WAHARAKA ALIAS MORATOTA SOBHITA THERO

v.

AMUNUGAMA RATNAPALA THERO

SUPREME COURT
SAMARAKOON, Q.C., C.J. SAMARAWICKREMA, Q.C., J, ISMAIL, J
WEERARATNE, J. AND WANASUNDERA, J.
S. C. (S.C.) 178/71(F) D. C. KEGALLE 17176/L.
JANUARY 26, 28, 1981

Buddhist Ecclesiastical Law — Succession by dedication — Res judicata - Misjoinder — Prescription — S.17 Civil Procedure Code - S. .3 and 10 Prescription Ordinance — S. 34 Buddhist Temporalities Ordinance.

The rules of res judicata apply to cases involving succession to an incumbency and the Courts cannot and will not allow the same question to be re-agitated once a competent Court has decided the issue. In cases where the pupil derives his right from the dedication by right of pupillary succession, and not in reality from his tutor, successive incumbents in the same paramparawa are bound by decisions concerning devolution in the same paramparawa.

Section 17 of the Civil Procedure Code enjoins a Judge not to dismiss an action for misjoinder or nonjoinder of parties. The wrong party should be struck off and the necessary amendments to the pleadings made. Merely striking out the name of a wrongly joined plaintiff would sometimes suffice.

The right to an incumbency is a legal right enforceable in law and it is not purely an ecclesiastical matter. When a Viharadipathi of a temple sues to be declared entitled to the office of Viharadhipathi of a temple and to eject those disputing his rights or to recover possession of the temple and its endowments he is enforcing a right he has in law and any such claim is exempt from the provisions of the Prescription Ordinance by virtue of the provisions of s. 34 of the Buddhist Temporalities Ordinance of 1931. Therefore all cases that have held that such an action is bound by the provisions of s. 3 or s. 10 of the Prescription Ordinance have been wrongly decided.

The Viharadhipathi has the control and management of the Temple premises and its occupation. No priest can select for himself a place of occupation independently of the wishes of the Viharadhipathi. A priest who is guilty of contumacy can be ejected from the temple.

Cases referred to

(1) *Moragolle Sumangala v. Kiribamune Piyadassi* 56 N.L.R. 32
(2) *Podiya v. Sumangala Thero* 58 N.L.R. 29
(3) *Piyaratne Thero v. Pemananda Thero* 62 N.L.R. 193, 202
(4) *London and Lanchashire Fire Insurance Co. v. P. & O. Company* 18 N.L.R. 15
(5) *Algama v. Mohamadu 4 C.W.R. 73.*
(6) *Kudhoos v. Joonoos 41 N.L.R. 25*
(7) *Dingiri Appuhamy v. Pangananda Thero* 67 N.L.R. 89
(8) *Rewata Unanse v. Ratnajothi Unanse* (1916) 3 C. W. R. 193
(9) *Terunnanse v. Terunnanse* (1927) 28 N.L.R. 477.
(10) *Premaratne v. Indasara* (1938) 40 N.L.R. 233.
(11) *Kirikitta Saranankara Thero v. Medagama Dhammananda Thero* 55 N.L.R. 313

(12) *Pandith Watugedera Amaraseeha Thero v. Tittagalle Sasanatilleke Thero* 59 N.L.R. 292
(13) *Henepolle Pansalle Sumangala Unanse v. Henepolla Pansalle Sobita Unanse* 5 S.C.C. 235, 236
(14) *Saranankara Unnanse v. Indajoti Unnanse* 20 N.L.R. 385, 401
(15) *Ratnapala Unnanse v. Sego Saibu Sego Abdul Cader* 5 S.C.C. 61
(16) *Mahattaya v. Kumarihamy* 7 S.C.C. 84
(17) *Kande v. Kiri Naide (1843 – 1955) Ramanathan's Reports 51.*
(18) *Rathanapala Unanse v. Kewitiagale Unanse* 2 S.C.C. 26
(19) *Heneya v. Ratnapala Unnanse* 2 S.C.C. 38
(20) *Somittare v. Jasin* 1 A.C.R. 167
(21) *Sidharta Unanse v. Udayara* 6 C.W.R. 29
(22) *Terunnanse v. Don Aron* 34 N.L.R. 348, 351.
(23) *Wimalatissa v. Perera 1* A.C.R. 83
(24) *Dias v. Ratnapala Terunnanse* 40 N.L.R. 41
(25) *Devarakkita v. Dharmaratne* 21 N.L.R. 255
(26) *Sumana Tissa Unanse v. Sometara Unanse* 4 Leader L. R. 27
(27) *Piyadasa v. Deevamitta* 23 N.L.R. 24, 25
(28) *Dhammejoty v. Tikiri Banda* (1891) 3 S.C.C. 121
(29) *Gooneratne Nayake Thero v. Punchi Banda Korala* 28 N.L.R. 145, 148
(30) *Guneratne v. Punchi Banda* 29 N.L.R. 249
(31) *Terunnanse v. Ratnaweera* 1 Times 48.
(32) *Therunnanse v. Andrayas Appu* 68 N.L.R. 286
(33) *Weeraman v. Somaratne Thero* 69 N.L.R. 438
(34) *Dharmaratne v. Indasara Isthavira* 47 N.L.R. 460
(35) *Sobita Thero v. Wimalabuddhi Thero* 42 N.L.R. 453
(36) *Dhammananda Thero v. Saddananda Thero* 79(1) N.L.R. 289

Appeal from judgment of the Court of Appeal.

