

1977

Present : Pathirana, J., Ratwatte, J. and  
Wanasundera, J.

MEDAKANDE DHAMMANANDA THERA, Petitioner

and

METARAMBA MAHINDA THERA, Respondent

S. C. 301/77— D. C. Colombo 13515/L

*Buddhist Ecclesiastical Law—Action praying that plaintiff be declared Viharadhipathi of temple and restored to possession of temporalities—Death of plaintiff pending action—Whether rights to sue survives—Nature of such and action—Administration of Justice (Amendment) Law, No. 25 of 1975, sections 572, 577—Civil Procedure Code, sections 392, 404.*

The original plaintiff filed action against the defendant praying for a declaration that he was the lawful Viharadhipathi of a temple called "Jayatilakaramaya" and for the ejection of the defendant priest from the said temple and the plaintiff's restoration to possession thereof. The mode of succession to the temple was the *Sisyanu Sisya Paramparawa* and the temple was exempted from section 4(1) of the Buddhist Temporalities Ordinance. After the evidence had been led and at the stage when addresses by counsel were going on, the original plaintiff died. The petitioner claiming to be the senior pupil and entitled to succeed him as Viharadhipathi made on application under section 577 of the Administration of Justice (Amendment) Law No. 25 of 1975 for substitution. The defendant objected taking up the position that the right to sue did not survive on the death of the original plaintiff and that the action therefore abated under the provisions of section 472(1).

*Held* : That if the petitioner establishes that he is the successor in title of the original plaintiff under section 577 of the Administration of Justice Law (which is the same as section 404 of the Civil Procedure Code) he is entitled to continue with the action as the person to whom the interests of the deceased plaintiff have passed. An action for declaration of title to the office of Viharadhipathi of a Buddhist temple is generally though in form an action for office or statue in substance an action for the temple and its temporalities and where a plaintiff asks for declaration of title to the incumbency and for an order of ejection, such ejection is not purely incidental to the claim to be incumbent. The action is therefore one not merely for the office of Viharadhipathi but for the other interests attached to the office as well which are disclosed in the plaint.

Meddegama Dhammananda Thero v. Dekatana Saddananda Thero, 79 (1) N.L.R. 289 followed.

Cases referred to :

*Podiya v. Sumangala Thero*, 58 N.L.R. 29.

*Dheerananda Thero v. Ratnasara Thero*, 60 N.L.R. 77.

*Pannananda Thero v. Sumangala Thero*, 68 N.L.R. 367.

*Charlis Appu Kapurala v. Manis Appu*, 71 N.L.R. 351.

*Vajiragnana Thero v. Anomadassi Thero*, 73 N.L.R. 529.

**A**PPPLICATION to revise an order of the District Court,  
Colombo.

*Eric S. Amerasinghe, with Nihal Singaravelu and M. B. Peramuna, for the petitioner.*

*A. C. Gooneratne, for the respondent.*

*Cur. adv. vult.*

December 12, 1977. PATHIRANA, J.

The petitioner makes this application by way of revision to set aside the order of the learned District Judge refusing his application to continue the action in substitution for the original plaintiff, on the ground that the action had abated on the death of the original plaintiff as it was a personal action, namely an action to be declared entitled to the Viharadhipathiship of the temple in question.

On 2.10.72, the original plaintiff Upananda Nayaka Thera, instituted this action against the defendant priest praying—

- (a) for a declaration that he was the lawful and rightful Viharadhipathi of the temple called “Jayatilakaramaya”, and
- (b) for the ejectment of the defendant from the said temple and that peaceful possession be handed over to the plaintiff.

The plaintiff's case was that he was the lawful Viharadipathi of the said temple and had permitted the defendant to reside and manage the affairs of the said temple during the plaintiff's absence from the Vihara. The defendant acting in violation of the permission given to him to reside in the premises had since January 1972 unlawfully and illegally disputed the plaintiff's rights to the incumbency of the said Jayatilakaramaya. To the plaint is appended a schedule which refers to the allotment of lands bearing assessment Nos. 18 and 19 with the boundaries in extent 0A. 0R. 24.48P. “together with the incumbency of the Vihara and the temple called and known as Jayatilakaramaya and its appurtenances presently bearing assessment Nos. 87 and 90, Swarna Chatiya Road, Grandpass, Colombo 14”.

