

CHULALANKARA THERO

v.

LAVENDRIS AND OTHERS

SUPREME COURT

WEERARATNE, J., WIMALARATNE, J.

AND VICTOR PERERA, J.

OCTOBER 06, 1981.

Buddhist ecclesiastical law — Res judicata — S. 406 of the Civil Procedure Code — Is trustee privy or successor in title of Viharadhipathy? Section 20 of Buddhist Temporalities Ordinance.

Where two earlier plaints on the same subject matter filed by a former Viharadhipathy had been dismissed for formal defects in the plaint and not after adjudication the plea of res judicata cannot succeed.

A trustee appointed by the Public Trustee under the Buddhist Temporalities Ordinance is not the privy or successor in title of the Viharadhipathy for the application of S. 406 of the Civil Procedure Code.

Cases referred to

1. *Kanapathipillai v. Kandiah* (1942) 44 NLR 42
2. *Dias v. Ratnapala Terunnanse* 1938) 40 NLR 41

Appeal from judgment of the Court of Appeal

A. A. de Silva with S. Dassanayake and U. S. Dharmaratne for plaintiff — appellant.

Walter Wimalachandra with C. B. Walgampaya for defendant — respondent.

Cur. adv. vult

October 28, 1981.

VICTOR PERERA, J.

The plaintiff-appellant as the duly appointed Trustee of Raja Maha Viharaya, Hittatiya Matara, filed this action on the 16th September 1976 against the defendant-respondents seeking a declaration of title to the premises described in the Schedule to the plaint alleging the same belonged to the temple and for ejection of the defendant-respondents. The defendant-respondents filed answer and seven

ral issues were framed at the trial. On the application of the parties it was agreed that the following issue be taken up as a preliminary issue:-

“Do the decrees in cases Nos. 3224 and 3721 operate as estoppel by *res judicata* against the plaintiff?”.

The learned District judge after hearing submissions by the parties held that the said decrees in the two earlier cases were not *res judicata* and directed that the trial do proceed on the other issues.

The defendant-respondents appealed from the said judgment to the Court of Appeal. The Court of Appeal reversed the finding of the learned District Judge and held that the said two earlier decrees were *res judicata* and directed that the plaintiff-appellant's action be dismissed with costs.

The plaintiff-appellant has with leave obtained from the Court of Appeal, appealed to this Court. The admitted facts in the present case are that the Raja Maha Vihara of Hittatiya is not exempted from the provisions of Section 4 (1) of the Buddhist Temporalities Ordinance (Chap. 318) and that the present plaintiff-appellant had been duly appointed the Trustee for the said temple by the Public Trustee by virtue of the letter of Appointment dated 20.12.1973, filed of record with the plaint in this case. The letter of appointment given in pursuance of the powers vested in the Public Trustee under Section 11 (2) of the Buddhist Temporalities Ordinance sets out that by reason of the nomination dated 10th September 1973 made by Kirthi Sri Ariyajothi Thero, the Viharadhipathi of the said temple, Godagama Chulalankara Isthavira, the plaintiff-appellant, was appointed the Trustee. It is clear from this letter of appointment, that the Viharadhipathi and the Trustee for the temple are two separate persons.

By virtue of the provisions of section 20 of the Buddhist Temporalities Ordinance, all property movable, belonging or in anywise appertaining to or appropriated to the use of any temple vests in the Trustee who may sue for the recovery of any such property. Thus the plaintiff-appellant, as trustee, alone had the legal right to institute this action on behalf of the temple for the recovery of the property alleged to belong to the temple after his appointment as Trustee.

