turns, in my view, on the interpretation of P 17A, which is in Pali but written in Sinhalese characters. Learned Counsel for the respondent also attacked the genuineness of the document itself. The learned District Judge has himself given his mind to this aspect of the matter. He has commented that by 1907 when the document was alleged to have been written, the ola leaf era of communication had long since died out and that the two ola leaves

attached to the book called 'Prathi Mokshaya' kept in all temples, were the last two leaves. The book consists of a sheaf of loose ola leaves bound together between two thin strips of wood with a cord, and left room for suspicion of a subsequent introduction of these two leaves. Rev. Dharamapala purported to identify the writing on the ola leaf (P 17A) as that of Rev. Piyaratna Tissa Thero but since writing on an ola leaf was by a process of inscribing with a pointed object called a 'panhinda' which is different from writing on a paper with a pen, and as Rev. Dharamapala had not seen Rev. Piyaratna Tissa Thero, the learned District Judge was not inclined to accept his evidence that it was written by Rev. Piyaratna Tissa Thero. The book was produced in evidence by Rev. Dharamapala who was the priest in charge of the library at the Mangala Pirivena where it was kept. As it was produced from proper custody and purported to be over thirty years old, the learned Judge drew the presumption of its genuineness under Section 90 of the Evidence Ordinance, but added, quite rightly, that it was a presumption that was rebuttable by other evidence. This book was alleged to have been sent by Rev. Piyaratna Tissa Thero to his co-pupil Rev. Saralankara who was at the time residing at Mangalaramaya in Beruwela. The learned Judge observes that the writer of P 17A could not have expected Rev. Saralankara to read it unless his attention was drawn to it and he further states that if it was meant to be an important document like an appointment, it should have been sent direct to Rev. Amarawansa. But Rev. Amarawansa and Rev. Ariyawansa were both residing in Mangalaramaya of which Rev. Saralankara was the chief priest. It was therefore quite natural that Rev. Piyaratna Tissa Thero should have communicated this information to Rev. Saralankara the chief priest of the Temple, who was also the co-tutor.

Another circumstance that the learned District Judge has taken into consideration is that Rev. Ariyawansa was a very pious and renowned monk who had been accorded a public funeral at the Independence Square and who according to both the appellant himself and Rev. Vissudhi was not a person who would lie and cheat. He would therefore not have executed D6, if P 17A was in existence. The appellant stated that Rev. Ariyawansa was aware of its existence. But at the same time Rev. Ariyawansa's conduct in executing D6 is consistent with the defendant's version that P 17A was not meant to be an act of appointment. P 17A was in the custody of Rev. Ariyawansa and if P17A was a fabrication introduced subsequently at the instance of the appellant, it could at least have been couched

in clearer language without leaving its interpretation in doubt. The learned Judge has certainly entertained suspicions regarding the genuineness of P17A but in the final analysis he has accepted the document and has held that it was only an expression of a wish of Rev. Piyaratna Tissa Thero and did not constitute a proper and permanent appointment of Rev. Amarawansa to the Viharadhipathship of Gothami Vihare. Indeed the fact that Rev. Amarawansa did go to reside in Gothami Vihare as Viharadhipathy on the aged priest's death in 1907, confirms the existence of P17A at the time. I therefore do not propose to differ from the learned District Judge's finding in this respect.

I shall now deal with the interpretation of P 17A. The document is written in the Pali language in Sinhalese characters. It has been translated by Dambulumaye Gnanarathana Thero, a lecturer in Pali at the Vidyalankara University and the translation is marked P17B. Gnanarathana Thero also gave evidence in Court in regard to it. Gothami Vihare was formerly known as Abinawaramaya Vihare.

