

REV. POLHENE PANNALOKA
v.
REV. PANDITA MIDIGAMA PEMANANDA

SUPREME COURT.

G. P. S. DE SILVA, C.J.,

KULATUNGA, J. AND

RAMANATHAN, J.

S.C. APPEAL NO. 76/94.

C.A. NO. 703/94 (F).

OCTOBER 31, NOVEMBER 7 AND 25, 1994.

Buddhist Ecclesiastical Law – Appurtenant temple – Dedication.

The Aswaththaramaya was on the basis of the documents, a temple appurtenant to Boderagane Maha Viharaya of which the plaintiff was admittedly the Viharadhipathi. The claim that the Aswaththaramaya was a separate and distinct temple was not borne out by the dedication or the other documents as the priest from whom title by pupillary succession was claimed was by all proofs only placed in charge of it and not described as Viharadhipathi.

APPEAL from judgment of the Court of Appeal.

A. C. Gooneratne Q.C. with *R. Sureshchandra* for 1st defendant-appellant.

P. A. D. Samarasekera P.C. with *Keerthi Sri Gunawardena* for plaintiff-respondent.

Cur. adv. vult.

December 05, 1994.

G. P. S. DE SILVA, C.J.

The plaintiff instituted these proceedings against the 1st and 2nd defendants seeking a declaration that he is the lawful Viharadhipathi of the temple known as Aswaththaramaya at Hiyare in the Galle district and for the ejectment of the 1st defendant from the temple. The 2nd defendant died before the trial and no substitution was made as substitution was not necessary. The 1st defendant in his answer denied the claim of the plaintiff and prayed for the dismissal of the action. After trial, the District Court, dismissed the plaintiff's action. The plaintiff appealed to the Court of Appeal which reversed the judgment of the District Court and held with the plaintiff. The 1st defendant has now preferred an appeal to this court.

The plaintiff's case was that Aswaththaramaya was a temple appurtenant to the temple known as Boderagane Maha Vihara at Habaraduwa (hereinafter referred to as the Boderagane temple) and that the Viharadhipathi of the Boderagane temple placed a monk in charge of Aswaththaramaya to look after it for and on behalf of Boderagane temple. At the hearing before us, it was not disputed that the plaintiff is the Viharadhipathi of the Boderagane temple and that the Viharadhipathiship devolved on the plaintiff in the manner set out in the plaint.

The main issue arising on this appeal is whether Aswaththaramaya is a temple appurtenant to the Boderagane temple as contended for on behalf of the plaintiff respondent or is a separate and distinct temple founded by Welihinda Ratnapala about the year **1916**. While the case for the 1st defendant was that Welihinda Ratnapala was the first Viharadhipathi of Aswaththaramaya and that he (the 1st defendant) was a pupil of Welihinda Ratnapala, the plaintiff's position was that Welihinda Ratnapala was not the Viharadhipathi of Aswaththaramaya but was appointed to be in charge of and administer Aswaththaramaya in **1903** by Heenatigala Dhammatilake who was admittedly the Viharadhipathi of the Boderagane temple from 1897. to 1962. Moreover it was a part of the case for the plaintiff that besides Aswaththaramaya there were 5 other temples which were appurtenant to Boderagane temple and amongst those appurtenant temples was **Kalawitigoda Purane Viharaya** (also known as Piyadassaramaya).

At the hearing before us, Mr. A. C. Gooneratne, Counsel for the 1st defendant appellant submitted that his case (to use his own words) "stands or fails by the document D1." Counsel urged that it was the crucial document in the case and it completely "destroyed" the plaintiff's case. Mr. Gooneratne thus rested his case entirely on D1.

D1 is a "Pooja Pathraya" bearing No. 654 dated 2nd November 1925. It is a formal dedication of a land by five persons of the village of Hiyare to "Aswaththaramaya" as a sanghika gift. These five persons were the owners of the land which was known as Godewatte. Mr. Gooneratne submitted that Welihinda Ratnapala is named as the recipient of the gift. Further, Mr. Gooneratne relied very strongly on a

recital in the deed which states that the sanction of the then Governor of Ceylon was obtained on **18th October 1916** for the purpose of dedicating the land to the temple as required by the provisions of section 41 of the Buddhist Temporalities Ordinance No. 8 of 1905. Having regard to the fact that permission was obtained by the owners of the land in October 1916 from the Governor, Mr. Gooneratne strenuously contended that the construction of the temple itself commenced only in 1916 and that Welihinda Ratnapala was the first Viharadhipathi of Aswaththaramaya. The formal dedication was no doubt in November 1925 but it was the submission of Counsel that, that was the point of time at which the building of the temple was completed. Counsel invited us to draw the inference that the construction of the temple went on from 1916 to 1925.