The defendant in his answer denied the averments in the plaint and claimed that on his own right he functioned as the controlling Viharadipathi of the temple for over 30 years. He asked for a dismissal of the plaintiff's action.

It is not disputed that the mode of succession to the said temple is *sisyanu sisya paramparawa* and the said temple is exempted from section 4(1) of the Buddhist Temporalities Ordinance.

There were several dates of trial and the plaintiff's and the defendant's respective cases were closed and addresses had commenced. A date for further addresses was given for 9.4.76. However, on 6.4.76 the original plaintiff died. The petitioner claiming to be the senior pupil of the deceased-plaintiff and entitled by succession to the office of Viharadhipathi filed petition and affidavit dated 19.7.76 and made an application under section 577 of the Administration of Justice Law (Amendment), No. 25 of 1975, that he had a right to continue the action in substitution for the deceased plaintiff as his rights had devolved on him. The defendant filed objection to the said application stating that the action of the original plaintiff was for a declaration for a personal right and therefore on the death of the plaintiff the right to sue did not survive and the action therefore abated under section 572(1) of the Administration of Justice Law. The defendant further stated that there was no claim in the action to the temporalities of the temple by the original plaintiff.

The learned District Judge was of the view that this was a personal action on an examination of the averments pleaded in the plaint. He followed *Dheerananda Thera v. Ratnasara Thera*, 60 N.L.R. 7, which was a case under section 392 of the Civil Procedure Code which is the same as section 572(1) of the Administration of Justice Law, where a Bench of three judges took the view that where a plaintiff's suit against a defendant is primarily to establish his personal right to the office of Viharadhipathi of a temple his cause of action was purely personal and the suit would abate on the death of the defendant during the pendency of the suit. He also held that the decision of this Court in *Pannananda Thera v. Sumangala Thera*, 68 N.L.R. 367, did not apply to the facts of the present case as in that case the plaintiff sued both for a declaration that he was the lawful Viharadhipathi of a Vihara and was also entitled to possess the temporalities thereof. It was held in that case that when the plaintiff priest died during the pendency of the action, a person who can establish that he would be the successor in title to the incumbency upon the assumption that the deceased plaintiff himself had been the incumbent was entitled to substitution under section 404 of the Civil Procedure Code. According to the learned District Judge in the present case there was only a claim for the Viharadhipathiship and no claim was made for the temporalities, as such section 404 of the Civil Procedure Code which corresponds to section 577 of the Administration of Justice Law did not apply. Dealing with the contention that the cause of action and the prayer in the present case sought to eject the defendant and restore the plaintiff to the possession of the temple and therefore the action did not

abate on the death of the original plaintiff, the learned District Judge was of the view that the relief claimed to eject the defendant from the Vihara was a claim which was only incidental to the main claim in the case, namely, an action for a declaration of title to the Viharadipathiship of the temple. There was no claim for the temporalities in the present case.

Mr. Eric Amerasinghe who appeared for the petitioner before us submitted that an examination of the plaint would reveal that the proprietary rights were in the forefront of the case and not incidental. He laid stress on the fact that the averments in the plaint disclosed quite clearly that the right to the temple which stood on a land which was described in the schedule to the plaint was in issue in the case.