Dharamapala Thero who produced the document P17A in Court from his custody was asked if he knew Pali and on his saying that he did, was requested to translate it in Court. In view of the certain material discrepancies between his translation and that of Rev. Gnanarathana's, I shall reproduce both. This is how Rev. Dharamapala translated the document: "This book contains 'Prathi Mokshaya'. This book was with me for many days. Now I am sending this book when I got the opportunity to do so. I am now about 80 years old and am weak and feeble and unable to walk about here and there. It is a well known fact that the temple called Abhinawaramaya (Gothami Vihare) at Welikade, in Colombo, has been accepted by us. The chief lay-woman Appolina de Soysa has faith and understanding in us and is held in high religious esteem by the other laymen. They expect to get a learned and competent resident Bhikku to look after this place. The Bhikku Sasana will get all the assistance and support. The chief lay-woman hopes that a Buddhist Bhikku will be the chief resident of the Viharaya or the incumbent of the Viharaya. Now, if Amarawansa Thero is sent to manage that temple, it may be improved in a few days' time. Bhikku Ariyawansa is efficient and a pundit. He is fit to reside at our Sailabimbaramaya and to organize the work there. If that is done, I can be relieved of my burdens and live peacefully. Hence ask Ariyawansa Thero to come to Sailabimbaramaya. Deliver this to Saralankera Thero of Beruwela Mangala Pirivena. Or

this Sunday the Duruthu Full Moon Day in the year 2450 (15.1.70) after the parinibbana of the Lord Buddha. I am sending this to dear Saralankera Thero from Sailabimbaramaya." The translation P17B rendered by Gnanarathana Thero is as follows: "This book containing 'Prathi Mokshaya' has been with me for a long time and I was unable to send it to you until I got this opportunity. I would also like to mention another matter here. I am now 80 years of age and am infirm and feeble and cannot get about. You are well aware that we have accepted Abhinawaramaya Vihare at Welikade, Colombo. The chief lay-woman Appolina Soysa and the other 'Dayakayas' have shown us great devotion for a long time. They take a keen interest (in the temple). I think that they will be greatly benefited if they get a prudent resident Bhikku. The chief lay-woman wishes to have an efficient priest as the chief resident Bhikku. I think that our dear pupil Amarawansa Bhikku who is learned, efficient and eloquent will be suited to reside as the Viharadhipathi of Abhinawaramaya. Therefore take my word and send Amarawansa Bhikku to manage that temple. By doing so the temple will be improved in no time. Our dear pupil, the efficient and erudite Bhikku Ariyawansa is suited to reside at this Sailabimbaramaya Temple and to organize what has to be done there. By doing this, I will be free of burdens and could lead a peaceful life. Therefore make arrangements to send Bhikku Ariyawansa here. This is sent by Piyaratne Tissa Thero the tutor priest at Sailabimbaramaya Vihare Dodanduwa to Saralankara residing at Mangalaramaya Temple, Beruwela. This Sunday Duruthu Full Moon Day in the year 2450 after the "Parinibbana of Lord Buddha." (i.e. 15.1.70)

In my view the more accurate translation is that of Rev. Gunarathana who is a lecturer in Pali at the Vidyalankara University and had made his translation (P 17B) as an expert after careful study of the original text, before he gave his evidence, unlike Rev. Dharamapala who translated the document cursorily as he was reading it in the witness box. I shall come back to the translation later in the judgment.

Learned Counsel for the respondent contended that if P 17A was intended to be an appointment of Rev. Amarawansa as the Viharadhipathy of Gothami Vihare it should have been effected by a formal instrument like a notarially attested deed or by a last will, although all the authorities were against him. He relied on the decision in *Dhammadaja Thero v. Wimalajothi Thero* (1) where a majority of four out of five Judges held that after the Buddhist

