

1937

Present : Poyser J. and Fernando A.J.

PIYARATNE UNNANSE v. SONUTHTHARA UNNANSE.

76—D. C. Kandy 45,415.

Buddhist Temporalities—Residence in pansala attached to vihare—Possession by pupils of incumbent—Prescriptive title.

Where the pupils of an incumbent resided in a pansala attached to the vihare, such possession cannot be regarded as adverse to create a prescriptive title.

THIS was an action brought by the first plaintiff as incumbent and the second plaintiff as trustee of Degaldoruwa Vihare for a declaration that the Meda Pansala situated in the premises of the Malwatta Vihare is part of the endowments of Degaldoruwa Vihare. The defendants claimed title by prescription to the pansala.

The learned District Judge held that the plaintiff's claim was prescribed.

Hayley, K.C. (with him *E. B. Wikramanayake*), for plaintiff, appellant.—This is not a claim to the right to an incumbency. It is an action for declaration of title to property belonging to the temple. One of the plaintiffs is the trustee. The pansala is a public charitable trust and as such cannot be acquired by prescription. The law of trusts existed in Ceylon before the Trusts Ordinance which merely codified it. *Per BERTRAM C.J.* (*Supramaniam v. Erampa Kurukal*¹).—Section 111 of the Trusts Ordinance is applicable to Buddhist temples as well. The dictum relied on by the trial Judge in *Ratwatte v. The Public Trustee*² is merely *obiter*.

H. V. Perera (with him *Weerasooria and Amerasinghe*), for defendants, respondents.—The Meda Pansala is a separate temple with a separate incumbent. This is an action for declaration of a right to an incumbency. As such it is prescribed. (*Terunnanse v. Terunnanse*³.)

Cur. adv. vult.

June 29, 1937. FERNANDO A.J.—

The first plaintiff-appellant is the incumbent of Degaldoruwa Vihare, and the second plaintiff is the trustee of that vihare, and they filed this action against the four defendants praying that the land and building referring to as Meda Pansala situated in the premises of the Malwatta Vihare in Kandy be declared to be a part of the endowments of the Degaldoruwa Vihare, and as such vested in the first plaintiff as incumbent, and in the second plaintiff as trustee, and that the first plaintiff be declared entitled to the possession thereof. The plaintiffs also claim damages, and that the defendants be ejected from the pansala.

At the trial it was admitted that the first plaintiff was the Adikari Bhikku or incumbent of Degaldoruwa Vihare, and the first and second issues framed were (1) Was Meda Pansala an appurtenant of Degaldoruwa Vihare? (2) Was Moratota Mahanayake Unnanse the Adikari Bhikku of the Degaldoruwa Vihare, and as such entitled to Meda Pansala. The learned District Judge held on the first and second issues in the affirmative,

¹ 23 N. L. R. 424.

³ 28 N. L. R. 477.

² 12 Law Rec. 208.

that is to say, he held that Meda Pansala was an appurtenant of Degaldoruwa Vihare, and that Moratota as incumbent of the vihare was entitled to the Meda Pansala. He held, however, on issue 6 that the plaintiff's action was prescribed in three years from the time the cause of action accrued to the plaintiffs, and that Parusella had been in possession of the Meda Pansala for a long period, according to the evidence from about 1887.

It was proved in the course of the trial that Parusella had prolonged litigation with one Pilawala Dhamadassi Unnanse, who claimed to be the successor to Parnathela Ratnapala Unnanse, with regard to the incumbency of Degaldoruwa Vihare, Parusella claiming on the strength of the deed of transfer by the previous incumbent in his favour. It was held, however, that an incumbent for the time being had no right to divert the succession from his own pupils and that the incumbency of the vihare had come to the pupillary successors, and that the deed was, therefore, of no effect. The claim made by Parusella in that action was to the possession of the vihare and of the endowments thereof. See D. C. Kandy, No. 81,630 dated March 27, 1878. In 1882 there was another action (D. C. No. 90,099), and Parusella who was the plaintiff in that action as well, still claimed to be the incumbent of Degaldoruwa Vihare and its endowments, and there too his action was dismissed with costs, and it was declared that the third defendant in the action, Amunugama Ratnapala Unnanse, was entitled to the incumbency, and it was ordered that he be quieted in the possession of the vihare and its endowments. From these facts and from the finding of the learned District Judge that Meda Pansala was an appurtenant of Degaldoruwa Vihare, it would follow that the rightful incumbent for the time being of Degaldoruwa Vihare would be entitled to the Meda Pansala, and the learned District Judge so found on issue 2.

