

**DHARMATILLEKE THERO**  
**v.**  
**BUDDHARAKKITA THERO**

COURT OF APPEAL,

S. B. GOONEWARDENE, J. (P/CA) and WEERASEKERA, J.,

C: A. No. 154/79(F) D. C. KALUTARA No. 2496/L,

OCTOBER 3, 5, 9, 11, 1989.

*Buddhist Ecclesiastical Law-Entitlement to Viharadhipathiship-Entries in Samanera and Upasampada declarations-Evidence in rebuttal-Seniority by act of robing.*

*Buddhist Temporalities Ordinance ss. 41(2) (a) (i), 41(2) (b), 46(6)—Circumstances in which an appellate court should set aside judgment*

Pothuwila Sri Saranatisa Thero was the Viharadhipathi of Kottarama Kande Vihare. He was succeeded by Heenatiyangala Jinarama Thero and functioned as Viharadhipathi until his death on September 03, 1976. The plaintiff priest (Dharmatilleke Thero) was robed on 30th September, 1952, while the defendant priest (Buddharakkita Thero) was robed on 2nd November, 1951. In the form of declaration of the robing of the defendant Saranatisa Thero was named in cage 7 as the robing tutor in terms of s. 41(2) (a) (ii) while in plaintiffs samanera declaration Jinarama Thero was named as robing tutor. Both plaintiff and defendant were presented for ordination on June 15, 1961 by Saranatisa Thero and Jinarama Thero. The entries in the declarations are prima facie evidence of the facts contained therein. In the upasampada declarations of both plaintiff and defendant the robing tutors under ss. 41(2) (a) (i) and 42 (2) (b) included the name of Jinarama Thero as one of the robing tutors.

**Held :**

(1) Evidence in rebuttal of the entries in the declarations which constitute prima facie evidence can be led and can be oral or documentary. Oral evidence can be led to supplement the information in the declarations.

(2) The entries in the upasampada declaration of the defendant show that one of the robing tutors of the defendant priest was Jinarama Thero and this is prima facie evidence of this fact. This prima evidence receives confirmation from other items of evidence as well. The notification of the forthcoming ordination of the plaintiff and defendant along with four others in June 1961 was under the joint names of Saranatisa Thero and Jinarama Thero and in this all of them were described as their samanera pupils.

(3) The District Judge who saw and heard the witnesses and watched their demeanour had found for the defendant. Where the personality of the witnesses is an essential element, the appellate Court should not set aside the decision of the trial judge save in the clearest of cases.

**Cases referred to:**

- (1) *Jinawansa Thero v. Piyaratna Thero* 1982 1 Sri LR 273
- (2) *Saranajothy Thero v. Dhammarama Thero* 61 NLR 76, 79
- (3) *Powell v. Streatham Manor Nursing Home* 1935 AC 243

APPEAL from the judgment of the District Judge of Kalutara.

*Dr. H. W. Jayewardene Q. C.* with *N. J. Seneviratne, H. Amarasekera* and *H. Cabral* for the plaintiff -appellant.

*A. C. Gunaratne Q. C.* with *B. Rajapakse* and *Mrs. Jayalath* for the defendant-respondent.

*Cur. adv. vult.*

December 7, 1989

**S. B. GOONEWARDENE, J. (P/CA).**

In this action in the District Court, the plaintiff-appellant sought by way of relief in the main, a declaration that he was the lawful Viharadhipathi of Kottarama Kande Vihara, said to be a famous temple situated at Kaluwamodera in Alutgama in the District of Kalutara. The principal ancillary relief he asked was that he be restored to possession of this temple and its temporalities on the basis that the defendant respondent was in wrongful and unlawful possession thereof upon an illegitimate claim of title to such Viharadhipathiship. His case upon his plaint was founded upon an assertion that at an earlier point of time a priest by the name of Pothuwila Sri Saranatissa Thero was the chief incumbent and that he was succeeded after death by Heenatiyangala Jinarama Thero who officiated in that capacity till September, 1976 and that on the latter's death he (the plaintiff appellant) succeeded to the Viharadhipathiship as his senior pupil.

For present purposes it suffices to say that the position of the defendant was that he himself was the senior pupil of Heenatiyangala Jinarama and thus succeeded to the Viharadhipathiship, a position which the District Judge upheld, resulting in this appeal.