Temporalities Ordinance No. 19 of 1931 (cap 318) came into operation the temporalities of a Vihare which have been exempted from the provisions of 4(1) of the Ordinance vest in the Viharadhipathy and an action for a declaration that a Bhikku is Viharadhipathy of a temple in which he also asks for possession of the temporalities which are in the main rights to immovable property, involves title to such property, and is not one for a mere declaration of a status. As such section 3 and not section 10 of the Prescription Ordinance applied and the period of limitation is 10 years. It was therefore argued by learned Counsel that inasmuch as the office of Viharadhipathy of a temple is held to involve title to immovable property, section 2 of the Prevention of Frauds Ordinance is applicable and the appointment of a Bhikku as Viharadhipathy consequently made by an informal writing like P 17A, is of no force or avail in law. This is a very attractive argument. But as presently advised, the authorities to the contrary are overwhelming, and this point must await the decision of the Supreme Court in an appropriate case.

In Saranapala Therunnanse v Piyatissa Therunnanse (2), another case on which learned Counsel for the respondent relied, de Kretser, A.J. said "the more solemn the form in which he nominates the easier will be the proof of the nomination, but there is no particular form of nomination". He however approved of the view taken by Schneider, J. in *Rewata Unnanse vs Ratnajothi Unnanse* (3) that "the appointment of a successor to an incumbency need not be in writing."

In *Dhummajothi v Sobita* (4) Pereira, J. said "Now, the general rule of succession to the incumbency of a Buddhist temple is that involved in the line of succession known as the 'Sisyanu Sisya Paramparawa'; but is clear that it is open to an incumbent to appoint by deed or will any particular pupil as his successor." This case is no authority for the proposition that appointment must be by deed or will. Maartensz, J. in *Saddananda Tissa Therunnanse v Gunananda Therunnanse* (5) referring to this dictum of Pereira, J., said, "It is clear from this passage in Mr. Walter Pereira's judgement that he did not think that the power of appointment should necessarily be exercised by a notarial instrument or by will. In *Saddhananda Tissa Therunnanse's* case it was held that where the right of nomination of the successor to an incumbency exists, a notarially executed instrument is not necessary to create a valid nomination. That was a case decided after the Buddhist Temporalities Ordinance No. 19 of 1931 had come into operation and Maartensz, J. said "I am of

opinion that the Buddhist Temporalities Ordinance of 1931 has not had the effect of placing Viharadhipathis in the position they were prior to the coming into operation of the Buddhist Temporalities Ordinances of 1889 and 1905." He was of the view that the act of appointment may be done even by word of mouth and that it need not be in writing. This case was not considered by the Bench of five Judges in *Dhammadaja Thero v. Wimalajothi Thero* (1).

The case of Dharmananda Thero V Dharamapala Thero (6), cited by counsel for the Respondent, is not relevant except for the dictum referred to in the two cases cited in 11 CLW that the writing should clearly indicate that a selection for appointment had been made.

In *Dhammasiri Therunnanse v Sudiranando Therunnanse* (7) it was held that where the incumbent of a Buddhist Vihare appoints one of his pupils as his successor, the appointment need not be by a notarial appointment.

On these authorities I am of the view that the appointment of a Bhikku to the office of controlling Viharadhipathy of a Temple can be made by an informal writing.

The question now is whether the informal writing P 17A is capable of being interpreted as an appointment of Rev Amarawansa as the Viharadhipathy of Gothami Vihare. For that we have to turn to the translation P17B. It is true, the words "Abinavaramaya Adipathi bavayen viseemata" appear in P17B. In the original Pali writing P17A the word 'Adipachchena' is used in reference to Amarawansa Bhikku. But they must be read in the context in which they appear. Rev. Piyaratne Tissa Thero refers to the desire of the chief lay-woman Apollonia Soysa to have an efficient priest as the chief resident Bhikku at Abinawaramaya and accordingly the aged Bhikku seemed to think that Rev. Amarawansa would do well as Viharadhipathy of the temple. He therefore expressed the view that if Rev. Amarawansa is sent to manage that temple, the temple would be improved in no time. But this is not an appointment of Rev. Amarawansa as Viharadhipathy of the temple. He was to be sent there to function as the Viharadhipathy as a temporary measure, since Rev. Piyaratne Tissa Thero was too old and feeble to manage that temple. That this arrangement was not to operate as an appointment but was only meant to relieve that aged priest of his functions as the Viharadhipathy is made manifest by the fact that the other Bhikku, Rev. Ariyawansa was to be sent to Sailabimbaramaya, where the aged priest was himself residing to take over the organisation there. In that inst...

