

**THABREW**

**v.**

**REV KOSGODA MANGALA AND OTHERS**

COURT OF APPEAL  
WEERASURIYA, J.  
DISSANAYAKE, J.  
C.A. 557/84(F)  
D.C. BALAPITIYA 237/L  
MARCH 16, 2000  
JUNE 7, 2000

*Buddhist Temporalities Ordinance S.3, S.4(1), S.20 - Action instituted by Viharadhipathy - locus standi - Declaration of title and ejectment - Dedication - Sangka property? - Property purchased by Trustee of Viharaya.*

The original Plaintiff instituted action on seeking a declaration of title to the land the basis that he was the Viharadhipathi and the property was Sangka and was purchased by the Trustee on behalf of the Viharaya. The District Court held with the Plaintiff.

**Held :**

- (i) As the property was purchased by Haramanis Soysa as trustee, on behalf of the temple, the legal title to the property was with Haramanis Soysa and only the beneficial interest was vested with the temple. As the legal title is with Haramanis Soysa, it is he who as trustee has locus standi to institute action.
- (ii) The terms of the Fiscals conveyance does not reveal in any manner that the property was purchased using temple funds indicating that it was sangka property.
- (iii) S.20 of the Buddhist Temporalities Ordinance which vest all properties belonging to a temple in the Trustee or Controlling Viharadhipathy applies only to sangka property which has been dedicated to the priesthood as a whole with all the ceremonies and terms necessary to effect dedication.
- (iv) Any property given to the Sangha must be dedicated in the manner prescribed in the Vinaya, then and then only it become sangka property.

**APPEAL** from the Judgment of the District Court of Balapitiya.

**Cases referred to :**

1. *Ratanapala Therunnanse v. Dias* - 40 NLR 41
2. *Morawaka v. Dhammaratne Thero* - 1978 - 79 - 2 SLR 153
3. *Wijewardena v. Buddharakkita* - 59 NLR 121
4. *Oluwawatte Dhammakirti Thero v. Kevittiyagoda Jinasiri* - 79 NLR 2 - 86

*Dr. Jayantha de Almeida Guneratne* with *P. Wanigaratne* for 1<sup>st</sup> Defendant Appellant.

*W. Dayaratne* for Substituted Plaintiff Respondent.

*Mangala Wijesinghe* for 2<sup>nd</sup> Defendant Respondent.

*Cur. adv. vult.*

September 15, 2000.

**WEERASURIYA, J.**

The deceased plaintiff-respondent (hereinafter referred to as the original plaintiff), by his plaint dated 08.05.1979 and amended subsequently, instituted action against the 1<sup>st</sup> defendant -appellant and two others, seeking a declaration of title to the land morefully described in the schedule to the plaint, ejectment of the 1<sup>st</sup> defendant-appellant and others thereform and damages.

The 1<sup>st</sup> defendant -appellant and others in their joint answer, whilst denying averments in the plaint prayed for dismissal of the action. This case proceeded to trial on 11 issues and at the conclusion of the case, learned District Judge by his judgment delivered on 22.06.1989, entered judgment for the plaintiff-respondent. It is from the aforesaid judgment that this appeal has been lodged.

At the hearing of this appeal, learned Counsel appearing for the 1<sup>st</sup> defendant-appellant submitted that the learned District Judge had misdirected himself in holding that the original plaintiff - respondent was the owner of the land in suit.

It is to be noted that the original plaintiff instituted this action on the basis that he was the Viharadhipathy of Kosgoda Ganegodella Rajamaha Viharaya. It was averred that the property in question was Sangika property and the said property was purchased by Agampody Harmanis Soyza as trustee on behalf of the Ganegodella Rajamaha Viharaya. Therefore, on the issues raised at the trial following matters arise for consideration.

- (a) Whether the plaintiff -respondent as Viharadhipathy is the owner of the property in suit.
- (b) Whether the said property was purchased by Agampody Harmanis Soyza as trustee on behalf of the temple.
- (c) Whether the property in question was Sangika property.

In *Ratanapala Therunnanse v. Dias*<sup>(1)</sup> it was held that-

***"The incumbent of a Buddhist temple who is not a trustee cannot maintain an action for declaration of title in respect thereof in the absence of proof that the temple in question has been exempted from the operation of Section 4(1) of the Buddhist Temporalities Ordinance No. 19 of 1931"***

In the light of this, the original plaintiff had no locus standi to have and maintain this action unless it is established that the temple has been exempted from the operation of Section 4(1) of the Buddhist Temporalities Ordinance and that the property in question was a Sangika property.

