

1936

Present : Akbar J.

PUNCHI APPUHAMY *et al.* v. APPUHAMY *et al.*

205—C. R. Kegalla, 1,590.

*Dewale—Appointment of trustee—Power of Public Trustee to appoint one for a dewale attached to a vihare—Buddhist Temporalities Ordinance, No. 19 of 1931, ss. 8, 10, 11 (2).*

The Public Trustee has power under the Buddhist Temporalities Ordinance, No. 19 of 1931, to appoint a trustee for a dewale attached to a vihare.

**A** PPEAL from a judgment of the Commissioner of Requests, Kegalla.

L. A. Rajapakse (with him T. S. Fernando), for plaintiff, appellants.

H. E. Garvin, for defendant, respondents.

*Cur. adv. vult.*

January 30, 1936. AKBAR J.—

The learned Commissioner dismissed the plaintiff's action with costs, on an objection taken by the defendant's Counsel, on issue No. 4, namely, whether the substituted plaintiff's appointment as trustee was valid in law. This letter of appointment was produced, namely, P1. It states that by virtue of powers vested in the Public Trustee by section 11 (2) of Ordinance No. 19 of 1931, he (the Public Trustee) appoints the substituted plaintiff as trustee of Mediliya Kataragama Dewale and Vihare in the District of Kegalla.

In my opinion, the dismissal of the plaintiff's action on the ground that this appointment was bad, seems to be wrong for the following reasons: Under section 2 of the Ordinance, a "temple" includes a vihare, dagoba, dewale, kovila, &c. . . . and a "Viharadhipati" means "the principal Bhikshu of a temple other than a dewale or kovila whether resident or not". "Trustee" means "a trustee of a temple appointed under the provisions of this Ordinance . . . ." so that it will be seen that the word "temple" is wide enough to include a dewale standing by itself, or a vihare, or a dewale attached to a vihare.

By section 7 of the Ordinance, provision is made for the appointment of a trustee for the Dalada Maligawa. Section 8 relates to the appointment of a trustee for a dewale, where it is customary to appoint a Basnayake Nilame as a trustee; in the case of every other dewale the trustee is to be appointed by the Public Trustee.

Then section 9 provides for the appointment of a trustee for the Atamasthana. Section 10 refers to a trustee of a temple where no special provision is made in the Ordinance; he is to be nominated by the Viharadhipati of such temple, who shall report such nomination to the Public Trustee. Under section 11 it is provided that it will be lawful for the Viharadhipati to nominate himself as such trustee. By sub-section (2) the Public Trustee is bound to issue a letter of appointment to the person so nominated.

So that it will be seen that there is ample provision for the appointment of a trustee by the Public Trustee under section 8 for a dewale which stands by itself. If it happens to be a dewale attached to a temple, as it appears to be in this case, the procedure indicated in sections 10 and 11 would apply. In either event, in the case of a dewale it is the letter of appointment by the Public Trustee which is legally binding.

Document P1 mentions that the Public Trustee has appointed the substituted plaintiff as the trustee, not only of the vihare, but also of the dewale. In my opinion section 11 (2) is recited by the Public Trustee for a good reason, namely, probably because the dewala was attached to the vihare.

In any event, even if a dewale was not attached to the temple, the letter of appointment appointing the substituted plaintiff could be made under section 8 and I fail to see why the appointment can be said to be illegal or invalid.

As it is a mistake partly of the trial Judge, I think I should make costs in this appeal costs in the cause.

The appeal is allowed, the decree being set aside and the case is sent back for trial on the other issues. Costs of this appeal to be costs in the cause.

*Appeal allowed.*

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