C. R. Gunaratne with T. B. Dissanayake and Keerthi Sri Tillekeratne for the 1st defendant-appellant.

Eric Amerasinghe with J. W. Subasinghe, N.R.M. Daluwatte and Y. N. W. Abayaratne for the substituted plaintiff-respondent.

Cur. adv. vult.

April 6, 1981.

SAMARAKOON, C.J.

This is an action that was instituted in the District Court of Kegalle on the 2nd February, 1965. After a chequered career it finally came up for hearing on the 7th July 1969 on which date issues were framed. These and other issues were finally accepted on 16th January, 1970, and the trial commenced immediately thereafter. Order was delivered by the District Judge on 20th June, 1971, and the Plaintiffs who were unsuccessful, appealed to the Supreme Court on the 2nd July, 1971. Pending the hearing in appeal the 1st Plaintiff died and the 2nd Plaintiff was substituted in his place by order of the then Supreme Court made on 10th March, 1975. The appeal itself was heard by the Court of Appeal and allowed on 6th December, 1979. The first Defendant appellant has now appealed to this Court.

The action was instituted by the deceased 1st Plaintiff (hereinafter referred to as 1st Plaintiff) and the substituted Plaintiff (hereinafter referred to as the 2nd Plaintiff) for the recovery of possession of a temple known as Selawa Vihara in Tunpalata Pattu of Paranakuru Korale in the District of Kegalle. They averred that the 1st Plaintiff was the Viharadhipathi and the 2nd Plaintiff was the Trustee of Degaldoruwa Temple and the Meda Pansala at Malwatte Vihara which were "comprised in a Charitable Trust for the advancement of Buddhism and for the maintenance, support, benefit and use of the pupillary successors of Moratota Unnanse." They stated further that Selawa Vihare has from the time of Moratota Unnanse been appurtenant to Degaldoruwa Vihare and as such they were entitled to possess it with its endowments. The 1st Plaintiff claimed as the pupillary successor of Moratota Unnanse and the 2nd Plaintiff, who was the only pupil of the 1st Plaintiff, claimed as the Trustee of the Vihare. Their prayer in the plaint (and all its subsequent amendments) was as follows:

"1. For a declaration that the said Selawa Vihara is comprised in a charitable Trust.

2. That the 1st plaintiff as Viharadhipathi and/or the 2nd plaintiff as Trustee be declared entitled to be quieted in possession of the said Vihara and its endowments.

3. The 1st defendant be ejected from the said Selawa Vihara and be decreed to pay plaintiffs the sum of Rs. 3,000/- as damages already sustained with further damages at the rate of Rs.100/- per month till the plaintiffs are restored to possession of the said Vihare and its endowments.

4. For costs and for such other and further relief as to this Court shall seem meet."

It is common ground that the Venerable Moratota Rajaguru Dhammakkande Thero, Mahanayake of Malwatte, was the Viharadhipathi of Degaldoruwa Vihara of Meda Pansala in Malwatte and of Selawa Vihara and that the succession to the said temples was governed by the Sisyanu Sissiya Paramparawa (pupillary) rule of succession. Each Vihara had been separately endowed with vast acres of land. To the Selawa Vihara King Sri Wickrema Rajasinghe, the last King of the Kandyan provinces, gifted large tracts of land on its restoration by Moratota Unnanse in 1806 A.D. (2349 AB). This grant is engraved on a stone slab built into the outer wall of the Vihara. *(Vide* an extract of the Archaeological Survey of Ceylon – Vol. XII – 1892 by P.C. Bel p. 19). The Plaintiffs pleaded that the 2nd Defendant had been placed in possession

of Selawa Vihara by the Plaintiffs and that the 1st Defendant had been permitted to occupy a portion of the Vihara and is now disputing the Plaintiff's rights to the temple and its endowments. The first Defendant denied this. The 1st Defendant claimed the temple in his own right by pupillary succession to Moratota Unnanse and denied that Selawa Vihara was appurtenant to Degaldoruwa Vihara. He claimed for it a distinct and separate existence. The 2nd Defendant did not file answer.