To narrow down the questions before this Court on this appeal it is convenient to state that on the admissions and concessions made in the

District Court and at the hearing before us, the following matters can be treated as being capable of acceptance without controversy:-

- (1) This temple is not exempted from the provisions of Section 4(1) of the Buddhist Temporalities Ordinance.
- (2) The rule of succession applicable to the Viharadhipathiship is that which is known as the Sisyanu Sisya Paramparawa Rule.
- (3) Heenatiyangala Jinarama who died on 3rd September, 1976, and through whom both the plaintiff and the defendant claim title, was the undisputed last chief incumbent.
- (4) The plaintiff was robed as a Samanera on 30th September, 1952, his robing tutors being Pothuwila Sri Saranatissa and Heenatiyangala Jinarama.
- (5) The defendant was robed on 2nd November, 1951, and Pothuwila Sri Saranatissa was his robing tutor.
- (6) The plaintiff and defendant were each presented for ordination by both Pothuwila Sri Saranatissa and Heenatiyangala Jinarama and both duly ordained on 15th June, 1961, and thus each had both as his ordaining tutors.

The case presented by the plaintiff in these circumstances was that when he was robed on 30th September, 1952, Heenatiyangala Jinarama was one of his robing tutors whilst on the other hand when the defendant was robed on 2nd November, 1951, Heenatiyangala Jinarama was not one of his robing tutors. On the basis therefore that he was the only one out of the two of them who had been robed by Heenatiyangala Jinarama, he claimed that in law he succeeded the latter as chief incumbent of this temple under the Sisyanu Sisya Peramparawa Rule of succession.

The case of the defendant conversely was that on the occasion of his robing on 2nd November, 1951, Heenatiyangala Jinarama was one of his robing tutors and that since this event predated the robing of the plaintiff on 30th September, 1952, he became the senior pupil of Heenatiyangala Jinarama by robing and thus succeeded the latter as the lawful chief incumbent of this temple.

The answer therefore to the simple question as to whether Heenatiyangala Jinarama was one of the defendant's robing tutors when he was robed on 2nd November, 1951, becomes decisive as to the result of this appeal, counsel being agreed that the succession depended upon

the seniority acquired by the act of robing, as indeed is the correct position in law. If such answer is in the affirmative the defendant must succeed, but if in the negative, the plaintiff. The District Judge for his part upheld the defendant's contention that Heenatyangala Jinarama was one of his robing tutors and consequently dismissed the plaintiff's action.

Counsel for the plaintiff had two criticisms to make about the judgment of the District Judge apart from the conclusions he reached. One such criticism was that there had been delay on his part in delivering such judgment, but here I am of the view that that criticism is without foundation and that a period of about 4 1/2 months (that is the time between 16.1.1979 being the date on which the plaintiff's written submissions had to be filed and 5.6.1979 the date on which the judgment was delivered) was not in the circumstances of this case excessive. The other criticism made by Counsel for the appellant was that the judgment of the District Judge was sketchy and lacking in adequate consideration of the evidence tendered for the plaintiff and on the basis of this criticism Counsel contended that at the very least the plaintiff was entitled to have a fresh hearing of the action in the District Court. Apart from a natural reluctance I would have against adopting that course of sending this case back for a retrial having regard to the fact that it had been instituted as far back as the beginning of 1978, I do not think the circumstances of the case warrant it. Although it could possibly be said that the District Judge might perhaps have dealt with certain aspects of the matter in somewhat greater depth, having regard however to the narrow compass within which the real issue in the case falls, I take the view that the judgment of the District Judge is not inadequate to meet the requirements of justice. When all is said and done it is not as though there are no findings on the principal questions at all. Our approach therefore I think should be this. There is a clear finding by the District Judge in the defendant's favour, the evidence oral and documentary is before us, evidence to which Counsel has made copious reference and which we can independently evaluate and therefore the effect of a judgment by us would be to do justice according to law as between the plaintiff and the defendant.

