1956 *Present :* K. D. de Silva, J., and Sansoni, J.

I. PODIYA *et al.*, Appellants, *and* REV. E. SUMANGALA THERO, Respondent

S. C. 89—D.C. (Inty.) Kurunegala, 6,148

Buddhist Ecclesiastical Law—Res judicata—*Applicability of doctrine to incumbency disputes—Abandonment of incumbency—Effect on pupillary succession—Judgment of consent—Effect of* res judicata.

The rule of *res judicata* is applicable to disputes as to who is the lawful Viharadhipathi of a particular Buddhist Temple. A pupil is the privy of his tutor for purposes of *res judicata*.

The abandonment by a priest of an incumbency results in the forfeiture of the rights of his pupil to inherit the incumbency. Abandonment may take place by means of the priest consenting to a decree of Court disentitling him to the incumbency.

A judgment of consent is as effective by way of estoppel as a judgment whereby the Court exercised its mind in a contested case, and has the full effect of a *res judicata* between the parties.

In action No. 1, A sued B asking for a declaration that A was the controlling Viharadhipathi of Manawala Vihare as against B. After issues were framed the dispute was settled on the following terms : " Of consent plaintiff is declared the controlling Viharadhipathi of the Manawala Vihare but this right will vest in him as from the date of the demise of the defendant who is hereby declared entitled to reside in and officiate as Viharadhipathi of the said temple during his lifetime, without any let or hindrance from the plaintiff. Each party bears his own costs. "

In the present action No. 2, A sued C, who was the pupil of B. He claimed, on the same title as he had set out in action No. 1, that he was the Viharadhipathi of Manawala Vihare.

Held, that the settlement in action No. 1 and the decree entered in accordance with it was *res judicata* between the parties in action No. 2, because C was a privy of B and was therefore bound by that decree.

Held further, that B, by consenting to the settlement in action No. 1, abandoned his rights to the incumbency in favour of A. Therefore C had no incumbency to which he could succeed on B's death.

APPEAL from a judgment of the District Court, Kurunegala.

H. W. Jayewardene, Q.C., with *C. R. Gunaratne*, for the 2nd to 6th defendants appellants.

T. P. P. Goonetilleke, for the plaintiff respondent.

Cur. adv. vult.

May 10, 1956. SANSONI, J.—

The plaintiff brought this action claiming to be declared the controlling Viharadhipathi of the Manawala *alias* Kalegedara Temple and praying that he be restored to possession of the three lands described in the schedule to the plaint, and the six defendants ejected therefrom. The

plaintiff claimed the office as the pupil of one Attadassi who was the pupil of one Sunnanda. The sixth defendant denied the plaintiff's claim and pleaded that he was the lawful Viharadhipathi of the temple as the pupil of one Rewata, who was himself the pupil of one Aggatissa. The second to fifth defendants filed a separate answer supporting the claim of the sixth defendant ; they pleaded that they were in possession of the lands in dispute under the sixth defendant.

When the case came up for trial the parties admitted that the lands in dispute belonged to the Manawala Temple ; they also admitted that the plaintiff and the sixth defendant were the pupils of Attadassi and Rewata respectively. A preliminary issue of law was then framed in the following terms :

> " Is the judgment and decree in D. C. Kurunegala Case No. 2,651 *res judicata* between the plaintiff and the sixth defendant on the question as to whether the plaintiff is the present lawful Viharadhipathi of the Manawala *alias* Kelegedara temple and entitled to the possession of its temporalities ? "

The relevant pleadings and proceedings of that earlier action were marked in evidence. They showed that the present plaintiff brought that action against the sixth defendant's tutor Rewata, asking for a declaration that he was the controlling Viharadhipathi of this temple. He claimed on the same title as he has set out in this action, and also pleaded that the Malwatte Sangha Sabha had declared him to be the lawful Viharadhipathi as against Rewata. The defendant Rewata in that action claimed the office as the pupil of Aggatissa ; he pleaded that the order of the Sangha Sabha was invalid. After issues were framed the dispute was settled on the following terms :—

> " Of consent plaintiff is declared the controlling Viharadhipathi of the Manawala Vihara but this right will vest in him as from the date of the demise of the defendant who is hereby declared entitled to reside in and officiate as Vihardhipathi of the said temple during his lifetime, without any let or hindrance from the plaintiff. Each party bears his own costs. "

The learned trial judge held on the preliminary issue of law that this settlement and the decree entered in accordance with it was *res judicata* between the present parties, because the sixth defendant is a privy of Rewata and is therefore bound by that decree.

This appeal has been filed against that decision, and Mr. Jayewardene attacked this finding on three grounds :

1. A pupil is not a privy of his tutor, since no question of property but only a question of status is involved when the matter in dispute is the office of Viharadhipathi.
2. The terms of the decree are uncertain and there is no clear adjudication in the decree as to who the lawful Viharadhipathi is.
3. It is not open to a Viharadhipathi to deprive his pupil of such an office by being party to a settlement of a dispute regarding that office.

In my view all three objections must fail.

In regard to the first objection, it is remarkable that although disputes as to who is the lawful Viharadhipathi of a particular Buddhist Temple have been tried in our Courts for very many years, it does not seem to have been urged before that the rule of *res judicata* does not apply to them. It was only last year that such an action came before this Court and a previous decree was pleaded as *res judicata* between the parties, but no objection was raised by the learned Queen's Counsel, who appeared in that case on either side, to the application of this doctrine. I refer to the case of *Moragolle Sumangala v. Kiribamune Piyadassi* [1]. In his judgment in that case (with which I agreed) Gratiaen, J. expressed the definite opinion that a plea of *res judicata* may properly be raised in such a dispute, although for the reasons given by him in that case the plea was of no avail.

