

1956 Present: de Silva, J., and H. N. G. Fernando, J.

U. DHAMMALOKA THERO, Appellant, and P. SARANAPALA THERO, Respondent

S. C. 482—D. C. Kandy, 3,220/L

Buddhist Ecclesiastical Law—Sisyanu sisya paramparawa—Extinction of line of succession—Appointment of new Viharadhipathi—Proper procedure—Prescription.

Upon the extinction of the line of pupillary succession to a Buddhist temple governed by the rule of succession known as sisyanu sisya paramparawa, the temple vests in the Sangha and the right of appointing a new Viharadhipathi vests in the Mahanayake of the fraternity which has jurisdiction over it. The fact that a stranger has functioned as Viharadhipathi for a long period does not entitle him to defeat the Mahanayake's right of appointment, which is a right that cannot be lost by prescription.

APPEAL from a judgment of the District Court, Kandy.

H. W. Jayewardene, Q.C., with *P. Ranasinghe*, for the defendant appellant.

Sir Lalita Rajapakse, Q.C., with *M. L. de Silva*, for the plaintiff respondent.

Cur. adv. vult.

April 30, 1956. DE SILVA, J.—

The Rev. Saranapala Thero, the plaintiff, instituted this action against the defendant Rev. Dhammaloka Thero praying for a declaration that he is the controlling Viharadhipathi of the Buddhist temple called Illupendeniya Vihara and as such he is entitled to the full control and management of the said Vihara and its temporalities and for the ejectment of the defendant therefrom. The defendant resisted the claim of the plaintiff and asserted that he was the lawful Viharadhipathi of this temple by right of appointment to that office by the Mahanayake of the Asgiriya fraternity of Buddhist monks on deed D 1 of November 4 of 1946. The learned District Judge entered judgment for plaintiff as prayed for. This appeal is from that judgment.

Admittedly, this temple is within the jurisdiction of the Asgiriya fraternity and it is governed by the rule of succession known as Sisyanu Sisyā Paramparawa. It is also common ground that one Pallodeniyo Ratanapala Thero was at one time the Viharadhipathi of this temple and he by deed P 1 in the year 1897 gifted this temple together with its temporalities to his only pupil Rev. Wanaratana Thero and Rev. Sobita who was not in the line of pupillary succession. Wanaratana Thero gave up his robes in the year 1902. Thereafter, in the same year, Rev. Sobitha by deed P 2 purported to gift this temple and the lands belonging to it to Rev. Randowella Piyadassi Thero who died in the year 1937.

No rights passed on this deed P 2 as neither the donor nor the donee was in the pupillary succession of Ratanapala Thero. The deed P 1 also did not confer any rights on Sobita Thero as he was not in this line of succession. Piyadassi Thero, however, functioned as the Viharadhipathi of this temple without let or hindrance from anyone. He had two pupils namely the plaintiff and the defendant of whom the former is admittedly the senior. Shortly before his death Piyadassi Thero by deed P 6 dated 2.7.37 gifted this temple and its temporalities to his two pupils, the plaintiff and the defendant in equal shares. This deed would not pass any title as the property dealt with by it is Sangika. Neither party rests his claim on this document. In or about the year 1938 the plaintiff began to receive his education in a Pirivena at Gampola while the defendant continued to reside in this temple. The plaintiff however used to visit this temple about once a week. The temple appears to be a fairly valuable one. It owns paddy fields and tea lands. According to the plaintiff the defendant began to dispute his right only in the year 1950 but it appears from the evidence that the defendant made up his mind to set up a claim to the incumbency as far back as 1946.