Rev. Ariyawansa was not to take charge of the Temple as Viharadipathy, because the old priest was himself there as the Viharadhipathy. This was an arrangement made for the purpose of relieving the aged priest of his duties, during his lifetime. In fact he says that if this is done he could lead a peaceful life. No definite appointment is made. It must further be noted that the Rev. Piyaratne Tissa Thero is writing to his co-pupil Rev. Saralankara and is only expressing his wish that the arrangement, be given effect to, for one thing because it would benefit Abinawaramaya Temple and for another because it would relieve him of his burdens. Indeed the argument employed by the learned Judge in testing the genuineness of the document, namely that a pious Bhikku like Rev. Ariyawansa would not have stooped to deceit by executing D6, only confirms the view that P17A was never understood to be an appointment of Rev. Amarawansa as the lawful Viharadhipathy of Gothami Vihare. Before the arrangement could be put into effect the aged priest apparently died and on his death, Rev. Ariyawansa, as the senior pupil, succeeded to the controlling Viharadhipathiship of Gothami Vihare. But no doubt in deference to the aged priest's wishes Rev. Amarawansa was permitted to reside in Gothami Vihare as its Viharadhipathy, while Rev. Ariyawansa came over to Sailabimbaramaya. In D. C. Colombo case No. 8741/L filed by Harold Peiris and others against Rev. Ariyawansa and others, Rev. Ariyawansa at para 28 of his answer (P 20) expressly states that he succeeded to the Viharadhipathiship of Gothami Temple and requested Rev. Amarawansa, to reside in Gothami Temple and administer it on his behalf, while admitting the averments in para 13 of the plaint that Rev. Amarawansa took up residence in the temple on Rev. Piyaratna Tissa Nayake Sthivira's death in 1907, until December 1949.

In my view the learned District judge was right in construing the writing P17A not as a permanent or proper act of appointment but only as an expression of Rev. Piyaratna Tissa Thero's wishes in regard to the management of the two temples.

A volume of documentary evidence was led by the appellant to prove that Rev. Amarawansa resided at Gothami Vihare as the Viharadhipathy while Rev. Ariyawansa resided at Sailabimbaramaya Temple. Rev. Ariyawansa has acknowledged this fact in the Upasampada declaration of Rev. Seelawimala P1 dated 5.8.42, which he himself has signed, and in P10, P18, P25 and P26. Several books P23 to P28 were also produced where reference is made to Rev. Amarawansa as being the Viharadhipathy of Gothami Vihare. A similar description

of Rev. Amarawansa also appears in the notices published of various functions held at the Vihare and produced as P6 to P13, P16 and P18. Rev. Amarawansa has made an application in 1930 to build a preaching hall at Gothami Vihare which was then known as Gautamaramaya Temple and the road where it was situated was called Yakbedda Road. The correspondence that took place between him and the Municipal Council is produced marked P14 to P16. It is not necessary to refer to every single document because there is ample evidence to establish that Rev. Amarawansa resided at Gothami Vihare as the Viharadhipathy.

