

PANNALOKA THERO
V.
SANGANANDA THERO

SUPREME COURT.

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

S. C. APPEAL NO. 19/87.

C. A. NO. 207/76 (F).

D. C. KALUTARA NO. 1886/L.

MARCH 12, 13, 1991.

Buddhist Ecclesiastical Law - Succession to Viharadhipathiship by virtue of oral appointment-Evidence of oral nomination - Burden and standard of proof.

The appellant contended that Rev. Sumanatissa Thero in or about 1929 orally nominated and appointed Rev. Saddhatissa Thero to the Viharadhipathiship of the Duwe Deeparamaya Temple, that by virtue of the said appointment Rev. Saddhatissa Thero became the Viharadhipathi of the temple upon the demise of Rev. Sumanatissa Thero in 1953; that he functioned in that office and died in 1969 having in 1967 made his Last Will which was admitted to probate in the District Court of Colombo.

Held:

1. There is no legal fetter against Sumanatissa Thero orally appointing his junior pupil to succeed him. There was no basis to disturb the District Judge's finding that the appointment had been so made.

2. The evidence of an oral nomination need not in every respect be as precise as in the case of a written nomination but the Court should assess the evidence carefully and if necessary look for corroboration before acting on it. However there is no rule of evidence which requires a witness giving evidence long after the event to go into the 'form' and 'manner' of the nomination with absolute precision.

3. The burden of proof is on the claimant to establish the nomination by a balance of evidence.

4. The conduct of the plaintiff challenging the nomination is relevant where it suggests that there was such an oral appointment.

5. While pupillary succession according to seniority is the rule, a Viharadhipathy has the right to appoint any particular pupil as his successor.

Cases referred to:

1. *Pemananda Thero v. Thomas Perera* 56 NLR 413.
2. *Amerasekera Thero v. Tittagala Sasanatilleke Thero* 59 NLR 289.
3. *Dhammadaja Thero v. Wimalajothi Thero* 79 [1] NLR 145.
4. *Jinaratne Thero v. Dhammaratana Thero* 57 NLR 372.
5. *Morontota Sobitha Thero v. Amunugama Ratnapala Thero* [1981] 1 Sri LR 201.
6. *Dhammajoti Thero v. Sobita* 16 NLR 408.
7. *Piyatissa Terunnanse v. Saranapala Terunnanse* 40 NLR 262.
8. *Pannavasa Thero v. Sudassi Thero* 68 NLR 512.

APPEAL from judgment of the Court of Appeal.

Eric Amerasinghe P.C. with *T. B. Dissanayake P.C.*, *Raja Bandaranayake* and *M. B. Peramuna* for 1st defendant - respondent - appellant.

L. C. Seneviratne P.C. with *Ms. T. Kcenawinna* and *Harsha Amerasekera* for substituted appellant - respondent.

May 23, 1991.

KULATUNGA, J.

The original plaintiff Rev. Wattaddera Somaratne (now dead) sued the 1st defendant-respondent-appellant and the 2nd to 4th defendants being pupils of late Rev. Benthara Saddhatissa Thero. The plaintiff claimed to be the Controlling Viharadhipathi of Duwe Deeparamaya Temple in the Kalutara district. He also claimed that by virtue of such Viharadhipathiship he is entitled to the custody and management of two other temples "Anandaramaya" and "Amarsingharamaya" and to the ownership of certain properties as forming part of the temporalities of the said Deeparamaya temple. The 5th and 6th defendants were made parties to give notice of the action as they are also pupils of the said Benthara Saddhatissa. In the answer filed on behalf of the defendants, the 1st defendant-respondent-appellant claimed the Viharadhipathiship of the three temples. It was however stated in the course of the trial that "Anandaramaya" and "Amarsingharamaya" are not appurtenant to Deeparamaya but distinct temples and the defendants would claim their rights to them in a separate action and the trial proceeded only in regard to the plaintiff's claim in respect of Deeparamaya.