The Plaintiffs averred that Moratota Unnanse died leaving 2 pupils:

1. Dunumale Seelawansa Unnanse, and
2. Paranatale Unnanse.

It was alleged that Paranatale Unnanse was beheaded by the King and that Seelawansa Unnanse succeeded to the incumbency. He died and was succeeded by Balaharuwe Sonuththara Unnanse. He in turn was succeeded by his only pupil Paranatala Seelawansa (Jnr) who disrobed himself leaving :

1. Sumana Unnanse,
2. Sumangala Unnanse, and
3. Ratnapala Unnanse.

The first named died and the second named disrobed himself. Neither left pupils and Ratanapala Unnanse succeeded to the incumbency. The 1st Plaintiff claimed the incumbency to Selawa Vihara by pupillary succession to Ratnapala Unnanse.

The 1st Defendant contested this line of succession. He contended that Moratota Mahanayake died leaving two pupils :

1. Deliwala Dhammadinna Unnanse, and
2. Paranatale Unnanse.

Paranatale Unnanse as senior pupil succeeded to the incumbency and upon his being beheaded his senior pupil Mahalle Sobitha Unnanse succeeded him. Sobitha Unnanse died and was succeeded by his chief pupil Parusselle Dhammajothi Thero. The 1st Defendant claimed that he succeeded Parusselle Dhammajothi Thero.

The 1st Defendant also took up an alternative position. He stated that when Paranatale Unnanse was beheaded the King reigning at the time took back the Vihara and handed it to Kobbewala Unnanse but the British Government restored it to Deliwala

Dhammadinna Thero and upon his death Udayale Gunaratana Thero became the Adhipathi. Gunaratana Thero by Deed No. 1661 dated 18th July 1936 "nominated and constituted" Paranatale Ratnapala Unnanse as Viharadhipathi who thereafter officiated. He in turn by Deed No.11007 dated 7th May, 1839 nominated the following :

1. Balaharuwe *alias* Paranatale Sumana Unnanse,
2. Balaharuwe *alias* Paranatale Ratnapala Samanera,
3. Parusselle Samanera Unnanse (later Parusselle Dhammajothi Thero), and
4. Sirimalwatte Sumangala Unnanse.

The fourth named officiated as Viharadhipathi and on his death Parusselle Dhammajothi succeeded him. He was succeeded by one of his pupils Waharaka Sonnuttara Thero. Sonnuttara Thero died in 1946 and he was succeeded by Waharaka Gunaratana Thero. The 1st Defendant claims to have succeeded to the incumbency on the death of Gunaratana Thero in 1962. Certain admissions by parties recorded on 7—7—1969 curtailed the lengthy dispute somewhat. They are as follows :

"1. It is admitted that Selawa Vihare and its endowments were dedicated to Moratota Anu Nayaka and the pupillary successors according to the rule 'Sissiyanu-Sissiya-Paramparawa.

2. It is also admitted that although the parties come by different process in or about 1836 Paranatala Ratanapala (senior) was the lawful Viharadhipathi of the said Vihare as the pupillary successor of Moratota according to rule of Sissyanu-Sissiya-Paramparawa and that the said Paranatala Ratanapala by his deed No.11007 of the 7th May, 1849 conveyed the said Vihare to four persons namely :

(1) Sumana;
(2) Ratanapala (Junior);
(3) Sumangala;
and (4) Parussella.

Admission 2 was later modified on 7-7-1969 as follows:

"2. It is stated by the plaintiff and admitted by the defendant as an alternative claim that although the parties come by different process that in or about 1836 Paranatala Ratanapala Senior was the lawful Viharadhipathi of the said Vihara as the pupillary successor of Moratota according

to the rule of Sissyanu-Sissiya-Paramparawa and that the said Paranatala Ratanapala by his deed No. 11007 of the 7th May, 1849, conveyed the said Vihara to four persons namely:

(1) Sumana;
(2) Ratanapala (Junior);
(3) Sumangala;
and (4) Parussella.

This second admission concerned the alternative claim of the 1st Defendant.

The following issues were framed and finally accepted by the Judge:

(1) Is the Judgment and Decree in D.C. Kandy Case No. 81630 *res-judicata* between the parties that Parussella was neither robed or ordained by the said Paranatala Ratanapala senior?

(2) If issue No. (1) is answered in the affirmative, was the said deed No. 11007 inoperative to pass any right, title or interests to the said Parussella or to his pupillary successors?

(3) Is the said Selawa Vihare appurtenant to Degaldoruwa Vihare ?

(4) Is the Judgment and Decree in D.C. Kandy Case No.45415 *res judicata* between the parties that the 1st plaintiff is the pupillary successor of Paranatala Ratanapala senior ?

(5) Is the 2nd plaintiff the lawful trustee of Degaldoruwa Vihare ?

(6) If issues (3) (4) and (5) are answered in the affirmative, are the plaintiffs entitled to the reliefs prayed for in the plaint ?