Learned Counsel for the appellant submitted that once it is established that Rev. Amarawansa resided as the Viharadhipathy of Gothami Vihare from 1907 till 1949 he cannot be regarded as having lost his rights to the Temple. *Dharamadaja Thero Wimalajothi Thero* (1). But residence in the Temple as Viharadhipathy does not necessarily mean that he was there as the lawful or *de jure* Viharadhipathy. That he was the *de facto* Viharadhipathi of the temple from 1907 till 1949 is not disputed. But there is a vast difference between the rights of a 'de facto' Viharadhipathy and 'a de jure' Viharadhipathy. In the five Judge Bench case of *Dharmadaja Thero v. Wimalajothi Thero* (1), Pathirana, J. discussed the concept of a 'de facto' and a 'de jure' Viharadhipathy. After discussing several cases on the subject, he says at page 160 "I am therefore, of the view that the judgment of Dias, S.P.J. in 52 NLR 150 read with his judgment in 49 NLR 325 makes it quite clear that a 'de facto' Viharadhipathy has no legal title or rights to a temple under the Ordinance of 1931" A 'de jure' Viharadhipathy is a Bhikku who has lawfully assumed that office either by appointment or by pupillary succession.

In the present case the document P17A and the subsequent events that occurred after Rev. Amarawansa's death in 1949 clearly establish that Rev. Amarawansa had not been appointed to the office of Viharadhipathy. He could not have obtained any rights by pupillary succession as he was not the senior pupil. He resided at Gothami Vihare during his lifetime only as the 'de facto' Viharadhipathy. Consequently he had no legal title or right to the Viharadhipathiship which could have accrued to his senior pupil by right of pupillary succession, that is, to the appellant, as Rev. Buddhapriya died in 1955 without any pupils.

I have already dealt with P17A and have demonstrated that it does not constitute an act of appointment by Rev. Piyaratne Tissa Thero. If indeed Rev. Amarawansa had been appointed the lawful

Viharadhipathy of Gothami Temple, on his death in 1949 his senior pupil Rev. Buddhapriya, should have succeeded to the office of Viharadhipathy of that Temple. There is no evidence that he did so but on the contrary, it was Rev. Ariyawansa who came over from Mangalaramaya Temple and took over the Viharadhipathiship of Gothami Temple without any protest from the appellant. On Rev. Amarawansa's death in 1949, Rev. Ariyawansa, took over the Viharadhipathiship of Gothami Vihare and appointed one of his pupils, Rev. Seelawimala, to succeed him as controlling Viharadhipathy of Gothami Vihare by deed No. 482 of 18.1.51 (D6).

The appellant alleges in his plaint that since Rev. Ariyawansa was their tutor, the pupils wanted him to take charge of the Temple on their behalf. But if that was the case, he would not within two years of taking over its management, have handed over the Viharadhipathiship of the Temple to Rev. Seelawimala.

When Rev. Buddhapriya died in 1955 without any pupils it is significant that the appellant who was the next senior pupil of Rev. Amarawansa made no claim to the Viharadhipathiship of Gothami Vihare.

On 23.1.59 Harold Peiris and certain others claiming to be the trustees of the Gothami Temple filed action in D.C. Colombo No. 8741/L (P 19) against Rev. Ariyawansa, Rev. Seelawimala and another priest for a declaration that the plaintiffs are entitled to the management and control of Gothami Vihare and for the ejectment of the defendants therefrom. If the plaintiffs succeeded in that action it would have resulted in the Kalyanawansa Nikaya, to which the appellant belonged, losing its rights to the Temple. In fact the plaintiffs succeeded in the District Court but lost the case in appeal. One would have expected the appellant to have intervened in the action if he had any legal right to the Viharadhipathiship of the Temple. His lack of interest in the action is only explicable on the basis that he was not the lawful Viharadhipathi of the Temple.

