

1963 Present : Tambiah, J., and Abeyesundere, J.

KAMBURUGAMUWA PIYANANDA TERUNNANSE, Appellant, and
UYANGODA SUMANAJOTHI TERUNNANSE, Respondent

S. C. 638/60—D.C. Matara, 676

Buddhist ecclesiastical law—Incumbency of vihare—Succession originally by several pupils—Applicability thereafter of rule sissyanu sisya paramparawa—Burden of proof.

In considering the rule of succession relating to the incumbency of a Buddhist temple, or vihare, the *sissyanu sisya paramparawa* rule is presumed to apply, unless the contrary be shown. Any rule of succession other than the *sissyanu sisya paramparawa* is an exception to the general rule, and the burden of proving such a rule rests on the party who alleges it.

Plaintiff sued for a declaration that he was the viharadhipathi of a certain Buddhist temple and that the defendant should be ejected from the premises. He alleged that the succession to the office of viharadhipathi of this temple was not governed by the *sissyanu sisya paramparawa* rule but that, by usage, it took place according to the order of seniority of *upasampatha* ordination of each generation of priests.

The evidence showed that the original viharadhipathi devised by last will of 26th July 1839 the vihare and its temporalities to all his pupils to be shared equally by them and that, accordingly, after his death, his pupils succeeded in turn as incumbents, according to their seniority. There was nothing, however, apart from some unreliable self-serving documents, to suggest that the rule of succession relied on by the plaintiff was ever followed thereafter and that the rule of *sissyanu sisya paramparawa* was not followed.

Held, that the finding that the original pupils succeeded in turn to the incumbency was not inconsistent with the applicability of the *sissyanu sisya paramparawa* rule.

APPEAL from a judgment of the District Court, Matara.

H. V. Perera, Q.C., with *H. A. Koattegoda* and *N. R. M. Daluwatte*,
for the Defendant-Appellant.

H. W. Jayewardene, Q.C., with *W. D. Gunasekera* and *L. C. Seneviratne*,
for the Plaintiff-Respondent.

Cur. adv. vult.

December 20, 1963. TAMBIAH, J.—

The plaintiff brought this action for a declaration that he is the viharadhipathy of a temple called Godakanda Samudratheera Aramaya in Kamburugamuwa and prayed for an ejection of the defendant who, he alleged, was in wrongful possession of the said vihare.

The plaintiff, in his evidence, stated that the original viharadipathy of the said vihare was one Ahangama Dhammananda Thero who, by last will No. 158 of 26.7.1838, marked P9, devised all his temporalities to his six pupils, namely,

- (1) Garanduwe Sangharakkhitha
- (2) Aluthwatte Jothirathana
- (3) Weragampita Seeladhara
- (4) Ahangama Seelarathana
- (5) Kamburugamuwa Rathanasara
- (6) Mirissa Rathanapala.

The plaintiff's case is that this temple had a peculiar rule of succession, different from the *sissyanu sisya paramparawa* and that the succession to the office of viharadipathy of this temple took place according to the order of seniority of *upasampatha* ordination of each generation of priests. In the course of his evidence, the plaintiff said that according to this rule, a priest, who is the most senior by higher ordination out of the pupils of any particular tutor, at any particular time, succeeded to the incumbency.

The defendant, who is in possession of the temple, claimed to be the viharadipathy of the temple by the rule of *sissyanu sisya paramparawa* from Seeladhara, the pupil of Ahangama Dhammananda.

According to the plaintiff, after the death of Ahangama Dhammananda, Sangharakkhitha, Jothirathana, Seeladhara and Rathanasara succeeded in turn as incumbents of this vihare in the order set out.

Ahangama Seelarathana left the vihare; Mirissa Rathanapala died before Rathanasara and, therefore, these two priests did not function as incumbents. After the death of Rathanasara, the plaintiff's case is that among the second generation of priests, Walgama Dhammananda, the pupil of Sangharakkhitha, Polhene Maha Dharmarathana, the pupil of Rathanasara, Polhene Punchi Dharmarathana, the pupil of Jothirathana and Walgama Sirisunanda, the pupil of Seeladhara, functioned as incumbents in the order set out, according to seniority.