(7) Is there a misjoinder of plaintiffs and causes of action ?

(8) Is the Selawa Vihare a Buddhist Temple separate and distinct from Degaldoruwa Vihare ?

(9) Is the 1st defendant the duly appointed Trustee of Selawa Vihare ?

(10) If issue No. (9) is answered in the affirmative, are the Plaintiffs in this case entitled to any relief ?

(11) Have the 1st Plaintiff and his predecessors abandoned their claims, if any, to the Office of Viharadhipathi of Selawa Vihare?

(12) Is the cause of action of the 1st Plaintiff and/or the 2nd Plaintiff barred by lapse of time ?

(13)a. Is the 1st defendant in the line of pupillary succession to Moratota Anu Nayaka as set out in paragraphs 4, 5, 10 and 11 of the further amended answer dated 1—2—68 ?

(13)b. Or as set out in paragraphs 6, 7, 8, 9, 10 and 11 of the amended answer of 1—2—68 ?

(14) If issue (13) is answered in the affirmative, is the 1st defendant liable to be ejected ?

(15) Did Paranatala Ratanapala die leaving three pupils — viz :

(1) Sumana;
(2) Amunugama Ratanapala;
and (3) Sumangala ?

(16) Did Amunugama Ratnapala succeed to Paranatala Ratanapala by virtue of Sumana dying leaving no pupils and Sumangala having disrobed himself as stated in the plaint?

(17) If issues (15) and (16) are answered in the negative, is the 1st Plaintiff entitled to the relief claimed ?

(18) Did Paranatala Ratanapala die without nominating his successor as set out in the plaint ;

OR

Did he nominate his successor on deed No.11007 of 1849?

(19) If Paranatala Ratanapala did execute deed No.11007 of 1849 nominating his successor, is the 1st Plaintiff entitled to succeed on the averments pleaded in the amended plaint of 17th December, 1967 ?

(20) Is there any appointment in favour of either of the plaintiff to the office of Trustee of the Selawa Vihare ?

(21) If not are the plaintiffs entitled to be placed in possession of the endowments of the Selawa Vihare and to the ejectment of the defendants ?

(22) If issue No. 3 is answered in the affirmative is the appointment of the 1st defendant as Trustee of the Selawa Vihare void and of no value in law?

(23) Is the judgment and decree in D.C. Kandy case No.90099 *res judicata* and are the defendants estopped from claiming that Mahella was a pupil of Moratota or a pupillary sucessor of Moratota?

(24) Was Paranatala Anu Nayake ever the Viharadhipathi of Selawa temple ?

(25) Even if Paranatala Ratnapala No. 1, was the lawful Viharadhipathi as stated by the plaintiff and he, the said Paranatala Ratanapala No. 1, disrobed himself leaving three pupils:

Sumana;
Ratanapala No. 2;
and Sumangala.

and the said Sumana succeeded to Ratanapala No. 1, and Sumana died leaving no pupil as stated by the 2nd plaintiff in his evidence; was Ratanapala No. 2 entitled in law to succeed to the office of Viharadhipathi?

(26) If the preceding issue is answered in the negative, is the plaintiff entitled to the office of Selawa Viharadhipathy ?

After trial the learned Judge answered issue 7 in the 1st Defendant's favour and dismissed the Plaintiff's action. Issue 26 was not answered by the District Judge.

The 1st Plaintiff relies on three decisions of the Supreme Court to establish his claim as pupillary successor of Moratota Rajaguru Dhammakkande Thero who was admittedly the original Viharadhipathi of Degaldoruwa Vihare. The first of these was the case No. 81630 instituted in the District Court of Kandy in 1879 by Paruselle Dharmajothi Unnanse of Malwatte (through whom the 1st Defendant now claims in this case) against Tikiri Banda Paranatala, Pillawala Dhammadassi Unnanse and Amunugama Ratanapala Unnanse (Plaint P10). He claimed to be entitled to Degaldoruwa Vihare and its endowments upon a Deed, dated 7th May 1849

executed by Paranatala Thero (Senior). The Supreme Court held that Dhammajothi Unnanse was not a pupil of Paranatala (Senior) and therefore not a pupillary successor of the original grantee Moratota Mahanayake. (*Vide* 4 S.C.C. 121).

The next case is the case No. 9009 which was instituted in the District Court of Kandy. This was also instituted by Parusselle Dharmajothi Thero on 27th January 1882 against the three persons who were the Defendants in Case No. 81630 referred to above. In this the priest claimed to be the sole incumbent of Degaldoruwa Vihare by right of pupillary succession to Mahalle Sobitha Unnanse (Plaint P13) who, he alleged, was a pupil of Moratota Mahanayake. The plaintiff failed to establish this and his action was dismissed.