After a trial of the action on 25 dates from 11.10.72 to 17.12.75, the learned District Judge upheld the 1st defendant's claim to the Viharadhipathiship of Deeparamaya and dismissed the plaintiff's action whereupon the plaintiff appealed to the Court of Appeal. During the pendency of the appeal the plaintiff died and his senior pupil Rev. Omatte Sangananda Thero (the respondent to this appeal) was made the substituted plaintiff-appellant. The Court of Appeal determined that the plaintiff was the lawful Viharadhipathi of the temple and set aside the judgement of the District Court, and declared the substituted plaintiff-appellant to be the present Viharadhipathi of the temple and further ordered that the 1st to 4th defendants be ejected from the temple and the substituted plaintiff

appellant (hereinafter referred to as the 'respondent') be restored to the possession thereof. The 1st defendant-respondent-appellant (hereinafter referred to as the 'appellant') appeals to this Court from the judgement of the Court of Appeal.

The temple in dispute which is described in all the documents as Deeparamaya Duwe Viharaya is a temple which is exempted from the operation of S.4(1) of the Buddhist Temporalities Ordinance (Cap. 318) but not being a temple exempted from the operation of the entire Ordinance the management of the property belonging to it is, in terms of S.4(2), vested in its Viharadhipathi. Rev. Kalutara Ratanapala was the original Controlling Viharadhipathi of this temple. On his death his sole pupil Mahagoda Sumanatissa Thero succeeded him in office. He died in 1953 leaving only two pupils i.e. the original plaintiff and Rev. Benthara Saddhatissa Thero. The plaintiff was the senior pupil and according to the rule of Sisyau Sisyu Paramparawa he would have succeeded to the office of Viharadhipathi of the temple.

The appellant, however, contends that Rev. Sumanatissa Thero in or about 1929 orally nominated and appointed Rev. Saddhatissa Thero to the Viharadhipathiship of the Duwe Deeparamaya Temple; that by virtue of the said appointment Rev. Saddhatissa Thero became the Viharadhipathi of the temple upon the demise of Rev. Sumanatissa Thero in 1953; that he functioned in that office and died in 1969 having made his last will in 1967 (6D18); and that the appellant succeeded to the said office under the provisions of 6D18 admitted to probate in D.C. Colombo (6D19).

Evidence of the alleged oral appointment was given by Rev. Sugathadeera Thero a monk of about 70 years of age. His testimony was assailed by Counsel for the plaintiff who urged that he was deliberately giving false evidence to help the appellant. It was submitted that his conduct and behaviour throughout the years has been unbecoming of a monk and that he is unworthy of credit. It was also submitted that at the time

of the alleged nomination there was displeasure between Rev. Saddatissa Thero and his tutor Rev. Sumanatissa Thero and therefore it is unlikely and improbable that Rev. Sumanatissa Thero would have nominated him. The learned District Judge after a careful consideration of the evidence rejected these allegations and submissions but in view of the position taken up by the plaintiff regarding the character and credibility of this witness analysed the other evidence in order to ascertain whether it tends to support the oral testimony of the witness; upon such analysis the learned Judge reached the conclusion that the documentary evidence and the conduct of parties as disclosed by the evidence support the evidence that the appointment spoken to by Rev. Sugathadeera had in fact been made.

Rev. Sugathadeera said that Rev. Sumanatissa made the alleged appointment at a meeting held at the conclusion of a foundation laying ceremony for the vihare in the presence of a gathering consisting of monks and prominent representatives of the laity. The plaintiff and Rev. Saddatissa Thero were also present. In the course of a lengthy cross-examination the Counsel for the plaintiff did not probe the details or the manner of the alleged appointment or the words used in making such appointment except what appears in Sinhala at page 442 of the brief the English version of which is as follows:

Q. According to your evidence, you do not say that this oral appointment is unequivocal?

A. I say that it is unequivocal.

Q. What you say is that he said so?

A. No the appointment was made.

Q. To what do you say this appointment was made?

A. I was present at that meeting.

The point was not pursued and in the cross-examination that followed Counsel only put questions suggesting that as the witness belonged to the Amarapura Sect he would not

have attended a function at the Duwe Temple which belonged to the Siamese Sect.

