

1955

Present : Gratiaen J. and Gunasekara J.

REV. WERAHERA WIMALASARA, Appellant, and N. POROLIS
FERNANDO *et al.*, Respondents

S. C. 405—D. C. Colombo, 6,210

Buddhist ecclesiastical law—Trust—Property donated to seminary under a trust instrument—No formal dedication to Sangha—Power of trustee to remove a priest from premises—Sanghika property.

The ceremonies which took place when a Buddhist seminary was established upon certain premises did not constitute a formal dedication sufficient to pass the premises from private ownership to the Sangha. Thereafter the owners of the premises conveyed the premises to trustees to be used as a Buddhist seminary for the benefit of a certain priest, G., and his pupil priests. On the face of the instrument, the lay trustees were vested with power, *inter alia*, to appoint a successor to G. in the office of "Chief Priest" and also to remove "any of the priests remaining in the premises" on grounds of misconduct or misbehaviour.

Held, that inasmuch as the premises in question were not Sanghika property the trustees were entitled to remove a priest from the premises on *bona fide* grounds in accordance with the power vested in them under the trust instrument.

APPEAL from a judgment of the District Court, Colombo.

Sir Lalita Rajapakse, Q. C., with *M. L. S. Jayasekera* and *M. L. de Silva* for the defendant appellant.

H. W. Jayewardene, Q. C., with *D. R. P. Goonetilleke*, for the plaintiffs respondents.

Cur. adv. vult.

February 25, 1955. GRATIÆN J.—

In my opinion the judgment under appeal should not be disturbed. By P2 dated 16th September, 1913, two pious Buddhists named Romanis Fernando and Charles Fernando conveyed the property in dispute to certain trustees "to be used as a Buddhist seminary for the benefit of Kanugala Gunatissa Therunanse . . . and his pupil priests who are prosecuting Oriental studies and studying the doctrines of Buddhism". On the face of the instrument, the lay trustees are vested with power, *inter alia*, to appoint a successor to Gunatissa Therunanse in the office of "Chief Priest" and also to remove "any of the priests remaining in the premises" on grounds of misconduct or misbehaviour. The appellant has challenged the authority of the trustees to exercise these powers because, in his submission, the premises had already been formally dedicated by the donors to the Sangha so that the premises thereafter constituted Sanghika property. If that were so, it necessarily follows that Romanis Fernando and Charles Fernando had no right subsequently to convey the premises to the trustees.

That certain ceremonies had in fact taken place at or about the time when the seminary was established is not disputed—but the question is whether they could properly be regarded as constituting a formal dedication sufficient to pass the premises from private ownership. On this vital issue, the learned trial judge seems to me to have applied certain extremely practical tests. “There is no reason that I can see,” he observed, “nor has any been advanced by the defendant, as to why these two pious donors should have executed a document which was unnecessary and which would certainly have the effect of nullifying the act of dedication which they are alleged to have performed”. The subsequent conduct of the parties also negatives the argument that anybody regarded the premises as *Sanghika* property. For instance, the defendant had actively associated himself with the trustees in 1946 when they successfully asserted their right under P2 to remove another priest named Wimalajothi from the premises. His present attitude is quite inconsistent with that which he had previously adopted, and I am unable to say that the learned judge was not justified in rejecting his explanation of this inconsistency.

Once the argument that the premises are *Sanghika* property is rejected, there is no reason for doubting the authority of the trustees to remove the defendant on *bona fide* grounds. I would therefore dismiss the appeal with costs.

GUNASEKARA J.—I agree.

Appeal dismissed.