Issue 7, however, suggests that Parusella was the Adikari Bhikku or incumbent of Meda Pansala, and it was contended by Counsel for the respondent that Meda Pansala was a separate temple within the meaning of the Buddhist Temporalities Ordinance, and that Parusella was the incumbent of the Meda Pansala. It will be noticed from deed P 1 of May 7, 1849, that Parantala Ratnapala, the grantor, described himself as residing at Malwatta Vihare, and as the incumbent of Degaldoruwa Vihare, and that he purported to grant Degaldoruwa Vihare and the lands, houses and gardens appertaining to it to four persons including Parusella. That deed is of importance, inasmuch as it refers to the Meda Pansala and calls it the pansala which belonged to the Moratota Unnanse of Malwatta Vihare, and provides that the four donees on P 1 shall improve that pansala, and that any necessary work might be done through the tenants of Degaldoruwa Vihare, showing that the Meda Pansala was regarded as an appurtenance of the vihare. But P 1 is also important as showing that the donor, although residing at Malwatta Vihare described himself as incumbent of Degaldoruwa. In P 2 and P 3, the pansala is described as belonging to Moratota, priest of Malwatta Vihare. In D 5 of 1860, Parusella describes himself as of the Meda Pansala and chief priest of Degaldoruwa Vihare, and the same description appears in D 7 of 1868. In 1873, Parusella executed lease D 8 for certain lands which he says

belonged to Degaldoruwa Vihare, and it seems obvious that he was dealing with the lands as incumbent of that vihare although he describes himself as resident in the Meda Pansala in Malwatta in Kandy.

Deeds D 9, D 10, D 11, D 12, and D 14 were all executed by Parusella, but not in one of these deeds does he describe himself as incumbent of the Meda Pansala. The witness Sri Deerananda who gave evidence for the defendant, stated that he was the Secretary of the Chapter known as the Malwatta College. His evidence is of some use, inasmuch as he defines what is a vihare. "The word, Vihare", he says, "means a monastic establishment. A vihare also has a Budu-ge. There is also a Poye-ge, and a Dagoba containing relics. Within the vihare, there is also a pansala. In the pansala lives the Adikari Bhikku and others in the pupillary succession. The pansala itself is also called a Lebun-ge, and is the place where the priests live. Malwatta Vihare comprises everything at Malwatta and is the Malwatta College. It contains 12 or 14 pansalas. Some of these pansalas are held in pupillary succession. The others are under the control of the Chapter. The Malwatta Vihare itself has a Poye-ge and a Budu-ge. There is also a Dagoba and a sacred Bo-tree." He then for the first time brought in the suggestion that Parusella was the Adikari Bhikku of Meda Pansala. In cross-examination he stated that Moratota was a famous monk, but that he did not know of what vihare he was Adikari Bhikku. He said that Rambukwelle Anunayake was incumbent of Kundasale Vihare, that he was the Anunayake of the Malwatta Chapter, and that there was a temple at Malwatta called Rambukwelle Pansala. He then added that the Kundasale Vihare should be appurtenant to the Rambukwelle Pansala at Malwatta. "Sumana is the Adikari Bhikku of Lankatileke Vihare. He has a pansala at Malwatta. The Malwatta Pansala had been used by his predecessors and a pupil of the pupillary line is in occupation. Sumana uses that pansala when he comes to Kandy." He was then asked if that pansala was an appurtenant of Lankatileke Vihare, and his answer was, "I think Lankatileke is appurtenant to the Malwatta Temple." "Some of the pansalas at Malwatta," he continued, "are held in pupillary succession, and others belong to the priesthood."