However, the plaintiff's Counsel developed the point during his submissions before the District Court when he said that the appointment must be proved unequivocally. It must be clear and specific. The burden is on the defendant to controvert the position that the plaintiff is the *de jure* Viharadhipathi. The appointment is proved only if that is the only inference possible. If necessary, there must be corroboration. It was the Counsel's submission that there is no evidence of an appointment to the Viharadhipathiship but that Rev. Saddhatissa was only the resident monk carrying out the religious functions. The fact that he was so resident for many years or that he was addressed as Viharadhipathi means nothing. It was on the basis of a similar submission that the Court of Appeal set aside the judgement of the District Court.

Now the learned District Judge's approach in deciding the dispute differs from the approach advocated above on behalf of the plaintiff. He might have more usefully examined the submissions made but he did not consider them specifically perhaps due to the paucity of cross-examination on the details of the alleged oral nomination. He decided the question of fact whether Rev. Saddhatissa had been nominated to succeed Rev. Sumanatissa as the Viharadhipathi of the Duwa Temple. In doing so he acted on the "uncontradicted" evidence of Rev. Sugathadeera Thero for which he looked for support in the other evidence. He regarded the evidence on this point as uncontradicted because Rev. Sangananda who gave evidence for the plaintiff was not in a position to say whether an appointment had in fact been made. He however, stated that to his knowledge there was no appointment. The plaintiff who is said to have been present at the time of the alleged appointment did not give evidence. It was stated that the plaintiff was too ill to attend Court and give evidence.

It seems to me that the question whether an appointment of a successor to the Viharadhipathiship of the Duwe Temple had been proved is ordinarily a question of fact even where the sufficiency of evidence on such appointment is involved. Mr. L. C. Seneviratne P.C. for the respondent conceded that it is a mixed question of fact and law. However, the Court of Appeal whilst mainly considering the question of sufficiency of evidence concluded that it is "entirely a question of law". According to that Court "the principal question before the District Judge was as to the validity and efficacy of the alleged oral nomination in 1929"; the "bald statement" of Sugathadeera Thero that such nomination was made without any "elaboration thereof" is inadequate; thus the witness has not clarified whether the appointment was made to be effective upon the death of Rev. Sumanatissa or only as Adhikari or the chief resident monk for the time being. The Court observed that the District Judge had failed to analyse the evidence; that in holding that there was a valid nomination in 1929 upon this evidence the Judge merely adopted the conclusions reached by Sugathadeera Thero and in doing so surrendered his function of deciding the effect of evidence. In the circumstances the Court took the view that the question of corroboration does not arise because on the evidence of Sugathadeera Thero the correct decision is that either no such nomination was in fact made or that there is no valid nomination; and that in considering that the documents produced supported the evidence of Sugathadeera Thero that there was a nomination in 1929 the District Judge misdirected himself.

The Court of Appeal dismissed a submission by Counsel for the appellant that it would be unrealistic to expect the witness after so many years to recollect the terms in which such nomination was made. The Court said that if it is sought to deflect the succession away from the senior pupil so as to disturb the normal rule, a nomination must be in "clear and intelligible terms" which would be the case with respect to a written document; and there is no logical basis for saying that

in the case of an oral nomination "It would suffice merely to say that there was a nomination as in this case". The Court also thought that the rule that an appellate tribunal should be slow to interfere with findings of facts reached by a Court has no application for the reason that whilst what Sumanatissa said in 1929 is undoubtedly a question of fact, what is involved here is the legal effect of what he said which is entirely a question of law.

