

RATNAPALA UNNANSE v. APPUHAMY.

D. C., Ratnapura, 807.

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Buddhist law—Sannas—Grant to Buddhist monks ("priests")—Sānghika property—Pudgalika property—Ordinance No. 3 of 1889, s. 20.

Where it was set forth in a sannas of a King of Kandy that a certain village was "granted, so that the income derived therefrom might be appropriated by D. and his successive pupils and by priests who reside in the Kiriella Vihare, they maintaining the services of the vihare"—

Held, that the grant was not one of *pudgalika* property but *sānghika* property, intended primarily for the benefit of the temple.

THE plaintiff, who described himself in the plaint as a Buddhist priest and the incumbent of the Kiriella Vihare, sued the defendant, a trustee appointed under the Buddhist Temporalities Ordinance to manage the said Kiriella Vihare, for the recovery of a village called Dumbaragama, which the plaintiff claimed to be entitled to absolutely, and which he alleged the defendant, as trustee aforesaid, held wrongful possession of.

Plaintiff's claim was founded on (1) a royal sannas granted by the last King of Kandy to Rakkitta Unnanse and his successors in pupillary succession; (2) a deed of gift from Rakkitta Unnanse to his pupil Sobita Unnanse; and (3) a deed of gift from Sobita Unnanse to his pupil, the plaintiff. Plaintiff alleged that by a power of attorney bearing date 4th December, 1889, he appointed the defendant to be his agent and authorized him to collect all the rents and produce of the said land; that the defendant entered into possession under the said power of attorney and collected the rents and produce till his appointment as trustee of the said vihare in the month of March, 1892, under the provisions of the Buddhist Temporalities Ordinance, 1889; that after such appointment the defendant refused to account to the plaintiff, but asserted title thereto as trustee of the said vihare.

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The sannas ran as follows:—

“ On the occasion when Deva Rakkitta Unnanse, of Kiriella Vihare in Kuruwiti korale of Sabaragamuwa Disava, showed the Medun Sangiya after he had finished transcribing it upon an order graciously made by His Supreme Majesty, Lord of prosperous Lanka.

“ On this Monday, the 11th lunar day of the bright half of the month Navan, in the year 1723 of the Saka era, this sattuwa was graciously vouchsafed to the effect that the village called Dumbara in the Palle pattu of Kukulukorale of the aforesaid Disava, and bounded [boundaries given], was granted, so that the income derived therefrom might be appropriated by the successive pupils of Deva Rakkitta Unnanse, of Karanda, and by priests who reside in the Kiriella Vihare, [such pupils and priests] maintaining the services of the vihare hereafter without dispute.

“ In attestation hereof,” &c.

The defendant admitted the sannas and deeds referred to in the plaint, but pleaded that the deeds, so far as they purported to gift and convey the said land inconsistently with the provisions of the sannas, were invalid; that the land was *sānghika* property and was always part of the temporalities of the Kiriella Vihare; and that defendant was not in lawful possession of the said land for and on behalf of the said vihare.

On the trial day plaintiff called only one witness, Dharma Rama, a Nayake Unnanse, to prove the meaning of the terms “*sānghika*” and “*pudgalika*.” He cited a Pali work of authority to the following effect:—“ If it be said that the property is given to you and your pupils, it becomes *pudgalika* property,” that is, it belongs to the individual personally. He further deposed: “ According to the Buddhist religion, a priest can only possess “ the four necessaries, clothing, medicines, furniture, and food. “ He cannot possess rice or money, except it is in charge of some “ agent, such as a pupil or servant. The principles of the Buddhist “ religion are not opposed to a priest holding landed property as his “ own property, if it has been given to him in a befitting manner. “ I could accept the gift of a paddy field and hold it as my own “ property, provided that I forewarned the donor by saying, ‘ If “ ‘ you say that you give us a field, we cannot receive it; but if you “ ‘ say that you give us the produce of a field, we can receive it “ ‘ for the four necessaries.’ ”

For the defence, Sri Sumangala Nayake Unnanse was the only witness examined. His evidence was as follows:—

“ I am the Chief High Priest of the Adam’s Peak temple and Nāyaka of the Colombo District and Principal of the Vidyodaya

