

1946

Present : Canekeratne J.

PUNCHIRALA, Appellant, and DHARMANANDA THERO,
Respondent.

162—C. R. Matale, 7,379

Buddhist Law—Controlling viharadhipati of temple—Rules for appointment of successor—Buddhist Temporalities Ordinance, ss. 3, 4.

The plaintiff was not in the line of pupillary succession from the original incumbent of Mailapitiya Vihare, neither was he a pupil of the last incumbent. The last incumbent had placed the plaintiff in charge of the temple and disrobed himself.

Held, that the plaintiff had no right to maintain an action for declaration of title to property belonging to the temple.

¹ (1909) 12 N. L. R. at p. 355.

² (1909) 13 N. I. R. at p. 40.

A PPEAL from a judgment of the Commissioner of Requests, Matale.

G. P. J. Kurukulasooriya (with him *S. R. Wijayatilake*), for the defendant, appellant.

E. B. Wikramanayake (with him *Vernon Wijetunge*), for the plaintiff, respondent.

Cur. adv. vult.

November 29, 1946. CANEKERATNE J.—

This appeal arises out of a claim by the plaintiff for declaration of title to a field called Polgahagoda. The plaintiff asserted that he was the viharadhipati of Mailapitiya Vihare and that the field belonged to the temple. These the defendant denied: he further pleaded that he had acquired a title by prescription to the field.

On the substantial question whether the land belongs to Mailapitiya Vihare, the Judge has given very cogent reasons for holding in favour of the temple, and it would hardly have been possible to contest successfully his findings on the question of title and possession. Counsel for the appellant attacks, and counsel for the respondent defends, the right of the plaintiff to institute the action which was upheld by the trial Judge.

Saranakare Thero was the incumbent about forty years ago of Mailapitiya Vihare, which belongs to Asgiriya College. On his death about 1903 his pupil Chandrajoti became the incumbent and in 1933 he leased the field, which forms part of the lands belonging to the Temple, to the defendant for a period of seven years. On the death of Chandrajoti in 1935 Ratnajoti Thero is alleged to have become the incumbent and somewhere in the year 1940 he brought the plaintiff to the temple and after placing him in charge of the Vihare he disrobed himself. Plaintiff is a pupil of Sumangala Thero of Murutoluwa Vihare and belongs to the Malwatta fraternity.

This temple appears to have been exempted from the provisions of sub-section (1) of section 4 of Ch. 222 of the Legislative Enactments (Buddhist Temporalities Ordinance). The management of the property belonging to this temple is vested in the Viharadhipati of Mailapitiya Vihare (sub-section (2)). The Viharadhipati is the principal bhikku of a temple, whether resident or not (section 3). The Ordinance is one to amend and consolidate the law. It is legitimate in the interpretation of the sections to refer to the previous state of the law for the purpose of ascertaining the intention of the Legislature. The presiding priest of a vihare or incumbent has the control and administration of the vihare itself. Formerly (*i.e.*, up to 15th November, 1889) the possession of the land and other property appertaining to the vihare was also in him; after the enactment of the Buddhist Temporalities Ordinance (No. 3 of 1889) the property of the vihare was vested generally in the trustee elected in the manner stated in the Ordinance. A bhikku may be the presiding officer of a vihare, or a resident priest, or a non-resident priest (*āgantuge*);

¹ *Re Budgett (1894) 2 Chancery 557.*

the presiding priest is known as the *Viharadhipati*; sometimes he is called the incumbent (the incumbency is called the *adhipati kama*); in some cases the *adhikari bhikshu*; (see 26 N. L. R. 257 and 20 N. L. R. 385). The viharadhipati has charge of the vihare and premises and the rights and ceremonies within it: a resident priest has no such charge: he lives in the pansala in the vihare premises and assits in the services: he generally is subordinate to the Viharadhipati: the *ágantuge* generally is not permanently resident in a particular vihare, he goes to some vihare and is there for some time; sometimes he may assist in the services¹.

Succession to an incumbency is regulated by the terms of the original dedication. If no provision was made at the time of the original dedication for regulating the mode of succession, succession must be presumed to be in accordance with the rule of *sissiyānu sissiyā paramparawa* or pupillary succession, which is the general rule of succession. An incumbent cannot grant the right of succession to a stranger².

The incumbency became vacant when Ratnajoti disrobed himself; the right of succession would have passed to his pupil, if any, or to his co-pupils, or to those who were in the line of pupillary descent from the original grantee or incumbent. If the chain of pupillary succession is broken the rights of representation to the incumbency vest in the chapter of the college to which the temple belongs³.

The dhayakayas of the vihare were not the persons who dedicated it and could have had no right to appoint the plaintiff as the successor to the last incumbent⁴. The plaintiff would not have been entitled to claim the incumbency of this temple before the enactment of the present Ordinance. Is he entitled to prefer a claim now? The language of the section (section 3) shows that residence is not the determining factor. He must however be the viharadhipati. A viharadhipati need not have his residence at the vihare itself. It sometimes happens that the viharadhipati of a particular temple does not live there; he lives at another temple and another priest lives at the temple and looks after its affairs, usually with the consent of the incumbent or because he has some right to be there—examples:—the Viharadhipati of Dambulla Vihare⁵ and the tutor of the plaintiff in the case of *Dhammajoti vs. Sobita*⁶. As a High Priest said in his evidence in the last case—“it is quite possible for a man to be pupil to two priests and succeed both”⁷.

A viharadhipati is one who can lawfully claim to be the head of the vihare, one, generally, who can show that he is the pupil of the last incumbent or that he is in the line of pupillary succession⁸. Had the plaintiff put forward a claim to recognition as viharadhipati according

¹ Cf. the evidence at page 237, 22 N. L. R. (*Wickremesinghe et al. v. Unanse et al.*).

² *Dhammajoti v. Sobita* (1913) 16 N. L. R. 408; *Indasotti v. Ratnasotti* (1915) 4 Bal. N. C. 39.

³ *Dammaratna Unnanse v. Sumangala Unnanse et al.* (1910) 14 N. L. R. 400.

Dammaratna Unnanse v. Sumangala Unnanse et al. (1910) 20 N. L. R. 507.

Gunanda Unnanse v. Dewarakkita Unnanse (1924) 26 N. L. R. 262.

⁴ *Dhamma Joty v. Saranande* (1881) 5 S. C. C. 8.

Cf. *Rathanapala v. Kewitiagala* (1879) 2 S. C. C. 26 (at p. 28).

⁵ *Dhammadassi Thero v. Dhammasiddi Thero* (1946) 47 N. L. R. 553.

⁶ *Dhammajoti v. Sobita* (1913) 16 N. L. R. 408.

⁷ “*Mayurapada parivenadhipati va. b. visin*—by the V. B. who was the head of the Mayurapada Vihare.”—*Dictionary of Sinhalese Language* 1940, Vol. 1, Part 5, page 203.

to the rules in force and had the trial Judge come to the conclusion that the claim had been established, it may have been difficult to disturb that finding. But no such contention was put forward by the plaintiff. It is clear that the plaintiff has no right to maintain this action and the appeal must consequently be allowed with costs of appeal. The costs of the hearing were increased by the defendant's denial of the rights of the temple to this field and his assertion of a title by prescription: the defendant failed to establish these to the satisfaction of the trial Judge; he will not be entitled to the costs of the trial in the lower Court.

Appeal allowed.