In the result, the Court of Appeal decided the entire case consisting of about 625 pages of evidence and submissions before the District Judge primarily with reference to what it had gathered to be the evidence of Sugathadeera Thero and on the basis that there was no question of fact which required scrutiny. In so deciding the case that Court relied on certain dicta of the former Supreme Court in judgements regarding the distinction between de facto and de jure Viharadhipathi and the statutory provisions before and after the Buddhist Temporalities Ordinance of 1931 as to the rights and privileges of the incumbent or the Viharadhipathi of a temple. In that background and on the basis that there is no evidence of a valid nomination, the Court expressed the view that Saddhatissa Thero was only the de facto Viharadhipathi of the Duwe Temple or the agent of the Viharadhipathi (Sumanatissa Thero) resident elsewhere; and that the evidence does not disclose that anything took place upon the death of Sumanatissa Thero in 1953 other than the fact that his tenure of Viharadhipathi terminated with such death. Consequently, the Court found that in 1953 the plaintiff as senior pupil of Sumanatissa Thero succeeded him as Viharadhipathi of the temple in accordance with the Sisyanu Sisya Paramparawa rule of succession. Our task is to determine the correctness of the decision so reached.

As regards the distinction between de facto and de jure Viharadhipathi, the Court cited *Pemananda Thero v. Thomas Perera* (1) *Amarasekera Thero v. Tittagala Sasanatilake Thero*

(2) and *Dhammadaja Thero v. Wimalajothi Thero* (3). I may add to this *Jinaratna Thero v. Dhammaratane Thero* (4) cited by Mr. L.C. Seneviratne P.C. at the hearing of this appeal. The first of these cases held that a de facto Viharadhipathi merely residing in the temple and looking after its property with the permission of the Viharadhipathi had no right to lease the property belonging to the temple. The other cases held that the de jure Viharadhipathi will not be deemed to have renounced or abandoned a temple by reason of residence in another temple of which he is also Viharadhipathi or by reason of permitting another priest to occupy his temple; that a priest can be incumbent of more than one temple; that a priest cannot acquire Viharadhipathiship by residence in his tutor's Vihare whilst conducting a Pirivena and a school for any length of time, and that the fact that the de jure Viharadhipathi looks on whilst another is described as Viharadhipathi does not deprive him of his rights. None of these cases even remotely deal with a question of succession to Viharadhipathiship by nomination. They would, however, be relevant if the Court of Appeal is right in taking the view that the evidence of Sugathadeera Thero fails and it was not open to the District Judge to have acted on it subject to corroboration by other evidence.

As regards the statutory provisions before and after 1931 as to the rights and privileges of the incumbent or the Viharadhipathi of a temple the Court cited *Morontota Sobitha Thero v. Amunugama Ratnapala Thero* (5) which held that "incumbent" under the Ordinance of 1905 which was in force in 1929 (when the alleged appointment was made) include both the Viharadhipathi if he was resident in the temple and the chief resident priest officiating in his behalf (if he was not) the latter being known as Adhikari; under that Ordinance the property of a temple vested in lay trustees. Under the 1931 Ordinance "Viharadhipathi" means the principal Bikkhu of a temple..... whether resident or not and where S.4(2) applies the property is vested in the Viharadhipathi who then is

termed the Controlling Viharadhipathi. The Court thought that at the time of the alleged nomination in 1929 the changes effected in 1931 could not have been in the contemplation of Rev. Sumanatissa Thero, the nomination in 1929 had necessarily to be as an agent only and in the absence of a further statement by him in 1931 Saddhatissa Thero could not have acquired any greater right of succession to the Viharadhipathi-ship in 1953. The criticism of Mr. Eric Amerasinghe P.C. for the appellant on this approach is twofold. Firstly it is highly legalistic in that it requires the effect of the actions of ordinary priests to be interpreted in the context of their appreciation of laws; Secondly, it ignores the relevance of several judicial decisions which Samarakoon C.J. examined (pp 218-221) on the basis of which he concluded.

“The above cases show clearly that the Buddhist Temporalities Ordinance of 1889 and 1905 left untouched an incumbent’s unalienable customary rights and interests in the temple and its endowments required to be exercised or used by him for the purpose of his office”.

If so, there was no legal fetter against Sumanatissa Thero appointing his junior pupil in 1929 to succeed him as Viharadhipathi of the Duwe Temple upon his death whether such pupil was immediately placed incharge of that temple or not; and that the appellant has proved the making of such appointment.

