

1939

Present : Poyser S.P.J. and Koch J.

DHAMMAPALA UNNANSE v. SUMANGALA UNNANSE.

31—D. C. Kandy, 41,714.

*Buddhist ecclesiastical law—Senior pupil of incumbent deserting temple—
Forfeiture of rights.*

A senior pupil who deserts a temple forfeits his rights to the incumbency.

A PPEAL from a judgment of the District Judge of Kandy.

H. V. Perera, K.C. (with him *L. A. Rajapakse* and *Cyril E. S. Perera*), for defendant, appellant.

N. E. Weerasooria, K.C. (with him *E. B. Wikremanayake* and *A. E. R. Corea*), for plaintiff, respondent.

Cur. adv. vult.

March 2, 1939. POYSER S.P.J.—

In this action the plaintiff claimed as senior pupil of the late Seelananda Unnanse, to be declared the Adikari Bikshu of Palipane Vihare *alias* Naththagoda Vihare.

The following facts were admitted on appeal, namely, that succession to the temple in question is governed by the rules of pupillary succession, that Seelananda Unnanse who died on October 29, 1930, was the Adikari Bikshu of these temples and had two pupils: Ratnapala (who was the senior) and the plaintiff. It was also admitted that Ratnapala had disrobed himself after this action was filed.

It was conceded on behalf of the appellant that the plaintiff was entitled to residence and maintenance as claimed in paragraph 7 (b) of the plaint but it was argued that in this action he could not succeed in his claim to be declared entitled to any office as at the date he instituted his action, Ratnapala was the senior pupil and had not disrobed himself.

In support of this argument the case of *Silva v. Fernando*¹ was cited in which the Privy Council laid down "that the rights of the parties to an action have to be ascertained as at the commencement of the action".

Mr. Weerasooria on behalf of the respondent urged that as Ratnapala deserted the temple on the death of Seelananda he had relinquished his claim, and having done so, the plaintiff as the next senior pupil succeeded.

There appears to be no doubt that the senior pupil can relinquish his claim, and if he does so, the next senior pupil will succeed.

In *Dhammaratna Unnanse v. Sumangala Unnanse*², Wood Renton J. having cited the following expert testimony "If a pupil leaves a Vihare without any intention of returning to it he would lose his rights altogether even though he be the sole pupil of his tutor" went on to hold that "the weight of the expert testimony decidedly supports the view that right of pupillary succession will be forfeited if the pupil deserts his tutor and the temple the incumbency of which he claims. There is ample evidence in the present case, justifying the conclusion that such a forfeiture has been incurred by the appellant".

¹ (1912) 10 N. L. R. 499.

² (1910) 14 N. L. R. 400.

In *Saranankara Unnanse v. Indrajoti Unnanse*¹, the following passage occurs at page 397 in the judgment of Bertram C.J.—“By custom the right to succeed is determined by seniority” (though it would appear from the evidence recorded in the case of *Dhammaratne Unnanse v. Sumangala Unnanse* (*supra*), that the right attaching to seniority is not so unqualified as some of our decisions appear to suggest).

In a later case, *Gunananda Unnanse v. Devarakkita Unnanse*², Jayawardene J. at page 275 in summarizing the rules regulating the succession to temples and vihares stated:—“If an incumbent dies leaving several pupils, the senior pupil succeeds. The selection of the incumbent however rests with the pupils, and the right of the senior pupil might in certain circumstances be disregarded. *Saranankara Unnanse v. Indrajoti Unnanse* (*supra*)”.

The point now taken in appeal was not raised in the lower Court and the District Judge found for the plaintiff on the ground that he was a pupil of Seelananda Unnanse and that Ratnapala had disrobed himself. There is however sufficient material before us to justify us in coming to the conclusion that Ratnapala did on the death of Seelananda leave the temple and relinquish his claim to his incumbency.

The plaintiff's evidence is accepted by the District Judge and in such evidence he stated “Ratnapala left Palipane temple ten or twelve days after Seelananda's death. He bolted to Asgiriya Vihare”.

Further it also appears from the evidence that Ratnapala never returned to Palipane temple and at no time made any claim to the incumbency.

In view of this evidence there can be no doubt in my opinion that Ratnapala's rights were forfeited by his deserting the temple at Seelananda's death.

I would dismiss the appeal with costs.

Koch J.—I agree.

Appeal dismissed.

