1962 *Present :* **H. N. G. Fernando, J., and T. S. Fernando, J.**

OKANDEYAYE WANGEESA THERA, Appellant, *and*
MULGIRIGALA SUNANDA THERA, Respondent

S. C. 520 of 1959—D. C. Tangalle, 631/L

Buddhist ecclesiastical law—Ancient temple—Succession to incumbency thereof—Absence of evidence of terms of original dedication—Mode of succession then—Applicability of sisyanu sisya paramparawa *rule.*

In a dispute between the appellant and the respondent as to which of them was entitled to be incumbent or *viharadhipati* of the ancient Buddhist temple Mulgirigala Raja Maha Vihare there was no evidence, in view of the lapse of time and the absence of records, of the terms by which the succession to the incumbency was regulated by the original dedication.

Held, that, in the circumstances, it was necessary to fall back upon such evidence as was available relating to the mode of succession upon and after the death of the first incumbent. In the present case it was indisputably established by the evidence that the rule of *sisyanu sisya paramparawa* did not apply to the temple and that the traditional and customary mode of appointment was for the Maha Sangha Sabha to make the appointment from among the Mulgirigala *paramparawa*, a suitable monk being elected irrespective of whether he was a pupil of the last incumbent.

APPEAL from a judgment of the District Court, Tangalle.

H. W. Jayawardene, Q.C., with *A. F. Wijemanne, C. P. Fernando* and *L. C. Seneviratne*, for the defendant-appellant.

A. C. Gooneratne, with *N. S. A. Goonetilleke*, for the plaintiff-respondent.

Cur. adv. vult.

September 14, 1962. T. S. FERNANDO, J.—

This appeal arises out of a lengthy contest in the District Court of Tangalle over the incumbency of an ancient and venerated Buddhist temple in the Southern Province, Mulgirigala Raja Maha Vihare, which is said to have first come into existence not long after the introduction of Buddhism into this country in the third century B.C. This temple appears to have lost, probably as a result of invasions of this country by foreign Powers, its importance as a centre of religious activity until about the year 1778 A.D. when something in the nature of a Restoration was brought about by the efforts of a monk of the name of Wataraggoda Dhammapala. This monk appears to have taken the initiative in establishing a sect of monks now known as *Siam Nikaya* and re-introducing the *Upasampada* or higher ordination of monks. Dhammapala Thera himself then became the first incumbent of this temple after the Restoration.

It is now settled law that succession to an incumbency is regulated by the terms of the original dedication—see *Gunananda Unnanse v. Dewarakkita Unnanse*[1]. In view of the lapse of time and the absence of records since the original dedication of this temple there is no evidence of these terms, and one is compelled to fall back upon such evidence as is available in regard to the mode of succession upon and after the death of Dhammapala Thera who will hereinafter for the purpose of this judgment be referred to as the first incumbent.

After the death of this first incumbent there appear to have been some thirteen incumbents, and it is common ground that the last of such incumbents was Moderawane Somananda Thera who died on 26th March 1957. The contest in the case under appeal arose as a result of the dispute between the appellant and the respondent as to who was entitled to be incumbent or *viharadhipati* upon the death of Somananda Thera.

It will be useful if I set down some of the events, as found by the learned District Judge to have taken place, after the death of Somananda Thera in connection with the vacant incumbency.

The body of Somananda Thera was cremated a few days after his death and, in accordance with custom, the ashes were enshrined on April 10, 1957. The plaintiff issued a notice dated April 2, 1957 (P1) which stated that a mass meeting for the appointment of an incumbent will be held at 2 p.m. on April 10, 1957 at the Mulgirigala Raja Maha Vihare. A meeting of monks and of *dayakayas* was accordingly held on April 10, 1957 at the temple, the assembly of monks being presided over by the Sangha Nayaka of the Matara and Hambantota Districts and that of dayakayas being presided over by Mr. George Rajapakse, Advocate. After one or two monks had addressed the combined gathering, the defendant informed the gathering that the last incumbent, Somananda Thera, had executed a deed (D3) on July 19, 1955 appointing