Has the Court of Appeal properly exercised its appellate jurisdiction by reversing the judgement of the trial Court in the way it did, resting its judgement on the evidence of Rev. Sugathadeera alone and on the basis that it is entirely a question of law? Is the Courts view that the trial Judge had merely adopted the conclusions of Sugathadeera Thero tenable? Did the District Judge misdirect himself in accepting documentary evidence as supportive of the alleged nomination? In deciding these questions one must bear in mind the fact that the Court below did not exclude the evidence of Sugathadeera Thero on

the ground of inadmissibility but on the ground that it is vague and unintelligible because the witness did not give details of the alleged appointment by Sumanatissa Thero indicating that it was to enable Saddhatissa Thero to succeed him on his death. There is, therefore, admissible evidence regardless of its evidentiary value. I shall presently refer to the relevant evidence on the point but before I do so I wish to reproduce the main points urged on behalf of the respondent at the hearing before us.

Mr. L. C. Seneviratne P.C. made the following points in support of the judgement of the Court of Appeal:

1. There must be acceptable evidence of nomination of Viharadhipathi.
2. The evidence presented to Court is insufficient in view of the fact that the alleged nomination was made in 1929 without the necessity for succession. The evidence did not disclose the form of nomination i.e. as successor or as Adhikari; hence the case is not proved.
3. Documents produced as corroborative evidence are capable of more than one meaning. They do not necessarily support the nomination of a successor and as such cannot be regarded as corroborative.
4. The Court of Appeal rightly laid stress on the form of nomination and rightly acted with caution.
5. Sumanatissa being Viharadhipathi of three temples appointed Saddhatissa as caretaker of one of them.
6. There is only a bald statement of an oral appointment. The evidence is more compatible with Sumanatissa having appointed Saddhatissa as de facto Viharadhipathi of the temple and gone to another temple.

The essence of these submissions is that Sugathadeera Thero's evidence by itself is insufficient as proof of the alleged

appointment; hence there is nothing to begin with and the question of corroboration does not arise; in any event the supporting documents are equivocal and hence not corroborative. Thus the learned President's Counsel did not contend that it is "entirely a question of law" as was understood by the Court below.

The record shows that Sugathadeera Thero's evidence on the point had been elicited not in the abstract but immediately in relation to document 6D49 dated March 1955 which is a joint appeal to the electors of the Kalutara electoral district regarding the impending General Election to Parliament. It had been prepared by the witness to be signed by the Viharadhīpathis of the area; the witness had included therein Saddhatissa Thero as the Viharadhipathi of the Duwe Temple; and the latter had signed it.

This was subsequent to the death of Sumanatissa Thero. Asked by the examining Counsel how the witness knew that Saddhatissa was the Viharadhipathi to so describe him, the witness answered that he knew from his personal knowledge that Saddhatissa had been appointed to Viharadhipathiship by Sumanatissa Thero and proceeded to give the details as to the year, the occasion etc. It is thus clear that the witness was testifying regarding the status of Saddhatissa in 1955 when Sumanatissa had ceased to be Viharadhipathi and in effect stating that Saddhatissa was Viharadhipathi consequent upon a nomination in 1929. In cross-examination the witness said (though subject to some confusion at one stage which I do not consider as material) that Sumanatissa Thero remained the Viharadhipathi of the Duwe Temple until his death; that he was Viharadhipathi of all his temples when he died and had not lost such status of Viharadhipathi (pp 416, 417 of the brief). The witness was, therefore, testifying to an appointment in 1929 which included the right of succession to the Viharadhipathiship of the Duwe Temple at a later date.

If Sugathadeera Thero's evidence considered in its context was intrinsically in respect of a nomination leading to succession to the Viharadhipathship of the Duwe Temple, it cannot be said that there is no evidence to begin with and that the trial Judge misdirected himself in looking for corroboration. If further details of the appointment were required on the sufficiency of such evidence the plaintiff's Counsel should have adequately cross-examined the witness. In the absence of such cross-examination the trial Judge cannot be faulted for acting on such evidence subject to corroboration. It is then a question of fact for the trial Court and the Court of Appeal was not warranted in interfering with the findings of fact of that Court in the way it did.

