

THALAWATUGODA SIRIRATNA THERO
v.
VEHEREWATTE ARIYAWANSA THERO

SUPREME COURT
G. P. S. DE SILVA, C.J.,
KULATUNGA, J.
RAMANATHAN, J.
S.C. APPEAL NO. 2/91
C.A. 84/81 (F)
D.C. HORANA 665/L
MAY 23 AND 29, 1995.

Succession – Viharadhipathi – Sisyanu Sisya Paramparawa – Abandonment of Rights – First Pupil – Second Pupil – Defacto and dejure Viharadhipathi.

Plaintiff instituted these proceedings seeking a declaration that he is the Viharadhipathi of the Pokunuwita Temple. His position was that Rewatha Thero was the Viharadhipathi of this temple and upon his death he was succeeded by his Senior Pupil Indrajothi Thero. Indrajothi Thero gave up Robes in 1907 and he was succeeded by his Senior Pupil – Saranatissa Thero who in turn appointed his third pupil, the Plaintiff by Deed.

The Defendant whilst denying the Plaintiff's claim, stated that, Kondanna Thero was the original Viharadhipathi and was succeeded by his junior pupil Rewatha Thero, Rewatha Thero appointed his Senior Pupil Indrajothi Thero as the Viharadhipathi and thereafter Indrajothi Thero and his successor Saranatissa Thero abandoned their Rights to the temple, each of them functioned as Viharadhipathi of Kumbuka Temple and that on the death of Rewatha Thero, his second pupil Sonuththara Thero succeeded him as Viharadhipathi of the Pokunuwita Temple, and that Sonuththara Thero was succeeded by his junior pupil Attadasi Thero, who was succeeded by the Defendant. He further alleged that he was appointed by the 'Sangha Sabha' in 1970 and that the Plaintiff and Saranatissa Thero were present and acquiesced in the appointment, and the Plaintiff is therefore now estopped from denying the defendant's rights as Viharadhipathi.

The District Court dismissed the Plaintiff's action; the Plaintiff however was successful in the Court of Appeal.

Held:

(i) In terms of the Sisyanu Sisya Paramparawa Rule, upon the death of the Viharadhipathi, his senior pupil succeeds him; but the Senior pupil may be excluded from succession if his tutor were to appoint a particular pupil in

preference to the senior pupil. Such appointment may be by deed, by Will or by informal writing.

(ii) As regards an oral appointment, there should be cogent and clear evidence.

(iii) Although documentary evidence indicated that, Sonuththara Thero has been described as the Viharadhipathi, the facts and circumstances of this case indicate only the defacto position, namely that Sonuththara Thero was resident at that temple and that he was in charge of the affairs of the temple.

(iv) The documentary evidence in this case does not displace the line of lawful succession to the Viharadhipathship in accordance with the Sisyana Sisyaramparawa Rule.

(v) A plea of abandonment cannot be raised for the first time in appeal; the office of Viharadhipathi 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 the Viharadhipathi."

Cases referred to:

1. *Dhammajothi v. Sobita* – 16 NLR 408.
2. *Gunananda v. Deepalankara* – 32 NLR 241.
3. *Piyatissa Terunnance v. Saranapala Therunnance* 40 NLR 262.
4. *Pandita Watugedera Amaraseeha Thero v. Tittagalle Sasanatilake Thero* – 59 NLR 289 at 290.
5. *Jinaratna Thero v. Dharmaratna Thero* – 57 NLR 372.

APPEAL from the Judgment of the Court of Appeal.

A. C. Gooneratne, Q.C. with *C. Ladduwahetty* and *P. K. Rajapakse* for Substituted Defendant-Appellant.

No appearance for the Substituted-Plaintiff-Respondent.

Cur. adv. vult.

June 14, 1995.

G. P. S. DE SILVA, C.J.

The plaintiff instituted these proceedings seeking a declaration that he is the lawful Viharadhipathi of the Pokunuwita Sri Kondannaramaya Raja Maha Viharaya (hereinafter referred to as the Pokunuwita temple) and an order ejecting the defendant from the temple. The plaintiffs' case was that:

- (1) Warakagoda Rewatha Thero was the Viharadhipathi of this temple and that upon his death he was succeeded by his senior pupil Weragoda Indrajothi Thero;
- (ii) Weragoda Indrajothi Thero gave up robes in 1907 and he was succeeded by his senior pupil Raigama Saranatissa Thero who in turn appointed his third pupil the plaintiff as Viharadhipathi by Deed No. 14948 of 1973 (P10).

The defendant, however, denied the plaintiff's claim and took up the position (a) that Ratanagoda Kondanna Thero was the original Viharadhipathi; (b) that Ratanagoda Kondanna Thero was succeeded by his junior pupil Warakagoda Rewatha Thero; (c) that Rewatha Thero during his life time appointed his **senior pupil** Weragoda Indrajothi Thero as the Viharadhipathi **of another temple at Kumbuke** founded by Rewatha Thero; (d) that thereafter Indrajothi Thero and his successor Saranatissa Thero **abandoned their rights to the Pokunuwita temple** and each of them functioned as Viharadhipathi of the Kumbuke temple; (e) that on the death of Rewatha Thero in 1903, his **second pupil** Okanduwe Sonuththara Thero succeeded him as Viharadhipathi of the Pokunuwita temple; (f) that Sonuththara Thero was succeeded by his junior pupil Attadassi Thero and Attadassi Thero was in turn succeeded by the defendant; (g) that the defendant was appointed Viharadhipathi by the "Sangha Sabha" in 1970 and that the plaintiff and Saranatissa Thero were present and acquiesced in the appointment; the plaintiff is now estopped from denying the defendant's rights as Viharadhipathi of the temple.