Counsel for the plaintiff in argument before us placed the greatest possible emphasis upon the worth of the contents of document P3 (or P31) which is a certified copy of the Samanera declaration of the defendant. The main thrust of his argument was directed at stressing what he submitted was the value and significance of this document, which

if I recall right he characterised as the most important bit of independent evidence in the case being a contemporaneous record of the events of the defendant's robing on 2nd November, 1951. This document was one prepared to comply with the requirements of section 41(2)(a) (ii) of the Buddhist Temporalities Ordinance and the details contained there are those asked for in the 'form' of document prescribed by the Statute itself (Form 'B' in the schedule). Such forms duly filled are required by section 41(2)(b) to be forwarded to the Registrar-General who in turn is directed to file them and make registers thereof. Such entries are stated to be "prima facie evidence of the facts contained therein in all Courts and for all purposes". (Section 41(6)). Counsel drew our attention to the fact that in document P3 the defendant's samanera declaration, the name of Pothuwila Sri Saranatisa is given as the tutor by robing and that he and the defendant have both placed their signatures at the foot thereof. He pointed to the words "Name of robing tutor or names of robing tutors and residence" as being the information asked for in cage 7 and in effect contended that the presence of this one name Pothuwila Sri Saranatisa was virtually an insurmountable obstacle in the circumstances of this case to the defendant's endeavours to establish that Heenatiyangala Jinarama was also his robing tutor. His argument was that this single name standing in cage 7 was evidence that Heenatiyangala Jinarama was not a tutor by robing of the defendant on the one hand and that it was an admission by the defendant that Pothuwila Sri Saranatisa alone was his robing tutor on the other.

To begin with I find it difficult to take the view that the presence of these words "Name of robing tutor or names of robing tutors" in cage 7 of a Samanera declaration renders it necessary that the names of all robing tutors should be inserted. If that be so, I find it hard to understand why at the foot of this form in the compartment set apart for "Signatures to correctness of above particulars" there is provision only for one "Signature of robing tutor". Rather, it seems to me that what is demanded by the Statute is the insertion of the name of at least one robing tutor (if there be more than one) who takes responsibility for the accuracy of that information given by placing his signature at the foot of the document in testimony inter alia of the fact that the samanera in question was duly robed by him; while the object of the provision in cage 7 for the inclusion of the names of other robing tutors is merely permissive to enable that information as well to be furnished if desired. The documents produced at the trial relating to the robing of other priests connected with this temple seem to

indicate that it was not unusual for those concerned in providing information relating to such acts themselves to have looked at the matter in that way. Indeed if one examines the plaintiff's own upasampada declaration P9 which in cage 7 also made provision for inserting the "Name of robing tutor or names of robing tutors" one sees that initially according to the information furnished by the plaintiff himself the name of Pothuwila Sri Saranatissa alone appeared as robing tutor although subsequently by an amendment dated 30th September, 1976, the name of Heenatiyangala Jinarama had also been included upon the application of the Mahanayake of the Malwatte Vihare acting at the instance of the plaintiff. As a corollary to that view I find it difficult to agree that the absence of the name of Heenatiyangala Jinarama as a robing tutor in cage 7 of P3, can be evidence having the effect of showing that he was not a robing tutor. The contents of this kind of document can be evidence of what in fact it contains but I cannot agree that it can be evidence, especially prima facie evidence, of what it does not contain. As section 41 (6) itself points out, an entry shall be prima facie evidence of the "facts contained therein", which I understand to be prima facie evidence of a positive nature as to what is actually contained there and not prima facie evidence of a negative nature as to what is not contained there. It is perhaps apt here to refer to what Samarakoon C.J. in the case of *Jinawansa Thero v. Piyaratne Thero* (1) (a case cited by Counsel for the appellant himself) in explaining the import of the words 'prima facie' in section 41(6) (at p. 279) said,

"Evidence in rebuttal (of this prima facie evidence) may be either oral or documentary or both. The Register maintained by the Registrar-General is not the only evidence. Oral evidence may be given to prove the fact of robing or ordination (*Saranajothy Thero v. Dhammarama Thero* (61 N.L.R. 76 at 79) (2). Nor is it conclusive of the fact of robing or ordination. Oral evidence may be led to disprove entries therein".

If oral evidence can be led to disprove information shown in these documents I cannot go along with a view suggesting that oral evidence or any other evidence may not be led to supplement such information. In similar manner I cannot agree that the contents of P3 can be taken as an admission against the defendant that Heenatiyangala Jinarama was not his robing tutor. The information in cage 7 might arguably, other requirements being met, be an admission that Pothuwila Sri Saranatissa was the defendant's tutor even if one disregards the fact that the