After Walgama Sirisunanda, who died in 1954, the plaintiff claims to be the incumbent of the temple as the most senior among the third generation of priests.

The learned District Judge, in giving judgment for the plaintiff, summed up his conclusions as follows:—

“To sum up my conclusions it appears to me that the Bikkhu who succeeded as Viharadipathy of this temple did not succeed in the usual manner of *sissyanu sisya paramparawa*, but quite in a different way. Ahangama Dhammananda, the original Viharadipathy, appointed six pupils, to own and possess this temple equally and gave special directions to his own four pupils *sisya puthrayo* (pupillary sons). Further it is evident from the documents produced in this case that at least the 4 original pupils who were the devisees in P9 became

Viharadipathys, viz : Garanduwe Sangharakkhitha, Aluthwatte Jothirathana, Weragampita Seeladhara and Kamburugamuwa Rathanasara. Thereafter their pupils succeeded as Viharadipathys. It is not correct to say that the senior pupil of one of the original pupils Ahangama Dhammananda succeeded as Viharadipathy. It has taken place according to the seniority of ordination. Buddhist Dhamma recognises seniority by ordination though it has come to mean in our law that robing confers seniority on a Buddhist Monk.”

Although the finding of facts by a judge who has heard witnesses, is normally entitled to weight and it is the settled principle of this Court not to disturb such a finding, I am of the view that in the instant case, the learned District Judge has misdirected himself on the law and has drawn incorrect inferences from the facts. After a careful consideration of the oral and documentary evidence led in the case, and the authorities cited before us, I am of the view that the plaintiff has failed to prove the particular rule of succession alleged by him. He has not shown that the *sissyanu sisya paramparawa* rule, which is presumed to apply in Ceylon as the law of succession, unless the contrary be shown, did not apply to this temple. It is a settled rule of law that any rule of succession, other than the *sissyanu sisya paramparawa*, has to be regarded as an exception to the general rule, and the burden of proving such a rule rests on the party who seeks to establish any right under it (vide *Eriminne Unnanse v. Senabowe Unnanse*¹; *Dantura Unnanse v. The Government of Ceylon*²).

According to the pupillary succession known as *sissyanu sisya paramparawa*, after the death of the chief incumbent of a Buddhist temple, his eldest pupil succeeds him unless he had deserted his tutor or suffered what may be termed as ‘ecclesiastical death’, such as being disrobed etc. This rule, which has had a flourished existence for over two hundred years, has undergone known deviations (vide *Okandeyaye Wangeesa Thera v. Mulgirigala Sunanda Thera*³).

The early decisions of this Court recognised the right of the founder to appoint all his pupils to the incumbency. When the founder of a vihare appoints several pupils to succeed him, they all become entitled to the temple; one of them is elected as superior and the others participate in the benefits (vide *Dantura Unnanse v. Government of Ceylon (supra)*) and this rule received the approval of Bertram C.J., in *Saranankura Unnanse v. Indajoti Unnanse*⁴ and several other cases (compare *Dewandra Unnanse v. Sumangala Terunnanse*⁵; *Piyaratne Unnanse v. Medankara Terunnanse*⁶).

Although the original rule as postulated by the Malwatte priests, is that it is only the founder priest of a vihare who could appoint a number of pupils to succeed him, this right appears to have been extended to

¹ (1832) 1869-1871 *Vanderstraaten Reports, Appendix D.*

² (*Ibid.*).

³ S.C. 520/D.C. *Tangalle* 631. S.C. *Minutes of 14th September 1962.* [65 N.L.R. 388].

⁴ (1918) 20 N. L. R. 398.

⁵ (1927) 29 N. L. R. 415.

