

WELAKANDA DHAMMASIDDI
v.
KAMBURUPITIYE SOMALOKA THERO

SUPREME COURT.

K.A.P. RANASINGHE, C.J., G.R.T.D. BANDARANAYAKE J and
K.M.M.B. KULATUNGA, J.

S.C. No. 19/88 - C.A. No. 335/80 (F) - D.C. MATARA 3770/ L
NOVEMBER 21 and 22, 1989.

Buddhist Ecclesiastical Law - Succession to Viharadhipathiship - Abandonment.

On the death of Kahawe Nandarama Thero his senior pupil Kamburupitiye Somaloka Thero the plaintiff - respondent was entitled to the viharadhipathiship of the Wilagoda Viharaya. At a meeting of the Sangha Sabha of Wilagoda Viharaya presided over by the Chief Sangha Nayake of the Matara - Hambantota Districts to fill the vacancy which had arisen in the Viharadhipathiship of the Wilagoda Temple, a co - pupil of the deceased Thero moved a resolution that the defendant - appellant Welakande Dhammasiddi Thero be appointed. The plaintiff - respondent Kamburupitiye Somaloka Thero, the most senior pupil of the deceased Thero seconded the resolution and said that as he was employed as a teacher in Government Service and also was functioning as the Viharadhipathi of Tuwakkugodawatte Parana Viharaya he was finding it difficult to accept the Viharadhipathiship of the Wilagoda temple and attend to its duties, and that the defendant priest was in every way suitable to hold the Viharadhipathiship and he was assigning and transferring whatever rights he had in respect of the said incumbency to him. He added that all that he desired was that one of the pupils or a co - pupil of the deceased Thero should hold the Viharadhipathiship and work for the betterment of the pirivena and temple and he expressed the hope that the defendant Thero would accept the Viharadhipathiship. Therefore all the pupils and co - pupils of the deceased Thero entrusted the Viharadhipathiship to the defendant priest. The minutes of this meeting (D5) signed by the parties and lay dayakas were produced in support of the plea of abandonment by the plaintiff priest.

Held :

(1) What works the forfeiture of the right to an incumbency is the abandonment of the temple.

(2) (a) In determining whether or not an abandonment has taken place a renunciation by him who was in law entitled to succeed is an important item of evidence.

(b) Abandonment connotes both a physical and a mental element. It means and requires both a giving - up of or going away from the temple, coupled with a clear manifestation of a decision not to attend to the functions and duties which are traditionally associated with and are expected to be performed by one who holds such office.

(c) Whether a person who was, in law, entitled to succeed to the incumbency has so conducted himself is a question of fact.

(3) (a) The desire expressed by the plaintiff in the course of his speech recorded in the minutes D5 does not seem to be compatible with the conduct of one who has made up his mind to sever completely his association with the said temple and to take no further interest in its future well - being.

(b) (i) The plaintiff was in fact residing in one of the temples of the paramparawa.

(ii) The necessity to appoint someone to be in charge of Wilagoda temple had arisen not only because the plaintiff was in actual residence in another temple but also because he was a teacher in the Education Department.

(c) The claim for the incumbency is being advanced by the very priest who is said to have abandoned the right to it.

(4) In view of the above facts the plaintiff cannot be said to have abandoned his right to the incumbency. He has not forfeited his right to it.

Cases referred to :

- (1) *Dhammadaja Thero v. Wimalajothi Thero* 79 (1) N.L.R. 145, 191
- (2) *Dhammaratna Unnanse v. Sumangala Unnanse* 14 N.L.R. 400 - see also 20 N.L.R. 388
- (3) *Pemananda v. Welivitiye Soratha* 51 N.L.R. 372, 376
- (4) *Jinaratana Thero v. Dhammaratana Thero* 57 N.L.R. 372, 374
- (5) *Sangananda Terunnanse v. Sumanatissa Terunnanse* 66 N.L.R. 394, 396
- (6) *Amaraseeha Thero v. Sasanatilleke Thero* 59 N.L.R. 289, 290
- (7) *Dharmapala Unnanse v. Sumangala Unnanse* 41 N.L.R. 235
- (8) *Dhammavisuddhi Thero v. Dharmadassi Thero* 57 N.L.R. 235
- (9) *Dheerananda Thero v. Ratnasara Thero* 67 N.L.R. 559
- (10) *B. Janananda Maha Thero v. B. Sirisunanda Thero* [1988] 2 Sri LR 61, 73

APPEAL from judgment of the Court of Appeal.