The defendants-respondents relied on two decrees in cases 3224/L and 3721/L as *res judicata*. The case No. 3224/L was filed

in September 1970 by Kirthi Sri Ariyajothi Thera as Viharadhipathi of the temple against K. A. Lavendris, the 1st defendant-respondent in the present case, for a declaration of title as property of the temple and for ejection on the basis that the 1st defendant had taken a lease of the premises from him on Deed No. 4868 dated 31st March 1941 for 10 years and had continued in occupation with his leave and licence thereafter, till June 1970 when the 1st defendant-respondent started disputing the title of the temple to the said land. In the plaint the said Ariyajothi Thera as Viharadhipathi averring that the temple was exempted from the provisions of Section 3 of the Buddhist Temporalities Ordinance sued, simpliciter, as the Viharadhipathi. The learned District Judge in his judgment in that case held that as the plaintiff in that case had not pleaded that the temple was exempted from the operation of Section 4(1) of the Buddhist Temporalities Ordinance, he could not maintain the action as Viharadhipathi. The action was dismissed and decree dismissing the action was entered on 30th November 1972.

The second case No. 3721 was filed on 30th October 1973 by the same Ariyajothi Thera as Viharadhipathi against the same 1st defendant and also against his son the 2nd defendant in respect of the said premises. In the plaint he averred that the temple had not been exempted from the operation of Section 4(1) of the Buddhist Temporalities Ordinance and he sued as the Controlling Viharadhipathi. However, when the case came up for trial the plaintiff while conceding that the temple had not been exempted from the operation of Section 4(1), admitted that a Trustee for the temple had been appointed by the Public Trustee. On 4th April 1975, the action was withdrawn and a formal decree dismissing the action was entered. In point of fact the present plaintiff-appellant had been appointed on 20th December, 1973.

The first question that comes up for consideration is whether the plea of *res judicata* arises under the circumstances. The dismissal of the two earlier actions were merely for the reason that there were formal defects, in the first case, the failure to plead exemption from the provisions of Section 4(1) of the Buddhist Temporalities Ordinance and in the second case the fact that the temple had not been exempted from the provisions of Section 4(1) and that a Trustee had been appointed after the action was filed.

The plaintiff in the first case failed to make out a legal status to maintain the action and in the second case he renounced his alleged claim to sue on the discovery that he had no legal status to file or maintain the action. It is significant that when he filed case No.

3721/L on 31st October 1973, the plaintiff Ariyajothi thero had already in September 1973 nominated the present plaintiff-appellant for appointment as Trustee by the Public Trustee. Thus he was fully aware that the temple had been brought within the operation of Section 4(1) of the Ordinance though no Trustee had been appointed at the date of the plaint.

The term 'res Judicata' by its very words mean a matter upon which the Court has exercised its judicial mind and pronounced a decision in regard to the claim of the plaintiff or the defendant. In these cases there was no adjudication in regard to the subject matter of the actions. The title of the temple if any, to the land remained intact, but the identical plaintiff in both cases was found not entitled to maintain those actions. There was a termination of the two actions as such but there was no termination of the actual controversy by a judgment one way or the other. Therefore the plea of res judicata did not strictly arise for determination in the present action.

But it could have been urged that the decrees of dismissal in both actions operated as statute bars in terms of Section 406 of the Civil Procedure Code. This section creates a statutory bar which precludes a plaintiff from bringing another action when an earlier action brought by him in respect of the same subject matter has been withdrawn or dismissed unless liberty to file a fresh action has been granted at the time of withdrawal or dismissal. In regard to Ariyajothi Thera the plaintiff in the earlier actions, the plaintiffs and the subject matter in the two cases were the same. In this case the plaintiff is a different person. No doubt, a statutory bar even though not operative as res judicata would operate against a plaintiff if he could be regarded as privy or successor in title to the plaintiff in the earlier actions.