[1] *(1924) 26 N. L. R. at 274.*

him to succeed the last incumbent " in the office of controlling *viharadhipati* and chief incumbent of Mulgirigala Raja Maha Vihare ". A proposal was moved that the deed be accepted and after several had spoken for and against the proposal, a vote was taken among the monks and 37 monks voted for and 12 against acceptance. Among the 37 who voted for the acceptance of the deed was the plaintiff himself. Following this vote, a letter of appointment D11 was issued by the Sangha Nayaka who presided at the meeting on April 10, 1957 purporting to " bestow " on the defendant the incumbency of this temple. Thereafter an announcement appeared in the Sinhalese newspaper Dinamina on April 27, 1957 that the defendant had been appointed *viharadhipati* of this temple consequent upon the death of Somananda Thera. It would also appear that after April 10, 1957 the defendant began to perform the functions of *viharadhipati* at this temple.

The next event of any significance in connection with the incumbency was the sending out of a notice dated June 18, 1957 by one Beligalle Dharmalankara Thera who had opposed the acceptance of deed D3 at the meeting held on April 10, 1957, himself not a resident bhikku of Mulgirigala Raja Maha Vihare, stating that as " the resident bhikkus of Mulgirigala have informed him that no suitable bhikku has yet been appointed in the proper manner to fill the vacancy created by the death of Somananda Thera " a meeting will be held at the Ihala Beligalle Sudarsanaramaya on June 24, 1957 for the selection of a suitable bhikku. It would appear that a meeting was held at the said temple on the day stated and the monks there assembled purported to appoint the plaintiff as *viharadhipati* of Mulgirigala Raja Maha Vihare. Relying on this appointment, the plaintiff shortly thereafter took possession of one of the *vihares* (Patha-malu-vihare) of the Mulgirigala Raja Maha Vihare and of a strip of land also belonging to the Raja Maha Vihare containing some 75 coconut trees. The defendant was not prepared to recognise the purported appointment of the plaintiff made on June 24, 1957, and the plaintiff thereupon instituted the present suit in the District Court claiming (*a*) a declaration that he is the duly appointed *viharadhipati* of Mulgirigala Raja Maha Vihare and is entitled to function as such and (*b*) damages from the defendant till such a declaration is granted.

The defendant by his answer denied the validity of the purported appointment of the plaintiff made on June 24, 1957, and claimed that he (the defendant) was by deed D3 of July 19, 1955, appointed by the previous incumbent to the office of *viharadhipati*, which appointment was accepted and confirmed by the Maha Sangha Sabha at the meeting held on April 10, 1957, and ratified by the Sangha Nayaka of the district. He claimed to have officiated as *viharadhipati* since April 10, 1957, and prayed for ejectment of the plaintiff from that portion of the temple known as Patha-malu-vihare and the strip of land containing the 75 coconut trees and for damages.

After a very lengthy trial upon a number of issues raised by counsel for the respective contenders for the incumbency, the learned District Judge, upon an exhaustive survey and a very careful examination of the evidence led before him, reached the conclusion that the meeting held at Beligalle Vihare on June 24, 1957 was neither properly convened nor constituted and that the plaintiff was not duly elected by the Maha Sangha Sabha at the said meeting as *viharadhipati* of Mulgirigala Raja Vihare. The claim made by the plaintiff was accordingly dismissed. No appeal has been preferred to this Court against the judgment and decree of the District Court in so far as it affects the plaintiff, and it therefore becomes unnecessary for us to consider here the nature or validity of the plaintiff's claim.

The learned trial judge has also held that neither deed D3 nor the vote of the Sangha Sabha taken on April 10, 1957 accepting D3 operates to confer the incumbency lawfully upon the defendant, and he has acordingly refused to order ejectment of the plaintiff as prayed for by the defendant. The appeal before us is designed to canvass the findings of the trial judge in so far as they affect the position of the defendant.