It is not denied that when Rev. Wanaratana Thero gave up his robes in the year 1902 the pupillary succession which existed so far came to an end. On the extinction of that line of succession the temple vested in the Sangha of the Asgiriya fraternity and the right of appointing a new Viharadhipathi vested in the Mahanayake of that fraternity—*Dharmapala Unnanse v. Madagama Sumana Unnanse*¹. It is true that the Mahanayake exercises this right with the concurrence of the Asgiriya Chapter. The defendant in order to resist the claim of the plaintiff appears to have approached the Mahanayake with the object of getting himself appointed as the incumbent. He was successful in this venture, for, the then Mahanayake by deed D 1 dated 4.11.46 appointed him as the Viharadhipathi together with the right of transmitting the succession to his pupils. The plaintiff's claim is based on the fact that he is the senior pupil of Piyadassi Thero. If, however, Piyadassi Thero was not the lawful Viharadhipathi the plaintiff cannot successfully assert a claim to the office of Viharadhipathi although he is admittedly the senior pupil of Piyadassi Thero. In the original plaint the plaintiff did not set out how his tutor became entitled to this temple. He later amended the plaint by setting up an averment that Piyadassi Thero had been appointed Viharadhipathi by the Mahanayake of Asgiriya. The plaint was once more amended. In the second amended plaint the plaintiff averred that his tutor had been verbally appointed Viharadhipathi by the Mahanayake. The question for decision therefore is whether Rev. Piyadassi Thero was verbally appointed Viharadhipathi by the Mahanayake and if so whether the terms of appointment included the right of transmitting the succession—*Dhammaratna Unnanse v. Summangala Unnanse*². The Mahanayake who is alleged to have made this appointment is now dead. He died in the year 1914. No witness has been called who was present at this alleged appointment. The plaintiff stated that he had a witness namely Rev. Silananda his co-tutor to prove this appointment. But this witness was not called. The plaintiff also stated that about two

¹ 2 *Current Law Reports* 83.

² 14 *N. L. R.* 40.

years before the deed P 6 was executed Rev. Piyadassi Thero had told him that the Mahanayako had appointed him as Viharadhipathi of this temple with the right of pupillary succession. This is hearsay evidence which is clearly inadmissible. This evidence was given by the plaintiff in examination-in-chief. Although no objection was taken this evidence should have been disallowed. The learned District Judge stated that "the probabilities of the case" supported the theory that Rev. Piyadassi had been appointed Viharadhipathi by the Mahanayake. While it is true that Rev. Piyadassi Thero functioned as Viharadhipathi for thirty-five years and that thereafter the Mahanayako did not make any appointment for a period of nearly nine years the story that Piyadassi Thero had been appointed to this office by the Mahanayake with the right of transmitting the succession is negatived by the recitals in the deed P 6 by which Piyadassi Thero donated this temple and its temporalities to his two pupils. In that deed Piyadassi Thero sets out his title as follows :—

"Which said premises have been held and possessed by me the said donor since a period of over thirty years past for and on behalf of the said Illupodoniya Viharo undor and by virtue of a deed which is not forthcoming at present."

The deed referred to here could be no other than P 2 by which Sobita Thero gifted this temple and its lands to Piyadassi Thero in the year 1902. Surely, if his title was based on the verbal appointment by the Mahanayake he would have referred to it in this deed. The present Mahanayake has stated that when a vacant incumbency such as this is filled a deed is executed by the Mahanayake in favour of the now incumbent. That would be particularly so when the incumbency is a valuable one. That the temple and its temporalities in question are of fairly considerable value cannot be denied. Although this temple was a valuable one, probably, the successive Mahanayakes did not realise that Rev. Piyadassi was not the rightful incumbent according to the rules of pupillary succession. There is strong reason to think that it was only when the defendant brought to the notice of the then Mahanayake Thero that the pupillary succession to this temple had come to an end with the departure of Rev. Wanaratana from the priesthood and that the temple had vested in the Asgiriya Chapter that the Mahanayake became aware that he was entitled to appoint a new Viharadhipathi to it. It was on such realization that the Mahanayake appears to have appointed the defendant by deed P 1 as the Viharadhipathi. There is no doubt that in obtaining this deed the defendant secured an undue advantage over the plaintiff. The Mahanayake's right to appoint, however, cannot be denied. It is not a right which is lost by prescription. I would therefore hold that Rev. Piyadassi Thero was not appointed Viharadhipathi by the Mahanayake. Consequently the plaintiff is not entitled to the office of Viharadhipathi. His action must fail. I would therefore allow the appeal and dismiss the plaintiff's action with costs in both Courts.

H. N. G. FERNANDO, J.—I agree.

Appeal allowed.