

**KUSALAGNANA THERO  
VS  
ASSAJI THERO AND OTHERS**

COURT OF APPEAL  
WIMALACHANDRA, J.  
CA No. 286/03(LG)  
DC MT. LAVINIA 1103/98/L  
JANUARY 13 AND 21, 2004

*Buddhist Temporalities Ordinance - Action by Viharadhipathi - Death of Plaintiff - Civil Procedure Code, section 404 - Substitution as legal representative - Original plaintiff had disrobed - Party seeking to be substituted not presented for higher ordination by the original plaintiff - Disrobing - Effect - Intention of leaving priesthood - Is it to be considered?*

Plaintiff Nandarama Thero instituted action seeking a declaration that he be declared as the lawful Viharadhipathy. Subsequently the priest disrobed. The person who sought to be substituted was ordained by Nandarama Thero on 12.06.1999. However, Nandarama thero had disrobed on 01.10.1998. The trial court allowed the substitution.

**HELD:**

- i) The test to be applied in deciding whether a Buddhist priest discarded his robes with the intention of renouncing the priesthood is whether the act of disrobing was done (1) voluntarily and (2) with the intention of permanently giving up robes.

**Per Wimalachandra, J.**

“It appears to me that when the said Nandarama Thero disrobed to obtain a photograph as a layman, to apply for a National Identity Card, definitely his intention would have been to give up robes permanently, it is a voluntary act with the intention of permanently giving up robes.”

- ii) Having given up the intention of leaving the priesthood, and declaring and affirming an affidavit to that effect, he cannot thereafter claim to be a bhikku by putting on robes again. He ought to go through the procedure of robing and higher ordination afresh to become a bhikku again.
- iii) As Nandarama Thero had disrobed on 01.10.1998, Assaji Thero who was ordained on 12.06.1999 by Rev. Nandarama, cannot claim to be a pupil of the said Thero,

**LEAVE TO APPEAL** from an order of the District Court of Mt. Lavinia with leave being granted.

**Cases referred to :**

1. *Somarathna vs Jinaratane* - 42 NLR 361
2. *Gooneratne vs Ratnapala Therunnanse* Matara case 227 - at -365-364
3. *Premaratne v. Indasara* - 40 NLR 235

*S.C.B. Walgampaya, P.C.* with *E.L. Tirimanne* for 1st defendant- respondent petitioner.

*W. Dayaratne* for 1st respondent.

*Cur. adv. vult.*

April 29th 2005

**WIMALACHANDRA, J**

The 1st defendant - respondent- petitioner has filed this application for leave to appeal from the order of the learned Additional District Judge of Mount Lavinia dated 24.07.2003.

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Briefly the facts as set out in the petition are as follows —

The plaintiff, Randiligama Nandarama Thero instituted this action in the District Court of Mount Lavinia for a declaration that he be declared as the lawful Viharadhipathi of Neelammahara Purana Viharaya, and for the ejectment of the 1st, 2nd and 3rd defendants respondents (1st, 2nd and 3rd defendants) and for damages. On the summons returnable date all three defendants appeared in Court and filed their proxies. The Court granted them time to file their answer. In the meantime Kumaragama Assaji Thero of Raja Maha Vihara, Navinna, Maharagama filed an application on 28.10.1999 under section 404 of the Civil Procedure Code, and sought that he be substituted in place of the original plaintiff as the legal representative, for the reason that the original plaintiff had disrobed. The 1st, 2nd and 3rd defendants filed objection to the said application of Kumaragama Assaji Thero (the party seeking to be substituted as plaintiff) on the ground that the said Assaji Thero was not a pupil of the original plaintiff.

It is the position of the 1st, 2nd and 3rd defendants that the original plaintiff the said Randiligama Nandarama Thero disrobed on 01.10.1998 and had taken the lay name "Thotapola Deniya Gedera Asoka Banda" according to the affidavit submitted by him to the Commissioner for the Registration of Persons to obtain the national identity card as a lay person.

After an inquiry into the application made by the said Assaji Thero who sought to be substituted in place of the original plaintiff, the learned District Judge made order on 24.07.2003 rejecting the objection of the 1st to 3rd defendants and allowed the application made by the said Assaji Thero. It is against this order that the 1st to 3rd defendants have filed this application for leave to appeal. When the matter was taken up for inquiry both counsel agreed to file written submissions and invited the Court to make its order on the written submissions and if the court grants leave to appeal, the parties further agreed that the appeal also be decided on the same submissions.

The 1st 2nd and 3rd defendants object to the application for substitution in place of the original plaintiff on the ground that the said Assaji Thero was not a pupil of the original plaintiff, as the original plaintiff had disrobed on 01.10.1998, about 7 1/2 months before the date of higher

ordination of the said Assaji Thero and the plaintiff could not have presented the said Assaji Thero for higher ordination.

The question to be decided in this application is whether the said Kumaragama Assaji Thero is the pupil of the original plaintiff, Randiligama Nandarama by higher ordination. It is settled law that under the Buddhist Ecclesiastical Law pupilage is conferred by robing or by presenting for higher ordination. The said Assaji Thero claims that he is the pupil of the original plaintiff by higher ordination. According to his Upasampada declaration, in column 19, which gives the name of the Bhikku presenting at higher ordination, the name of Randiligama Nandarama Thero appears. The date of higher ordination of the said Assaji Thero is 12.06.1999.