The main dispute at the trial was whether the mode of appointment of *viharadhipati* was election by the Maha Sangha Sabha from among members of the Mulgirigala *paramparawa* as claimed by the plaintiff or whether it was nomination by the last *viharadhipati* from among his pupillary successors and due acceptance and confirmation thereafter. On this main dispute the trial judge has definitely held against the defendant. Mr. Jayewardene for the defendant contended that where the rule of succession as laid down at the time of the original dedication of the temple is lost in the dim past there arises a presumption that the *sisyanu sisya paramparawa* rule operates. He attempted to show that what has been followed in respect of this temple since the death of the first incumbent Dhammapala nearly two hundred years ago was the *sisyanu sisya paramparawa* rule as then known and understood. In view of the known deviations from this rule as understood since 1924 (the date of the judgment in the case of *Gunananda Unnanse v. Dewarakkita Unnanse* (*supra*)) in the case of many an incumbent who was obviously not a pupil of the last incumbent before him, Mr. Jayewardene sought a way of escape by suggesting that before 1924 it was accepted that a co-pupil of an incumbent had a preferent right over a pupil to succeed to a vacancy in the incumbency of a Buddhist temple. It is apparent, however, upon a reading of all three judgments in *Gunananda Unnanse v. Dewarakkita Unnanse* (*supra*) that the decision in *Siriniwase v. Sarananda*[1] delivered only three years before these judgments was in conflict with a series of earlier decisions which had up to that time been treated as authoritative. It is therefore not possible to accede to Mr. Jayewardene's argument that the deviations from the *sisyanu sisya paramparawa* rule apparent in the

[1] *(1921) 22 N. L. R. at 318.*

appointments to the incumbency of this particular temple can be explained upon the footing that they were made following upon the pupillary succession rule as then understood.

In a carefully reasoned judgment, the learned trial judge has stated that it has been indisputably established by the evidence that the rule of *sisyanu sisya paramparawa* does not apply in the case of this temple and that the traditional and customary mode of appointment was for the Maha Sangha Sabha to make the appointment from among the Mulgirigala *paramparawa*, a suitable monk being elected irrespective of whether he was a pupil of the last incumbent.

Moreover, in regard to the deed of appointment D3 relied on by the defendant, the learned trial judge has found on the evidence that the prior consent of the resident monks of the Raja Maha Vihare was not obtained for its execution by the last incumbent. This is a failure to comply with the requirement of the very Code of Rules of 1928 for the administration of Mulgirigala Raja Maha Vihare (D1) which the defendant relied on as authorising his nomination for the incumbency. The only instance of a nomination by the previous incumbent is that of the defendant himself. Nor can we lose sight of the force of the observation of the learned trial judge that the injunction in the Code of Rules of 1878 (D10) for the nomination by the previous incumbent of a successor from among his pupils appears to have been totally ignored in the case of the very first and indeed of every subsequent appointment including Somananda Thera's after that Code was introduced.

Although the trial judge held that a vote was indeed taken among the Sangha on April 10, 1957, he went on to hold that that vote went no further than to declare the opinion of the Sangha that the principle embodied in D3 was valid and that it was not regarded by those voting on that occasion as conclusive. He concluded that neither deed D3 nor the vote taken accepting D 3 was sufficient to constitute the defendant the duly appointed *viharadhipati*. We were pressed for a reversal of this finding of the trial judge, but feel compelled to say that nothing we have heard in argument on behalf of the defendant is cogent enough for us to set aside this finding. If is sufficient to add that upon the whole of the evidence relating to the purported appointment or election of the defendant as *viharadhipati* it is not possible for us to say that the findings reached in the District Court are wrong.

There remains only to consider the question of the ejectment of the plaintiff whose purported appointment as *viharadhipati* on June 24, 1957 has been declared to be without authority. He is, of course, a monk who was resident at Mulgirigala Raja Maha Vihara at all times material to the case. The right to residence as such is not questioned even at this present stage, the challenge being limited to the claim of the plaintiff to the exclusive possession of the Pahata-malu-vihare and of the strip of coconut land. The learned District Judge has held that the fact that the plaintiff voted for the acceptance of deed D3 does not estop him from now making a

claim to be *viharadhipati*. I think this finding is correct. It is a matter for regret that the plaintiff has followed the course of taking possession of a part of the temple and part of the land appertaining thereto. At the same time, as we are unable to reverse the finding of the District Judge that the defendant himself has not been lawfully appointed *viharadhipati*, it appears to follow that a decree for the ejectment of the plaintiff cannot be granted in favour of the defendant in this case.

I would dismiss the appeal with costs.

H. N. G. FERNANDO, J.—I agree.

Appeal dismissed.