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College. I have been High Priest since 1867. I have studied the Buddhistic religious books and I am well versed in them. I am familiar with the terms "sánghika" and "pudgalika" properties. Pudgalika is almost equivalent to the English personal property with a slight difference, that is, a priest can do what he likes with such property. Landed property cannot be the subject of pudgalika, as the priests are forbidden to hold it. If landed property is given to priests they cannot take it, but they can take the produce for their maintenance. Except in this manner priests cannot hold property, either pudgalika or sánghika. If a priest wrongfully accepts the property, the priesthood must reject it, but at law it would be different. If a priest, who has been given a property, dies, the property, if in terms of the gift, could be accepted; if it has been property dedicated as sánghika, it becomes sánghika, otherwise it is rejected.

" Q.—Can a priest hold land except as sánghika property ?

" A.—No; a priest cannot accept a land if offered as personal property, but a house or vihare property can be sometimes used as pudgalika. (Witness is shown the true copy of the sannas filed with the case A.) I have read through the sannas.

" Q.—Does this sannas contain a grant of property to the priest and his pupils ?

" A.—With regard to the Kiriella Vihare, ' for the purpose of performing the rites and for the maintenance of the priest, Dewarakitta Unnanse and his pupils ' is my reading of the sannas.

" The dedication of the property is only to the priest residing in the vihare, not to the general priesthood. It is sánghika property only to priests residing at the temple, not to the general priesthood.

" Q.—This being partly dedicated to the vihare, does it not become generally sánghika after the death of the donee ?

" A.—Yes, absolutely.

" I have authority for what I have stated, viz., Mahawagga Thiwarakandakachulawagga, Senasanakkhandaka, Pali Muttaka, Vinaya Vinishthya, Samantapasadika.

" The immovable property becomes sánghika because he cannot give them away, but robes, bowl, mats, carpets, if given to any one during his lifetime, then it is not included in the sánghika; but if it is not given so away, it becomes sánghika. (The passage quoted by Dharmasane Unnanse and in the record is shown to witness.) The property referred to in this passage refers to robes and sundry small articles and not to immovable property, nor does it refer to *garu badu*, such as beds, couches, &c. It refers to property such as could be carried.

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(Shown C.) “ The property in this deed is referred to as belonging to the Kiriella Vihare.

Cross-examined by Mr. Bawa.—“ The Buddhist books divide property which priests enjoy into three kinds—*sānghika*, *pudgalika*, and *gana santhaka*. *Gana santhaka* means property belonging in common to two or three. *Sānghika* means property belonging to the whole priesthood. When property is gifted to the priesthood the following words are used:—‘*Senpasse sangayata ganna pinissa*,’ or ‘*preyogenaya vidina pinissa me thaga watte or ketta demi*,’—*i.e.*, the priests may enjoy the produce for their maintenance or take it for their maintenance. When a grant of *pudgalika* landed property is made the form is the same. Although the property is offered as *pudgalika*, it is accepted as *sānghika*. *Pudgalika* does not mean offered as *puja*; it is offered to an individual. Although there is a prohibition against priests holding lands, yet I know that for hundreds of years past priests do hold lands in this manner. The bulk of the property of this College is *sānghika*. The deeds for the land are in my name as manager. On the occasion of the presentation of the book *Medun Sānghika*, the *Dumbara* village was given as an offering to the *vihare*, *Dharmarakkita Unnanse*, and his pupillary successors, residing priests. The offering is made to the *vihare*, but the priests take the profits to themselves, as well as give to other priests who come to the *vihare*.

“ *Dharmarakkita Unnanse* could not, according to the deed, give the property to any other priest than his pupils. Only a resident priest in the *Kiriella Vihare* can take the profits of this *Dumbara* village. I notice the words “ *Dharmarakkita Unnansege sisyanu sisiya paramparawa* ” in the *sannas*. According to the *sannas* a priest who is not resident at the *Kiriella Vihare* could not enjoy the profits of the land. In order to enjoy the profits of the land two things are therefore necessary: first, the priest must be a pupil of *Dharmarakkita Unnanse*; and second, he must be resident of the *vihare*; but there is an ambiguity in the *sannas*, and it may be that any resident priest, though not a pupil of *Dharmarakkita Unnanse*, could enjoy the profits.