On this evidence it seems clear to me that the witness' statement that Parusella was Adikari Bhikku of Meda Pansala was clearly false, that the Meda Pansala was an appurtenant of Degaldoruwa Vihare, and that Parusella first came to live there when he was claiming to be the incumbent of Degaldoruwa on the strength of the deed P 1 in favour of himself and three others. Apparently there are pansalas in the premises of the Malwatta Vihare which are appurtenant to other vihares and the incumbent of each such vihare manages the pansala in Kandy which he occupies whenever he visits Kandy. When Moratota was made Anunayake of Malwatta Vihare, it apparently became necessary for him to stay at Kandy whenever he came there on business, and the pansala in question appears to have been given to Moratota for that purpose. He however, and his successors as incumbents of Degaldoruwa Vihare occupied it in that capacity, and in the result the learned Judge was right when he held that the Meda Pansala was an appurtenance of the Degaldoruwa Vihare.

The only other important question is that of prescription. The learned District Judge held that if the action is regarded as one for a declaration that first plaintiff is the Adikari Bhikshu of Meda Pansala that claim would be prescribed in three years, but that is not the nature of the present action. This is an action in which the plaintiffs claim that the Meda Pansala is an appurtenance to the Degaldoruwa Vihare, that the title to the pansala in dispute vests in the trustee of the vihare, and that the first plaintiff is entitled to the possession of it. The question would, therefore, arise whether it is possible for any person to acquire title to the Meda Pansala by prescription, and if so whether the defendants have in fact been in possession for such a period and under such circumstances as to enable them to acquire a title thereto by prescription. The learned Judge has not discussed the evidence of possession led for the plaintiff. The first plaintiff himself stated that when he went to Kandy he went to the Meda Pansala and had his meals there, and he also sent the tenants of Degaldoruwa to repair the Meda Pansala when necessary.

The witness Ratnajoti Unnanse corroborated the plaintiff when he said he had seen the plaintiff at the Meda Pansala during the last 40 years. He also corroborated the plaintiff's evidence when he said that he himself had a pansala at Malwatta which he visits about 15 times a month. The second defendant who gave evidence did not state anything to the contrary, and I see no reason to disbelieve the evidence of the first plaintiff when he says that on his visits to Kandy, he did reside at the Meda Pansala, and that repairs to that pansala was effected by him through the tenants of Degaldoruwa. It is true that Parusella and his pupils lived for a number of years at Meda Pansala, but Parusella's claim to the incumbency of Degaldoruwa Vihare was decided against him in 1887, and any acts of possession prior to 1887 cannot avail him or his pupils in this action. Since then the plaintiff and his predecessors in office must be taken to be entitled to the possession of the Meda Pansala. At the same time a pansala is intended for the residence of priests, and the right to reside in a pansala vests not only in the incumbent of the Vihare, but in the whole body of priests, or the Sanga, to whom the pansala is dedicated. The fact that Parusella or any of his pupils resided in the Meda Pansala at a time when the use of that particular portion of the building was not required by the incumbent of Degaldoruwa Vihare amounts to nothing more than that they lived there under his control and with his permission. I do not think the incumbent of a vihare is entitled to eject any priests from the pansala belonging to that vihare, unless of course, for some specific reason, or perhaps because he disputed the right of the incumbent. In such circumstances, possession by the pupils of Parusella cannot be regarded as adverse possession so as to enable such pupils to acquire a title by prescription.

I do not think it necessary in this case to go into the question whether a pansala as an appurtenance of a vihare is property that is capable of being acquired by prescription. On the evidence I would hold that the plaintiff and his predecessors in office have exercised the right of occupation which they had, and that the defendants and their predecessors have not acquired a title by prescription.

Issues 9, 10, and 11, also raise the question whether the defendants are entitled to compensation for improvements effected by them, and whether they are entitled to *à jus retentionis* till such compensation is paid. The record shows that it was agreed that the question *re* the value of the improvements was to be decided after the issues of fact have been decided, and the learned District Judge did not decide these issues in view of the finding that the defendants have acquired a title by prescription. I would accordingly set aside the decree of the District Court and send the case back for trial on these issues 9, 10, and 11. It will, however, be open to the parties if they so desire to raise the question whether the defendants are in law entitled to claim compensation, and any issues necessary for that purpose may also be raised at the trial. The defendants-respondents will pay to the plaintiffs-appellants their costs of this appeal, and the costs of the action in the District Court will abide the final decision of the action.

POYSER J.—I agree.

Appeal allowed.
