

1961

Present : Sansoni, J., and T. S. Fernando, J.

MAHAMADAGALLE UPANANDA THERO *et al.*, Appellants,
and DUNUPOTHAGAMA SOBITHA THERO, Respondents

S. C. 436/57—D. C. Kurunegala, 12688

*Buddhist ecclesiastical law—Tutor and pupil—Desertion of tutor by pupil—
Forfeiture of pupillary succession.*

A right of pupillary succession will be forfeited if the pupil deserts his tutor and the temple the incumbency of which he claims.

On 7th July 1951 the controlling Viharadhipathi of two Viharas robbed the 1st plaintiff as his pupil. Immediately, however, after his robing, the 1st plaintiff, who was a minor, deserted his tutor and abandoned the two temples. When the Mahanayake Thero, to whom the tutor had complained on 8th March 1953 about the 1st plaintiff's conduct, called for a report from the 1st plaintiff's next friend and a priest, both of whom had sponsored the 1st plaintiff's robing, he was informed that there was no objection whatever to the tutor discontinuing his pupil the 1st plaintiff. The Mahanayake Thero accordingly informed the Registrar-General, who on 2nd July 1953 amended the declaration of the 1st plaintiff by adding the remark "Cancelled the pupilship". After the tutor died on 11th August 1955 the 1st plaintiff, by his next friend the 2nd plaintiff, sued the defendants in the present action, claiming a declaration that he was the controlling Viharadhipathi of the two Viharas and consequential relief.

Held, that the 1st plaintiff had, by deserting his tutor, forfeited his right to succeed his tutor. A formal inquiry by the Sangha Sabha was not an essential pre-requisite to the 1st plaintiff forfeiting his rights.

¹ (1928) 29 N. L. R. 443.

APPPEAL from a judgment of the District Court, Kurunegala.

E. B. Wikramanayake, Q.C., with G. T. Somerawickreme, for the Plaintiffs-Appellants.

N. E. Weerasooria, Q.C., with H. W. Jayewardene, Q.C., W. D. Gunasekera and N. R. M. Daluwatte, for the 2nd Defendant-Respondent.

Our. adv. vult.

October 26, 1961. SANSONI, J.—

The first plaintiff, by his next friend the second plaintiff, has sued the two defendants, claiming a declaration that he is the controlling Viharadipathi of the Kovilakanda and Diyabete Viharas and consequential relief. The two defendants by their answer denied the plaintiff's claim, and the first defendant counter-claimed that he be declared entitled to the incumbency of both Viharas.

After trial, the learned District Judge dismissed the plaintiffs' action and declared the first defendant the lawful controlling Viharadipathi of the two Viharas. While the appeal filed against the judgment was pending, the first defendant died. Mr. Jayewardene indicated to us that since the dispute was mainly between the first plaintiff and the first defendant, the action might be said to have abated when the first defendant died. Mr. Wikramanayake, however, argued that the action did not abate, because the plaintiffs had sued both defendants and the Court had still to adjudicate on the dispute between the first plaintiff and the second defendant. He argued that he was entitled to a final decision as to whether the first plaintiff was or was not entitled to the declaration claimed in his plaint. We therefore heard the appeal, and we have no doubt that any decision we make will bind the present parties.

Medankara Thero was admittedly the controlling Viharadipathi of both Viharas until he died on 11th August, 1955. On 7th July, 1951, he robbed the first plaintiff. On 6th March, 1953, he petitioned the Mahanayake Thero of Malwatte to cancel the registration of the first plaintiff as his pupil. He complained in that petition that the second plaintiff and Konwewa Saranankara Thero had, on 7th July, 1951, brought the first plaintiff and another youth to Kovilakanda Temple and had them robbed that day and gone away with those two pupils. In concluding his petition he said: "And up to date the said pupils did not live with me in a temple of mine even for a day. I do not know where they are residing . . . therefore, I respectfully submit that from today I have discontinued both the priests and pray that their registration be cancelled." The respondents to the petition were the two Samanera priests whom he had robbed. Medankara Thero repeated his request by his letter dated 29th March, 1953.

The petition was sent to the second plaintiff and Konwewa Saranankara Thero by the Mahanayake Thero for their report. They replied by their letter of 10th April, 1953, stating that the first plaintiff, after the robing, was admitted to a pirivena at Ratmalana to receive his education. They denied the allegation that the two Samanera priests had never stayed in Medankara's temple even for a day. They ended their reply by informing the Mahanayake Thero that they had no objection whatever to Medankara discontinuing his pupil the first plaintiff. The other pupil had, by this date, disrobed himself. The Mahanayake Thero accordingly informed the Registrar-General, who on 2nd July 1953 amended the declaration of the first plaintiff by adding the remark "Cancelled the pupilship".

It will be observed that neither the second plaintiff nor Saranankara Thero objected to Medankara Thero acting in the way he did. They did not even ask for an inquiry before action was taken on the petition. It is, therefore, not surprising that no inquiry was, in fact, held. If such an inquiry had ever been contemplated, there would have been nothing to inquire into. In view of the minority of the two respondents to the petition, and the part alleged to have been played by Saranankara Thero and the second plaintiff in the ceremony of robing, it seems reasonable that the petition should have been sent to them for a report. Even in this action the second plaintiff appears as the next friend of the first plaintiff, and this indicates that they were closely connected in their relations with each other.

