

BASNAGODA HEMALOKA

V.

SANDANANGAMA ATTADASSI

SUPREME COURT.

BANDARANAYAKE, J., FERNANDO, J. AND KULATUNGA, J.

S. C. APPEAL NO. 6/90.

S. C. SPL. L.A. NO. 3/90.

C. A. NO. 482/76 (F).

D. C. GAMPAHA NO. 16242/L.

FEBRUARY 11, 1991.

Buddhist Ecclesiastical Law - Right to main temple carries with it right to appurtenant temples - Office of Viharadhipathy is indivisible - Succession.

Where it was conceded that the Sri Maha Viharaya is the main temple, the appurtenant temples go with it - the office of Viharadhipathy being indivisible. In the case of a temple having appurtenant temples the appurtenant temples are merged with the main temple and the succession to the office of Viharadhipathy or the appointment of a pupil to succeed in such office has to be with reference to the main temple and the Viharadhipathy of the main temple is entitled to the appurtenant temples. Where the claim arises by virtue of an appointment, no reference to the appurtenant temples by name is required. The defendant -respondent though the junior pupil having become entitled to the Viharadhipathiship of Sri Maha Viharaya by virtue of a deed, becomes entitled to the appurtenant temples. An incumbent of a Buddhist temple is entitled to appoint any particular pupil as his successor.

Cases referred to:

1. *Dhammajoti v. Sobita* 16 NLR 408, 409.
2. *Saranankara Unnanse v. Indajothi Unnanse* 20 NLR 385.
3. *Piyaratne Unnanse v. Sonuththara Unnanse* 36 NLR 236.
4. *Piyatissa Terunnanse v. Saranapala Terunnanse* 40 LR 262.

APPEAL from a judgment of the Court of Appeal.

A. C. Gooneratne Q.C. with *Champaka Ladduwahetty* for Appellant.

P. A. D. Samarasekera P.C. with *W. P. Senanayake* for Respondent.

March 28, 1991.

KULATUNGA, J.

This is an appeal by the substituted plaintiff-appellant from the judgment of the Court of Appeal which affirmed the judgment of the District Court in the above action and in terms of which Rev. Sandanangama Attadassi the defendant-respondent was declared the Viharadhipathi of Radawana Sri Maha Viharaya and its appurtenant temples. Rev. Pasgammana Ratnasara the original plaintiff-appellant instituted this action claiming to be the Viharadhipathi of these temples as the successor to the late Rev. Diyawala Jinananda under the rule of pupillary succession as against the defendant-respondent. The plaintiff-appellant was eligible to have so succeeded in the normal course as the most senior pupil of Jinananda as against the defendant-respondent who is the pupil next in seniority to him. However, the defendant-respondent claimed that by deed IV7 Rev. Jinananda had appointed him to succeed as the Viharadhipathi of the said temples.

The plaintiff-appellant came to Court claiming that Sri Jinendramaya was the main temple of which Sri Maha Viharaya the Pirivena and Abinawaramaya alias Jayawardenaramaya were appurtenant temples. The case for the defendant-respondent was that the Sri Maha Viharaya was the main temple and the other three temples were appurtenant to it and the deed IV7 conveyed to him all these temples. The learned District Judge held with the defendant-respondent and delivered judgment declaring him to be the Viharadhipathi and dismissing the action of the plaintiff-appellant who appealed therefrom to the Court below. That Court affirmed the judgment of the District Court and dismissed the appeal.

The only point urged by Mr. A. C. Gooneratne Q.C., on behalf of the plaintiff-appellant before the Court of Appeal and on behalf of the substituted plaintiff-appellant before this Court is that IV7 conferred on the defendant-respondent the

Viharadhipathiship of Sri Maha Viharaya only and therefore the other three temples devolved by right of pupillary succession on the senior pupil namely the plaintiff-appellant. The finding of the District Court that Sri Maha Viharaya is the main temple is no longer canvassed. The learned Queen's Counsel's present submission is that the determination of the question was purely on an interpretation of the deed IV7 and therefore a question of law that had to be decided on the correct interpretation of IV7; that according to the grammatical and ordinary meaning of the words used in the deed, the grant therein is confined to the Sri Maha Viharaya and the two lands described in the Schedule to the said deed; that the District Judge could never have answered the issue relating to the Viharadhipathiship without a correct construction of the deed, even though this point was not specifically raised before him; and that it is a pure question of law and could be raised for the first time in appeal.

The relevant portions of IV7 read —

“AND WHEREAS the said Diyawala Sri Jinananda Nayake Thero took unto himself and robed five pupils who are in the order of robing as follows. Pasgammana Ratnasara Thero, Sandanangama Attadassi Thero.....

AND WHEREAS the said Diyawala Sri Jinananda Nayake Thero is now desirous of nominating and constituting and appointing the next in order of robing his senior pupil Sandanangama Attadassi Thero to succeed to the office of lawful incumbent Controlling Viharadhipathi and Adikari Bikshu of the said temple which is fully and particularly described in Schedule No. 1 hereto and its appurtenants fully and particularly described in Schedule No. 2 hereto which are of the reasonable value of Rupees Ten Thousand (Rs. 10,000).

AND WHEREAS the said Diyawala Sri Jinananda Nayake Thero considering the implicit disloyalty sees reason to discard the said Pasgammana Ratnasara Thero from succeeding as

lawful incumbent Controlling Viharadhipathi and Adikari Bikshu of the said temple and its temporalities.