defendant was only about 11 years in age at the time that the declaration on P3 was made. But the contention that it can become an admission that Heenatiyangala Jinarama was not his robing tutor is one I cannot accept. The argument that there was this admission in P3 that Heenatiyangala Jinarama was not the defendant's robing tutor, which is based upon the contention of Counsel for the appellant that it was incumbent, by virtue of the terms of cage 7 of P3, to give the names of all the defendant's robing tutors, is flawed in another respect as well. In the case of *Jinawansa Thero v. Piyaratne Thero* (supra) Samarakoon, C. J. rejected a contention that in this kind of declaration where a party has signed at the foot of the document, he was certifying to the correctness of ail the particulars contained in the body of the document. Keeping that in mind the question is as to who is responsible for the information given in cage 7 of the samanera declaration regarding the name or names of the robing tutor or robing tutors as the case may be. In my view the answer to that question is to be found in the provisions of section 41 (2) (a) (ii) which casts the duty of procuring a copy of the relevant 'form' and entering therein the details regarding such samanera, on the robing tutor who is also called upon to himself forward such declaration to the Registrar-General (section 41 (2) (b)). By contrast in the case of an upasampada declaration the duty of procuring the relevant 'form' entering the appropriate particulars and forwarding such declaration to the Registrar-General is cast on the Upasampada Bhikku himself (sections 41 (2) (a) (i) and 41 (2) (b)). In the face of this provision casting this duty on the robing tutor in the case of the robing declaration the argument that the samanere in question, the defendant, was responsible for the contents of cage 7 of the declaration P3 to the extent that anything contained therein operates as an admission by him, in my view becomes untenable. Indeed in adducing an argument pertaining to the defendant's upasampada declaration P10 containing information favourable to the defendant that Heenatiyangala Jinarama was also one of his robing tutors, Counsel for the plaintiff with the object of challenging the value of such information adopted what I think was a not altogether consistent stance based upon the view taken by Samarakoon C.J. in *Jinawansa Thero v. Piyaratne Thero* (supra) regarding the divisibility of responsibility for the contents of a declaration among those signing at the foot of such declaration, as I will advert to later.

The result then is that the absence of the name of Heenatiyangala Jinarama in cage 7 of P3 does not conclude the question whether he was

in fact a robing tutor of the defendant. As Samarakoon C., J. in the case of *Jinawansa Thero v. Piyaratne Thero* (supra) said "nor is it (the declaration) conclusive (even) of the fact of robing or ordination".

The next question is whether there was other evidence that Heenatiyangala Jinarama was a robing tutor of the defendant to justify the conclusion reached by the District Judge that he was.

To establish this the defendant relied strongly on his upasampada declaration, certified copies of which have been produced at the trial by both sides marked P10 and V10 respectively. If any document can be considered a contemporaneous record of the event in question itself, this must be it, as the declaration on it had been made on the same date as the date of ordination namely 15th June 1961, although it was not a contemporaneous record of the event of robing referred to in cage 7. On the other hand the document P3 the defendant's samanera declaration was not quite a contemporaneous record of the event of robing as the declaration there had been made on 23rd November, 1951, some days after the event of robing which had taken place earlier on 2nd November, 1951. P10, in the defendant's assertion, is important as on it the names of his robing tutors shown in cage 7 are those of Pothuwila Sri Saranatissa and Heenatiyangala Jinarama. Whilst purportedly supporting the oral testimony of the defendant that one of his robing tutors had been Heenatiyangala Jinarama this document is of importance to the defendant in view of the fact that he had been presented for ordination on this day, namely 15th June, 1961, at the Malwatta Maha Vihara in Kandy by Pothuwila Sri Saranatissa and Heenatiyangala Jinarama, as was done on the same date and at the same place in the case of the plaintiff as well (vide P9). These upasampada declarations like the samanera declaration are made in accordance with the 'form' prescribed by the Buddhist Temporalities Ordinance in section 41 (2) (a) (i) (Form A in the schedule) and here too cage 7 is in terms identical with cage 7 of a samanera declaration while cage 19 similarly makes provisions to give the "Name of tutor or names of tutors presenting for ordination". Here too at the foot of the document similar words as in a samanera declaration "Signatures to correctness of above particulars" are used, but once again provision is made *inter alia* for the placing of the signature of one tutor only presenting for ordination. In the document P10 with which we are concerned



