

1945

Present : Soertsz A.C.J. and Rose J.

NUGAWELA (BASNAYAKE NILAME), Appellant, and
MOHATHALA *et al.*, Respondents.

50—D. C. Kandy, 1,444.

*Dewale—Hereditary office of Kapurala—No panguwa attached to office—
Right of Basnayake Nilame—General control and management.*

The Kapuralas of the Alutnuwara Dewale hold their office by hereditary right and the hereditary quality of the office is not dependent on whether or not a panguwa is attached to it.

The Basnayake Nilame who has only the general control and management of the Dewale has no right to appoint any person to the office provided he is a Buddhist of the Goigama caste.

A PPEAL from a judgment of the District Judge of Kandy.

H. V. Perera, K.C. (with him *N. E. Weerasooria, K.C.*, and *H. W. Jayewardene*), for the first defendant, appellant.

N. Nadarajah, K.C. (with him *L. A. Rajapakse, K.C.*, and *E. A. G. de Silva*), for the plaintiffs, respondents.

Cur. adv. vult.

December 19, 1945. SOERTSZ A.C.J.—

This case was very fully tried and carefully considered in the Court below, and the learned trial Judge came to the conclusion that the plaintiffs and second, third and fourth defendants "have been performing the functions of Kapuralas of the Aluthnuwara Dewale by hereditary right". Counsel for the first defendant, appellant, who, as Basnayake Nilame has the general management and control of the chief dewales, maintained that although these parties and their ascendants had always filled the office of Kapurala, they had done so not in virtue of any hereditary right but because the Basnayake Nilames had thought fit on grounds of expediency and convenience *quieta non movere*, and it was open to them at any time to appoint anyone to the office provided he was a Buddhist of the Goigama caste.

I have examined the evidence carefully, and on that evidence, this claim on the part of the appellant is quite untenable. The defendant himself is unable to adduce a single instance in respect of any dewale in which a stranger has been appointed Kapurala. He says that in regard to the dewale concerned in this action "I was under the impression that these people were hereditary Kapuralas as in the other dewales", but he appears to have taken a different view when for the first time he "found out that there were no kapu panguas attached to the Aluthnuwara Dewale". Neither the appellant nor his Counsel was able to show that the hereditary quality of a Kapurala's office was dependent on whether or not a "panguwa" was attached to the office. The dictum in Dr. Hayley's book on Sinhalese Laws and Customs at page 532 indicates that this hereditary quality of the office applied without any discrimination to all Kapuralaships. He says, "The priests called Kapuwas, Kapuralas or Pattiniamis . . . appointed by the villagers or lay managers do not belong to any order, but conduct the ceremonies of each temple according to custom, usually learned from relations whom they succeed in office". I am unable to subscribe to Mr. H. V. Perera's contention that the words "whom they succeed in office" mean nothing more than a fortuitous succession of instances and do not mean that such is the established custom. I find it impossible myself to resist the conclusion to which the trial Judge came when he held that the office is hereditary, it being left to the Kapurala family to make such arrangements for the performance of the services as expediency and convenience dictated subject to the approval of the Basnayake Nilame who, clearly, enjoys the control and management of the dewales and could, therefore, impose reasonable terms and conditions which, in the long course of time, have become more or less well established.

In the social order of today and in the light of modern legal conceptions, the rights and obligations of an office such as this cannot be rigidly defined, and it must be left to the sense of fairplay on the part of so high an official as the Basnayake Nilame on the one hand, and to the sense of service and discipline of the Kapuralas on the other hand to ensure that the interests of the dewales and of the devotees who resort to them are maintained with dignity and efficiency, and that personal motives are repressed.

According to the system of tenure of this office which has obtained, for some time, it was the plaintiffs' turn to officiate at the time they sought to officiate and, in my opinion, they were entitled to the relief the trial Judge gave them. I would dismiss the appeal with costs.

ROSE J.—I agree.

Appeal dismissed.

