

1946

Present : Jayetilleke and Canekeratne JJ.

JINARATHANA THERO, Appellant, and SOMARATNE THERO,
Respondent.

86—D. C. Kegalla 2,711.

Buddhist law—Incumbency of vihare—Succession—Sisiyanu Sisya Paramparawe—Appointment of junior pupil as incumbent's successor—Sufficiency of deed executed by incumbent transferring the temple property to the pupil and indicating that latter should be successor.

Where the incumbent of a Buddhist temple which was held under the *Sisiyanu Sisya Paramparawe* tenure executed a deed purporting to donate the property belonging to the temple to the first defendant, one of his junior pupils, and giving him the right to convey the said lands on a similar instrument to any one of his pupils to succeed him as Vihare Adipathy and providing that, after the death of the first defendant, the said lands should devolve on his pupils in pupillary succession—

Held, that the deed was intended by the donor to appoint the first defendant as his successor to the incumbency.

A PPEAL from a judgment of the District Judge of Kegalla.

N. E. Weerasooria, K.C. (with him *N. Nadarajah, K.C.*, and *C. R. Guneratne*), for the plaintiff, appellant.

H. V. Perera, K.C. (with him *L. A. Rajapakse, K.C.*, and *E. A. P. Wijeratne*), for the first defendant, respondent.

Cur adv. vult.

April 16, 1946. JAYETILEKE J.—

This is an action brought by the plaintiff for a declaration that he is entitled to the incumbency of the Hunugampola Vihare and for an order that the defendants may be ejected from the vihare. The plaintiff says that he is the rightful incumbent by right of succession as the senior pupil of the last incumbent Guneratne Thero according to the law of succession called *Sisiyanu Sisya Paramparawe*. The first defendant, who is also a pupil of Guneratne Thero, claims to be the incumbent by right of appointment by his tutor. Guneratne Thero was ill for a period of about three months and he died on August 25, 1942. He had four pupils: the plaintiff, the second defendant, Seelaratne Thero, and the first defendant. The plaintiff as the senior pupil would be entitled to the incumbency if Guneratne Thero died without appointing a successor. The District Judge held that Guneratne Thero appointed the first defendant as his successor both orally and by a notarially attested document bearing No. 20708 dated June 30, 1942 (D1). It is unnecessary for us to go into the claim of the first defendant based on the oral appointment by Guneratne Thero because it was not insisted on at the argument before us. D1 purports to be a gift of the temporalities to the first defendant, but the evidence shows that one of the lands donated was the personal property of the donor. The plaintiff admitted that the vihare, preaching hall, the school and the sacred Bo-tree stand on the lands dealt with by

D1. In D1 Guneratne Thero is described as the Vihare Adipathy of Hunugampola Temple, and the properties gifted are described as those that came to him from his tutor Sumana Thero by pupillary succession.

D1 provides *inter alia* as follows :—

(1) That the second defendant shall have the right to live at Hunugampola Vihare during his life time and to be maintained out of the income of the lands donated to the 1st defendant.

(2) That the first defendant should attend on Guneratne Thero and look after him during his life time, cremate his body after his death and perform the necessary religious rites ceremonies and charities for the repose of his soul.

(3) That the first defendant shall subject to the aforesaid conditions possess the lands and improve them and he shall have the right to give the said lands on a similar instrument to any one of his pupils to succeed him as Vihare Adipathy (Chief Incumbent) if he so desires.

(4) After the death of the first defendant, the said lands shall devolve on his pupils in pupillary succession.

Mr. Nadarajah contended that by D1 Gunaratne Thero has not appointed the first defendant his successor.

In *Saranankara Unnanse v. Indejoti*¹ a deed similar to D1 was relied on by one of the claimants to the incumbency and in the course of his judgment De Sampayo J. said :

“ The case thus turns upon the rights of the third and fourth plaintiffs and with regard to them, the questions for determination are (1) whether they are the pupils of Sri Sumana Unnanse, and (2) whether Sri Sumana Unnanse, to whom Ratnapala Unnanse gave a deed of gift, was a pupil of the latter. These deeds take the form of a transfer of the property belonging to the temple and not of nomination of the grantor's pupil or pupils as his successor or successors. But no dispute has been raised on that score. Such deeds are not uncommon, as witness the deed of gift put forward by the defendant themselves. In most cases the defect is due to want of appreciation of the nature of the transaction or of professional skill on the part of the notary and I think that the deeds pleaded by the plaintiffs may be taken as being intended to gift the right of succession ”.

De Sampayo J. was a Judge of great experience and eminence and though these observations are *obiter* they are entitled to great weight.

In an unnamed case from the District Court, Kurunegala² and in *Sumangala Unnanse v. Sobita Unnanse*³, the right of an incumbent to appoint his successor by transferring the temple and lands to him has been recognised. It is, however, unnecessary for us to go into this question because the language of D1 seems to us to indicate that Guneratne Thero meant to appoint the first defendant as his successor.

To interpret a deed, the expressed intention of the parties must be discovered.

¹ (1918) 20 N. L. R. 385. ² (1866) *Vanderstraaten's Reports Appendix F.*
³ (1883) 5 S. C. C. 235.

In *Moneypenny vs. Moneypenny*¹ Lord Wensleydale said :

“ The question is not what the parties intended to do by entering into the deed, but what is the meaning of the words used in the deed : a most important distinction in all cases of construction and the disregard of which often leads to erroneous conclusions ”.

In *Olayton v. Glengall*² Lord Denman C.J. said :

“ It is quite true I am not to conjecture or guess what might have been the intention of the parties but I am to consider the whole instrument if there is a plain intention to give interest, then, though there should be no express words to that effect, and this is the case of a deed yet I am bound to give that construction ”.

In D1 there is a reference to the successor of the first defendant as the chief incumbent and a provision that the lands gifted shall devolve on the pupils of the first defendant in pupillary succession unless the first defendant gifts them to one of his pupils. I am unable to comprehend how the successor of the first defendant can become the chief incumbent unless the first defendant himself is the chief incumbent. In my view the words made use of by Guneratne Thero in D1 contain a plain intention to appoint the first defendant as his successor to the incumbency.

The learned District Judge has, in my opinion, come to a correct conclusion in this case. The appeal is accordingly dismissed with costs.

CANEKRATNE J.—I agree.

Appeal dismissed.
