

1913.

Present: Pereira J. and De Sampayo A.J.

DHAMMAJOTI v. SOBITA.

93—D. C. Matara, 5,605.

Buddhist ecclesiastical law—Right of incumbent of temple to appoint a particular pupil as his successor—What constitutes pupilage—May one man be pupil of two priests ?

The general rule of succession to the incumbency of a Buddhist temple is that involved in the line of succession known as the "sisyanusisya paramparawa"; but it is open to an incumbent to appoint by deed or will any particular pupil as his successor.

The question as to what is essential to constitute pupilage discussed.

It is quite possible for a man to be pupil to two priests and to succeed both.

THE facts appear from the judgment.

H. A. Jayewardene, for appellant.

H. J. C. Pereira, for respondent.

The following cases were referred to at the argument:—*Dhammajoti Unnanse v. Paranatale*,¹ *Sumangala Unnanse v. Sobita Unnanse*,² *Dammaratna Unnanse v. Sumangala Unnanse et al.*,³ *Sobitta Terunnanse v. Siddatte Terunnanse*,⁴ *Somaloka Terunnanse v. Somalankara Terunnanse*,⁵ *Sumangala Unnanse v. Dhammarakkita et al.*⁶

Cur. adv. vult.

May 23, 1913. PEREIRA J.—

In this case the question is whether the plaintiff or defendant is entitled to be declared to be the chief incumbent of the Buddhist temple called the Sirinivasarama Viharastana of Aturaliya. Admittedly, Kirti Sri Sumangala Terunnanse was at one time the chief incumbent of this temple. He by deed P 1, which is described in itself as a "deed of endowment or trust," appointed one of his pupils, Balukawela Dhammarakita, who is referred to in the deed as the "fittest person to manage the affairs of the temple," to the management of the Srinivasarama temple. Then, as regards Heella Dharmapala, another pupil of Kirti Sri, the latter declared in the deed as follows: "As Heella Dharmapala is also one who

¹ (1881) 4 S. C. C. 121.

² (1883) 5 S. C. C. 235.

³ (1910) 14 N. L. R. 400.

⁴ (1867) *Ram.* 280.

⁵ (1899) 3 N. L. R. 380.

⁶ (1908) 11 N. L. R. 360.

has hitherto taken care of the property belonging to this temple, he is hereby appointed a second in order of authority to continue to take care and look after the property aforesaid hereafter also in the same manner as he has done hitherto." Now, the general rule of succession to the incumbency of a Buddhist temple is that involved in the line of succession known as the "sisyanusisya paramparawa"; but it is clear that it is open to an incumbent to appoint by deed or will any particular pupil as his successor. (See D. C. Kurunegala, 15,057; ¹ *Sumangala Unnanse v. Sobita Unnanse*.²) In times anterior to the passing of the Buddhist Temporalities Ordinance, the succession was not only to the status in a purely religious point of view of the incumbent, but to his power over the temple property as well, and apparently deed P 1 was framed in imitation of the deeds written in times when the management and control of the temporalities or revenues of the temple went hand in hand with the incumbency of the temple. However that may be, it is clear that it is a part of the defendant's case that by deed P 1 was appointed the successors in the incumbency to Kirti Sri Sumangala Terunnanse. The defendant says in his evidence: "Heella Dharmapala and Balukawela were appointed to succeed him (Kirti Sri) by deed XXX. Dharmapala remained sole incumbent after Balukawela died." The last sentence clearly implies that Balukawela was during his lifetime the sole or joint incumbent with Heella Dharmapala under deed P 1. The idea of a joint incumbency can hardly be entertained. I read the deed to mean that Heella was appointed thereby to help Balukawela in the management of the temple property. Any way, the defendant's witness, Sapugoda Gunananda Terunnanse, says in no uncertain terms: "I knew Balukawela. When he died he was chief incumbent of Aturaliya temple." I do not think there is room for doubt as to Balukawela, and he alone, having been the successor of Kirti Sri in the incumbency of the temple in question, although it is equally clear that Heella Dharmapala also continued to live there and look after its affairs until his death. The evidence shows that Balukawela lived chiefly at Habaraliya, but that did not deprive him of the incumbency of the Aturaliya temple. The force of Mudaliyar Gunaratne's evidence in favour of the defendant is largely discounted by the reason given by him for supposing that Heella was incumbent. He says: "As Heella was an elderly priest and resided at the temple I recognized him as incumbent."

The next question is whether the plaintiff was a pupil of Balukawela Dhammarakita. On this point the case of *Dhammajoti Unnanse v. Paranatale*³ has been cited to us. It may, I think, be inferred from what Dias J. says there, that he was of opinion that robing was essential to constitute pupilage, but in view of the facts proved this

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*Dhammajoti
v. Sobita*¹ *Vand. App. F.*² (1883) 5 S. C. C. 235.³ (1881) 4 S. C. C. 121.

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expression of opinion was mere *obiter*, and, as the learned Judge himself observed, it was opposed to the opinion of the High Priest of Adam's Peak, who had been examined as a witness in the case. As the headnote correctly puts it, what was really held in the case was that instruction, without robing or presentation for orders, was insufficient to create pupilage for the purposes of succession under the rule of the line of succession known as the "sisyanusisya paramparawa." In the present case there is evidence that the plaintiff was not only instructed, but presented for ordination by Balukawela Dhammarakita, and that he was "obedient" to him. The High Priest called by the plaintiff says that robing, obedience, and ordination, or any two of them, would be sufficient to constitute pupilage. He mentions instruction also as one of the essentials. I think it is clear that the plaintiff was the pupil of Balukawela, although he may be said to have been Kirti Sri's pupil as well. As the High Priest in his evidence says, it is, I take it, "quite possible for a man to be pupil to two priests, and succeed both."

I think that the District Judge is right in the conclusion arrived at by him as to who is entitled to the incumbency of the Aturaliya temple, but I am not prepared to say that the plaintiff has made out a sufficient case either for ejection—for the present at any rate—of the defendant from the temple or for the recovery of damages.

I would affirm with costs the decree appealed from, except those portions of it that order ejection of the defendant from the temple, and allow the plaintiff damage at Rs. 50 per annum. I would leave the plaintiff to take such further action as he may be advised if further molested by the defendant in the enjoyment of the incumbency.

DE SAMPAYO A.J.—I agree.

Varied.

