

1962

Present : T. S. Fernando, J., and Tambiah, J.

UDUWE WIMALA RANSI and another, Appellants, and C. J. C. MATHEW and 2 others, Respondents

S. C. 161 of 1959—D. C. Colombo, 7855/L

Buddhist ecclesiastical law—Dharmasalawa of a temple—Premises not sanghika property—Unlawful possession of it by monks—Liability of the monks to be ejected therefrom by trustees of temple.

Public Trustee Ordinance (Cap. 88)—Section 41—Custodian trustee—Vesting of title in him—Vesting order necessary.

(i) Two Buddhist monks were in unlawful possession of the *dharmasalawa* or preaching-hall of a Buddhist temple. The building was not *sanghika* property and was not the dwelling-house of the two monks, who were said to be pupils of the first incumbent of the temple.

Held, that the trustees of the temple could maintain an action to be declared entitled to the *dharmasalawa* and for the ejection of the monks from the building.

(ii) When the Public Trustee is appointed to be custodian trustee of any trust, in terms of section 41 of the Public Trustee Ordinance, he is not vested with title to the trust property until a vesting order is executed. Until then the title remains in the trustees other than the custodian trustee.

A PPEAL from a judgment of the District Court, Colombo.

E. B. Wikramanayake, Q.C., with *A. L. Jayasuriya* and *M. L. de Silva*, for the 1st and 2nd defendants-appellants.

H. W. Jayewardene, Q.C., with *Walter Wimalachandra* and *L. C. Seneviratne*, for the plaintiffs-respondents.

Cur. adv. vult.

February 21, 1962. T. S. FERNANDO, J.—

In this action filed by the plaintiffs-respondents as trustees of a Buddhist temple, the plaintiffs complaining that the 1st and 2nd defendants-appellants and three other defendants have taken unlawful possession of the *dharmasalawa* or preaching-hall of the said temple and have unlawfully assumed the control and management of the said *dharmasalawa* in violation of their (the plaintiffs') rights prayed that (i) the court do declare them entitled to the said *dharmasalawa*, (ii) the defendants be ejected therefrom, and (iii) they be awarded damages until restored to possession.

The District Court, on March 13, 1959, after a very lengthy trial, entered judgment in favour of the plaintiffs (a) declaring them entitled to the management and control of the building called *dharmasalawa* standing on the land described in Schedule B to the amended plaint, and marked "A" in plan P1 annexed thereto, subject to the trusts and conditions contained in deed No. 3631 of April 4, 1919, (b) granting

them an injunction restraining the defendants from acting in violation of the plaintiffs' rights of control and management of the said building, (c) directing the defendants to restore the plaintiffs to the possession of the said building and (d) for ejectment of the 3rd, 4th and 5th defendants from the said building.

The 3rd, 4th and 5th defendants preferred no appeal against the judgment of the District Court. The only appeal preferred to this Court was that of the 1st and 2nd defendants who are Buddhist monks, said to be pupils of the first incumbent of the temple referred to above. Learned counsel who appeared for the appellants felt himself unable to press the appeal seriously, having regard (a) to the evidence, both oral and documentary, led at the trial and (b) to the findings of the learned trial judge. The appeal of the 1st and 2nd defendants must be dismissed with costs, and we accordingly so order.

There remains for consideration certain cross-objections to the decree taken by the plaintiffs-respondents. Shortly put, they relate to the refusal of the learned District Judge (1) to order the ejectment also of the 1st and 2nd defendants from the building in question and (2) to grant a declaration that the plaintiffs-respondents are entitled to the said building as prayed for in the amended plaint and not merely to its management and control as decreed by the learned District Judge. Having regard to the finding of the trial judge that the premises in question had not at any time become *sanghika* property, a finding which we hold is correct, the question of misconduct in the sense of contumacious conduct on the part of the 1st and 2nd defendants is in our opinion irrelevant. Nor is it relevant to consider whether the 1st and 2nd defendants as Buddhist monks have a right of residence in the temple, because the question that arose in the case was whether they were liable to be ejected not from the dwelling-house of the monks but from the *dharmasalawa* or the preaching-hall. There was ample evidence before the trial judge that these two defendants together with the other three defendants who are laymen had prevented the lawful trustees from utilising the *dharmasalawa* for the lawful purposes to which it had to be put by the trustees. So long as the 1st and 2nd defendants are preventing the trustees from lawful management and control of the building they become liable to ejectment from that building, and the circumstance that they are Buddhist monks is, in my opinion, irrelevant to an answering of issue 24. That issue has to be answered in favour of the plaintiffs rendering all the defendants liable to be ejected from the building in question.

The other question as to the right of the plaintiffs to obtain a declaration of title in their favour depends upon the interpretation to be placed on section 41 of the Public Trustee Ordinance (Cap. 88). By Indenture No. 4357 of 21st October 1932 (Document 1D6) the Public Trustee was in terms of section 41 (1) of the said Ordinance appointed the custodian trustee of the trust under which the plaintiffs themselves claim the declaration of title in the present case. The plaintiffs however claim that no vesting order as contemplated in section 41 (2) of the said

Ordinance has in fact been made vesting title in the Public Trustee, and Mr. Jayewardene, on their behalf, submitted that the title to the property is still in them. Mr. Wikramanayake submitted that indenture No. 4357 operates as a transfer of title to the Public Trustee rendering the execution of a vesting order unnecessary. The indenture itself purports to appoint the Public Trustee as the custodian trustee of the property in question "to the end and intent that the said property may be vested in and held by the Public Trustee as such custodian trustee under and subject to the conditions, restrictions and stipulations laid down in the said deed No. 3631." We find ourselves unable to agree with the learned District Judge that indenture 1D6 is sufficient to vest title to this property in the Public Trustee without the execution of a vesting order. In the result the plaintiffs are still vested with title to the property enabling them to be declared entitled to the property and not merely to its management and control.

While dismissing the appeal with costs, we therefore direct that the decree be amended declaring the plaintiffs entitled to the building called dharmasalawa standing on the land in Schedule B to the amended plaint and marked "A" in plan P1 annexed thereto subject to the trusts and conditions contained in deed No. 3631 of April 4, 1919 and declaring also that all the defendants be ejected from the said building.

TAMBIAH, J.—I agree.

Appeal dismissed.
Decree amended.