The last of the cases is No. 45415 instituted in the District Court of Kandy on 4—7—1934 (Plaint P5). In that case the 1st Plaintiff and 2nd Plaintiff (both appellants in this case) claimed Meda Pansala in Malwatte Pansala as being part and parcel of the endowments of Degaldoruwa Vihare. The four Defendants who were priests residing in Meda Pansala claimed it by right of succession to Parusselle Dhammajothi Thero. The second Defendant in this case, Waharaka Gunaratne Thero, was the Tutor of the 1st Defendant in that case, and the 1st Defendant claims to have succeeded him.

The Supreme Court held that Meda Pansala was appurtenant to Degaldoruwa Vihare and that the 1st Plaintiff as the rightful incumbent of Degaldoruwa Vihare was entitled to Meda Pansala (*Vide* 39 N.L.R. 236). These cases establish that Parusselle Dhammajothi Thero was not a pupillary successor to Moratota Mahanayake, that the 1st Plaintiff was the rightful pupillary successor to Moratota Mahanayake and therefore entitled to Degaldoruwa Vihare and its appurtenant, Meda Pansala. In this case both contestants agree that Selawa Vihare was granted to Moratota Mahanayake and his pupillary successors. It is this same line of succession that applies to Degaldoruwa Vihare. In District Court Kandy Case No. 9009 the Supreme Court held that Mahalle Sobitha Unnanse was not a pupil of Moratota Mahanayake. The 1st Plaintiff pleaded that these decisions were *res adjudicata* between the parties. There is no doubt that the rules of *res judicata* will apply in cases of this kind. Courts cannot and will not allow the same question to be reagitated once a competent Court has decided the issue. There must be an end to litigation. *Moragolle Sumangala vs. Kiribamune Piyadassi* [1] *Podiya vs. Samangala Thero* [2] In a case such as this where the pupil derives his right from the dedication by right of pupillary succession, and not in reality from his tutor, successive incumbents in the same paramparawa are

bound by decisions concerning devolution in the same paramparawa. It is analogous to a *fidei commissum.* "While a fiduciary in relation to *fidei commissaries,* can be regarded as representing the inheritance, a tutor in relation to his pupils in a particular line of succession can be regarded as re presenting the succession or that line—per Sansoni J. in *Piyaratne Thero vs. Pemananda Thero* (3) Therefore issues 1, 2 and 4 were correctly answered and 1st Plaintiff was properly held to be the *de jure* Viharadhipathi of Selawa Vihare.

The question was raised as to whether Selawa Vihare was an appurtenance of Degaldoruwa Vihare. Degaldoruwa Vihare was granted on a *Sannas* by King Sri Rajadhi Rajasinghe to Moratota Mahanayake Thero. This *Sannas* is reproduced by Lawrie at page 138 of Vol. 1 of his Gazetteer (*Vide* judgment P8). Selawa Vihare was restored in the year 1779 A.D. (2322 A.B.) by Moratota Mahanayake and King Sri Wickrama Rajasinghe, who reigned in Kandy from 1798 — 1815 A.D., dedicated lands to this temple which were to be inherited by pupillary succession to Moratota Mahanayake. This dedication is engraved on a rock built into the outer wall of the Vihare and is dated 2439 A.B. (1806 A.D.) (*Vide* P19). Lands belonging to Selawa Vihare were surveyed in 1864 and registered as Temple Land under the Temple Land Registration Ordinance 1856 (P1 and P2). A Service Tenures Register had been prepared for its lands that were subject to service tenures (P3 and P4). Services were performed by Paraveni Nilakarayas of Selawa Vihare which services were also utilised to maintain Meda Pansala which was the Avasa of Moratota Unnanse. But this last fact does not prove that Selawa Vihare was appurtenant to Degaldoruwa. The finding that Selawa Vihare was not appurtenant to Degaldoruwa Vihare is correct.

Issue 7 raised a question of misjoinder of Plaintiffs and causes of action. The learned District Judge answered it in the affirmative. His view was that "the status of a Trustee and the status of Viharadhipathi cannot constitute one cause of action." They were, in his opinion distinct. In the original plaint and its subsequent amendments the 1st Plaintiff pleaded that he was the Viharadhipathi of Selawa Vihare and the 2nd Plaintiff stated that he was Trustee of Selawa Vihare by virtue of the fact that he was Trustee of Degaldoruwa Vihare. Neither prayed for a declaration of status. The joint prayer is as follows :

1. That Selawa be declared a Charitable Trust.

2. That they or one of them be quieted in possession.

3. That they be awarded damages against the first Defendant.

In the original plaint dated 2–2–1965 (and all its subsequent amendments) the Plaintiffs pleaded that since 30th September, 1964, the first Defendant was in forcible possession and disputing their rights. In considering this objection one must first look at the plaint and its averments. The first Plaintiff does not ask for a declaration that he is the Viharadhipathi nor does the 2nd Plaintiff ask for a declaration that he is the Trustee of Degaldoruwa Vihare or even of Selawa Vihare. The Plaintiffs plead that the first Defendant is "wrongfully and unlawfully disputing the plaintiffs' rights to the said Selawa Vihare . . . . . and is in wrongful and unlawful possession thereof" causing loss and damage. "Cause of action" is defined in section 5 of the Civil Procedure Code as follows:

> "cause of action" is the wrong for the prevention or redress of which an action may be brought, and includes the denial of a right, the refusal to fulfil an obligation, the neglect to perform a duty, and the infliction of an affirmative injury."

