

SANGHARATANA UNNANSE v. WEERASEKERA.

D. C., Galle, 5,599.

1903.

June 9 and 10

*Buddhist vihare—Incumbency—Rule of succession—Temple property in Kandyan Province and Southern Province—Evidence.*

The terms of the original dedication of a Buddhist vihare must govern the method of succession as to its incumbency.

In the absence of definite terms attached to the dedication, *sisya-paramparawa* must be presumed to be the rule of succession, in not only the Kandyan Provinces, but also the Maritime Provinces.

Proof of any exception to this rule lies on the party who alleges it.

**I**T appeared in this case that one Dharmarama Terunnanse, the incumbent of the Ahangama Vihare, was succeeded by his eldest pupil Wimalasara Terunnanse, who died in 1896. Wimalasara's only pupil was the plaintiff, who, at the time of his teacher's death, was a minor. Being now of full age, he came into Court complaining of possession being withheld from him by the defendants, and prayed that he be declared entitled to the vihare and its adjuncts.

The defendants, admitting that Dharmarama Terunnanse was the incumbent of the vihare, pleaded that he was succeeded by Wimalasara Terunnanse, and the third defendant (Ratnapala Terunnanse) by election at a duly convened assembly of the priests belonging to the Amarapura Dharmayuktika Nikaya, and that the rule of pupillary succession was never recognized by the priests of that Nikaya, to which Dharmarama Terunnanse belonged.

1903.  
June 9  
and 10.

The District Judge (Mr. F. J. de Livera), after hearing evidence, found as follows:—

“ I consider it proved that this vihare was held by pupillary succession, and that on the death of Dharmarama, Wimalasara, as senior pupil, succeeded to the incumbency, and that plaintiff was the only pupil of Wimalasara.

“ ‘ If a Buddhist priest be the incumbent of a vihare held by the pupillary succession, the incumbency on his death passes by law to the priest or priests who are next in the line of succession.’ So observed Lawrie, A.C.J., in D. C., Kalutara, 205, reported in 3 N. L. R. 383. I therefore hold plaintiff is now the lawful incumbent of the vihare.

“ My verdict on the issues is:—

“ (1) Wimalasara succeeded Dharmarama. Wimalasara and third defendant were not appointed joint incumbents on the death of Dharmarama. There is nothing in writing to show who succeeded Dharmarama upon the oral evidence adduced. I hold that Wimalasara alone succeeded Dharmarama.

“ (2) Plaintiff was the only pupil of Wimalasara.

“ (3) Sumangala was in charge of the incumbency for plaintiff since the date of Wimalasara's death.

“ (4) First defendant is a legally constituted trustee of this vihare under Ordinance No. 3 of 1889. His appointment has been produced (dated 4th September, 1897).

“ (5) Defendants kept plaintiff out of possession.

“ (6) Second defendant was appointed joint incumbent with third defendant of this vihare at an assembly of priests convened at Dodanduwa some time after Wimalasara's death, but that appointment is of no force in law.

“ It would seem shortly before Wimalasara's death there was a split resulting in the formation of two parties, one party supporting Sumangala, who was also a pupil of Dharmarama, and the other party supporting third defendant. When Wimalasara died an attempt was made to elect a successor to Wimalasara at Ahangama, and this was frustrated by Sumangala. An assembly was then convened by the party opposed to Sumangala at Dodanduwa, and second defendant was appointed joint incumbent with third defendant in place of Wimalasara.

“ (7) The Provincial Committee did not dismiss the second and third defendants, and uphold the plaintiff's right to the incumbency. (See document W for the judgment of the Provincial Committee.) The Committee held the chief power was in Sumangala, and ordered second defendant to quit, and third defendant to remain, but be obedient to Sumangala.

“ Document Z is a translation of the rules that were in operation when the Provincial Committee met in July, 1898. The rules in operation then were those published in the *Gazette* dated 7th October, 1892. I find no authority given by any of these rules to the Provincial Committee to decide who the lawful incumbent of a vihare may be. 1903.  
June 9 & 10.

“ Let a decree be entered declaring plaintiff entitled to the incumbency of the Ahangama Vihare, and that defendants do pay plaintiff costs. ”

The defendants appealed. The case was argued on the 9th June, 1903.

*Peiris*, for appellants.

*Dornhorst*, K.C. (with *Samarawikrama*), for respondent.

*Cur. adv. vult.*

10th June, 1903. LAYARD, C.J.—

The main question argued in this appeal is whether the vihare in question was held by pupillary succession.