⁶ (1931) 32 N. L. R. 271.

any incumbent. Jayawardene A.J., in the case of *Gunananda Unnanse v. Dewarakkita Unnanse*¹, in discussing the right of an incumbent to appoint his pupil, summarised the rule as follows (vide 26 N. L. R. at page 275):

“He can appoint by will or deed more than one pupil to succeed him; in such a case these pupils, although called jointly, succeed in rotation according to seniority. The pupil who succeeds last can appoint one of his pupils, and, in the absence of such an appointment, his senior pupil will succeed him to the exclusion of the pupils of the previous incumbents.” (vide also *Piyaratne Unnanse v. Medankara Terunnanse* (supra).)

Applying these principles to the facts of the instant case, even if one accepts the contention of the respondent's counsel that after the death of Ahangama Dhammananda, Sangharakhitha, Jothirathana, Seeladhara and Rathanasara succeeded to the incumbency by way of rotation, in the order mentioned, there is nothing to suggest that the rule of *sissyanu sisya paramparawa* was not followed.

By deed P9 of 1838, Ahangama Dhammananda, after reciting that he desires to dispose of the movable and immovable property which he got from his tutor and by his own exertions, devised the Vihare and its temporalities to his six pupils to be shared equally by them. Since a Buddhist temple is indivisible, by the rules of succession set out earlier, its pupils would have become incumbents according to their seniority and when Rathanasara, the last of the pupils of Dhammananda, died, his eldest pupil would have succeeded to the incumbency. There is evidence in this case that Polhene Maha Dharmarathana, the eldest pupil of Rathanasara, succeeded to this temple as incumbent.

An attempt made by Sangharakhitha to nominate his pupil, Walgama Dhammananda, to succeed him by granting one sixth share of the temple by last will, P18, shows that Sangharakhitha believed in the *sissyanu sisya paramparawa* rule of succession. This attempt again negatives the usage relied on by the plaintiff that another form of succession applied to this temple.

The plaintiff, who relied on a pedigree in which he set out the order of succession to the incumbency of this temple, was compelled to admit that apart from what he had seen in the documents, he does not know anything personally. He also admitted that he had not seen the priests, and although he claims to know the *paramparawa*, his knowledge of the pedigree is based on the inferences he had drawn from the documents produced in the case. It is common ground that Seeladhara, at some stage, officiated as the viharadipathy.

In order to prove that Seelarathana succeeded to the incumbency after Seeladhara, the plaintiff relied on two indentures of leases P21 of 1839, and P38 of 1879, purported to have been executed by Rathanasara as chief incumbent of Godakanda. An assertion in an indenture of lease

¹ (1924) 26 N. L. R. 257.

to the effect that the lessor is the chief incumbent carries little weight in proving that he was the *de jure* incumbent of a particular temple. Such self-serving documents are of little evidential value and this point is illustrated by the plaintiff's own evidence.

The plaintiff has stated, in the course of his evidence, that he succeeded to the incumbency only in 1954, after the death of Walgama Wimalasiri, according to the rule of succession he relied on in this case. It is curious, however, that long before the year 1954, in a number of documents executed by him, he has described himself as the chief incumbent of this temple. In P37 of 31.3.1940, a document which deals with the redeeming of a debt, the plaintiff calls himself the chief controlling priest of this temple. In P29, which purports to be an indenture of lease executed by the plaintiff in January 1942, he calls himself *sthavira* of Samudratheerarama. In P30, a lease purported to have been executed in October 1941, he calls himself *sthavira*, the chief incumbent of this temple. In P31, dated 5.10.1942, P32, dated 2.1.1948, P34 of 6.1.1949, he calls himself the chief incumbent of the vihare. If the particular rule of succession he relied on operated, he could not have been the incumbent of the vihare till 1954. The execution of these documents shows that the plaintiff himself did not believe in the peculiar rule of succession which he asserted in this case. The plaintiff was apparently trying to create title in himself by alleging that he was chief incumbent of the temple.