AND WHEREAS the said temple and its temporalities are exempt from s.4 of the Buddhist Temporalities Ordinance.

NOW KNOW YE AND THESE PRESENTS WITNESSETH that in pursuance of the said desire and in consideration of the reasons aforesaid and diverse other good causes and consideration hereunto moving and the said Diyawala Sri Jinananda Nayake Thero for myself or any other claiming from me whether pupillary or otherwise do hereby nominate, constitute and appoint the said Sandanangama Attadassi Thero of Sri Maha Viharaya aforesaid to be and to continue as lawful incumbent Controlling Viharadhipathi Adikari Bikshu and Trustee in such office of the said temple now known as Purena Sri Maha Viharaya fully and particularly described in Schedule 2 hereto as my successor in such office upon my departing this life.

TO HAVE AND TO HOLD the office to which I have hereby nominated, constituted and appointed the said Sandanangama Attadassi Thero absolutely and against any other claiming to be whether pupillary or otherwise and to administer the said temple and its temporalities”.

The Schedule No. 1 describes the Sri Maha Viharaya and a land called Kongahawatte. The Schedule No. 2 describes a land called Pinwatte.

The learned Queen's Counsel for the substituted plaintiff-appellant submits that however strongly Rev. Jinananda may have expressed his intention to exclude the plaintiff-appellant from succeeding to him, he has made the appointment of his successor only to the Sri Maha Viharaya and the two lands described in the schedule; hence the defendant-respondent became entitled to the Sri Maha Viharaya and the said lands only; and the plaintiff-appellant as the senior pupil succeeded to the Viharadhipathiship of the other three temples by right of pupillary succession.

The argument of the learned Queen's Counsel is that even if the late Rev. Jinananda may have discarded the plaintiff-appellant, everything was not given to the defendant-respondent; that if nothing is said in IV7 about the other temples, the plaintiff-appellant's right to such temples remained unaffected; and that the reference to the "temporalities" in IV7 mean only those of the Sri Maha Viharaya.

In English Law "temporalities" means - in a wider sense - the money revenue of a church, derived from pew rents, subscriptions, donations, collections, cemetery charges and other sources. Black's Law Dictionary 5th Ed. P1312. In relation to a temple under the Buddhist Temporalities Ordinance it means the revenues of a temple. This is what Pereira J. meant in *Dhammajoti v. Sobita* (1) at 409 when he said —

"In times anterior to the passing of the Buddhist Temporalities Ordinance (No. 8 of 1905)..... the management and control of the temporalities or revenues of the temple went hand in hand with the incumbency of the temple".

Under the Buddhist Temporalities Ordinance (Cap. 318) the Viharadhipathi has the control of the revenues of the temple. IV7 appoints the defendant-respondent to succeed to the Viharadhipathiship of Sri Maha Viharaya and its "temporalities" (meaning its revenues and not appurtenant temples); and hence the submission that upon a grammatical construction the deed is confined to Sri Maha Viharaya is correct. If the matter stood at that, the substituted plaintiff-appellant would have succeeded in this appeal.

However, Mr. Samarasekera P.C. for the defendant-respondent submitted that if Sri Maha Viharaya is the main temple (and this is no longer contested) the appurtenant temples go with it; that the contest is not in respect of any property but in respect of an office, and the office of Viharadhipathi is not divisible. He cited the decision in *Saranankara*

Unnanse v. Indajothi Unnanse (2) in support. In that case, the plaintiffs prayed for a declaration that they are entitled to the incumbency of a Vihare jointly with the defendant. It was held that a Vihare cannot be portioned out in shares whether divided or undivided; that the office of incumbent is a single office and cannot be held jointly; that a claim to a share of the incumbency cannot be sustained; and that a Vihare is vested in the Sangha as a whole and the succession to an incumbency connotes the selection for the office”.

In the case of a temple having appurtenant temples the appurtenants are merged with the main temple and the succession to the office of Viharadhipathi or the appointment of a pupil to succeed in such office has to be with reference to the main temple and the Viharadhipathi of the main temple is entitled to the appurtenant temples. Where the claim arises by virtue of an appointment no reference to the appurtenant temples by name is required. Thus in *Piyaratne Unnanse v. Sonuththara Unnanse* (3) it was held that Meda Pansala was appurtenant to Degaldoruwa Vihare and that the 1st plaintiff as the rightful incumbent of Degaldoruwa Vihare was entitled to Meda Pansala.

It follows that by virtue of his appointment under IV7 to succeed to the Viharadhipathiship of Sri Maha Viharaya the defendant-respondent became entitled to its appurtenant temples. Presumably, it was to defeat this right that in the District Court the plaintiff-appellant took up the position that Jinendramaya is the main temple of which Sri Maha Viharaya is an appurtenant. Had he succeeded in establishing it the defendant respondent's claim under IV7 could have been impeached. When he failed to establish it he failed entirely and was left with no rights to any temple. I therefore hold that both the District Court and the Court below were right in rejecting his claim. His right of succession under the rule of pupillary succession has to give way to the appointment made in favour of the defendant-respondent. An incumbent of a Buddhist temple is entitled to appoint any particular pupil as

his successor - *Dhammajoti v. Sobita (supra)*; *Piyatissa Terunnanse v. Saranapala Terunnanse* (4).

For the foregoing reasons, I affirm the judgment of the Court of Appeal and dismiss the appeal with costs.

Bandaranayake, J. — I agree.

Fernando, J. — I agree.

Appeal dismissed.