T.B. Dissanayake P.C. with *S. Walgampaya* and *N. Hatch* for substituted defendant - appellant.

N.R.M. Daluwatte P.C. with *Mrs. D.K. Gabadage Manohara de Silva* and *S. Abhayajeewa* for plaintiff - respondent.

Cur. adv. vult.

January 17, 1990.

RANASINGHE, C.J.

The plaintiff - respondent has instituted these proceedings against the defendant - appellant for a declaration that he is the lawful Viharadhipathy of the Wilegoda Viharaya, on the footing that the succession to the said viharaya is based on the principle of *sisyanu sisya paramparawe* ; and for ejectment of the defendant appellant therefrom.

The defendant - appellant, in his answer, has taken up the position that the plaintiff had abandoned whatever rights he (the plaintiff) had in respect of the incumbency of the said temple ; and that he, the defendant, is now the lawful Viharadhipathy of the said temple.

The District Court entered judgment for the plaintiff and the defendant's appeal therefrom to the court of Appeal has been dismissed by the Court of Appeal.

Thereafter, upon the defendant moving this Court for special leave to appeal to this Court, this Court, by its order dated 9.5.88, granted him special leave upon the two questions : the abandonment by the plaintiff of his rights as Viharadhipathy : whether the purported appointment on 8.3.72, and later recognised and confirmed by the Malwatte Chapter,

constituted a valid appointment of the defendant as Viharadhipathy of the said temple.

When this appeal was taken up for argument before this Court learned President's Counsel for the defendant - appellant informed this Court that he was not pressing the second of the aforesaid two questions, namely, the validity of the said appointment of the defendant on 8.3.72. The only question, which now arises for consideration by this Court, is whether the plaintiff has abandoned his rights to the Viharadhipathiship of the said temple. An affirmative answer to this question would entail the dismissal of the plaintiff's action.

The defendant-appellant relies entirely upon the document D5 which embodies the proceedings of a Sangha Saba held at the said temple five days after the death of the previous incumbent, Nandarama Thero, on 8.3.1972 to establish that the plaintiff-respondent is not entitled to the incumbency of the said vihare.

The document D5 contains the minutes of a meeting of the Sangha Saba held at the Wilegoda Viharaya at 7.00 p.m. on the 8th March 1972, presided over by the Chief Sangha Nayake of the Matara-Hambantota District. This meeting had been convened at the special request of the robed pupils and the co-pupils of the late Kahawe Nandarama Thero. The purpose of the meeting, as has been clarified by the Chief Adikarana Sangha Nayake of the Matara Palatha, was to fill the vacancy which had arisen in the Viharadhipathiship of the said Wilegoda Temple, by appointing, with the common consent of all the robed pupils and the co-pupils of the said deceased Nandarama Thero, a suitable priest. A resolution had then been moved by Pilimatalawa Dhammapala Thero, who was a co-pupil of the deceased Nandarama Thero, that Welakande Dhammasiddi Thero (the defendant) be appointed to fill the said vacancy. Kamburupitiye Somaloka Thero, the plaintiff, had then, whilst seconding the said motion, stated: that, as he was then employed as a teacher in the service of the Government and was also functioning as the Viharadhipathi of the Tuwakkugodawatte Purana Viharaya in Galle, he was finding it difficult to accept the Viharadhipathiship of the Wilegoda temple and attend to its duties: that the said Dhammasiddhi Thero was in every way suitable to hold the said Viharadhipathiship: that he was assigning and transferring whatever rights he has in respect of the said incumbency to the said Dhammasiddhi Thero: that all he desires is that one of the pupils or a co-

pupil of the deceased Nandarama should hold such Viharadhipathiship and work for the betterment of the pirivena and the said temple. Saying so, the plaintiff had gladly seconded the said resolution, so moved by Dhammapala Thero and had expressed the further hope that Dhammasiddhi Thero would accept the said Viharadhipathiship. Thereupon all the pupils and co-pupils of the said deceased Nandarama Thero, had entrusted the said Viharadhipathiship to the said Dhammasiddhi Thero subject to their right of maintenance. D5 also makes it clear that thereafter the said Dhammasiddhi Thero had been so appointed, but that such appointment, was to be confirmed only after the lapse of a period of three years, if his services were found to be satisfactory. This decision of the Sangha Saba had been accepted by all the lay dayakas who had been present. This document has also been signed, inter alia, by the plaintiff in this case, the said Kamburupitiya Somaloka Thero.