The relief claimed was alleged to exist in them jointly against the first Defendant. Therefore the joinder conformed to the provisions of section 11 of the Civil Procedure Code, At the end of the trial the learned Judge found that Selawa Vihare was not a appurtenant of Degaldoruwa Vihare and this finding implied that the 2nd Plaintiff had at no time a cause of action to join in this action as he could claim no rights in Selawa Vihare based on his status as Trustee of Degaldoruwa Vihare. It was then open to him, to give judgment for the 1st Plaintiff alone without amendment of the pleadings as he was empowered by section 11 of the Civil Procedure Code to do. Instead, he dismissed the action which dismissal was not warranted in law. The Court of Appeal was of the view that the Judge should have acted under the provisions of section 17 of the Civil Procedure Code. This section enjoins a Judge not to dismiss an action for misjoinder or nonjoinder of parties. The Supreme Court has held that in cases of misjoinder the Court should facilitate the correction of defects by striking off wrong parties and by making the necessary amendments to pleadings. *London and Lanchashire Fire Insurance Co. v. P. & O. Company*(4) *Algamma v. Mohamadu* (5) *Kudhoos v. Joonoos* (6) *Dingiri Appuhamy v. Pannananda Thero*(7). Even if section 17 of the Civil Procedure Code was applicable I would not in this case send the case back for

such action to be taken in view of the fact that the 2nd Plaintiff had no cause of action whatsoever. Technicalities of this nature must be overcome to ensure the least possible expense and delay. Merely striking out the name of the 2nd Plaintiff from the caption would have sufficed. However in the circumstances of this case this course of action is not necessary.

The next question is the issue of Prescription. The Appellant's contention is that this action is a claim for an incumbency and therefore one for declaration of a status which claim is barred in 3 years in terms of section 10 of the Prescription Ordinance. *Hewata Unnanse v. Ratnajothi Unnanse*(8) *Terunnanse v. Terunnanse*(9) and *Premaratne v. Indasara*(10). In *Kirikitta Sarana-nkara Thero v. Medegama Dhammananda Thero*(11) Gratiaen J. came to the same conclusion, though reluctantly, but he expressed doubts as to this proposition in the following manner :

> "The earlier authorities certainly seem to indicate that, if a trespasser who disputes the status of the true incumbent of a temple continues thereafter to remain in adverse possession without interruption for a period of three years, the dilatory incumbent's right to relief in the form of a declaratory decree becomes barred by limitation under section 10. We must, of course, regard ourselves as bound by these decisions, but with great respect, I think that, on this particular point, the question calls for reconsideration by a fuller Bench on an appropriate occasion. It is clear law that an impostor cannot acquire a right to an incumbency by prescription; nor can the rights of the true incumbent be extinguished by prescription. Although the operation of section 10 may destroy the remedy accruing from a particular "denial", the right or status itself still subsists. It is true that the lawful incumbent can take no steps after three years to enforce his remedy *if it is based exclusively on that particular "denial" of his status,* but there is much to be said for the argument that a continuing invasion of a subsisting right constitutes in truth a continuing cause of action. Indeed, the contrary view would indirectly produce the anomalous result of converting the provision of section 10 into a weapon for the extinction of a right which cannot in law be extinguished by prescription."

He adopted the same principle in *Moragolla Sumangala vs. Kiriba-mune Piyadassi* (1) Basnayake C. J. also expressed doubts as to the correctness of this view. He thought that such an action was in effect not only for a declaration of status but also for the recovery of the temple and its property and therefore the provisions of section 3 of the Prescription Ordinance should apply. His *obiter*

dictum in the case of Pandith Watugedera Amaraseeha Thero v. Tittagalle Sasanatilake Thero [12] is as follows:

> "The plaintiff's action is in effect an action, for not only a declaration of status, but also for the recovery of the temple and its property, for, his prayer is that the defendant be ejected from the premises described in the Schedule to the plaint.
>
> It would therefore not be correct to treat the instant case as an action for declaration of a status alone. The period of prescription in respect of actions for the purpose of being quieted in possession of lands or other immovable property, or to prevent encroachment or usurpation thereof, or to establish a claim in any other manner to land or property is governed by section 3 and not by section 10 of the Prescription Ordinance. The decisions of this Court (1916) 3 C.W.R. 198 [8], (1927) 28 N.L.R. 477 [9], and (1938) 40 N.L.R. 235 [10] which held that an action for an incumbency of a temple, being an action for a declaration of a status, is barred by the lapse of three years from the date when the cause of action arose, may have to be re-examined in a suitable case in the light of the altered rights of a Viharadhipathi who is now empowered to sue and be sued as the person in whom the management of the property belonging to a temple is vested."