The conduct of the plaintiff shows how unreliable self-serving statements prove to be in indentures of leases or other documents executed by a person. Such documents have very little evidential value for the purpose of proving that the persons mentioned as chief incumbents were *de jure* viharadipathys of the temples concerned.

A further examination of the plaintiff's case shows that the rule of succession relied on by the plaintiff was never followed. According to the plaintiff, before Walgama Wimalasiri succeeded to this incumbency; Walgama Siri Sunanda was the chief incumbent as he was the most senior pupil in the second generation of priests. But D3, a document produced by the defendant, conclusively shows that Sunanda did not succeed as chief incumbent of this temple according to the rule of succession relied on by the plaintiff but was appointed by the chief priest of the sect, with the approval of the Sangha, to look after the temple as a caretaker in order to prevent the temple falling into ruins. The plaintiff's case is that after the death of Walgama Siri Sunanda, Walgama Wimalasiri succeeded as chief incumbent, according to the rule of succession relied on by him.

By document D4, the Maha Sanghaya of Siri Dharmarakshita Vansaya, who gathered at the Godakanda Vihare on 6.3.1940, with the consent of all the pupils and Dayakas of the vihare, appointed Walgama Wimalasiri *sthavira* as chief incumbent of the said temple. This document shows that the rule of succession relied on by the plaintiff was not followed,

but Walgama Wimalasiri was elected as the chief incumbent by the Maha Sangha. These two instances are sufficient to show that the peculiar rule of succession alleged by the plaintiff was never followed.

To prove that Polhene Punchi Dhammaratane was the chief incumbent before Sunanda, the plaintiff relied on the documents P2, P4, P7 and P8, the oral evidence of one Mr. Weerasooriya, who described himself as a poet, and P2, a book of poems entitled "Kavya Rasaya", containing some stanzas made by Polhene Siri Dhammaratana "Maha *sthavira* Viharadipathy" of this temple.

In P7, Polhene Dhammaratana has signed as a witness where he described himself as Godakande Samudratheeramadipathi. P8 is said to be a funeral card which is addressed to Godakanda Samudratheera Vihara Adhipathi . . . by some person in the year 1912. There is no evidence to show whether the person who is alleged to have sent this card was alive or not and it is not clear whether it came from proper custody. These documents are of little probative value in establishing that Polhene Punchi Dhammaratana was the *de jure* viharadipathy of this temple.

In P4, which is the plaintiff's declaration under the Buddhist Temporalities Ordinance, his robing tutor is mentioned as Polhena Dhammaratana Sthavira Viharadipathi of Godakanda. The Mahanayake Thero of the Nikaya has signed as a witness but the document does not show that Polhene Punchi Dhammaratana functioned as the *de jure* incumbent of the temple. It is sometimes the practice to describe the *de facto* incumbent as the chief incumbent of a particular temple. Mr. Weerasooriya, who was called by the plaintiff, had to admit that he met Polhene Punchi Dhammaratana only once and his knowledge that Polhene Dhammaratana functioned as viharadipathy is derived from hearsay.

The documentary evidence in this case shows that after the death of the original pupil, Ahangama Dhammananda, disputes and dissensions had arisen among the priests regarding the management of this temple. In certain instances, Court intervention was sought by the priests of the Nikaya. The document P24, relied on by the plaintiff to prove the rule of succession, shows that the sect to which the plaintiff belongs, representing the Sangha, appointed Siri Sunanda to look after the temple and its temporalities and as Siri Sunanda had leased some properties of the temple and as other priests had also leased other properties of the same temple, the Court cancelled the lease granted by Sunanda and upheld the leases made by the other priests. An inquiry appears to have been held by the Secretary by an order of Court of the District Judge of Matara and Polhene Dhammaratana Thero, who was residing at this temple, was accepted as incumbent of the said temple and the Sanghika property. This document shows that Polhene Dhammaratana who was also referred to as Polhene Maha Dhammaratane, did not become viharadipathy of the temple according to the rule of succession relied

on by the plaintiff. The plaintiff has not called the Mahanayake Thero of his sect or any other prominent priest belonging to this Nikaya to prove the rule of succession relied on by him according to usage.

