

REV. DHARMATILLEKA THERO
v.
REV. BUDDHARAKKITA THERO

SUPREME COURT.

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

AMERASINGHE, J. AND

RAMANATHAN, J.

SC NO. 9/90.

SC Spl. LA 15/90.

CA/LA 25/90.

CA 154/79F.

DC KALUTARA 2496/L.

DECEMBER 18th, 1992.

FEBRUARY 11th, 17th AND 18th, 1993.

AND MARCH 09th, 1993.

Buddhist Ecclesiastical Law – Pupillary succession to Viharadhipathyship – Prima facie evidence identifying robing tutor – Samanera Declaration – Upasampada Declaration.

While the Samanera Declaration constitutes *prima facie* evidence of what is contained, the particulars contained in the Upasampada Declaration made with reference to the Upasampada ceremony which is a formal and solemn ceremony can be used to displace the *prima facie* evidence contained in the Samanera Declaration. On this basis the common robing tutor of both plaintiff and defendant can be identified. The robing date determines the seniority.

Case referred to :

Jinawansa Thero v. Piyaratna Thero (1982) 1 Sri LR 273, 278, 279.

APPEAL from judgment of Court of Appeal.

E. S. Amerasinghe P.C. with M. B. Peramuna and Harsha Amerasekera for plaintiff – appellant.

A. C. Goonaratne Q.C. with P. A. D. Samarasekera P.C., B. Rajapakse and C.J. Ladduwahetty for the defendant – respondent.

Cur. adv. vult.

April 29, 1993.

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

Arama Dhammatilake Thero instituted these proceedings against Batuwanhena Buddharakkita Thero for a declaration that he is the lawful Viharadhipathi of the temple called Kettarama Kande Vihare at Kaluwamodera in Aluthgama in the Kalutara District ; he also asked that he be restored to possession of the temple and its temporalities. In his plaint he averred that at one time Saranatissa Thero was the Viharadhipathi and upon his death he was succeeded by Jinarama Thero who died on 3rd September, 1976. It was the claim of the plaintiff that upon the death of Jinarama Thero on 3rd September, 1976, it was he who was entitled to the Viharadhipathiship of the temple, as the senior pupil of Jinarama Thero. The defendant in his answer, while denying the claim of the plaintiff, pleaded that it was he who was the senior pupil of Jinarama Thero.

At the hearing before the District Court and the Court of Appeal it was common ground that –

(a) the applicable rule of succession to the Viharadhipathiship is that which is known as the Sisyanu Sisyu Paramparawa rule;

(b) that both the plaintiff and the defendant claim succession to the Viharadhipathiship through Jinarama Thero who was the undisputed last Viharadhipathi ;

(c) the plaintiff was robed as a Samanera on 30th September, 1952, and his robing tutors were Saranatissa Thero and Jinarama Thero ;

(d) the defendant was robbed on 2nd November, 1951, and his robing tutor was Saranatissa Thero ;

(e) the plaintiff and the defendant were each presented for ordination by both Saranatissa Thero and Jinarama Thero, and they were both ordained on 15th June, 1961.

In brief, the case for the plaintiff was that when he was robbed on 30th September, 1952, Jinarama Thero was one of his robing tutors but when the defendant was robbed on 2nd November, 1951, Jinarama Thero was not one of the robing tutors of the defendant. The plaintiff therefore claimed that he alone was robbed by Jinarama Thero and that in law he succeeded to the Viharadhipathiship under the Sisyanu Sisya Paramparawa rule of succession. On the other hand, the defendant's case was that Jinarama Thero was one of his robing tutors and since he was robbed on a date prior to the robing of the plaintiff, he became the senior pupil of Jinarama Thero.

Thus it is seen that the only question that arises for decision on this appeal is whether Jinarama Thero was also a robing tutor of the defendant. Both the District Court and the Court of Appeal held that Jinarama Thero was also a robing tutor of the defendant and dismissed the plaintiff's action. The Plaintiff has now appealed to this Court.

No questions of Buddhist Ecclesiastical Law arise on this appeal. The appeal turns purely on the evaluation of the evidence placed before the District Court.

The case for the plaintiff rests very largely on the document P3 which is a certified copy of the Samanera declaration of the defendant. P3 is in Form B in the Schedule to the Buddhist Temporalities Ordinance and is prepared in terms of section 41 (2) (a) (ii) of the Ordinance. Mr. Amerasinghe for the plaintiff-appellant relied very strongly on the contents of cage 7 of P3 which gives the name of Saranatissa Thero alone as the robing tutor of the defendant. What is more, P3 has been signed by Saranatissa Thero as the robing tutor and the signature of the defendant too appears on P3. Mr. Amerasinghe rightly emphasised the fact that the contents of P3 are " *prima facie* evidence of the facts contained therein in all courts and for all purposes..... ". (Section 41 (6) of the Ordinance)

There is no doubt that P3 is prima facie evidence of the fact that the robing tutor of the defendant was Saranatissa Thero. The meaning of the expression "prima facie evidence" in s. 41 (6) was considered by Samarakoon C. J. in *Jinawansa Thero vs. Piyaratna Thero*⁽¹⁾. This expression does not mean conclusive evidence. It is evidence which could be rebutted by other evidence, direct or circumstantial, oral or documentary. "Oral evidence may be led to disprove entries therein" per Samarakoon C.J. in *Jinawansa Thero vs. Piyaratne Thero* (*supra*). In short, the statement in P3 that Saranatissa Thero was the robing tutor of the defendant will prevail unless displaced by other admissible evidence.