Since the first plaintiff was the only pupil of Medankara, he would have been entitled to succeed the latter as Viharadipathi of the two Viharas if he had been his pupil at the time of his death. The main question that arises on this appeal is whether the first plaintiff was Medankara's pupil when Medankara died, or whether he had forfeited his right to succeed Medankara, as the defendants allege. Several issues were framed at the trial, amongst them being :

- (6) Did the first plaintiff desert the said Medankara Thero and abandon the Kovilakanda Vihara, or at any time have any connection with him or the said Vihara ?
- (8) Did the said Medankara Thero disown the first plaintiff ?

When making his findings on the facts the learned Judge rejected the first plaintiff's evidence. He disbelieved him when he said that he had stayed in Kovilakanda Vihara and that he was taken by Medankara to Ratmalana pirivena and maintained there by him. He disbelieved him also when he said that he had visited Kovilakanda Vihara and stayed with Medankara during the pirivena vacations. He has found that the first plaintiff never returned to the Vihara after his robing. He has held it proved that the first plaintiff had deserted Medankara and abandoned the two temples. The evidence certainly supports the findings of the learned Judge, and no submission that those findings were wrong

was made to us. The question is whether, on those findings, he was right in holding that the first plaintiff has forfeited his right to succeed Medankara.

It was urged by Mr. Wikramanayake that, on being robed by Medankara, the first plaintiff acquired a certain status, and he could not be deprived of that status by Medankara except upon due inquiry after proper charges had been framed against him. I have already referred to the reaction of the second plaintiff and Saranankara Thero when Medankara's petition was forwarded to them for their report. Even if the reply they sent was not sufficient to render an inquiry unnecessary, the question arises whether an inquiry was an essential pre-requisite to the first plaintiff forfeiting his rights. In my view, on the facts of this case it was not. We were referred to the *Mahavagga* which deals with the qualities which a pupil should possess in relation to his tutor. It states at 1.27.6: "The pupil possessed of the following five qualities should be dismissed: if he is wanting in great affection towards his teacher, if he has not much faith in him, if he does not display correct modesty towards him, if he lacks great respect for him, if he does not have much goodwill towards him."

Whether the tutor who finds his pupil lacking in these qualities has power to dismiss him of his own motion, or should ask for an inquiry by the Sangha Sabha, does not seem to me to be the question here. On the learned Judge's findings the first plaintiff had proved himself not only to be wanting in these qualities, but by his conduct in deserting Medankara from the time he was robed until Medankara's death he clearly forfeited his right to succeed him. In *Dammaratna Unnanse v. Sumangala Unnanse*¹, Wood Renton, J. said "The weight of the expert testimony decidedly supports the view that a right of pupillary succession will be forfeited if the pupil deserts his tutor and the temple the incumbency of which he claims. There is ample evidence in the present case justifying the conclusion that such a forfeiture has been incurred by the appellant." I think those words may appropriately be used in regard to the present case. They were quoted with approval in *Dammapala Unnanse v. Sumangala Unnanse*² and Mr. Hayley in his book on Sinhalese Law and Custom page 567 cites *Dammaratna Unnanse v. Sumangala Unnanse*¹ as authority for his statement that "A pupil who disrobes himself or deserts his tutor, (the italics are mine) forfeits his right." It is of the essence of the relationship between the pupil and his tutor that the pupil should remain under allegiance to the tutor and in a state of obedience to him. The pupil's right to succeed is not to be taken as permanently established by the mere fact of his having been robed by his tutor. A pupil must continue to be obedient to his tutor, and if he is disobedient it is inconsistent with his being a pupil in the Buddhist sense: that was the view expressed by Sri Dharmarama who gave expert evidence in the case decided by Wood Renton, J.

¹ (1910) 14 N. L. R. 400.

² (1939) 41 N. L. R. 235.

The very word 'antevasika' used in the Vinaya to denote a pupil indicates that he is one who is near at hand. Of course, if he wishes to reside elsewhere to receive instruction he can do so, but only if his tutor approves. It has been pointed out before that there is strong condemnation of disobedience on the part of a pupil to be found in the religious books; and the word 'obedience' is sometimes interpreted to mean 'dependence' on the tutor and submission to his guidance. Conduct such as that displayed by the first plaintiff towards Medankara seems amply to merit the penalty of forfeiture of his rights. His minority will not avail him: he had failed in his primary duty as a pupil, and a status voluntarily acquired can be voluntarily abandoned.

Although a question of status is involved, I do not think that the parties when they become tutor and pupil, are irrevocably committed to that status. I do not attach any greater significance to Medankara's dismissal of the first plaintiff from his position as pupil than to regard it as a demonstration of his disapproval of the first plaintiff's conduct. It is open to the Court to hold that the first plaintiff had, by deserting Medankara, forfeited his right to claim to be his pupil. I think the learned Judge was right in so holding, and I would dismiss this appeal with costs.

T. S. FERNANDO, J.—I agree.

Appeal dismissed.
