

1899.  
September 28.

In the Matter of the Estate of the late POTUWILA INDAJOTI  
TERUNNANSE, of Paiyagala, Deceased.

SOMALOKA TERUNNANSE, Petitioner,

vs.

SOMALANKARA TERUNNANSE *et al.*, Respondent.

*D. C., Kalutara, 205.*

*Administration—Estate of Buddhist priest—Pupil of Buddhist priest—Private property of deceased priest—Right of next of kin to administer such property—Pupillary succession to incumbency—Civil Procedure Code, ch. 38—Ordinance No. 15 of 1876, s. 15.*

*Per* LAWRIE, J.—The pupil of a Buddhist priest is not his heir and he has no right of succession *ab intestato* to the private property of the deceased over which he had disposing power at the date of his death.

If a Buddhist priest be the incumbent of a vihara held by pupillary succession, the incumbency passes on his death to the priest or priests who are next in the line of succession.

Prior to the passing of the Buddhist Temporalities Ordinance, the endowments of a *vihara* passed to the pupil who succeeded to the incumbency; now these are vested in a trustee, and the endowments do not fall under the grant of administration *ab intestato*.

The pupils of a Buddhist priest never appear to have been recognized as his heirs, to the exclusion of, or rank with, his next of kin. If there was any disposition to treat pupils as heirs, it was corrected by the Ordinance No. 15 of 1876, which limits the succession of unmarried persons to their kinsmen.

**T**HE petitioner, calling himself “Dediawala Somaloka Terunnanse,” applied for letters of administration to the estate of the late Potuwila Indajoti Terunnanse, averring in his affidavit

that Potuwila died intestate, and that the petitioner and the two respondents named in the petition were the pupils of the deceased, and as such entitled to one-third each of his estate and effects. 1899. September 23.

Upon this application the District Judge allowed an order *nisi* to be entered, declaring that the petitioner was entitled to have letters of administration issued to him, unless the respondents showed sufficient cause to the contrary. On the service of the order *nisi* on the respondents, they appeared and showed cause as follows :—

(1) No administration can be taken out in regard to the property of a deceased Buddhist priest, because he leaves nothing behind him.

(2) Chapter 38 of the Civil Procedure Code refers only to the estate of persons leaving a will, or of intestates mentioned in Ordinance No. 11 of 1876.

(3) Property held by a Buddhist priest is in the nature of a *fidei commissum*, and letters of administration are not necessary.

(4) The petitioner virtually admits the effect of the petitioner's petition to be that the property sought to be administered is all *sangika*.

The District Judge, after hearing the respondents, made the order *nisi* absolute by the following judgment :—

“ The main objection seems to be that there is no necessity for administration, as a Buddhist priest leaves naught behind him to be administered. This would be a sound doctrine if the followers of Sakyamuni strictly adhered to the principles laid down by him, and faithfully kept the vows of poverty which they take at the time of their entrance into the priesthood, but unfortunately they do not keep to their vows in this Island, and Buddhist priests frequently acquire large extent of lands and amass large sums of money which they lend out at interest in exactly the same way as a Sinhalese layman.

“ Now, with regard to the deceased priest Potuwila Unnanse, it will be seen from the inventory filed that he left behind him in this mortal world not only landed property, but such articles as arrack, precious stones, medicinal oil, surgical instruments, books on medicine, astrology, &c. Very few priests leave such things as these, but it is well known in this district that the deceased was more a healer of bodily diseases than a curer of lost souls, hence his possessing surgical instruments, medicated arrack, &c. It cannot possibly be said (in fact, the opponents do not say it) that these things are *sangika* property. Therefore, if the other property even be actually the common property of the priesthood, administration would be necessary for the distribution of these articles alone, as they aggregate more than Rs. 1,000 in value (section 545).