In the circumstances the question for consideration is even though the name of Randiligama Nandarama Thero appears in the declaration regarding Upasampada of the said Assaji Thero (P2) whether the said Nandarama Thero had given up his robes with the intention of disrobing himself, before the higher ordination of Assaji Thero.

The test to be applied in deciding whether a Buddhist priest discarded his robes with the intention of renouncing the priesthood is whether the act of disrobing was done :

- (i) Voluntarily and
- (ii) With the intention of permanently giving up robes.

It was held in the case of *Somarataka Vs. Jinaratana*<sup>1</sup> that temporary disrobing in the emergency of a grave illness does not amount to permanently renouncing the priesthood. In this case Soertsz. J. cited with approval the view taken by Bonser C.J. and Withers, J. in the case of *Gooneratne Vs. Ratnapala Terunanse*<sup>(2)</sup> at 365-364 Soertsz, J. said :

**“In that case it was held that for disrobing to produce such a result as is here claimed, it must be voluntary and with a clear intention to renounce the priesthood. It follows that a temporary, and obviously *pro forma* departure from the priesthood in the emergency of a grave illness cannot produce such a result. See also *Premaratne Vs. Indasara*<sup>(3)</sup>**

**In *Premaratne Vs. Indasara (supra)* it was held that it is the mental element that is of primary importance.”**

In the instant case the original plaintiff, the said Randiligama Nandarama Thero had disrobed on 01.10.1998. The question is whether his act of disrobing on 01.10.1998 had been carried out with the intention of permanently renouncing the priesthood.

The learned counsel for Kumaragama Assaji Thero, the party seeking to be substituted in place of the plaintiff submitted that the said Randiligama Nandarama Thero disrobed on 01.10.1998 only for the purpose of obtaining a photograph as a laymen to apply for a national identity card and not with the intention of giving up robes permanently. At the inquiry held in the District Court it was established that the said Nandarama Thero the plaintiff, had affirmed the affidavit marked “F3” wherein he had stated that he disrobed on 01.10.1968. Halwitigala Yasassi Thero who was a Justice of the Peace, before whom the said affidavit marked “F3” was affirmed in giving evidence in the District Court, said, that he saw Nandarama as a layman on the date of attesting the said affidavit and thereafter he saw him when he came to give evidence in the District Court also as a layman. It appears to me that when the said Nandarama Thero disrobed to obtain a photograph as a layman, to apply for a national identity card, definitely his intention would have been to give up robes permanently. As held in *Premaratne Vs. Indasara (supra)* it is the mental element that is of primary importance at the time he disrobed. That is whether he had the intention of giving up robes at the time he disrobed with the clear intention to renounce the priesthood. In my view it is a voluntary act of the said Nandarama Thero with the intention of permanently giving up robes. This is borne out by the affidavit (marked “F3”) of the said Nandarama Thero, attested by Halwitigala Yasassi Thero. It reads as follows :

“කැගල්ල දිස්ත්‍රික්කයේ හෙම්මාතගම නගරයෙහි රන්දිලිගම ආරාමයෙහි බුලුගහපිටියේ පදිංචි කොටපොලදෙනියේ ගෙදර අශෝක බණ්ඩා හෙට්ටන් ටී. ජී. අශෝක බණ්ඩා වන මම 1981 මහරගම නාවික රජමහා විහාරස්ථානයේ රන්දිලිගම නන්දාරාම හිමි යන නමින් පැවිදි වූ බවත් ඉන් පසුව 1998 ඔක්තෝබර් මස 01 වෙනි දින උපැවිදි වූ බවත් දිවුරා ප්‍රකාශ කරමි.

However the said Nandarama, the original plaintiff, gave evidence contrary to the aforesaid affidavit (F3). At the inquiry he said he disrobed

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on 28.10.1999. But according to his own affidavit (marked F3) he had given up robes on 01.10.1998. In "F3" he had in unequivocal terms affirmed to the fact that he disrobed on 01.10.1998. He had voluntarily given up robes with the intention of leaving the priesthood permanently. In these circumstances having given up robes with the intention of leaving the priesthood, and declaring and affirming an affidavit to that effect, he cannot thereafter claim to be a bhikku by putting on the robes again. He ought to go through the procedure of robing and higher ordination afresh to become a bhikku again.

The said Assaji Thero sought to be substituted in place of the original plaintiff the said Nandarama Thero on the ground that he is a pupil of the said Nandarama Thero by presenting him for higher ordination. As the original plaintiff the said Nandarama Thero had disrobed on 01.10.1998, the said Assaji Thero cannot claim that he is a pupil of the said Nandarama Thero by higher ordination.

In these circumstances I am of the view that the learned District Judge erred in holding that the said Nandarama Thero disrobed temporarily only to obtain a photograph as a layman for the national identity card, but thereafter he continued as a bhikku until the date of the higher ordination of the said Assaji Thero.

For these reasons I grant leave to appeal. The order of the learned District Judge dated 24.07.2003 is set aside and the appeal is allowed with costs. It appears to me that none of the defendants have made any application to substitute all or one of them in place of the original plaintiff who is now disrobed. Accordingly, if an application is made by a party, the learned Judge can after holding an inquiry according to law, make an order with regard to the substitution in place of the original plaintiff.

*Appeal allowed; order set aside.*

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