1946 *Present :* **Howard C.J. and de Silva J.**

CHANDRAWIMALA THERUNNANSE, Appellant, *and* SIYADORIS *et al.*, Respondents.

286—D. C. Galle, 890.

Buddhist Temporalities—Purchase of land by incumbent—Uncertainty as to whether consideration was from temple or private funds—Subsequent possession by temple for 67 years—Inference that property was sanghika*—Bhikku who is not rightful incumbent but has acted as Viharadhipathi—His right to maintain action regarding* sanghika *property.*

A certain land was purchased by the incumbent of a Buddhist temple, but the deed of sale dated March 29, 1817, did not show whether the consideration was provided by the priest out of his *pudgalika* property or from the funds of the temple. There was, however, documentary evidence showing clearly that, subsequent to the death of the incumbent, the temple was in possession of the land as *sanghika* property for a period of 67 years.

Held, that the land was the *sanghika* property of the temple and not the private property of any of the priests resident therein to whom the *pudgalika* property of the incumbent had been devised.

Held, further, that a Bhikku, who is not the rightful incumbent, can maintain an action in respect of *sanghika* property of a temple if he has acquired sufficient interest as Viharadhipathi.

APPEAL from a judgment of the District Judge of Galle.

E. A. P. Wijeratne (with him *U. A. Jayasundara*), for the plaintiff, appellant.—The evidence both documentary and oral proves conclusively that the land in question was *sanghika* property. The evidence of possession negatives the suggestion that this was the *pudgalika* property of any priest. The last will 2D3 and the Inventories P10, P11 and the Grain Tax Commutation Register P6 are significant.

The planting agreement P7 entered into by the Trustee of the temple with one Uberis in respect of this land also indicates that this property was recognized as *sanghika*.

The learned Judge was right in holding that the plaintiff was entitled to maintain this action as controlling Viharadhipathi. See *Sumana Therunnanse v. Somaratne Therunnanse* [1].

H. W. Jayewardene, for the first defendant, respondent.

L. A. Rajapakse, K.C. (with him *S. R. Wijayatilake*), for the second defendant, respondent.—The learned Judge was right in holding that the property in question was not *sanghika*. The Inventory P11 is a copy of Inventory P10. The lease 2D10 of 1922 for 10 years by Kondanna Thero of this property was on the basis that it was *pudgalika* property. His including this land in the Inventory as *sanghika* property cannot be of much significance. At the time of the lease Kondanna Thero was not functioning as Viharadhipathi and he could have leased the property only in his personal capacity. Two other lands, Radagewatta and Pothukumbura, which appear in the Inventory P11 as *sanghika* property have been held to be *pudgalika* by the District Court, Galle—2D18 and 2D19. With regard to the planting agreement P7 the Register 2D16 shows that in 1922 Uberis sued not the Trustee but Kondanna for compensation and 2D17 shows that the compensation was

[1] *(1935) 5 C. L. W. 37.*

paid by Kondanna although he had ceased to be Adikari in 1918. See P3 and P4. The deed 2D2 of 1852 refers to property acquired by Indrajothi out of his private cash and also to property granted to the Vihara as charity. The land in dispute had not been given to the Vihara. Therefore it is reasonable to conclude that this property was recognised as *pudgalika* property. See also the last will 3D3 and last will 2D5. Kondanna's will was admitted to probate and this land was sold to recover the testamentary expenses 2D13 of 1934.

The plaintiff has no status to maintain this action as he is not the Controlling Viharadhipathi. Indrajothi was the original incumbent and the plaintiff is not in the line of succession of Indrajothi. Piyadassi being in the direct line the plaintiff has no right to the incumbency. The deeds of appointment relied on by plaintiff do not convey rights to the incumbency. A person other than the lawful incumbent cannot be the controlling Viharadhipathi. The Buddhist Temporalities Ordinance does not provide for a *de facto* trustee. The effect of sections 4, 18 and 20 was considered by Abrahams C.J. and Soertsz J. in the case of *Dias v. Ratnapala Therunnanse* [1]. The judgment in *Sumana Therunnanse v. Somaratne Therunnanse* [2] is that of a single Judge. Moreover, the facts in that case can be distinguished.

An incumbency cannot be acquired by prescription—*Therunnanse v. Therunnanse et al.* [3].

E. A. P. Wijeratne, in reply.—The judgment in *Dias v. Ratnapala Therunnanse* (*supra*) is on another point. It does not apply to the facts of this case. On the other hand the decision in *Sumana Therunnanse v. Somaratne Therunnanse* (*supra*) is precisely in point.

Cur. adv. vult.