The original plaintiff in his evidence disclosed that the temple was exempted from the operation of Section 4(1) of the Buddhist Temporalities Ordinance. Nevertheless, learned District Judge had failed to come to a finding that the temple in question had been exempted from the operation of Section 4(1) of the Buddhist Temporalities Ordinance and that the original plaintiff was the controlling Viharadhipathy.

The averment that temple in question had been exempted from the operation of Section 4(1) of the Buddhist Temporalities Ordinance had been denied by the 1<sup>st</sup> defendant-appellant in the answer. Nevertheless there was no issue settled on this important question despite parties were at variance relating to the exemption of the operation of Section 4(1) of the Buddhist Temporalities Ordinance. The 1<sup>st</sup> defendant-appellant and other defendants had failed to counter the assertion of the original plaintiff that the temple was exempted from the operation of Section 4(1) of the said Ordinance.

It is to be noted that Section 3 of the Buddhist Temporalities Ordinance stipulates that the provisions of the Ordinance shall apply to every temple in Sri Lanka. However, the proviso stipulates that an exemption can be made use of only by an order made by the Minister and published in the gazette. There was no material placed in the District Court that this exemption was gazetted. In the absence of a definite finding by the District Judge that the temple was exempted from the operation of Section 4(1) of the Buddhist Temporalities Ordinance the question would be whether one could rely only on the bare assertion of the original plaintiff that the temple was in fact exempted from the operation of Section 4(1).

The significance of a reference to any exemption by an order made by the Minister published in the gazette has to be emphasised as it entails serious legal implications.

It is to be noted that the original plaintiff did not claim that purported exemption was by an order by the Minister published in the Gazette. Therefore, the bare assertion of the original plaintiff that temple was exempted from the operation of Section 4(1) of the Buddhist Temporalities Ordinance appear to be unconvincing.

The position of the original plaintiff was that the property in suit was purchased by Agampody Harmanis Soyza as trustee on behalf the temple. If that was the true position the legal title

to the property was with Agampody Harmanis Soyza and only the beneficial interest was vested with the temple. In the circumstances, as the legal title to the property was vested with Agampody Harmanis Soyza it is he who as trustee has locus standi to institute action for declaration of title to the land in suit and to recover possession thereof.

The other question to be examined is whether the property in suit was Sangika property. It is noteworthy that the defendant-appellant and other defendant-respondents in their answer denied this was Sangika property and put the plaintiff to strict proof thereof. However, there had been a failure to settle a specific issue on this crucial matter where the parties were at variance. The original plaintiff in his testimony in the District Court made no attempt to state that the property in suit was Sangika Property. The evidence of the original plaintiff was to the effect that the property in suit was purchased at the fiscal's sale by the trustee of the temple as evidenced by fiscal's conveyance marked P1.

The original plaintiff failed to produce any evidence to establish that the property was purchased with temple funds. The statement made by him (original plaintiff) that the property was purchased by the trustee of the temple by a fiscal's conveyance does not necessarily mean that the property had been purchased with temple funds. The terms of the fiscal's conveyance marked P3 do not reveal in any manner that the property was purchased using temple funds indicating that it was Sangika property.

In *Morawaka v. Dhammaratna Thero*<sup>(2)</sup> it was held that property obtained in such circumstances would not become Sangika property.

Section 20 of the Buddhist Temporalities Ordinance which vest all properties belonging to a temple in the trustee or controlling Viharadhipathy of the temple applies only to Sangika property which has been dedicated to the priesthood as a whole with all the ceremonies and forms necessary to effect dedication.

In *Wjewardena v. Buddharakkita Thero*<sup>(3)</sup> it was held that any property given to the Sangha must be dedicated in the manner prescribed in the Vinaya. Then and then only it become Sangika property. The requirement of a formal act of dedication has also been reiterated in *Oluwawatte Dhammakerthi Thero v. Kevittiyagala Jinasiri Thero*<sup>(4)</sup>

In the instant case, there was no assertion by the original plaintiff that it was Sangika property purchased with temple funds or that there was an act of formal dedication as prescribed in Vinaya.

In the absence of proof of locus standi of the original plaintiff to have and maintain this action, one need not examine the claim of the 1<sup>st</sup> defendant-appellant to the property in suit.

For the aforesaid reasons, it seems to me that original plaintiff had failed to establish that he could maintain this action. Therefore, I proceed to set aside the judgment of the District Judge delivered on 22.06.1989. Subject to the above condition, this appeal is allowed with costs.

**DISSANAYAKE, J.** - I agree.

*Appeal allowed.*