In the context, I also have grave doubts as to the correctness of the view expressed by the Court of Appeal that the evidence of an oral nomination must in every respect be so precise as in the case of a written nomination. No doubt the Court should assess such evidence carefully and if necessary look for corroboration before acting on it. However, there is no rule of evidence which requires a witness giving evidence regarding an event that occurred 45 years ago to go into the "form" and "manner" of the nomination with absolute precision. I do not think that the Counsel for the opposite party can then refrain from testing such evidence and urge that the claim of a nomination is "not proved"

The failure of the trial Judge to analyse the evidence of Sugathadeera Thero did not result in the adoption of a wrong approach in deciding the case when he looked for corroboration because the evidence of the witness properly examined is sufficiently specific to be acted upon subject to corroboration. With great respect it is my view that the Court of Appeal by failing to examine the actual evidence of the witness on record erroneously assumed that the issue was one of law as to the "legal effect" of his evidence and on that assumption struck out the corroborative evidence and proceeded to reverse the judgement of the District Judge. By this process, the Court has unjustifiably interfered with the findings of fact.

What is more, the Court has expressed the view that corroboration is "not met by the large volume of evidence led in the case" because that evidence (which the Court has not proceeded to discuss) merely suggests that Sugathadeera Thero was no more than de facto Viharadhipathi or the agent of Viharadhipathi resident elsewhere. This is one of the submissions urged by Mr. L.C. Seneviratne P.C.. The Court went beyond and said that the only evidence which could have been thought to be corroborative is the evidence of the 6th defendant Sangarakkitha Thero who testified that according to the information he had from his tutor (Saddhatissa Thero) the nomination in 1929 was to all the three temples. The Court made the point that this evidence tends to have the opposite effect, meaning that it contradicts Rev. Sumanatissa. This evidence which was given under examination in chief was overruled by the Court on an objection by the plaintiff's Counsel (p. 69 of the brief) and as such it was not competent to the Court of Appeal to have used it to contradict Sumanatissa Thero. The Court has committed a serious error in so using the evidence. Further by purporting to review corroborative evidence the Court has expressed views on facts without any discussion of the evidence or a critical examination of the views of the original Court on the various items of evidence. This too is a serious error. The judgement appealed from cannot therefore stand and must be set aside.

What I have said is sufficient to dispose of this appeal. However, for the sake of completeness I wish to briefly comment on the merits as the Court of Appeal has made certain observations thereon but without a proper examination of the relevant evidence. Firstly, in view of my ruling that the District Judge was competent to act on Sugathadeera Thero's evidence subject to corroboration judicial decisions cited by the Court of Appeal would lose much of their force in the instant case. Secondly, whilst pupillary succession according to seniority is the rule, a Viharadhipathi has the right to appoint any particular pupil as his successor. *Dhammajoti v. Sobita* (6) *Piya-*

tissa Terunnanse v. Saranapala Terunnanse (7). It follows that the right to Viharadhipathiship by nomination is as much a right as in the case of pupillary succession except that the party claiming to succeed by appointment must prove it. If necessary, the Court may look for corroboration; but the burden on the claimant is to satisfy the Court on a balance of evidence.