It was the contention of Mr. A. C. Gooneratne for the defendant-respondent that the entry in cage 7 of P3 was incomplete for the reason that Saranatissa Thero was only one of the robing tutors of the defendant and that the other was Jinarama Thero. In support of his submission, Mr. Gooneratne placed strong reliance on P10 which is a certified copy of the Upasampada Declaration of the defendant which is in form A of the Schedule to the Buddhist Temporalities Ordinance (s. 41 (2) (a) (i) of the Ordinance). Cage 7 of P10 gives the names of the robing tutors of the defendant as Saranatissa Thero and Jinarama Thero.

On the other hand, Mr. Amerasinghe strenuously contended that P10 was not a document which could possibly displace the statutorily recognized evidentiary value of P3. Counsel emphasized that P3 related to and was contemporaneous with the event which is relevant to this case, namely the robing of the defendant. P10, on the other hand, came into existence 10 years later and related not to the robing but to the ordination of the defendant.

It seems to me, however, that the evidentiary value of P10 cannot be lightly dismissed in that way. In the first place, P10 has been signed not only by Saranatissa Thero but also by Jinarama Thero, both certifying to the correctness of the particulars contained in P10. Secondly, there is the intensely relevant evidence of the plaintiff himself of what actually took place on the occasion when the defendant was presented for ordination at the Malwatta Maha Vihara in Kandy. It is to be noted that the plaintiff too was presented for ordination on the same occasion by Saranatissa Thero and Jinarama Thero. The testimony of the plaintiff reads thus :-

ඒ උපසම්පදාව උත්සවයට පිනාරාම භාමුදුරුවෝ සහ සරණකීර්ස භාමුදුරුවෝ වැඩියා. ඒ දෙදෙනම සිටියා උපසම්පදාව කරන වේලාවේ. එකතේ කවුද මහණ කළේ කියා අසන බව මම කිව්වා. මම කිව්වා මාව මහණ කළේ සරණකීර්ස සහ පිනාරාම යන භාමුදුරුවරු බව. විත්තිකාර භාමුදුරුවෝ කියා සිටියා මහණ කළ ගුරු භාමුදුරුවෝ දෙන්නා හීනටියන්ගල පිනාරාම සහ පොතුච්ච සරණකීර්ස කියා.

ප්‍ර: ඒ දෙපොල ඉදිරිපිටදී ඒ ප්‍රකාශය කළේ

උ: ඔව්

ප්‍ර: ඒ දෙපොල එය වැරදියි කියා කිව්වේ නැහැ.

උ: නැහැ.

ප්‍ර: ඒ දෙපොල පිළිගත්තා ඒ අවස්ථාවේදී විත්තිකාර භාමුදුරුවෝ මහණ කළේ ඒ දෙදෙනම කියා.

උ: පිළිගත්තා.

(Jinarama Thero and Saranatissa Thero came for the Upasampada ceremony. Both of them were present at the time of the Upasampadawa. I was told that there I will be asked " who robed you ", I said I was robed by Saranatissa Thero and Jinarama Thero..... The defendant priest said the robing tutors were Heenatiyagala Jinarama Thero and Pothuwila Saranatissa Thero.

Q. That statement was made before those two priests?

A. Yes.

Q. Those two priests didn't say that it was wrong?

A. No.

Q. Those two priests at that stage accepted that they robed the defendant priest ?

A. Accepted.....").

The evidence in the case shows that the ordination or Upasampada ceremony is a formal and solemn ceremony which takes place before an august assembly of monks and in the presence of the Mahanayake of the Malwatta Chapter. The evidence clearly establishes that it was on an occasion such as this and in the very presence of Jinarama Thero that the defendant had publicly declared that Jinarama Thero was also one of his robing tutors. In my view, the evidence of the plaintiff set out above constitutes strong confirmation of the correctness and the truth of the statement in cage 7 of P10.

Mr. Amerasinghe pointed out that P10 contains an incorrect statement. The incorrect statement is with reference to cage 21 which reads " Serial number in Samanera Register, if any ". The answer

given is " " (No). This is not a correct statement because the defendant did have his Samanera Declaration, P3. However, the defendant in his evidence stated that it was not he who entered the particulars in P10. It seems to me that this incorrect statement does not in any material way detract from the evidentiary value of P10.

As submitted by Mr. Gooneratne, P10 does not really contradict P3 ; it rather supplements the statement in cage 7 of P3. The fact that P3 constitutes " *prima facie* " evidence of the facts contained therein is not a bar to evidence being admitted to supplement the statements found in P3. I accordingly hold that P10 displaces the *prima facie* evidence of P3, and that Jinarama Thero was also one of the robing tutors of the defendant.

Before I conclude it is right to add that the Upasampada Sittu (V3) and the invitation to the Upasampada ceremony (P5) relied on by Mr. Gooneratne are documents of an equivocal nature and do not tend to rebut the *prima facie* evidence in P3. The oral evidence of Loolbaddawe Uparatana, which was somewhat discredited by the letter V8, makes no significant impact on the plaintiff's case.

In the result, the appeal fails and is dismissed with costs.

AMERASINGHE, J. - I agree.

RAMANATHAN, J. - I agree.

Appeal dismissed.