1899. " Counsel for opponents contended that chapter 38 of the Code  
 September 28. does not apply to the property of Buddhist priests, but I can see  
 no distinction drawn in the various sections of that chapter  
 between the property of such priest and the property of a layman.  
 Section 542 requires that when any person shall die without  
 leaving a will, it shall be the duty of the widow, widower, or next  
 of kin of such person, within one month of the date of death, to  
 report such death to the Court and to make affidavit *inter alia* what  
 property the intestate has left ; and, again, in section 544 it is  
 enacted that in any case where a person is reported to have died  
 intestate, any person interested in having the estate of such  
 intestate administered may apply to the Court for grant to himself,  
 &c. So that the petitioner as one of the deceased priest's sacerdotal  
 heirs, in other words his next of kin, is quite within his  
 right in applying for administration.

" I may also quote as applicable to the contention raised by the  
 opponent's counsel the dictum of that eminent Judge Sir J. B.  
 Phear, C.J., in D. C., Kandy, 74,378 (2 S. C. C. 27) :—' It is import-  
 ' ant to remember that the incumbent of a vihara or pan-  
 ' sala in this Island is not a body corporate with perpetual succes-  
 ' sion, as is the case with the parson (*persona*) of an English parish,  
 ' where though the individual changes, yet so far as concerns  
 ' the property of the corporation, the parson never ceases  
 ' to be, and continues for ever,' &c. . . . . ' In this Island, on  
 ' the other hand, the property dedicated to the vihara or pansala  
 ' appears to be the property of the individual priest, who is the  
 ' incumbent of the foundation, for the purposes of his office, includ-  
 ' ing his own support and the maintenance of the temple  
 ' and its services, and on his death it passes by inheritance to an  
 ' heir, who is ascertained by a peculiar rule of succession or special  
 ' law of inheritance, and is not generally the person who would  
 ' be by general law the deceased priest's heir in respect to secular  
 ' property.' I believe this dictum has been followed in all later  
 decisions on the same subject, and it clearly shows that a Buddhist  
 priest can leave behind him at his death property which requires  
 to be administered in the same way as the property of any other  
 person dying within this Island. I therefore overrule all the  
 objections taken and make the rule entered on 18th November,  
 1898, absolute.

" The opponent will pay to the applicant all costs incurred by  
 him with regard to their opposition."

Against the above order the respondents appealed.

Wendt, for appellant.

Dornhorst, for respondent.

Cur. adv. vult.

23th September, 1899. LAWRIE, A.C.J.—

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The appointment of the petitioner as administrator of the estate of the deceased Potuwila Indajoti Unnanse was premature.

It must be recalled, and the case remitted to the District Court to make inquiry whether there be any next of kin of the deceased, and, if there are, to cause them to be made respondents to the petition.

If there be no next of kin, or if none of them be willing to take out letters of administration, the District Judge may appoint this petitioner as administrator on being satisfied that he is a fit and proper person for the office.

It is necessary to correct an error into which the District Judge and the parties have fallen. By our law the pupils of a Buddhist priest are not his heirs, they have no right of succession *ab intestato* to the private property of the deceased over which he had disposing power at the date of his death.

If a Buddhist priest be the incumbent of a vihara held by pupillary succession, the incumbency on his death passes by law to the priest or priests who are next in the line of succession.

Prior to the passing of the Buddhist Temporalities Ordinance the endowments of a vihara passed to the pupil who succeeded to the incumbency ; now these are vested in a trustee, and the endowments do not fall under the grant of administration *ab intestato*.

So far as I know, the pupils of a Buddhist priest were never recognized as his heirs to the exclusion of, or rank with, his next of kin ; if there was any disposition to treat pupils as his heirs, it was corrected by the Ordinance No. 15 of 1876, which limits the succession of unmarried persons to their kinsmen ; and if there be no heirs, the estate escheats to the Crown.

In this case it may be difficult to separate the property which the deceased held as incumbent of the vihara which passed to the trustee from the property which he held as an individual. Lands to which he succeeded, and lands and books and medicine which he bought with his own money, go to his next of kin ; while lands and other property bought and paid for out of the income of the vihara should go to the trustee for the use of the incumbents of the vihara.

It seems in this case very probable that there is some private property to administer, and it is right that a responsible person should be appointed.

I remit for further proceedings.

BROWNE, A.J.—I agree.