“ Apart from the Buddhistical books in the time of the *Kandyan* kings, the practice has been for the residing priest—the incumbent—to enjoy the profits of the land. I am aware, although it is wrong, that priests have appointed their successors by deed and have also given over *sāngika* property to others. This is a practice that has come into use recently within the last eighty years. I am not aware that any lands have been given as a *pudgalika* for the priests to enjoy the rents and profits of the land. If the rents and

profits are gifted to a priest and the priest dies, the land does not revert to the donor, but becomes *sánghika*. I am aware of a case where a king had gifted to the priest himself a village as *pudgalika*—this was contrary to the Buddhist religion—*i.e.*, the village of *Pallebedde*. I do not know who holds it now. I know that for the last eighty years priests have bought and sold lands although prevented by their religion.

Re-examined.—" But this practice is never recognized by Buddhists. Some of them have been granting lands to priests through ignorance of the Buddhist law.

" The priest who holds lands to enjoy the rents and profits is bound to give the *suppasa* to the priests for their maintenance, and anything that is left over is given to priests who cannot maintain themselves at the *vihare*. When the grantor, a priest, in a deed says that it is to take effect ' after my death,' the property does not go to the donee named in the deed, but becomes *sánghika*.

" I want to add that there is a fourth classification of property, *viz.*, *chathiya santhaka*."

The District Judge (Mr. Murty) dismissed the plaintiff's case with costs, in the following judgment:—

" The plaintiff in this action is the incumbent and officiating priest of the *Kiriella Vihare*. The defendant is the trustee of that temple appointed under the Buddhist Temporalities Ordinance.

" In the year Saka 1723 (A.D. 1800) Sri Vikrama Raja Sinha, the last king of Kandy, granted by a *sannas* or *sittuwa*, the village of *Dumbara* to one *Devarakkita Unnanse* of *Kiriella Vihare* and his pupillary successors.

" *Devarakkita Unnanse* entered into possession of the land, and was succeeded on his death by *Kuruwita Sobita Unnanse*, whom he had duly appointed his spiritual successor.

" In like manner, *Kuruwita Sobita Unnanse* was succeeded on his death in 1861 by his pupil, the plaintiff.

" In 1889 plaintiff appointed defendant his agent and attorney to collect the revenues of and generally manage the temple lands. Defendant took up this appointment and continued to act as plaintiff's agent until 1892, when he was made trustee for the temple under the Buddhist Temporalities Ordinance. Thereafter defendant, as trustee, refused to account to plaintiff as before for the temple revenues; hence this somewhat belated action.

" Plaintiff contends that the grant of *Dumbaragama*, being a reward for a meritorious book, was personal to the grantee, and that the latter and his pupillary successors were entitled to treat the gift as *pudgalika* property.

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“ On the other hand, the defendant trustee maintains that the grant is *sānghika* and not *pudgalika*, and was intended, as an endowment for the *vihare*, to be enjoyed only on the usual conditions of the grantee continuing to reside there, maintaining the temple in a state of repair and carrying on the customary religious services.

“ It is, I believe, a well-established principle of Buddhist law that a priest cannot hold any kind of property, whether movable or immovable, except in trust for a temple. The only exception to this rule appears to be that a priest can possess in his own right what is termed *pudgalika* property.

“ To explain the exact meaning of “ *pudgalika* ” plaintiff and defendant have each called as a witness a Buddhist priest of high standing.

“ As well as I can judge from their evidence, *pudgalika* property includes only actual necessities for a Buddhist priest, namely, clothing, food, furniture of a simple kind, and medicines. All other property is apparently *sānghika*, that is, held in common and in trust by the resident priests of a particular temple. It would seem, therefore, to be clear that land cannot be included in the term *pudgalika* property. This is not, however, the opinion of the plaintiff's witness Dharmarama Unnanse, for he has stated in evidence that he believes the royal grant of Dumburagama to be *pudgalika*. This witness has also stated, ‘ I could accept the gift of a paddy field and hold it as my own property, provided that I forewarned the donor by saying, If you say that you give us a field, *we cannot receive that*, but if you say that you give as the *produce* of a field, we can receive that for the *four necessities*.’