however, both tutors presenting the defendant for ordination Pothuwila Sri Saranatisa and Heenatiyangala Jinarama have placed their signatures as indeed they have done in the case of the plaintiff (vide P9). While the defendant seeks to derive strength from the presence of the signatures of Heenatiyangala Jinarama that it is eloquent testimony to the truth of the statement in cage 7 that he was a robing tutor of the defendant occurring as it does below the words "Signatures to correctness of the above particulars", Counsel for the plaintiff in argument before us sought to decry its evidentiary value altogether. That, counsel attempted to do by falling back on what Samarakoon C., J. said in *Jinawansa Thero v. Piyaratne Thero* (supra) that by the mere presence of his signature in this manner the person who so placed his signature does not necessarily take responsibility for the correctness of all the particulars in the declaration. Indeed Samarakoon C., J. did say so, but that was with respect to the facts in the case before him and not in such absolute terms as contended by Counsel. I certainly do not understand Samarakoon C., J. to have said that in every instance each of the signatories necessarily takes no responsibility for some of the information provided. Each case must be examined with respect to its own facts and whether a particular signatory does or does not take responsibility for the accuracy of any particular item of information given on any occasion must depend on the character of such signatory and the nature of the particular item of information under consideration. Secondly, Counsel for the plaintiff contended that P10 was of no use to the defendant because he had in cage 21 thereof inserted the word "no" in response to the query, "Serial number in the samanera register if any". This, Counsel contended was contrary to the fact having regard to the availability of the defendant's samanera declaration P3 which bears on its face its serial number. I cannot take the view that this was a deliberate attempt at falsehood on the part of the defendant as suggested, just as much as I cannot accept that when he made this declaration as far back as June 1961, in an attempt at creating evidence to bolster a false future claim to this Viharadhipathship, in the presence of both his ordaining tutors he displayed a temerity to utter the name of Heenatiyangala Jinarama as one of his robing tutors contrary to the fact. In a good many of the upasampada declarations produced at the trial pertaining to several other priests including the declaration of the plaintiff himself the word "no" occurs against the information sought in cage 21 although in the case of the plaintiff it cannot be said that that was an incorrect statement in view of the fact that his samanera declaration (which was not produced at the trial) appears not to have been available.

I am of the view therefore that the statement in cage 7 of document P10 that Heenatiyangala Jinarama was one of the robing tutors of the defendant is prima facie evidence of that fact. Such statement in P10 I think is as much prima facie evidence as the statements in cages 7 and 19 respectively of the upasampada declaration of Heenatiyangala Jinarama himself (P38) produced by the plaintiff at the trial, that his robing tutor and one of his ordaining tutors had been Pothuwila Sri Saranatissa who however had nowhere placed his signature at the foot of that declaration.

Accepting as I do that the statement in cage 7 of P10 that Heenatiyangala Jinarama was a robing tutor of the defendant is prima facie evidence of that fact, it is helpful to see whether such evidence receives confirmation elsewhere so as to justify the affirmation in appeal of the District Judge's finding to that effect. It is convenient at this point to advert to the worth of the information contained in cage 7 of P10 that Heenatiyangala Jinarama had been a robing tutor of the defendant, in the view of a witness, admittedly a priest of standing, to some aspects of whose evidence Mr. Gunaratne, Counsel for the defendant-respondent referred us. That was Paravehera Prajnananda Thero the Chief Sanganayake of the Western Province called to testify as a witness for the plaintiff. Appraised of the contents of this cage bearing the names of the two monks said to have robed the defendant namely Pothuwila Sri Saranatissa and Heenatiyangala Jinarama the witness has stated that it was not possible not to accept its correctness. As I understand his evidence it was not that he was suggesting that he was present on this occasion and was speaking in verification of the truth of this information from personal knowledge but rather that, based upon a consciousness of the solemnity of the occasion, the procedure and practice adopted at such ceremonies and the value placed upon information recorded in circumstances such as these surrounding the ordination of the defendant, he was making this statement in evidence.

Of some what like significance is the testimony of witness Loolbadduwe Uparathana a co-pupil with Pothuwila Sri Saranatissa of their common tutor Malewana Seelawansa Thero and therefore belonging to the paramparawa to which the monks of this temple belong. He was a witness for the plaintiff and endeavoured to support him by testifying that he was present on the occasion of the defendants robing which he claimed was done only by Pothuwila Sri Saranatissa. He also testified to the role he

played in securing for the defendant the Sanganayakaship of the Kalutara district and endeavored to explain that he had been misled by the defendant into describing him as the Viharadhipathy of the Kande Vihara in a letter (V8) he wrote to the Chief Priest of the Malwatte Chapter in Kandy, but was compelled nonetheless to admit that this post of Sanganayake is ordinarily conferred upon the Chief Incumbent of the Kande Vihara. It is not unreasonable to think that this kind of important appointment is done not in a careless and irresponsible manner but only after careful investigation of all material facts and the background and qualifications of the appointee.

