

DANIEL v. SARANELIS APPU.

D. C. Galle, 5,749.

1903.
May 2.

*Partition suit by trustee of Buddhist vihare—Ordinance No. 3 of 1889, s. 30—
Ordinance No. 10 of 1863.*

The Ordinance No. 10 of 1863 was not intended to be limited to persons who have an absolute ownership in the property, but includes also one who has an undivided share vested in him as trustee.

The power which section 30 of the Buddhist Temporalities Ordinance gives to trustees is wide enough to include a right to bring a partition suit, when he finds it inexpedient to hold together with co-owners the land vested in him.

ACTION for partition. The plaintiff claimed to be the trustee of the Ruanwella Vihare in Kataluwa, and the land sought to be partitioned was the land on which the vihare stood. He alleged that as such trustee he was entitled to an undivided two-fifths share of the land.

The claim for partition was resisted by the eighth defendant and one Silva, an added party, on the ground that the District Committee had no right to appoint the plaintiff as a trustee of the

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vihare under the provisions of the Ordinance No. 3 of 1889, inasmuch as the land had been dedicated as *sanghika* property, and the donors, who were private persons, had appointed certain persons as trustees of the temporality by deeds of endowment. They also raised defences on the merits.

At the trial it was agreed to have the following issues tried first:—

- (1) Had the Provincial Committee authority to appoint the plaintiff as trustee?
- (2) Can plaintiff as trustee institute an action for the partition of the land?

The District Judge gave the following judgment:—

“ I hold that the Provincial Committee had power to appoint plaintiff trustee of Rangwella Alutvihare, and that if this land is an endowment of that vihare it is vested in plaintiff.

“ Proviso 3 of Ordinance No. 3 of 1889 does not exclude this land from the operation of Ordinance No. 3 of 1889. Prior to the passing of the Buddhist Temporalities Ordinance the endowment of a vihare passed to the pupil who succeeded to the incumbency.

“ Now they are vested in a trustee (3 N. L. R. 333.)

“ Plaintiff cannot institute an action such as this, which is for a partition of the land. A partition is not requisite for carrying into effect the objects of the Buddhist Temporalities Ordinance (section 30 of Ordinance No. 3 of 1889). The vihare's interest in this land, besides, does not admit of partition. It might be sold under the provisions of the Entail and Settlement Ordinance, 1876. It does not follow, because it might be so sold, therefore it might be partitioned (see judgment of Bonser, C.J., in *Koch's Supreme Court Decisions, 1899, p. 55*).

“ In view of my verdict on the second issue I dismiss this action with costs. ”

The plaintiff appealed.

The case was argued before Layard, C.J., and Wendt. J., on the 29th May, 1903.

Van Langenberg and *Batuwantudawa*, for appellants.

H. Jayawardene, for respondent.

29th May, 1903. LAYARD, C.J.—

In this case I do not see my way to affirming the order of the District Court. The plaintiff claims as trustee of the Minuwangoda temple to be entitled to the possession as trustee of that temple of an undivided two-fifths share of the land sought to be partitioned in this suit. It is argued, however, for the respondent

that as trustee of this temple he is not in a position to bring a partition suit under Ordinance No. 10 of 1863. It is contended that section 30 of the Buddhist Temporalities Ordinance, No. 3 of 1889, does not authorize the trustee, to do more than recover any property vested in him as trustee, or to sue to be placed in possession thereof, or to recover rents accruing from tenants in occupation of such property or to recover damages in the event of trespass on temple property vested in him as trustee. It appears to me that the respondent's counsel has not given a sufficiently wide interpretation to the words of section 30 "and for any other purpose requisite for carrying into effect the objects of this Ordinance". He admits that the words would cover an action for damages and an action for rent; but he says that they do not extend to the bringing of a partition suit, as a partition suit is expressly excluded from section 30 of Ordinance No. 3 of 1889. I think the power which that section gives to trustees to sue for "any other purpose requisite for carrying into effect the objects of the Ordinance" is so wide that it would include the right of the trustee, when he finds that it is inexpedient to hold the land vested in him together with his other co-owners, to bring a partition suit under Ordinance No. 10 of 1863; and certainly I can find no words expressly excluding the bringing of a partition suit in that section.

Now, it is further suggested that a trustee is not an owner such as is contemplated by the Partition Ordinance, No. 10 of 1863. It appears to me that Ordinance No. 10 of 1863 was not intended to be limited to persons who have an absolute ownership in the property, but that it also includes one who has an undivided share vested in him as trustee. The English Courts have allowed a partition suit to be brought by freehold tenants in possession, whether they are entitled in fee simple, or in fee tail or for life, and there have been cases in which they have allowed a partition action where an estate was vested in a person for a term of years only. The trustee under the Buddhist Temporalities Ordinance appears to me to be the owner of the temple property subject to the terms of the trust on which the property is vested in him, and I see no reason why he should not be allowed to bring an action for partition under Ordinance No. 10 of 1863. No authority has been cited to us in which it has been held that such a trustee cannot bring a partition suit under that Ordinance. This Court has recognized the rights of executors and administrators as parties to a partition suit under Ordinance, No. 10 of 1863, and having allowed trustees to be parties in such suits I see no reason why a trustee created by statute should be excluded from the right of

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1903. bringing a partition suit, unless there is anything in the statute
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LAYARD, C.J. bringing such an action.

This case must be remitted to the District Court to be proceeded with under the Partition Ordinance. I desire, for the information of the District Judge, to say that in remitting this case to the District Court I have not considered in any way the question whether the plaintiff has title as trustee to any undivided share of the land which he seeks to have partitioned. The Court will have to satisfy itself that title is vested in the trustee before it decrees a partition. The appellant is entitled to his costs of the contention in the Court below and in appeal.

WENDT, J.—I agree.