Moreover, Mr. Gooneratne stressed the fact that there was no reference whatsoever to the Boderagane temple in the entirety of D1. This, Counsel contended, negated the claim of the plaintiff that Aswaththaramaya was appurtenant to Boderagane temple. On the contrary, he argued, it strongly supported the position of the 1st defendant that D1 conferred a right on Welihinda Ratnapala which is a right totally independent of Boderagane temple or indeed of any other temple. The contention was that the title conveyed by D1 was the title of the admitted owners of the land (Godewatta).

On the other hand, Mr. Samarasekera for the plaintiff respondent rightly pointed out that section 41 of the Buddhist Temporalities Ordinance No. 8 of 1905 does not require the licence of the Governor to construct a temple; the licence was required "for any temple, or any person in trust for, or on behalf, or for the benefit of any temple to **acquire any land ...**". Counsel submitted that the language in D1 rather suggests a gift to the temple which was already in existence. I am inclined to agree with this submission. More importantly, paragraph 3 of D1 (as translated reads thus) "... under and by virtue of the sanction so granted the land is dedicated to the Aswaththaramaya for the benefit of the monks of the Siamese sect from the four corners and the gift or dedication is made **in the name of the priest in charge of the affairs of the said temple, namely, Welihinda Ratnapala who was the Viharadhipathi of the Meepe temple**" (The emphasis is mine). These words in D1 are of the utmost

significance for here there is the clear recognition of the status of Welihinda Ratnapala as being no more than that of the monk in charge of Aswaththaramaya. This strongly corroborates the case for the plaintiff and considerably weakens the position of the 1st defendant, that Welihinda Ratnapala was the first Viharadhipathi of Aswaththaramaya. It is to be noted that in D1 Welihinda Ratnapala is not described as the Viharadhipathi of Aswaththaramaya which is the crux of the case for the 1st defendant. If in truth Welihinda Ratnapala was the Viharadhipathi of Aswaththaramaya, it is very strange that he was not so described in a formal document such as D1. On the contrary, he is referred to as the Viharadhipathi of another temple (the Meepe temple).

Furthermore, Mr. Samarasekera made a cogent submission in regard to the purpose for which the five owners of the land obtained the "licence" from the Governor as set out in D1. It was Counsel's contention that the permission of the Governor was sought and obtained in order to comply with the requirements of the law, namely the provisions of section 41 of the Buddhist Temporalities Ordinance No. 8 of 1905. The purpose was to regularise the *de facto* construction of a temple on private property and was not to construct or establish a new temple. With this submission, I agree.

It is also not without significance that in paragraph 5 of the Answer the 1st defendant specifically avers that "Aswaththaramaya at Hiyare was founded in or about 1903". This position is inconsistent with the plea based on D1 that the commencement of the construction of the temple was in 1916 when the Governor granted the licence in terms of the prevailing law. And, be it noted, the 1st defendant failed to give evidence at the trial.

This apart, there is cogent documentary evidence which shows that Aswaththaramaya was in existence long before 1916. I refer to P36, P37 and P38. P36 relates to a donation of a paddy field and 2 coconut trees to the temple at Hiyare in 1907. P37 is similar gift of a paddy field to the temple at Hiyare in 1906. P38 is an endorsement on a deed indicating that the property dealt with was dedicated to the Hiyare temple on 29th August 1912. The evidence of witness Meepe Sirisumana shows that Aswaththaramaya is the only temple in Hiyare.

I now turn to the answer of the 1st defendant. He claimed in his answer that Welihinda Ratnapala was the original Viharadhipathi of Aswaththaramaya (and of Piyadassaramaya) and that Welihinda Ratnapala had several pupils who in order of seniority were Meepe Medhankara, Meepe Pannasara, Denepitiye Pannatissa, Denepitiya Saddhananda (the deceased 2nd defendant) and the 1st defendant himself. There are 2 important documents which proved that the claim of the 1st defendant is untenable. The first document is P22 which is the minutes book of the Dayaka Sabha maintained at Aswaththaramaya. The minutes clearly show that the 1st defendant was placed **in charge of Aswaththaramaya** by the deceased 2nd defendant. He had no independent right but was in the position of a licensee under the 2nd defendant. The next document is P26, the Upasampada Declaration of the 1st defendant which clearly proves that he was certainly not a pupil of Welihinda Ratnapala.

The judgment of the District Court is unsatisfactory. The several documents produced by the parties have not been considered. No findings have been reached even in regard to the oral evidence. It is right to add that the record contains very helpful written submissions filed in the District Court but unfortunately the trial Judge has failed to consider these submissions.

On the other hand, the Court of Appeal in a comprehensive and well-considered judgment has concluded that the plaintiff is entitled to the relief prayed for in the plaint (except the claim for damages). The judgment of the Court of Appeal is accordingly affirmed and the appeal is dismissed with costs fixed at Rs. 750/.

KULATUNGA, J. – I agree.

RAMANATHAN, J. – I agree.

Appeal dismissed.