Dr. Jayewardene, Counsel for the appellant was heard to say that unlike at the occasion of the robing ceremony of the defendant priest which was held at Kande Vihare, the temple in question in this case, in circumstances of a somewhat intimate nature where a few laymen were robed as priests with an accurate record made of all information that had to be included in the samanera declaration, the upasampada ceremony held in Kandy at Malwatte Maha Vihara was of a more impersonal nature with many samanera priests being ordained in busy circumstances where relevant information would not ordinarily be recorded with the same degree of accuracy. He was endeavouring to persuade us that despite the presence of Pothuwile Sri Saranatissa and Heenatiyangala Jinarama and their participation at the ordination ceremony of the defendant and the subscription of their signatures to the upasampada declaration P10, having regard to the nature of the circumstances surrounding such ceremony where a large number of priests were ordained, they were perhaps not conscious of the information shown in cage 7 of P10 being inserted. As Mr. Gunaratne, Counsel for the respondent pointed out the plaintiff's own evidence negatives this contention. He has admitted that on this day he himself, the defendant and two others had been ordained and that just as he did, the defendant in his hearing mentioned the names of his robing tutors as Pothuwila Sri Sarantissa and Heenatiyangala Jinarama in their very presence and without any denial from them. In such circumstances I find myself hard pressed to say that Pothuwila Sri Saranatissa and Heenatiyangala Jinarama did not associate themselves with the information in cage 7 of P10 that they were the robing tutors of the defendant. If any other evidence of acknowledgement of this by these two priests is necessary, that is to be found in document P5 produced by the plaintiff himself at the trial. That was a notification under their joint names given by Pothuwila Sri Saranatissa and Heenatiyangala Jinarama

dated 8th of June, 1961, of the forthcoming ordination fixed for the 15th June, 1961 of the plaintiff, the defendant and two others all four of whom are described by them there as their samanera pupils.

I do not think it becomes necessary to dwell on more of the evidence supporting the defendant's contention that Heenatiyangala Jinarama was one of his robing tutors except perhaps to make a reference to an item of evidence given by the plaintiff himself. In cross examination he has answered in the affirmative a question asked as to whether it was not correct that six samaneras (names mentioned with the defendant's as the most senior and including the plaintiff) were in seniority the pupils of both Pothuwila Sri Saranattissa and Heenatiyangala Jinarama. If anything is an admission in this case, that I think is it.

Having regard to the course adopted by Counsel for the plaintiff in assailing the conclusion reached by the District Judge that the defendant had been robed by Heenatiyangala Jinarama, which took the form of a challenge to show differently though in respect of the respondent's case, that it had no basis of independent worthwhile evidence to support it other than certain items of what Counsel styled self serving evidence, all that it becomes necessary to do here to demonstrate that such conclusion was justified is to point out, as I have done, some items of evidence which show otherwise, and which certainly escape the description Counsel used of "self serving evidence".

Before I conclude it is necessary I think briefly to say something about the approach that should be adopted by an appellate tribunal in a matter such as this. Relevant to such approach Samarakoon C. J. in *Jinawansa Thero v. Piyaratne Thero* (supra) referred (at page 281) to the "priceless advantage" the District Judge had in the original Court of seeing and hearing the witnesses and of watching their demeanour. In similar vein the House of Lords in *Powell v. Streatham Manor Nursing Home* (3) pointed out that where the personality of the witnesses was an essential element in the decision (as here) there being a conflict of evidence of fact an appellate Court ought not, save in the clearest of cases, to set aside the decision of the trial Judge who has seen and heard the witnesses. In the instant case in my view there is no justification for interfering with the conclusions reached by the District Judge which as I perceive are warranted by the evidence that was before him. I would concur with his finding to the effect that the defendant did discharge the burden of proof

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that lay upon him in this regard and successfully established that he was a pupil by robing of Heeriatiyangala Jinarama. The District Judge having properly addressed his mind to the issues before him and having come to a correct decision thereon, his findings and judgment are affirmed and this appeal is dismissed with costs.

**WEERESEKERA, J.-** I agree.

*Appeal dismissed*

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