The plaintiff's case was that he had consented and permitted the defendant to reside and manage the affairs of the temple in the plaintiff's absence from the Vihara and that in violation of the permission given by the plaintiff to reside in the premises he had since January 1972 unlawfully and illegally disputed the plaintiff's rights to the incumbency of the said temple. There was a claim that the defendant should be ejected from the temple and peaceful possession handed over to the plaintiff. Mr. Amerasinghe relied strongly on the judgment of *Podiya v. Sumangala Thero*, 58 N.L.R. 29, where Sansoni, J. seemed to think that other rights besides a personal right were involved in the office of Viharadipathi of a temple. He speaks of lesser rights in property which a Viharadipathi by virtue of his office acquires. In this case the question was whether the pupil was a privy of his tutor for the purpose of the law of *res judicata*. Sansoni, J. held that this was so and made the following observations :—

“I do not think that it is essential in order to constitute one person the privy of another that there should be a question of ownership of property arising ; *there are lesser rights in property which a Viharadipathi, by virtue of his office acquires*. For instance, he is entitled to the unhampered use of the Vihare for the purpose of maintaining the customary religious rites and ceremonies. He can claim full possession of it even though the title in respect of it and of the other endowments of the Vihare is vested in a trustee. See *Gunaratne Nayake Thero v. Punchi Banda Korale* (1926) 28 N.L.R. 145. Again, he is entitled to the control and management of the temple premises and might regulate its occupation and use to the extent that no other priest can select for himself a particular place in the Vihare independently of him against

his wishes. A priest who is guilty of contumacy is liable to be ejected by him. See *Piyadasa v. Devamittu* (1921) 23 N.L.R. 24.”

In the judgment in S.C. 136/70(F)—D.C. Gampaha 11011/L which was delivered on 7.12.1977 this Court considered the same question whether an action for a declaration of title to the office of Viharadipathi of a temple abates on the death of the plaintiff or the defendant in the case. In that case I took the view (Malcolm Perera, J. and Wanasundera, J. agreeing) that the action can be continued by or against the successor in title under section 404 of the Civil Procedure Code which is the same as section 577 of the Administration of Justice Law. We took the view that the action though in form an action for a status or an office was in substance an action for a temple and its temporalities which by operation of law belonged to the Viharadipathi of a temple. We considered in that case the judgments of this Court in *Dheerananda Thera v. Ratnasara Thera* (supra), *Pannananda Thera v. Sumangala Thera* (supra), *Charlis Appu Kapurala v. Manis Appu*, 71 N.L.R. 351, and *Vagiragnana Thera v. Anomadassi Thera*, 73 N.L.R. 529 and we expressed the following view :—

“When an usurper, imposter or trespasser disputes the rights of a lawful Viharadipathi of a temple, this usually takes the form of occupying the temple and or its temporalities, the temple being a symbol of the office of the Viharadipathi. In the result in an action for declaration of title to the office of Viharadipathi of a temple though in form it is an action for an office or status, it is in substance an action for the temple and all its temporalities. In the present case, the plaintiff who is asking for a declaration of title for the incumbency also asks for an order of ejection. Ejection from what? Obviously from the temple and its temporalities. The action is therefore not merely for the office of Viharadipathi but also other interests attached to that office, which as I have pointed out earlier are disclosed in the plaint. Ejection of the defendant cannot therefore be said to be purely incidental to the claim to be the incumbent. The temple and the office are so inextricably interwoven that it is almost impossible to visualise the one without the other. To eject means to oust the defendant from the temple and put the plaintiff in possession of the same temple.”

We, therefore, take the view that it is competent if the petitioner establishes that he is the successor in title of the original plaintiff in this case, under section 577 of the Administration of

Justice Law (same as section 404 of the Civil Procedure Code) to continue with the action as the person on whom the interests of the deceased plaintiff have passed. We, therefore, set aside the order of the learned District Judge and remit the case to the District Court for inquiry into the application of the petitioner. If the District Court is satisfied that the petitioner is the lawful successor in title to the incumbency on the assumption that the deceased plaintiff himself had been the incumbent, then the petitioner will be entitled to substitution under section 577 of the Justice Law, as the person on whom his interests have devolved.

The petitioner will be entitled to costs of this application both here and in the District Court.

RATWATTE, J.—I agree.

WANASUNDERA, J.—I agree.

*Application allowed.*

