

1966

Present : G. P. A. Silva, J., and Alles, J.

E. A. MUDIYANSE (Kapurala and *de facto* Trustee of Eragoda Paththini Devale), Appellant, and **T. M. DINGIRI BANDA** and another, Respondents

S. C. 192/1965—D. C. Kandy, 2783/L.

Buddhist ecclesiastical law—Devale—De facto trustee thereof—Action instituted by him for declaration of title to land belonging to the devale—Maintainability—Buddhist Temporalities Ordinance, ss. 2, 3, 4 (1) (2), 8, 10.

Where a devale is exempted from the operation of section 4 (1) of the Buddhist Temporalities Ordinance, a *de facto* trustee of the devale who has not received an appointment as such from the Public Trustee can maintain an action for a declaration of title to any land said to belong to the devale.

APPEAL from a judgment of the District Court, Kandy.

T. B. Dissanayake, with *S. Moonesinghe*, for the Plaintiff-Appellant.

V. Jonklaas, Q.C., with *G. Candappa*, for the Defendants-Respondents.

Cur. adv. vult.

November 22, 1966. G. P. A. SILVA, J.—

The plaintiff-appellant, calling himself a hereditary Kapurala and the *de facto* trustee of the Eragoda Paththini Devale, brought this action in his capacity as such trustee for a declaration of title and for ejection of the defendant-respondent from a portion of land said to belong to the devale alleging that the latter and her husband had entered into this land as a lessee of the former and was wrongfully disputing his title. Several issues were framed at the trial but the parties agreed that the issue whether the plaintiff had any right or title to maintain the action should be first decided as it would go to the root of the cases. The learned District Judge accordingly tried this as a preliminary issue and held that the plaintiff was not entitled to maintain the action. The plaintiff appeals from this order. The only question that this court is called upon to decide therefore is whether a *de facto* trustee of the devale who has not received an appointment as such from the Public Trustee can maintain an action for a declaration of title to any land said to belong to the devale. The question turns on an interpretation of the relevant sections of the Buddhist Temporalities Ordinance.

According to the definition in section 2 of the Buddhist Temporalities Ordinance, which I shall refer to hereafter as "The Ordinance", a temple means, *inter alia*, a vihare or a devale. Section 3 makes the provisions of the Ordinance applicable to every temple in Ceylon unless, by an Order made by the Minister, such a temple is exempted from the operation of all or any of its provisions. Counsel appearing on both sides before this court were agreed that the devale which, according to the definition, is a temple, has been exempted from the operation of section 4 (1) of the Ordinance. The question has therefore to be considered on that basis.

As there was considerable argument in regard to sections 4 and 8 of the Ordinance it is necessary to consider the bearing of these two sections on the present question. Section 4 (1) deals with the management of the property belonging to every temple not exempted from the operation

of this subsection and vests such management in a person or persons duly appointed trustee under the provisions of the Ordinance, which provisions would appear to be contained in section 8. As the temple in this case is one which is exempted from the operation of this subsection the provision as to vesting of the management has no application. Section 4 (2) deals with the management of property belonging to every temple exempted from the operation of section 4 (1) but not exempted from the operation of the entire Ordinance and vests such management in the viharadhipati of such temple. It would thus appear from a reading of sections 3 and 4 together that the Ordinance contemplates three classes of temples, namely, those that fall within the operation of the Ordinance, those that are exempted from the operation of section 4 (1) and those that are exempted from the operation of all the provisions of the Ordinance. So far as it is necessary for the present purpose, in the case of temples not exempted from the operation of Section 4 (1), the management would be vested in a person or persons appointed trustee in terms of the provisions of section 10, where such temple is a vihare, and in terms of section 8 when it is a devale. In the case of temples exempted from the operation of section 4 (1), although the provision regarding their management is contained in section 4 (2), a certain difficulty is created by the wording of the provision which lays down that the management shall vest in the viharadhipati. A viharadhipati can be present only if a temple is a vihare and not a devale. For this reason, although section 4 (2) deals with the management of property belonging to a temple which can mean both a vihare and a devale, the vesting of the management in a viharadhipati, by necessary implication, restricts the operation of this subsection to vihares only and excludes devales from its purview. The Ordinance is therefore silent as regards the vesting of the management of devale property when such devale is exempted from the operation of section 4 (1) and it will not be permissible to invoke the provisions of section 8 for the appointment of a trustee to the devale in those circumstances. When, therefore, section 8 provides that the trustee for every other devale shall be a person appointed by the Public Trustee, the words "every other devale" must be interpreted as being applicable only to those devales that are not exempted from the operation of the Ordinance. A similar question arose for consideration in the case of *Peter Singho v. Appuhamy*¹ in which Wijeyewardene J. expressed the view that a devale which has not been brought under the operation of section 4 (1) of the Buddhist Temporalities Ordinance, falls outside the provisions of the Ordinance. This is a judgment which commends itself to me as one that should be followed. In order to accept Mr. Jonklaas' submission that the provisions of section 8 are wide enough to cover every devale, it is necessary to proceed on the basis that, while the Ordinance itself excludes certain devales—which would be included in the definition of 'temple'—from the operation of the Ordinance, section 8 at the same time governs such devales as well. Such an interpretation would suffer from inconsistency and must therefore fail.

Counsel for the appellant has cited, apart from the case already referred to, a number of older cases in support of his submission that a *de facto* trustee of a devale can maintain an action for declaration of title to land belonging to the devale. In the case of *Sidhartha Unnanse v. Udayara*¹ it was held by de Sampayo J. that a *de facto* trustee of a dagoba who had proved his actual possession for many years and was ousted was entitled to maintain a possessory action. In the course of his judgment Sampayo J. referred to the Privy Council decision in the case of *Abdul Azeez v. Abdul Rahiman*², which confirmed the principle that a person in possession of a land, even though it does not belong to him by any investive fact, has a right to bring a possessory action. The Privy Council in turn cited with approval the following pronouncement of Bonser C.J. in the case of *Changarapilla v. Chelliah*³: "It seems to me that if the plaintiff, who is called the manager of the temple, has the control of the fabric of the temple and of the property belonging to it, he has such possession as would entitle him to maintain an action, even though he makes no pretence of claiming the beneficial interest of the temple or its property, but is only a trustee for the congregation who worship there."

While the last two cases cited above dealt with the trusteeship of a mosque and a Hindu Temple respectively it is possible to extract a principle from these three cases, namely, that a person who functions as a trustee of a religious institution such as a devale, temple or mosque, may be treated as a *de facto* trustee for the purpose of instituting proceedings for the protection of any property belonging to such religious institution even though he may not have a legally recognised title thereto. Counsel for the respondent advanced the argument that all these cases were decided prior to the Buddhist Temporalities Ordinance of 1931 and have therefore no application to the instant case. He relied of course for this argument on his earlier submission that section 8 of the Ordinance covered every devale. In view of the opinion I have already expressed in regard to the inapplicability of section 8 to devales exempted from the provisions of the Ordinance, the argument of counsel cannot prevail.

For the above reasons I hold that the plaintiff in this case is entitled to maintain this action, assuming that he is able to establish on the evidence that he is a *de facto* trustee of the devale. I accordingly allow the appeal, set aside the order of the District Judge and send the case back for trial in due course. The appellant is entitled to his costs in this court and in the court below.

ALLES, J.—I agree.

Appeal allowed.

¹ (1919) 6 C. W. R. 29.

² (1911) 14 N. L. R. 317.

³ (1905) 2 Bal. 49.