After trial, the District Court held in favour of the defendant and dismissed the plaintiff's action. The plaintiff preferred an appeal to the Court of Appeal. The plaintiff's appeal was successful in so far as he was declared the lawful Viharadhipathi of the Pokunuwita temple, but he was denied an order for ejection of the defendant from the temple as prayed for in the plaint. The defendant has now appealed to this court against the judgment of the Court of Appeal.

The main question that arises for decision on this appeal is whether the admitted Viharadhipathi Warakagoda Rewatha Thero

was succeeded by his **senior pupil** Weragoda Indrajothi Thero as contended for by the plaintiff or by his **second pupil** Okanduwe Sonuththara Thero as claimed by the defendant. In considering this question it is very relevant to bear in mind in the first place that admittedly the rule of succession applicable to the temple in dispute is the Sisyanu Sisya Paramparawa rule. Secondly, it is not disputed that Weragoda Indrajothi Thero was the senior pupil of Warakagoda Rewatha Thero and that Saranatissa Thero was the senior pupil of Indrajothi Thero. It is well settled that in terms of the Sisyanu Sisya Paramparawa rule, upon the death of the Viharadhipathi his senior pupil succeeds him; but the senior pupil may be excluded from succession if his tutor were to appoint a particular pupil in preference to the senior pupil. Such an appointment may be made by deed, or by will or even by an informal writing. (*Dhammajothi v. Sobita*,⁽¹⁾ *Gunananda v. Deepalankara* ⁽²⁾, *Piyatissa Terunnanse v. Saranapala Terunnanse* ⁽³⁾.)

What needs to be stressed is that there is nothing in the evidence in this case to show that Rewatha Thero appointed in writing his second pupil Sonuththara Thero as the Viharadhipathi of the Pokunuwita temple. Mr. Gooneratne for the defendant-appellant submitted that an oral appointment would suffice; but in such a case there must be clear and cogent evidence of an oral appointment. There is no such evidence on record. The position then is that there is no evidence of an appointment either in writing or orally to support, the defendant's case that Sonuththara Thero succeeded Rewatha Thero as the Viharadhipathi.

At the hearing before us Mr. Gooneratne placed strong reliance on a number of documents marked in evidence to prove that Sonuththara Thero had dealt with the lands belonging to the Pokunuwita temple. It is correct that in each of these documents Sonuththara Thero has been described as the Viharadhipathi of the Pokunuwita temple. The defendant had also produced declarations made under the Buddhist Temporalities Ordinance where Sonuththara Thero was described as the Viharadhipathi of the temple in dispute. It seems to me that, in the facts and circumstances of this case, these documents are indicative only of the *de facto* position, namely, that Sonuththara Thero was resident at that temple and that

he was in charge of the affairs of the temple. On this point, the finding of the Court of Appeal is expressed in the following terms: "In the instant case with the death of the Viharadhipathi Warakagoda Rewatha in 1903, his senior pupil Weragoda Indrajothi should succeed and Okanduwe Sonuththara ... in following the concept of Sisyanu Sisya Paramparawa could not have succeeded in (sic) the Viharadhipathiship. His (i.e. Sonuththara) residence and carrying (sic) the duties and obligations to the betterment of the Vihara in no way confers a *de jure* Viharadhipathiship. Weragoda Indrajothi residing in ... Kumbuke and the performance of the duties by Sonuththara at the Raja Maha Vihara does not have the effect of making him Viharadhipathi ... there being no particular duties, spiritual or temporal which a Viharadhipathi need perform for the purpose of keeping alive his rights; such rights cannot be said to be lost because Sonuththara was actually residing in the temple, managing its affairs, and preventing the temple from falling into decay. He was only a *de facto* guardian."

I am in entire agreement with the aforesaid finding of the Court of Appeal. In the words of Basnayake C.J., in *Panditha Watugedera Amaraseeha Thero v. Tittagalle Sasanatilake Thero* ⁽⁴⁾ "The fact that a Bhikku takes an active interest in the religious and other activities of a temple gives him no right to be Viharadhipathi even if his activities extend over a long period of time ... a *de jure* Viharadhipathi does not lose his rights merely because he has expressly or impliedly permitted another to occupy his temple and take an active interest in its maintenance and improvement." I accordingly hold that the documentary evidence relied on by the defendant does not displace the line of lawful succession to the Viharadhipathiship in accordance with the Sisyanu Sisya Paramparawa rule.

Finally, it was urged that Indrajothi Thero and his successor Saranatissa thero **abandoned** their rights to the Pokunuwita temple. The plea of abandonment is, in my view, untenable; it was neither pleaded nor put in issue at the trial. It cannot be raised for the first time in appeal. In any event, as found by the Court of Appeal, there is no evidence to support the plea of abandonment. The mortgage bond P17 and the lease bond P18 negative the claim of the defendant that Saranatissa Thero had abandoned his rights as the

lawful Viharadhipathi of the Pokunuwita temple. As observed by Basnayake C.J., in *Jinaratana Thero v. Dharmaratana Thero* ⁽⁵⁾. "The office of Viharadhipathi 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 the Viharadhipathi" (at page 374).

For these reasons, the judgment of the Court of Appeal is affirmed and the appeal is dismissed but without costs.

KULATUNGA, J. – I agree.

RAMANATHAN, J. – I agree.

Appeal dismissed.