In that case the respective tutors of the plaintiff and the defendant had been parties to an earlier action in which a decree was entered dismissing that action. That decree was relied on as *res judicata* by the defendant in the later action. In dealing with that plea Gratiaen, J. said :

> "This plea of *res judicata* would without doubt have succeeded if a decision that Ratnajoti (the defendant's tutor) was in truth the lawful incumbent of the temple had been implicit in the dismissal of Indajoti's (the plaintiff's tutor) action. In that event the present defendant's claim to have succeeded to the incumbency (by reason of the " privity of estate or interest " which exists under the Sisyanu Sisya Paramparawa between a proved incumbent and his pupil) could not have been challenged by the plaintiff (claiming the office as Indajoti's privy). "

The learned judge then went on to consider whether such a decision was necessarily involved in the dismissal of Indajoti's action, and found that the action was dismissed not because Ratnajoti was the lawful incumbent but because Indajoti had failed to prove that he had any right to the relief he claimed in the action. In other words, there was no determination as to who the lawful incumbent was. In the present action the plaintiff is not faced with any such difficulty. He has obtained a decree of Court which explicitly declared him to be the controlling Viharadhipathi as against the sixth defendant's tutor. It is therefore not open to the sixth defendant now to reagitate that issue. I do not think that it is essential in order to constitute one person the privy of another that there should be a question of ownership of property arising ; there are lesser rights in property which a Viharadhipathi, by virtue of his office, acquires. For instance, he is entitled to the unhampered use of the Vihare for the purpose of maintaining the customary religious rites and ceremonies. He can claim full possession of it even though the title in respect of it and of the other endowments of the

[1] *(1955) 56 N. L. R. 322.*

Vihare is vested in a trustee. See *Guneratne Nayake Thero v. Punchi Banda Korale* [1]. Again, he is entitled to the control and management of the temple premises and might regulate its occupation and use to the extent that no other priest can select for himself a particular place in the Vihare independently of him against his wishes. A priest who is guilty of contumacy is liable to be ejected by him. See *Piyadasa v. Deevàmitta* [2].

I would also refer to the case of *Gunaratne v. Punchi Banda* [3], where Schneider, J. contrasted the relationship which exists between successive high priests of the Dambulla Vihare with that which exists between a tutor and his pupil under the succession called Sisyanu Sisya Paramparawa. The learned judge said :

> " A priest becomes a high priest of the vihare in question not by virtue of any form of succession recognised by the law, but by being appointed to the office by some person or persons. The law has not recognised a continuity of succession to temporal rights as existing between one high priest so appointed and his successor, as it has in recognising the succession called Sisyanu Sisya Paramparawa. "

He impliedly decided that a pupil is the privy of his tutor for purposes of *res judicata*. It therefore seems clear that the sixth defendant could have claimed this incumbency against the plaintiff only if there had been no decision in the earlier action as to who was entitled to the incumbency. But a declaration that the plaintiff was the lawful incumbent was made in that action against the sixth defendant's tutor, and the matter is therefore at an end.

Mr. Goonetilleke also urged that the sixth defendant had no right to claim the incumbency independently of his tutor Rewata, and he submitted that the sixth defendant had no such right in view of the decision in *Punnananda v. Weliwitiya Soratha* [4]. In that case it was held that the abandonment by a priest of an incumbency results in the forfeiture of that to which his pupil's rights of succession are attached, namely, the incumbency itself. In such a case there remain no rights for the pupil to inherit. If that decision is applied to this case the plaintiff's case is all the stronger. In effect, Rewata by consenting to the settlement abandoned his rights to this incumbency in favour of the plaintiff, and such abandonment was made a matter of record in a decree of Court ; the sixth defendant therefore had no incumbency to which he could succeed on Rewata's death.

With regard to the second objection, I think the meaning of the settlement is clear enough. The matter in dispute was whether the plaintiff was entitled to be declared the controlling Viharadhipathi, and this declaration was granted to him. There was added the condition that Rewata was entitled to reside in and officiate as Viharadhipathi during his lifetime. In effect, the plaintiff was declared *de jure* incumbent and Rewata was to be *de facto* incumbent for life. I do not think that this limitation imposed on the plaintiff's title rendered the matter which was

[1] *(1926) 28 N. L. R. 145.*
[2] *(1921) 23 N. L. R. 24*
[3] *(1927) 29 N. L. R. 249.*
(1950) 51 N. L. R. 372.

decided by the decree uncertain. I would say that the very qualification which was introduced in favour of the defendant made it all the clearer as to who was declared by the decree to be lawfully entitled to the office of controlling Viharadhipathi.

With regard to the third objection, I see no reason why we should not apply the ordinary rule that "a judgment of consent is as effective by way of estoppel as a judgment whereby the Court exercised its mind in a contested case, and has the full effect of a *res judicata* between the parties". *Sinniah v. Eliakutty* [1]. Mr. Jayewardene objected that if the principle of *res judicata*, and particularly that principle in relation to judgments of consent, were applied to incumbency disputes, it would be possible for a tutor deliberately to divert the succession to the incumbency from his pupils to an outsider. He would be enabled to do indirectly what he cannot do directly. This argument seems to deal with another topic—as to whether such a decree may be attacked on such grounds as fraud or negligence. It does not, however, induce me to reject the application of what has been described as "a fundamental concept in the organization of every jural society", "a rule common to all civilized systems of jurisprudence", and "a rule which, founded on ancient precedent, is dictated by a wisdom which is for all time."

For these reasons I would affirm the judgment under appeal and dismiss this appeal with costs.

K. D. DE SILVA, J.—I agree.

Appeal dismissed.