In considering the rule of succession of an incumbent of a Buddhist temple, or vihare, the terms of dedication must govern the rules of succession (vide *Sangharatana Unnanse v. Weerasekera*¹; *Dharmapala Unnanse v. Medagama Subana Unnanse*²). In the absence of any rule laid down by the founder, or where the terms of the original dedication cannot be proved either by direct evidence or by usage, then it must be presumed that the rule of *sissyanu sisya paramparawa* applies, unless it can be established that the succession is governed by *sivuru paramparawa* (vide *Sumanatissa v. Gunaratne*³). If any other rule of succession is shown by usage, it may be accepted as evidence of the original terms of dedication by the founder. Under our law, it will be presumed that the rule of succession applicable to Buddhist temples is the *sissyanu sisya paramparawa*. The onus of proving any other rule of succession is on the person alleging it. When a person alleges that any other rule of succession other than the aforesaid two rules of succession applies to a temple, the burden is on him to prove that such a rule had been adapted by long usage. Such usage must be certain, continuous and invariable to warrant the conclusion that it was laid down by the founder.

The counsel for the respondent also relied on the unreported case of *Okandeyaye Wangeesa Thera v. Mulgirigala Sunanda Thera* (supra) and urged that the facts of that case were on all fours with the facts of the instant case. In that case, however, it was held that it was “indisputably established by evidence” that the rule of *sissyanu sisya paramparawa* did not apply and the traditional mode of appointment of an incumbent of that temple was for the Sangha Sabha to make such an appointment.

The learned District Judge’s finding that four of the original pupils of Ahangama Dhammananda succeeded in rotation to the incumbency is consistent with the rule of *sissyanu sisya paramparawa*. After the original pupils of Dhammananda died, there has been no consistent rule of succession proved by the plaintiff to establish his claim. The learned District Judge, in entering upon the period subsequent to the demise of the original pupils of Ahangama Dhammananda, remarked that he was entering “upon the troublous phase of this succession”. In dealing with this period, he was no more sailing in smooth and placid waters with ripples and eddies but was embarking on a hazardous journey where he has to encounter shoals and sandbanks. The plaintiff has failed to prove the rule of succession relied on by him and his action must necessarily fail.

¹ (1903) 6 N. L. R. 313.

² (1900) 2 Curr. Law Rep. 83.

³ (1937) 39 N. L. R. 251.

It is unnecessary for me to discuss the title of the defendant in this case, since he is in possession and the learned District Judge has not declared that he is the lawful incumbent.

The counsel for the respondent sought an escape by submitting that even if the rule of *sissyanu sisya paramparawa* applied, nevertheless the plaintiff was the rightful incumbent of the temple. This argument, which was not even adumbrated in the court of first instance, cannot be accepted. He submitted that after the death of Rathanasara, Polhene Punchi Dhammarathana would have stepped into the shoes of Rathanapala and the plaintiff, being the pupil of Punchi Dhammaratana, would have succeeded as incumbent. But in view of the modification of the rule of *sissyanu sisya paramparawa* enunciated earlier, Rathanasara would have been succeeded by his pupil Polhene Maha Dhammaratana and after the latter's death, his senior pupil would have succeeded him. There is no evidence in this case that Polhene Maha Dhammaratana had no pupils.

The counsel for the respondent also ventured to submit that the plaintiff could also claim his rights through Jothirathana. But, in view of the last will P9, executed by Ahangama Dhammaratana, Jothirathana would have been succeeded by Seeladhara. For these reasons, I set aside the order of the learned District Judge and dismiss the plaintiff's action with costs. The defendant is entitled to the costs of appeal.

ABEYESUNDERE, J.—I agree.

Appeal allowed.