In the case of *Kirikitta Saranankara Thero* (supra) Gratiaen J. expressed the view that "an impostor cannot acquire a right to an incumbeney by prescription nor can the rights of the true incumbent be extinguished by prescription." He cited no authority for this proposition. When he later came to decide the case of *Moragolla Sumangala vs. Kiribamune Piyadassi* (supra) he stated this to be settled law. As a part of Buddhist Ecclesiastical Law this is true. Prescription was a later British concept. The question I ask myself is — Does the Prescription Ordinance apply in this case?

It must be borne in mind that the prayer to the plaint in this action merely asks that the plaintiffs be quieted in possession of the Vihare and its endowments and for the ejectment of the first Defendant. As a result of the issues framed the learned District Judge held that the 1st Plaintiff must be deemed to be the lawful successor to Moratota Mahanayake in respect of the incumbency of Selawa Vihare It is in that capacity that the prayer to the plaint must be considered. In the result he is praying for recovery of possession and damages as Viharadhipathi. In considering this question I proceed on the basis that Selawa Vihare was at all times sangika property, as this was the accepted basis throughout the trial by

both contesting parties. What was the Buddhist Ecclesiastical Law in regard to the rights and powers of a Viharadhipathi in the temple and its endowments, and in what form do they now exist after the many British Statutes interfering with them? No doubt one has to refer to the Buddhist Scriptures to find the original rules. They are the three Pitakes but over the centuries rites, rituals, customs and practices have developed, particularly in relation to dealings in property, and these are tolerated by Buddhists as accretions growing out of historical necessity. Dias J. in *Henepolle Pansalle Sumangala Unnanse v. Henepolle Panselle Sobita Unnanse* (13) stated the position thus:

> "These *Pitakas,* three I believe in number, contain a large body of rules and regulations with reference to the conduct of the priesthood, to the succession to ecclesiastical property, and so forth; but the Buddhists of Ceylon have not adopted all these rules, and our Courts have only given effect to such rules as have been adopted in this country. Now, one of the fundamental rules of right, a priest, according to Buddhist theology is that a priest is not entitled to hold property commonly called *Pudgalika* in this individual right. A priest, according to Buddhist law, is supposed to be a pauper, and he is indebted for his daily subsistence to the charity of Buddhists. This rule is, to some extent, in force in this country, for we occasionally see Buddhist priests going round with their *pattre* of vessel to collect their daily food. This is the correct Buddhist usage; but in point of fact, the Buddhist priests of this country are landed proprietors they buy and sell and enter into contracts in their own right, and these dealings are upheld by our courts."

De Sampayo J. in *Saranankara Unnanse v. Indrajoti Unnanse*(14) preferred to look to actual practice and custom. He found himself in agreement with Dias J. (quoted above) and added:

> "This view is confirmed by the number of departures from the strict Buddhist law and the creation of new precedents. For instance, notwithstanding the rule of absolute poverty, priests generally hold considerable private property which is at their own disposal, and on their death descends to their lay heirs, *Ratanapala Unnanse v. Abdul Cader*(15) *Mahattaya v. Kumarihamy*(16). passages in *Marshall's Judgments* and *Morgan's Digest* which reproduce the old Buddhist rule. Again, a priest

may acquire property by special gift or bequest, and he may inherit his brother's or sister's estate, or if he be the only child, he has a right to his father's lands in preference to collaterals. *Kande v. Kiri Naide*(17). He was also entitled, before the enactment of the Buddhist Temporalities Ordinance, to the savings out of the revenue of the temple. See *Ratnapala vs. Abdul Cader (supra)* and the authorities therein cited. Another instance of modification is found in *Sumangala Unnanse vs. Sobita Unnanse (supra)*, where it has been held, notwithstanding the authority of the Buddhist scriptures to the contrary, that a deed of gift conferring the incumbency on a pupil may be revoked by the grantor and a new appointment made. Without referring to all the examples of this kind, I may mention that the jurisdiction exercised without any question by the Asgiriya and Malwatte Colleges in appointing incumbents to vacant temples where the line of succession has been broken, appears to have no support in the Buddhist scriptures, which confer that power upon the entire priesthood. Nor is there any warrant in the books for the distinction between the Siamese and the Amarapura sects, and for the incapacity of a priest of one sect to succeed to an incumbency held by a priest of the other sect. I wish, however, to make it clear that these changes should be regarded, not as lapses, but as necessary developments in the course of centuries. Doctrine and belief are, of course, immutable, but discipline and administration are naturally subject to modifications. Accordingly, it becomes necessary, in matters of the latter kind, to look to actual practice and custom rather than to the accient canons."