In the case *Ratnapala Unnanse v. Kewitiagala Unnanse* (2 S. C. C. 26), Sir John Phear laid down the following rule with regard to the law of succession to Buddhist temple property, viz., that in the absence of any other definite rule of succession the *Sisya-paramparawa* must be presumed to be the rule applicable to the succession to a Buddhist temple. I think it would be dangerous to depart from that rule, which appears to have governed the judgments of this Court from the year 1897 to the present time. The appellant's counsel has tried to persuade us that another rule of succession is applicable to temple properties situated in the Southern Province. I can find no authority to that effect, and none has been cited to us. The simple question for us to determine on this appeal is whether any definite rule of succession other than the *Sisya-paramparawa* has been established in respect to the succession of this vihare. There is absolutely no evidence to establish the terms of the original dedication of this vihare that primarily impose the rule which is to govern the case. Of course in the absence of such direct evidence we are at liberty to see if any usage has been established, and if such usage has been clearly proved it may be accepted as evidence of the terms of the original dedication.

The suggestion is made in this case that the succession was governed by election. The evidence on this subject is vague and indefinite. The witnesses are not agreed as to who the electors are, and there is no material before us to show how or by whom a meeting to carry out an election has to be convened,

1903. and where it is to be held. It is suggested that the temple was  
*June 9 and 10.* founded and dedicated by one Dharmarama in modern times; and  
 LAYARD C.J. if that is the case, there ought to be no difficulty in ascertaining  
 the actual terms of dedication, if there were any definite terms  
 attached to such dedication. On the other hand, it is not clear  
 that the temple was so founded in modern times, and the evidence  
 of usage is very meagre and scanty, and the evidence that has  
 been called to prove such usage does not clearly established that  
 there were any definite rules either written or unwritten in  
 existence.

There was some attempt to prove that according to the rules of  
 the Amarapura sect and some "Buddhist works" the rule of  
 succession is governed by other principles than those laid down  
 by Sir John Phear. I would merely point out that those principles  
 enunciated by Sir John Phear in 1879 were not new ones, but  
 based on the authorities cited by him, which date back to the  
 years 1827 and 1832, and it is too late now to depart from the  
 principles which governed the judgments of this Court for so long  
 a period without demur. With reference to the Buddhist works  
 referred to in the evidence of some of the witnesses, there is no  
 mention of the particular books to which they refer, and  
 secondary evidence of the contents of those books was clearly  
 inadmissible.

In 1882, in the case of *Weligama Dhammajoti Unnanse v. Sarananda Unnanse*, reported in 5. S. C. C. 8, Justices Clarence and Dias followed, with regard to temple property situated at Matara, the rule of Phear, C.J., in the judgment above quoted: thus clearly showing that those Judges thought that no distinction should be drawn between temple property in the Southern Province and in the Kandyan Provinces. Under these circumstances I am not prepared to interfere with the judgment of the District Judge, and to hold that he was wrong in deciding that there was no definite rule of succession to take the case out of the general presumption, and that the *Sisyanusisya-paramparawa* was consequently the rule of succession applicable to the vihare in question. I would affirm the judgment of the District Judge and dismiss the defendants' appeal with costs.

WENDT, J.—

I am of the same opinion. So far as I am aware, this is the first case in which it has been suggested that a different rule of succession applies to Buddhist temples situated in the Maritime Provinces from that which governs temples in the Kandyan Provinces. The latter recognize the authority of the

colleges of Malwatta and Asgiriya, while the former, it is said, owe them no allegiance. But it has not been shown that this contention is sound, and the only case which has been cited to us as touching the point, viz., that reported in *5 S. C. C. 8*, was a case where the previous decisions of this Court relating to temples in the Kandyan Provinces were held to apply to and were made to regulate the succession to a temple in the Matara District. If those long-established principles be applied to the present case as well, the burden lies on the defendant to show that succession to the incumbency of this temple did not go in the pupillary line, but depended upon election or appointment by some electoral body, which the evidence has in but a very meagre manner indicated. Not only is the electoral body unascertained, but the mode in which it is to be summoned, and the rules which are to govern its action, have not been proved, and it would therefore be impossible for this Court, upon the materials now before it, to declare how the next vacancy in the incumbency of this temple is to be filled. Proof of any exception failing, the general rule must prevail, and that is in favour of the plaintiff, the sole pupil of the last incumbent, succeeding his tutor.

1903.

June 9 &amp; 10.

WENDT, J.