

PIYARATANA THERO
v.
JOTHIYA AND ANOTHER

SUPREME COURT.

WIMALARATNE, A. C. J., PARINDA RANASINGHE, J. AND H. D. TAMBIAH, J.

S. C. APPEAL No. 61/84. – D. C. KEGALLE No. 414/L.

1st AUGUST, 1985.

Buddhist Ecclesiastical Law – S. 34 of the Buddhist Temporalities Ordinance – Action for declaration of title.

Where title by prescription to Buddhist temple land had not been acquired prior to 1931, section 34 of the Buddhist Temporalities Ordinance bars the acquisition of prescriptive title to temple land.

APPEAL from judgment of the Court of Appeal.

C. R. Gunaratne, P. C. with A. A. de Silva for plaintiff-appellant.

Defendant absent and unrepresented.

Cur. adv. vult.

August 26, 1985.

WIMALARATNE, A. C. J.

The plaintiff, as Viharadhipathi of the Degalagiriya Purana Viharasthanaya in Undugoda, claimed title to a portion of land called Galaudadeniya, described in the schedule of the plaint as a land of 3 roods, 12 perches, depicted in crown plan 124728 dated 4.9.1882, which is the plan marked P2 at the trial. The plaintiff's case was that this land belonged to Deraniyagala Sönnuthara Thero, the then Viharadhipathi of this temple, who gifted the same on deed No. 3284 of 1881 to his pupil Siddhartha and Mullanadu, of whom the latter died leaving no pupils. Siddhartha was succeeded by Maboda Gunaratne, who was succeeded by Moragoda Sumangala. The plaintiff has succeeded Moragoda Sumangala. The plaintiff complained that the defendants, who are the owners of the land immediately to the west, had since 1974 encroached upon a portion of Galaudadeniya, which encroachment is shown as lot 3 in plan 666 dated 9.6.1975, prepared for this case and marked P3. The said encroachment is in extent 05 perches.

The defendants claimed the said lot 3 as a portion of their land Urulindawatte* to which they had title and to which they had prescribed.

Among the issues raised on behalf of the plaintiff were these :—

- (1) Was Deraniyagala Sonnuthara Thero, Viharadhipathi of Degalagiriya Purana Viharasthanaya entitled to and did he possess the land called Galaudadeniya described in the schedule to the plaint and depicted in title plan No. 124728?
- (2) If so, is the plaintiff as Viharadhipathi of the said temple entitled to the said land on the pedigree pleaded in the plaint?
- (3) Is the said land depicted as lots 1 & 3 in plan No. 666 made for the purpose of this case?
- (4) If so are the defendants in wrongful and unlawful possession of the said lot 3?

The following, among other issues were raised on behalf of the defendants.

- (9) Has the plaintiff in this case ever possessed the land in dispute?
- (10) If not, can the plaintiff maintain this action?
- (11) have the defendants acquired a prescriptive title by adverse possession for a period of over 10 years?

To this the plaintiff raised the following further issue :—

- (12) If the land in dispute is declared to be a portion of the land belonging to the Degalagiriya Puranaviharasthanaya, can the defendants claim title by prescription?

The learned Judge has answered these issues as follows :—

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| 1. Yes. | 9. No |
| 2. Yes. | 10. No |
| 3. No. | 11. Yes. |
| 4. No. | 12. Does not arise. |

The plaintiff's action was accordingly dismissed. The Court of Appeal has affirmed the judgment of the lower court. It had been argued on behalf of the plaintiff that in view of the provision of section 34 of the Buddhist Temporalities Ordinance (Cap. 318) the claim for recovery of possession of immovable property belonging to any temple shall not be prejudiced by any provision of the Prescription Ordinance, provided that the section shall not affect rights acquired prior to the commencement of that Ordinance, that is, rights acquired prior to 1931. The Court of Appeal has taken the view that this principle applies only where the temple had a title which someone else is trying to prescribe to. The temple should have at some time had

paper title to this land or should have acquired a prescriptive title to it at some time prior to the dispute. The Court of Appeal was not satisfied that deed No. 3284 of 1881 fulfilled the requirement as to title because the deed itself does not describe by metes and bounds the land so described.

It is significant that the gift on deed No. 3284 had been made on 6.9.1881 which was the year in which the land depicted in P2 was surveyed by the Surveyor General's Department. By the year 1881 the temple would have been in possession of the land depicted in P2. But the learned trial judge has answered Issue (3) against the Plaintiff on the ground that the Surveyor, who had prepared Plan 666 (P3) for the purposes of this case – in which the disputed portion is depicted as Lot 3 – and also superimposed it upon the Title Plan 124782, P2, had said that such superimposition has not been duly done (නිසම් ආකාරයෙන් ආරෝපිත නොකළ බව). Careful consideration of the surveyor's evidence, however, shows that the surveyor was quite definite that, according to his superimposition, Lot 3 falls within the Title Plan P2. The surveyor has nowhere conceded that his superimposition has not been as it should have been done. The learned trial judge has, in my opinion, misdirected himself upon the evidence on this point. Had the surveyor's evidence been evaluated as it should have been done, then the only answer to Issue (3) should have been in favour of the Plaintiff.

Logically, therefore, an answer to issue 12 did arise. The answer to issue 12 is that section 34 of the Buddhist Temporalities Ordinance debarred the defendants from acquiring title by prescription to lot 3. Admittedly they had not acquired title by prescription prior to 1931

I would set aside the judgments of the Court of Appeal and of the Magistrate, and enter judgment for the plaintiff as prayed for, together with costs of this appeal.

RANASINGHE, J. – I agree.

TAMBIAH, J. – I agree.

Appeal Allowed.