June 21, 1946. DE SILVA J.—

This is an appeal from the decree of the District Court of Galle dismissing the plaintiff's action. The plaintiff, claiming to be the controlling Viharadhipathi of Sudharmaramaya Temple at Bope, sued the first defendant for a declaration of title to a land called Pathahewatta *alias* Bandarawatta Kumbura, and to have the first defendant ejected therefrom. The first defendant filed answer stating that he was the lessee of the Venerable Baddegama Piyaratne under Deed of Lease No. 3960 of April 20, 1939. Thereupon the lessor, Baddegama Piyaratne, was added as second defendant and he filed answer denying—(*a*) that the plaintiff was the controlling Viharadhipathi of Sudharmaramaya Temple at Bope and stating (*b*) that the property in question was *pudgalika* property which had vested in him by purchase from one Edward Dias

[1] (*1938*) *40 N. L. R. 41.* [2] (*1935*) *5 C. L. W. 37.*
[3] (*1927*) *28 N. L. R. 477.*

Jayasiriwardene who had purchased it at a sale held in Testamentary Proceedings of the estate of one Bope Kondanna Therunnanse, No. 6476 of the District Court of Galle.

At the trial the learned District Judge held that the property had been purchased by one Talpawila Indrajoti who was the first incumbent of Sudharmaramaya Temple at Bope and that the plaintiff was not the rightful incumbent of the Temple but that he had sufficient interest to maintain the action if the property was *sanghika* property. He also held that the property was not *sanghika* property of the Temple. He accordingly dismissed the plaintiff's action with costs.

In appeal Counsel for the appellant contended that the documentary evidence in the case showed conclusively that the property was *sanghika* property of the Temple. Counsel for the respondents maintained that the Judge's finding that the property was *pudgalika* property was supported by the evidence and, further, that the learned Judge was wrong in holding that the plaintiff could maintain an action in respect of temple property.

It is necessary therefore to consider—(1) whether the property is *sanghika* property of the Temple and (2) whether the plaintiff is the controlling Viharadhipathi and so entitled to maintain the action.

The property in question had been purchased by Indrajoti Therunnanse from one Watugedarage Juwan of Kumbalwella on a bill of sale dated March 29, 1817 (2D1) for a sum of 75 Rix dollars. This deed does not show whether the consideration was provided by the Priest out of his *pudgalika* property or from the funds of the Temple. No presumption would therefore arise either that it was *sanghika* or *pudgalika* property. Any attempt at this stage to find out what funds were actually paid would be futile. The question has therefore to be decided by an investigation into the possession of the property to determine whether it had been possessed by the Temple or by the pupils of Indrajoti Therunnanse as their *pudgalika* property.

Indrajoti Therunnanse by his last will No. 2130 (2D3) dated November 22, 1852, dealt with all the properties which were in his possession, both *sanghika* and *pudgalika*. After granting certain properties to two of his pupils, and confirming the previous grant (2D2) of ¼ of the properties to Dharmarakkita Therunnanse, he gave a half share of all the properties to his pupil Medhankara Therunnanse and another ¼ share to Dharmarakkita Therunnanse, whereby Dharmarakkita Therunnanse became entitled to half and Medhankara Therunnanse to the other half. These two pupils were directed that they should carry out the instructions given in the last will " without deviating from the true intent of a single word or syllable by the Executors ". These two Executors having resided in the Temple were in a position to know whether any particular property had been possessed by Indrajoti Priest as *pudgalika* property or as *sanghika* property. As the *pudgalika* property would by his last will devolve on the two Executors and the *sanghika* property would

devolve on all the priests of the Temple it was against the interests of these two Executors to enter in the Inventory as *sanghika* property any property which in fact was *pudgalika*.

The estate of Indrajoti Therunnanse was administered in case No. 772 of the District Court of Galle and the Inventory was filed on or about March 8, 1853. The Inventory shows that a careful distinction had been made between *sanghika* property and *pudgalika* property. Thirteen lands have been included in the Inventory as *pudgalika* property and another 13 lands, including the temple in which the deceased resided, have been included as *sanghika* property. As the two Executors were in the best position to know which were *sanghika* properties and which were *pudgalika* it is clear that this property, which was included as *sanghika* property, was in fact treated as such during the time that Indrajoti was in possession of the property. This admission on the part of the Executors, in the absence of any satisfactory proof that it was due to inadvertence or a mistake, is binding on the successors in title of the Executors (who were the legatees under the last will) in any subsequent proceedings between the temple and their successors in title. The question however does not rest on this admission alone.

Medhankara Therunnanse died in 1862 leaving a last will which was admitted to probate in case No. 1,804 of the District Court of Galle in which Dharmarakkita Therunnanse and Bope Kondanna Therunnanse were appointed Executors. In the Inventory filed by them on August 22, 1862, was included the half share of this property which had been devised to Medhankara Therunnanse as *sanghika* property of the Temple.

The next document which affords evidence as to whether the property was *sanghika* or *pudgalika* property is the document P6 of 1882. This is an extract from the Grain Tax Commutation Register which shows that the owner of this property was the Bope Pansala.