It has been contended by learned President's Counsel for the plaintiff on the basis of the judgment of Gunasekera, J., in the case of *Dhammadaja Thero v. Wimalajothi Thero*, (1) that: the conduct of the plaintiff at the said meeting – in saying what he said and in seconding the said motion – does not amount to a renunciation of his right to officiate as Viharadhipathi; that, even if it amounts to an act of renunciation such renunciation alone is not sufficient to deprive him of the rights which he had, in law, become entitled to upon the death of his tutor, the deceased Nandarama Thero, as his senior pupil: that his conduct does not in law amount to an abandonment of his rights and of the said Wilegoda Vihare.

Gunasekera, J., had expressed the opinion that :

“the Buddhist Ecclesiastical Law does not recognise such a renunciation of the right to function as Viharadhipati. The office of Viharadhipati is inalienable and a priest on whom this office has devolved according to the Sisyanu Sisya Paramparawa rule of succession only holds it in his life time to pass it on according to law, to his senior pupil or such other pupil as he may select.”

Gunasekera, J., has proceeded to take the view, after a consideration of the two judgments - *Dhammaratna Unnanse v. Sumangala Unnanse*, (2) and *Pemananda v. Welivitiye Soratha*, (3) - that what deprives a monk, and his pupils of the rights to succeed to a Viharadhipathiship, which devolves on him according to law, is the “desertion of a vihare and the abandonment” of the office of Viharadhipathiship.

Way back in 1910, in the case of *Dhammaratna Unnanse v. Sumangala Unnanse* (2) the Supreme Court concluded, after having had the expert evidence of seven Mahanayakes - which said evidence was intended to be "a source of information for future reference on the points inquired about", and now published in the Appendix to the 20th Volume of the New Law Reports, vide 20 N. L. R. p. 388:

"that a right of pupillary succession will be forfeited if the pupil deserts his tutor and the temple the incumbency of which he claims".

With regard to the question of "abandonment" by a Buddhist monk of his rights to an incumbency, Windham, J., observed, in the case of *Pemananda v. Welivitiye Soratha*, (3) that the "abandonment of such rights does not require any notarial deed or other prescribed formality, but is a question of fact, and the intention to abandon may be inferred from the circumstances", and that the "question appears not to be covered by authority." it has been held in *Dammaratna Unnanse v. Sumangala Unnanse* (supra) that when a tutor disrobes himself for immorality, this does not deprive his pupils of their rights of pupillary succession. But I think the case is different where the tutor abandons his right to an incumbency. Disrobing, with the intention of giving up the priesthood, is the equivalent, ecclesiastically, of personal demise, and it does not entail, any more than death entails, an abandonment of rights, but merely a personal incapacity to exercise them. These rights can accordingly descend to a pupillary successor. The abandonment of an incumbency by a priest, on the other hand, constitutes the forfeiture of that to which his pupils' right of succession are attached, namely the incumbency itself. The priest remains a priest, but abandons his rights to the incumbency, upon which the pupillary right of succession are dependent. There accordingly remain no rights for the pupil to inherit.

The evidence led in that case established that Sumangala Thero, through whom the claim for the incumbency was founded had from the death of his tutor Revathe, in 1894 until his own death many years later, officiated as incumbent neither personally nor through a deputy. Furthermore, Sumangala Thero had in a letter P9, expressed his desire not to be burdened with the temple. These items of evidence, together with his, Sumangala Thero's failure at any time to exercise any rights and functions of an incumbent either personally or through deputies, were taken as having constituted an abandonment of Sumangala Thero's rights to the said incumbency.