Thirdly, it would appear that Sumanatissa Thero who was the Viharadhipathi of three temples had as early as 1929 entrusted the Duwe Temple where he was resident to Saddhatissa. By 1932 he was resident at Anandaramaya and shifted to Sri Dharmaramaya which was in-charge of the plaintiff, about a month before his death in 1953. The documents clearly show that until 1953 the plaintiff and Saddhatissa Thero functioned as 'Viharavasis' (resident monks) of their respective temples and that it was so understood by them and their tutor Sumanatissa (P13, P20, P31, P32, P32A, P34, P34A, P43, 6D28, 6D29, 6D30). From 1953-1969 the plaintiff functioned as the Viharadhipathi of Sri Dharmaramaya whilst Saddhatissa Thero was publicly acknowledged at religious functions of Sri Dharmaramaya itself and in the media as Viharadhipathi of the Duwe Temple to the full knowledge of the plaintiff. He published books under his name as such Viharadhipathi. The plaintiff never objected to it. Instead the plaintiff and his pupil Sangananda Thero addressed him letters describing him as Viharadhipathi of the Duwe Temple in most respectful terms. Even in the notice on the occasion of Saddhatissa's death published under the name of the plaintiff and the funeral committee, Saddhatissa is described as such Viharadhipathi whilst the plaintiff is described as Viharadhipathi of Sri Dharmaramaya (6D9, 6D10, 6D12, 6D13, 6D14, 6D15, 6D16, 6D37A, 6D37, 6D38A, 6D38, 6D39A, 6D39, 6D64, 6D64A, 6D65, 6D65A, 6D66, 6D66A, 6D67). The explanation of Sangananda Thero is that they addressed Saddhatissa Thero as Viharadhipathi out of respect; and that he functioned under that designation with the plaintiff's permission. There is not a single document

in support of the plaintiff and he relies on the bare assertion of Sangananda Thero to that effect; and the District Judge rejected this explanation being of the view that the plaintiff's conduct supports the evidence of Sugathadeera Thero that the appointment had in fact been made.

It is true that the fact that a person looks on whilst another is called Viharadhipathi for any period whatsoever will not deprive him of rights; but here there is an admission by the plaintiff against his interests and the question is whether such admission tends to support the alleged nomination of Saddhattissa Thero to succeed his tutor. The plaintiff's conduct for 16 years is most unusual for a priest who claims the Viharadhipathiship of a temple. I am of the view that the District Judge's determination is correct.

The judgment of the District Court also derives some support from the decision in *Pannavasa Thero v. Sudassi Thero* (8). There the plaintiff claimed the incumbency of a temple as a pupil of Saranapala Thero (The Viharadhipathi), by virtue of an appointment to succeed him. The defendant claimed:

1. that the temple was never dedicated;
2. that the plaintiff had abandoned the temple;
3. that the defendant had been invited to the temple by the Dayakayas.

It was held that the temple was sangika property, the allegation of abandonment was false and the plaintiff alone had the right to possess the temple and the Dayakayas had no power to choose the incumbent. Though this decision is not directly in point, there is a finding in respect of the plaintiff's claim of succession which is relevant. It was held that an admission by Gunaratana, a pupil of Saranapala who was senior to the plaintiff in a declaration under s.41 of the Buddhist Temporalities Ordinance and in the plaintiff's favour strongly supported his claim. Another fact which supported it is that it was the plaintiff and no other pupil had resided in the temple and administered its affairs from the time of Saran-

apala's death in 1913, until the dispute arose in 1949. Sansoni J. (as he then was) also said this —

“Not a single document has been produced to show that either Gunaratana or Ratanapala (both senior pupils) over exercised powers in respect of the temple, and I think the learned District Judge's finding that the previous incumbent Saranapala nominated the plaintiff as his successor is the only possible one on the evidence”.

This judgment does not specifically state that the alleged nomination was oral. However, the tenor of the judgment and the fact that the plaintiff first came to Court as a senior pupil of Saranapala, and later amended his plaint and claimed the incumbency of the temple under an appointment suggests that it was an oral appointment.

In the instant case, the dispute arose only after the death of Saddhatissa Thero when his senior pupil the appellant sought to exercise his right to the temple under Saddhatissa Thero's last will. The Court of Appeal held that the conduct of the appellant and the 2nd to 4th defendants were contumacious and made them liable to ejection. In view of my findings this determination has no merit.

For the foregoing reasons, I allow the appeal, set aside the judgment of the Court of Appeal and affirm the judgement of the District Court with costs payable to the appellant in all the three Courts.

Bandaranayake, J. — I agree.

Fernando, J. — I agree.

Appeal allowed.