On the other hand, the respondent produced a series of documents to prove that his tutor Rev. Seelawimala was the lawful Viharadhipathi of Gothami Vihare on his appointment by D6. When a portion of the Temple land was acquired by the Municipal Council for road widening in 1967, it was Rev. Seelawimala who claimed compensation for it. (D1 and D2). He also applied to the Municipal Council by D3 in 1972 for the installation of drainage in the Temple and made payment for it (D4). The appellant never resided at Gothami Vihare

as the Viharadhipathy as he claimed he did. He resided at Mangalaramaya. In the invitation D5 issued on the occasion of Rev. Rahula's Ordination, the appellant Rev. Sangapala, is described as the Viharadhipathy of Mangalaramaya and not of Gothami Vihare. That was in 1966. (vide D 11)

In 1957 a party of Buddhist priests had come to Gothami Vihare to meet Rev. Ariyawansa, who had made one of his visits to the Temple, and had attempted to force him to sign a document, during the absence of Rev. Seelawimala. On learning of the incident Rev. Seelawimala complained about it to the Kalyanawansa Nikaya Sanga in a printed document dated 15.11.57 (D 12) in which he describes himself as the Viharadhipathy of Gothami Vihare.

The appellant stated in evidence that Rev. Ariyawansa managed Gothami Vihare on his behalf till 1962 and the latter before his death, requested him to permit Rev. Seelawimala, who was Rev. Ariyawansa's brother, to administer the Temple till his death. The learned District Judge has rejected this evidence in view of the overwhelming documentary evidence against it and I see no reason to disturb that finding.

Rev. Ariyawansa died in 1962 at Mangalaramaya, where the appellant was also residing but the latter made no effort to claim the Viharadhipathiship of Gothami Vihare, as the senior pupil, by right of pupillary succession. His conduct shows that he had no lawful right of succession to the Viharadhipathiship either from Rev. Amarawansa by virtue of P17A or from Rev. Ariyawansa, because of the appointment of Rev. Seelawimala by D6.

Rev. Seelawimala died on 5.11.72 and in a notice D14 published on that occasion, it is stated that he was appointed Viharadhipathy of Gothami Vihare by Rev. Ariyawansa in 1951 and functioned as such till his death on 5.11.72. His obituary notice D13 was published by his senior pupil, the respondent, of Gothami Vihare.

What finally knocks the bottom off the appellant's case is the incident that occurred in 1972, after Rev. Seelawimala's death and its sequel in the Magistrate's Court.

On Rev. Seelawimala's death on 5.11.72 the respondent, as his senior pupil, succeeded to the Viharadhipathiship of Gothami Vihare. About two weeks later, on 22.11.72, a party of about 30 Buddhist priests entered Gothami Vihare and attempted to forcibly take possession of it. The party included Rev. Rahula, who was a pupil

of the appellant. The respondent thereafter filed a private plaint in the Magistrate's Court of Colombo in case No. 62542/C (D9) charging five priests with inter alia, unlawful assembly, criminal trespass and criminal intimidation. The first accused in the case was Rev. Rahula and the third accused was the appellant. The case came up before Court on 24.2.73 and on that day Rev. Rahula Thero, the pupil of the appellant conceded that the respondent "has been duly appointed" as the Viharadipathy of Gothami Vihare. The appellant for his part, claimed only the right to enter the temple since it belonged to the paramparawa.

Counsel for the appellant submitted that the matter in issue in that case was criminal trespass and it was unnecessary for the appellant to have asserted in Court his right to the Viharadhipathiship of the Temple. But the appellant did assert his right to enter the temple on the basis that it belonged to the paramparawa and if he was also the lawful Viharadhipathy of the Temple, would not that have been the stronger right to rely on in Court? His failure to mention his right to the Viharadhipathiship of the Temple on that occasion is an implied admission that he had no such right and is consistent with the position that Rev. Amarawansa had been residing in Gothami Vihare during his life only as the 'de facto' Viharadhipathy.

The Magistrate's Court case was compounded on the undertaking given by the appellant, not to enter the temple until he had vindicated his rights if any, in a civil Court. The present action has been filed in accordance with that undertaking.

I am of the opinion that the learned District Judge's conclusion that the appellant has no lawful right to the Viharadhipathiship of Gothami Vihare is correct.

I dismiss the appeal with costs.

ABDUL CADER, J. — I agree.

Appeal dismissed.