The case of *Jinaratana Thero v. Dhammaratana Thero*, (4) is another instance where the Supreme Court expressed the opinion that a Buddhist monk could renounce his rights to a Viharadhipathship, even though it was held that, in the circumstances of the case, no such renunciation has, in law, taken place. Said Basnayake, A. C. J., at page 374 -

"It has been held by this court that a bhikku can renounce his right to be Viharadhipathi of a vihare and that the renunciation of the right need not be expressly made; but may be inferred from facts and circumstances. But an intention to renounce will not be inferred unless that intention clearly appears therefrom upon a strict interpretation of the facts and circumstances of the case. If the facts and circumstances leave the matter in doubt then the inference to be drawn is that there is no renunciation.

There being no presumption in favour of the renunciation of a right, the onus is on the appellant to prove facts and circumstances from which it can be clearly inferred that Ratanapala renounced his right to the office of Viharadhipathi of Mungampola.

Learned Counsel for the appellant has not cited any authority in support of his contention that a Viharadhipathi forfeits his rights to the office when he leaves the temple of which he is Viharadhipati and takes up residence in another of which he is also Viharadhipati. The office of Viharadhipati is not one that can be abandoned by mere residence in another place. There is nothing in the vinaya or the decisions of this court which requires a Viharadhipathi to reside in the temple of which he is Viharadhipati. A bhikku who is Viharadhipathi of more than one temple must of necessity reside in one place at a time and the mere fact that he makes one of the temples his permanent residence does not operate as a renunciation of his right to the others."

Sangananda Terunnanse v. Sumanatissa Terunnanse. (5) is also another instance where the concept of renunciation was affirmed, even though once again the claim of a renunciation was held not to be established by the evidence relied upon, Sansoni, J., dealt with the matter, at page 396 in this way :

"The law is clear that although a renunciation by a monk of his right to be Viharadhipati may be inferred from facts and circumstances,

such an inference will not be drawn if the matter is left in a state of doubt. It is quite usual for a monk who is the Viharadhipathi of several temples to give charge of one or more of those temples to other monks, who would normally reside in and look after those temples and their temporalities. It is not always convenient for a Viharadhipathi to look after temples which are situated some distance away from the temple in which he resides, and he may appoint managers or deputies for this reason. Any acts of possession or management by such appointees are referable to that appointment; they would all be on behalf of the lawful Viharadhipathi and would not give the appointee any claim to that title."

The plea of renunciation was held to have been established by Chief Justice Basnayake, in the case of *Amaraseeha Thero v. Sasanatilake Thero*, (6). Basnayake, C.J., observed -

"..... the fact that the resolution to place the plaintiff in charge of Sanghatissarama was proposed by Aggawansa and seconded by Gnanawansa and adopted *nemine contradicente* by the assembled Sangha, removes all difficulties that would otherwise have arisen. I have no doubt that on the facts of this case the Plaintiff is the *de jure* Viharadhipathi of Sanghatissarama. In my opinion it is correct to infer from the fact that Aggawansa proposed and Gnanawansa seconded the resolution that they renounced their rights."

In the case of *Dharmapala Unnanse v. Sumangala Unnanse*, (7) the Supreme Court took the view that a senior pupil who deserts the temple forfeits his right to the incumbency of the said temple. Although the question of desertion and the consequent forfeiture of his rights had not been expressly taken up in the lower court, the Supreme Court yet dealt with it for the first time in appeal, and the Court was satisfied that there was sufficient material to justify the conclusion that "R", the priest from whom the claim was put forward, had, on the death of his tutor "S", left the temple, having "bolted" 10-12 days after the tutor's death to another temple, and thus relinquished his claim to the incumbency. In coming to the said conclusion the Supreme Court also took into consideration that "R" had never returned to the temple and had not at any time made any claim to the incumbency.

The claims to the incumbency in these two cases were not, it must be noted, put forward by the very bhikkus who were alleged to have abandoned the rights in dispute.

Dealing with the position of a bhikku who is Viharadhipathi of more than one temple, Basnayake, A.C.J., did, in the case of *Dhammavisuddhi Thero v. Dhammadassi Thero* (8), observe that: where such Viharadhipathi places a bhikku, who is not necessarily a pupil of his, in charge of temple of which he is also the Viharadhipathi while adopting for his usual residence only one of them, the performance of any functions by such bhikku so appointed does not have the effect of making such bhikku the Viharadhipathi of such temple; that there being no particular duties, spiritual or temporal, which a Viharadhipathi need perform for the purpose of keeping alive his rights, such right cannot be said to be lost because another bhikku, who is actually residing in the temple, manages its affairs and prevents the temple from falling into decay; and that such other bhikku cannot by virtue of his residence assert his right to be its Viharadhipathi.

