1963 *Present :* Abeyesundere, J., and G. P. A. Silva, J.

K. S. PERERA, Appellant, *and* C. J. C. MATHEW and others, Respondents

S. C. 68 of 1961—D. C. Badulla, 13635

*Buddhist ecclesiastical law—*Rei vindicatio *action brought by a person claiming to be trustee of a temple—Issue raised as to due appointment of trustee—Burden of proof—Buddhist Temporalities Ordinance, ss. 3, 11.*

Where a person, claiming to be the trustee of a Buddhist temple, institutes an action for a declaration that a certain land belongs to the temple, and his right to institute the action is challenged on the ground that he does not hold a letter of appointment issued by the Public Trustee under section 11 of the Buddhist Temporalities Ordinance and, therefore, is not the duly appointed trustee of the temple, the burden is then on him to establish that, although, under section 3 of the Buddhist Temporalities Ordinance, the provisions of that Ordinance apply to every temple in Ceylon, those provisions do not apply to the temple of which he claims to be the trustee.

APPEAL from a judgment of the District Court, Badulla.

E. B. Wikramanayake, Q.C., with *N. Senanayake* and *B. Nadarajah*, for 1st defendant-appellant.

T. B. Dissanayake, for plaintiffs-respondents.

March 13, 1963.—ABEYESUNDERE, J.—

In this case the plaintiffs-respondents, claiming to be the trustees of Visuddharama Temple in Dematagoda, Colombo, instituted an action against the 1st defendant-appellant and the 2nd defendant-respondent in respect of a land in Badulla district which had thereon a building described as an " avasa ". The plaint alleged that the premises in suit belonged to Visuddharama Temple and that the 1st defendant-appellant had taken forcible possession thereof. The plaintiffs-respondents prayed that the premises in suit be declared to be the property of Visuddharama Temple, that the defendants be ejected therefrom and that possession thereof be restored to the plaintiffs-respondents as the trustees of Visuddharama Temple. The 1st defendant-appellant claimed to be the owner of the premises in suit by right of purchase and denied that he took forcible possession of those premises. The 2nd defendant-respondent, who is a Bhikku, was added as a party as he too claimed to be the owner of the premises in suit. The learned District Judge delivered judgment in favour of the plaintiffs-respondents. The 1st defendant-appellant has appealed from that judgment.

Mr. E. B. Wikramanayake, Q.C., who appeared for the 1st defendant-appellant, argued that the Buddhist Temporalities Ordinance applied to Visuddharama Temple, that the plaintiffs-respondents were not appointed trustees of Visuddharama Temple in accordance with the provisions of that Ordinance and that therefore they were not competent to institute the action in respect of the premises in suit. If the plaintiffs-respondents had been appointed trustees of Visuddharama Temple in accordance with the provisions of the aforesaid Ordinance, there would have been a letter of appointment issued by the Public Trustee under section 11 of that Ordinance. No such letter was produced by the plaintiffs-respondents. They claimed to be trustees of Visuddharama Temple by virtue of appointment in accordance with the provisions of Indenture No. 3631 of 4th April, 1919, marked P7 at the trial By that Indenture the owner of the land on which Visuddharama Temple stands vested that land and the buildings thereon in trustees. Those trustees were empowered to have the control and management of all gifts and endowments, movable and immovable, made to Visuddharama Temple.

Mr. T. B. Dissanayake, who appeared for the plaintiffs-respondents, contended that the Buddhist Temporalities Ordinance applied to sanghika temples only, that Visuddharama Temple was not a sanghika temple

and that therefore the trustees of that temple need not be appointed in accordance with the provisions of that Ordinance. Issue 12 in the action was as follows :—

> " Are the plaintiffs the duly appointed trustees of Maha Visuddharama Temple, Dematagoda ?"

If the position of the plaintiffs-respondents was that Visuddharama Temple was not a temple to which the Buddhist Temporalities Ordinance applied, the burden was on them, in view of the aforesaid issue, to establish that, although under section 3 of that Ordinance the provisions of that Ordinance applied to every temple in Ceylon, those provisions did not apply to Visuddharama Temple. The plaintiffs-respondents failed to discharge that burden. There was no proof that Visuddharama Temple was exempted under section 3 of the Buddhist Temporalities Ordinance from the provisions of that Ordinance and there was no proof that Visuddharama Temple was not a sanghika temple.

Three documents relied on by the plaintiffs-respondents contain passages indicating a recognition of the fact that Visuddharama Temple is a sanghika temple. The Indenture marked P7 provides that the trustees shall hold the subject matter of the trust " generally for the use and benefit of or as a dedication for the whole Order of Maha Sangha ". According to the document marked P1 and entitled " A dedication of a residence of Sangha together with other things appurtenant to it ", the premises in suit which the plaintiffs-respondents averred belonged to Visuddharama Temple were dedicated " to the Sangha from the four directions ". The document marked P2 and entitled " Deed of confirmation of offering " states that the premises in suit were donated " as a Sanghika offering ".

Two decisions of this Court were cited on behalf of the plaintiffs-respondents in support of the contention that the properties vested in trustees by the Indenture P7 were not those in respect of which the Buddhist Temporalities Ordinance had any application. The first decision cited was that in the case of *Morantuduwe Sri Naneswara Dhammananda Nayaka Thero v. Baddegama Piyaratana Nayaka Thero*[1]. That case related to the pirivena known as Vidyodaya Pirivena in connection with which a Buddhist place of worship had been established. It was held in that case that " religious education was the primary purpose for which the institution established on the premises in question came into existence and that worship was merely incidental to such purpose " and that therefore " the institution that was carried on in the premises at the time of the filing of the action was not a temple within the meaning of the Buddhist Temporalities Ordinance ". As the sanghika gift in that case was to an institution that was not a temple within the meaning of the Buddhist Temporalities Ordinance, the argument that such sanghika gift was not one in respect of which that Ordinance had any application was considered to be sound. In the present case there was no evidence

[1] *(1958) 59 N. L. R. 412.*

that Visuddharama Temple was not a temple within the meaning of the Buddhist Temporalities Ordinance. The decision in the case relating to Vidyodaya Pirivena is therefore not applicable to the present case. The second decision cited was that in the case of *Uduwe Wimala Ransi et al. v. C. J. C. Mathew et al.*, decided on February 21, 1962. (S. C. No. 161/'59, D. C. Colombo No. 7855/L—Supreme Court Minutes of February, 1962.) That case related to a building described as a dharmasalawa. It was held therein that the finding of the District Judge that such building had not at any time become sanghika property was correct. In that case those who claimed to be the trustees of the aforesaid building were the trustees under Deed No. 3631 of April, 1919, which is the Indenture P7 in the present case. There was however no finding in the aforesaid case that Visuddharama Temple was not a temple within the meaning of the Buddhist Temporalities Ordinance. The decision in the case relating to the dharmasalawa is of no assistance in deciding the present case.

I hold that the Buddhist Temporalities Ordinance applies to Visuddharama Temple and that the plaintiffs-respondents were not appointed trustees of that temple in accordance with the provisions of that Ordinance. Consequently the properties of Visuddharama Temple did not vest in the plaintiffs-respondents according to law. They were therefore not competent to institute the action in respect of the premises in suit. For this reason the first defendant-appellant must succeed in his appeal. I set aside the judgment and decree of the learned District Judge and dismiss the action of the plaintiffs-respondents. The 1st defendant-appellant is entitled to costs in this Court and in the Court below.

G. P. A. SILVA, J.—I agree.

Appeal allowed.