The question therefore to be considered in this case is whether the plaintiff-appellant a Trustee duly appointed for the temple is a successor in title to Ariyajothi Thero, the Viharadhipathi of the temple, the plaintiff in the earlier action. In determining this question one must examine in this light the relationship of a Viharadhipathi of a temple over which he presides and his rights to the property belonging to the temple. If the temple is not brought within the operation of Section 4(1) of the Buddhist Temporalities Ordinance, the Viharadhipathi's rights in regard to the property belonging to the temple are unaffected and he is regarded as the controlling Viharadhipathi. On his death, his pupillary successor in title is vested with all the rights his tutor was entitled to and

he would be his privy or successor in title. When a temple is brought within the operation of this Section 4(1), the Viharadhipathi's rights to preside over the temple are unaffected. His rights to the temple property are not lost. But when a Trustee is appointed for the temple, the management of the temple property alone vests in the Trustee in terms of Section 20 of the Ordinance and it is he who could sue for the recovery of property of the temple in terms of Section 18 of the Ordinance. On the death of the Viharadhipathi, his pupillary successor becomes his successor in title notwithstanding the appointment of a Trustee. The rights of the Trustee in regard to management and the right to sue come into being by the fact of his being duly appointed a Trustee for the temple. *The present plaintiff-appellant is therefore in no way a privy or successor in title of Ariyajothe Thera, the Viharadhipathi*

The title to the temple or to the property did not vest in the plaintiff-appellant as Trustee and the plaintiff-appellant did not derive any title from the Viharadhipathi. In this case the plaintiff is different and therefore the reliefs claimed as Trustee are different. The plaintiff in the earlier cases had no right to sue in the manner he did. The plaintiff-appellant has been clothed with the right to sue and therefore his appointment as Trustee has given rise to the relief he claims. The earlier actions and the present action are therefore not in respect of the same subject matter. A situation such as this was considered in the case of *Kanapathipillai v. Kandiah* (1) and the Supreme Court held that the identical plaintiff who had subsequent to the dismissal of a mortgage action in respect of the same bond, taken the necessary steps entitling him to sue, was entitled to maintain the second action on the same bond and that the action was not barred by section 406 of the Civil Procedure Code. Ariyajothe Thera, the plaintiff in the earlier actions, could himself have filed this action, if he had subsequently clothed himself with the right to maintain this action by having himself appointed the Trustee for the temple. This is clear from the judgment of the Supreme Court in the case of *Dias v. Ratnapala Terunnanse*. (2) Soertsz, J. held in that case that an incumbent of a Buddhist temple which is not exempted from the provisions of Section 4(1) of the Buddhist Temporalities Ordinance was not entitled to vindicate title to land belonging to a temple. The action filed by him as Viharadhipathi as such was dismissed. The Supreme Court, however, held that there were liberal provisions in the Buddhist Temporalities Ordinance to meet such contingencies as delay or the non-appointment of a trustee, for instance in sections 9, 10 & 11 of the Ordinance and that "it is still open to the temple to avail itself of these provisions and bring a properly constituted action." In this case instead of Ariyajothe Thero getting himself appointed Trustee and himself filing a properly constituted action,

the plaintiff-appellant as the duly appointed trustee has filed this action and that was precisely what he had to do in order to recover the property claimed by him as belonging to the temple under these circumstances.

The Court of Appeal appears to have mis-directed itself by starting with the premise that the present plaintiff was filed on the basis that the plaintiff had been "duly appointed by the Public Trustee as Viharadhipathi by the Letter of Appointment dated 20.12.73", and that the case 3224/L and 3721/L were filed by the plaintiff in these cases "in his capacity of Trustee of the Vihare". The Court of Appeal held that the present plaintiff has also been filed by the plaintiff claiming to be the Trustee and that hence the present plaintiff is privy "in his capacity as Trustee to the plaintiff who filed case No. 3721/L also in the capacity of Trustee of the same Vihara." Factually the position was different. It is this confusion that resulted in its setting aside the order of the District Judge on his finding on issue (15). This appeal is accordingly allowed. The learned District Judge is directed to proceed to trial on the other issues raised at the trial.

The plaintiff-appellant is entitled to the costs in the District Court, Court of Appeal and in this Court.

WEERARATNE, J.

I agree

WIMALARATNE, J.

I agree

Appeal allowed