Dheerananda Thero v. Ratnasara Thero, (9) is also a case in which the Supreme Court had to consider a claim that a Viharadhipathi had abandoned his rights to an incumbency, Sirimane J., dealt with this matter in this way at page 561--

"The basis of abandonment is the intention to renounce one's rights; and this intention must be clear and unambiguous. If there is any doubt on this matter, the inference drawn must be against an abandonment. (see *Jinaratane vs. Dhammaratana Thero*, 57 NLR 372 (4) at page 562)"

Sirimane J., proceeded to deal with the distinction between abandonment, or relinquishing of one's rights and a conveyance of those rights to another, thus :

"When rights are abandoned they disappear, and cease to exist, and there is no person to whom those rights accrue. In the case of a conveyance the transferor asserts his rights, and then transmits them to the transferee so that rights continue in the transferee. It may turn out that the act of transfer is ineffective (as in this case) but then the rights of transferor did not disappear (for he never renounced them) but continue to remain in him."

Having dealt the relevant facts and circumstances, the Court held that there was, at least a great deal of doubt as to whether Piyadassi Thero, through whom the rights were claimed, had abandoned his rights or not, and, on that basis, the Court affirmed the findings of the District Court that there was no proof of abandonment.

The case of *B. Janananda Maha Thero v. D. Sirisunanda* (10) is also a case in which the question of abandonment was considered, along with questions of res judicata and estoppel, in relation to a claim of forfeiture of the right of succession to an incumbency. The Court of Appeal judgment does not, however, appear to be of much assistance for the reason that, having considered two earlier cases and taken the view that, although the claim to the incumbency is not barred by the principles of res judicata, the plaintiff is nevertheless estopped from maintaining the action. The court merely states, at page 73, that the plaintiff has also "abandoned" his claim to the Viharadhipathiship.

On a consideration of the principles elucidated in the foregoing judgments of the Supreme Court, in regard to this aspect of the Buddhist Ecclesiastical Law, it would seem that, what works the forfeiture of the right to an incumbency is the abandonment of the temple, the incumbency of which is in dispute : that, in determining whether or not such an abandonment has taken place, a renunciation by him, who was, in law, entitled to succeed, is an important item of evidence : abandonment connotes both a physical and a mental element : it means and requires both a giving-up of or going away from the temple, coupled with a clear manifestation of a decision not to attend to the functions and duties which are traditionally associated with and are expected to be performed by one who holds such office: whether a person, who was, in law, entitled to succeed to the incumbency, has so conducted himself is a question of fact: that such conduct must be conscious, deliberate, and must be clearly established and should not be left in doubt.

The desire expressed by the plaintiff in the course of his speech, seconding the motion as set out in D5, does not seem to be compatible with the conduct of one who has made up his mind to sever completely his association with the said temple and to take no further interest in its future well-being.

It is also in evidence that the plaintiff was, in fact, residing in one of the temples of the paramparawa: that the necessity to appoint someone to be

in charge of the Wiligoda temple had arisen not only because the plaintiff was in actual residence in another temple but also because the plaintiff had accepted a job as a teacher in the Education Department.

It is also noteworthy that in this case - unlike in the cases where the claims of abandonment were upheld, as in *Dhammapala Unnanse v. Sumangala Unnanse* (supra), *Pemananda v. W. Soratha* (supra) and *Amaraseeha Thero v. Sasanatilaka Unnanse* (supra) - the claim for the incumbency, which is resisted on the basis of an abandonment, has been put forward by the very person who, it is claimed, has abandoned the right to such incumbency.

In this view of the matter, I find myself unable to say that the findings of the District Court, which have also been affirmed by the Court of Appeal - that the plaintiff has not forfeited the right, which devolved on him on the death of his tutor Nandarama Thero, in respect of the incumbency of the said temple - should be set aside.

The appeal of the defendant-appellant is, therefore, dismissed with costs.

BANDARANAYAKE, J. - I agree.

KULATUNGA, J. - I agree.

Appeal dismissed.