“ It would seem, therefore, that a Buddhist priest cannot accept land as his own property, but may accept only the produce of the land. The gift may be made as *pudgalika*, but, according to strict Buddhist law, can only be accepted as *sānghika*.

“ The opinion of the witness appears to me, therefore, at direct variance with his evidence; and how he can reconcile the one with the other I find it impossible to understand.

“ The defendant's witness, the High Priest of Adam's Peak, has expressed the opinion that the royal grant of Dumburagama is *sānghika*. This witness's opinion has, at least, the merit of being consistent with his evidence.

The right, however, of a Buddhist priest to hold landed property has long been recognized by our courts of law, and it becomes necessary to look carefully into the terms of the royal grant so as to ascertain its nature. A translation (marked D) of the original *sittuwa* or *sannas*, prepared by Mudaliyar Guñasekara,

Chief Sinhalese Translator to Government, has been accepted as correct by the parties.

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“ After a careful perusal of this document I am of opinion that the grant was made, not to Devarakkita Unnanse personally, but to him and his pupillary successors and to priests who should in future reside in the Kiriella Vihare, to be held in trust for that temple. While the motive for the grant was the king's desire to recognize in a suitable manner the grantee's literary services, it seems to me to be clear that the object of the grant was to provide a perpetual endowment for the temple.

“ This construction of the sannas is, I think, confirmed by a perusal of the deed (C) under which plaintiff became the incumbent of the vihare. In document C it is set forth that the plaintiff or his sisyanu sisiya pupils, or any persons appointed by the plaintiff, shall have the power to possess the temple property and receive its revenues after the demise of the grantor, on these conditions: (1) that the temple pupils are properly cared for; (2) that the temple properties are duly maintained in a state of repair; and (3) that the customary religious services are carried on.

“ The deed enumerates twenty-eight different lands belonging to the temple, including the village of Dumbara now in dispute; but there is nothing to show that the grantor did not consider Dumbaragama to be *sánghika* property like the other lands. The deed makes no distinction whatever, and moreover lays down expressly that the plaintiff shall not have power at any time to sell any portion of the temple property; and, in the event of the plaintiff disrobing himself, provides that the property shall devolve upon the temple—*i.e.*, shall become *sánghika*.

“ Document B, by which the original grantee appointed Kuruwita Sobita Unnanse his spiritual successor, similarly makes no distinction between the lands now in dispute and other lands admitted to be temple property. As has been seen, Sobita Unnanse treated the land in dispute as *sangika*, and the presumption is that the original grantee, Devarakkitta Unnanse, did so too.

“ In conclusion, I find that the royal grant of Dumbaragama is *sánghika* property, gifted to the original grantee and his pupillary successor in his spiritual office as an endowment for Kiriella Vihare, and that this grant is properly of the nature which, by section 20 of the Buddhist Temporalities Ordinance, vests in the defendant trustee.

“ The plaintiff's action is accordingly dismissed with costs.

“ The matters of plaintiff's claim for damages (if this judgment is reversed in appeal) and the defendant's claim in reconvention

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have been, by consent of parties, deferred for decision hereafter, when judgment has been delivered by the Appeal Court."

Plaintiff appealed.

Wendt, Acting A.-G., with *Bawa*, for appellant, contended that the property in question must be regarded as *pudgalika*—i.e., "an offering for the exclusive personal use of an individual priest," as distinguished from what would become the common property of the whole priesthood. Only the grantee under the sannas, and his successor for the time being in the incumbency by *sisiyanu sisiya paramparawa*, would be entitled to enjoy the land granted. It was granted primarily as a reward for the personal services of the grantee, and the limitation is to his ecclesiastical heirs in the incumbency. The trustee therefore, as representing those entitled to the *sánghika* or common property of the whole priesthood, would not take this land under section 20.

Sencviratne (with *Sampayo*), for respondent, was not called upon.

BONSER, C.J.—

I think the District Judge has quite rightly construed this royal sannas as being a grant not intended for the personal benefit of the priest, although the donor's motive was gratitude to the priest for his services. The fact that the grant was limited to the priest and his pupillary successors, and that it was made on condition of their maintaining the services of the vihare, shows clearly that it was intended primarily for the benefit of the temple, and therefore comes within section 20 of the Ordinance No. 3 of 1889.

MONCREIFF, J.—I agree.