Up to 1889 *sanghika* properties belonging to temples were managed by the Incumbent Priest, but in 1889 the Buddhist Temporalities Ordinance, No. 3 of 1889, was passed by which provision was made for the appointment of Trustees, District Committees and Provincial Committees. Section 14 of that Ordinance provided that it shall be the duty of the District Committee to ascertain and record in a book to be kept by them for that purpose certain particulars, including the nature, extent and value of other lands belonging to such temple whether held under lease or otherwise. It also provided that all properties should vest in a Trustee to be appointed in terms of the Ordinance. This Ordinance was followed by Ordinance No. 5 of 1905, section 14 of which contained provisions similar to that of Ordinance No. 3 of 1889 but provided that it shall be lawful for Trustees to demise for any term not exceeding 50 years lands vested in them with the written sanction of the District Committee. In accordance with these provisions the Trustee of the Temple, one Don Andris de Silva of Bope, with the sanction of the District Committee, entered into Agreement No. 35,711 (P7) of December 1, 1911, with one Uberis for planting and improving the land for a period

of 8 years. This agreement provided for the payment of Rs. 56·25 for the coconut trees to be planted on the land. Uberis appears to have possessed the land under this agreement for the full term mentioned therein.

These documents thus show clearly that the Temple was in possession of this property as *sanghika* property from the year 1852 till at least 1919—a period of 67 years.

The first document relied on to prove that this property was *pudgalika* property is Deed No. 3,934 of 1922 (2D10) by which Bope Kondanna Thero purported to lease this property to one Simoris for a term of 10 years. Kondanna at this time had failed in his attempt to obtain the incumbency of the temple and was apparently trying to put forward a claim to this property. It is also alleged that Kondanna paid the compensation which was due to Uberis on Agreement No. 35,711 (P7) and an extract from the Registrar (2D16) and a receipt given by Proctor Karunaratne for the sum of Rs. 71·25 (2D17) have been produced. An examination of 2D16 shows that it was an action brought by Uberis against Kondanna of Bope for the sum of Rs. 100·50 and that he obtained judgment for Rs. 71·25. There is nothing to indicate that this was in respect of Lease P7, but the parties appear to be agreed that it was in respect of that lease. If this is the case it is clear that payment would have been made by Kondanna only on the basis that he was a successor in title to the Trustee. If he claimed the property on a different title then he would not be bound by the Agreement P7 and there would have been no reason for him to pay the compensation provided in the agreement.

The learned District Judge appears to have been influenced to some extent by the translation of the document 2D2 in coming to the conclusion that Indrajoti purchased the property out of his private funds. The translation reads :—" ¼th part or share of the Vihara and Pansala of my private property acquired out of my own private cash and of the high and low lands which have been granted to the said Pansala and Vihara for charity sake . . . ." As this translation did not appear to be correct I got the Interpreter Mudaliyar of this Court to translate the relevant passage, which is marked X. This translation reads :—" One-fourth share of the Vihara and the Temple and of my lands inherited and purchased by me and also of all the lands and fields donated to this Temple on charity ". There is no indication in that document therefore that the purchase was made with the private funds of the Priest.

I think that on the evidence afforded by the documents the only conclusion possible is that the land in question was the *sanghika* property of the Temple and not the private property of any of the priests residing therein.

As the earliest claim that this property was *pudgalika* property was made by the Lease 2D10 in 1922 no question of prescription will arise in view of the provisions of section 34 of Chap. 222.

The next question which requires consideration is whether the plaintiff could maintain his action as he was not the lawful incumbent of the Temple. It is unnecessary for this purpose to consider the question whether a person who is not in the a pupillary succession of the first incumbent can acquire the incumbency of a temple by prescription. Counsel for the respondent relied on the case of *Therunnanse v. Therunnanse et al.*[1] for his contention that an incumbency cannot be acquired by prescription, but in this case the plaintiff does not claim to be the incumbent but the controlling Viharadhipathi who has the right to possess the properties belonging to the temple. His Lordship the Chief Justice in the following passage of his judgment, in the case of *Vipulananda Therunnanse v. Sedawatte Pannasara*[2] shows the distinction between a claim to an incumbency and a claim to be trustee :—" So far as the claim of the plaintiff to succeed by right of prescription is concerned, it was held in *Therunnanse v. Therunnanse* that, as the incumbent of the temple has no title to the immovable property of the temple nor a right to the possession thereof nor any rights as contemplated by section 3 of the Prescription Ordinance, he cannot obtain a title to an incumbency by prescription". The plaintiff's tutor, Sarananda, had been Viharadhipathi from 1928 and the plaintiff has succeeded him as such Viharadhipathi. In the circumstances I agree with the learned Judge that this case falls within the principle laid down in the case of *Sumana Therunnanse v. Somaratane Therunnanse*[3] and that the plaintiff is entitled to maintain this action.

I would accordingly allow the appeal and set aside the decree and enter judgment for the plaintiff as prayed for with costs.

HOWARD C.J.—I agree.

Appeal allowed.