Then again he quotes the statement of Sri Sumangala Gahagoda Nayake Thero of Dambulla in regard to the much litigated rule of pupillary succession as follows :

"What I have now stated does not appear in any books but is the custom handed down for ages. Buddha did not create Sissiyanu Sisya paramparawa succession but the Kings did, who in ancient times dedicated temples to the worship of Buddha by Royal Sannas".

I think one can safely assume that the original rules contained in the scriptures have not uniformly been adhered to by the Buddhists of this country but various practices, custom and usage have sprung up and these have from time to time been recognised by the Courts. It is to those decisions that one must look to find that part of the Buddhist ecclesiastical law that has escaped the ravages of British and other legislations. The historical evolution of this law

is contained in a series of decisions the correctness of which however is not necessary for us to examine. The Viharadhipathi was entitled to the temple and its lands *(1 Beven & Siebel Reports 1859 p. 32).* An incumbent held "the temple lands subject to the duty of making provision out of the revenues for the maintenance of the temple. Anything which he saves out of revenues and dies possessed of, passes to his legal representative – that is the person who would be his legal representative were he a layman, per Clarence J. in *Ratnapala Unanse vs. Sego Saibu Sego Abdul Cader* (supra). This was a decision in June 1882. Property dedicated to a Vihare or Pansala was the property of the incumbent for the purposes of his office, including his own support and the maintenance of the temple and its services. *Rathanapala Unanse vs. Kewitiagala Unanse*[18] He could alienate or encumber the lands to meet the needs and exigencies of the Vihare. *Heneya vs. Ratnapala Unnanse*[19] These decisions show that the Viharadhipathi referred to as the 'incumbent' which term is more appropriate to English law, was considered to have proprietary rights over the temple and its endowments and to wield almost unfettered power over them.

The first of the legislative attempts to control this power was the Buddhist Temporalities Ordinance No. 3 of 1889 as amended by Ordinance No. 17 of 1895 and Ordinance No. 3 of 1901. They were subsequently consolidated into the Buddhist Temporalities Ordinance No. 8 of 1905. The essence of this Statute was that title to the temple and its endowments movable and immovable was vested in Trustees elected in terms of section 17 of the Ordinance. Section 20 reads as follows :–

> "All property, movable and immovable, belonging or in anywise appertaining to or appropriated to the use of any temple, together with all the issues, rents, and profits of the same, and all offerings made for the use of such temple other than the pudgalika offerings which are offered for the exclusive personal use of any individual priest, shall vest in the trustees of such temple, subject, however, to any leases and other tenancies, charges, and encumbrances affecting any such immovable property; and such issues, rents, profits, and offerings shall be appropriated by such trustees for the following purposes and no other:
>
> (a) The proper repair and furnishing of such temple and the upkeep of the roads and buildings belonging there;

(b) The maintenance of the priesthood and ministerial officers attached to such temple;

(c) The due performance of religious services and ceremonies as heretofore carried on, in, or by or in connection with, such temple;

(d) The promotion of education;

(e) The relief of the poor in the case of a dewale, and the customary hospitality to priests and others in the case of a vihare;

(f) The payment of compensation under sections 37 or 38 ;

(g) The payment of such share of the expenses incurred or to be incurred in carrying out the provisions of this Ordinance as shall be determined by the district committee."

One of the Trustee's duties was to utilise income for the maintenance of the priesthood and ministerial officers, the maintenance and repair of the temple and buildings and for the performance of religious services. By section 30 he was permitted to sue and could be sued as Trustee in the name of the temple. The reasons why this was necessary was considered to be that neither the temple nor the Viharadhipathi was a corporation and could not therefore in the law maintain an action for temple property. Section 28 casts a duty on the incumbent to furnish information to the Trustee and to the President of the District Committee with regard to offerings made to the temple, regarding value of paraveni, maruveni and other lands and the value of rents issues and profits of these lands.

" Incumbent" here is defined as follows in section 2:
"Incumbent" shall mean the chief resident priest of a temple."

This definition includes both the Viharadhipathi or the Chief resident priest officiating on his behalf. The latter was known as 'Adhikari'. This term 'incumbent' could include the Viharadhipathi if he was resident in the temple. (*vide* 20 N.L.R. at 397[14]). Thereafter sections for vindication of title to temple property could only be maintaind by a Trustee as title was vested in him, *Somittare* v. *Jasin*[20] not by reason of the fact that section 30 empowers the Trustee to sue (as this decision states) but by reason of the vesting in terms of section 20 of the Ordinance. Yet it appears that this right of action in the Viharadhipathi was not lost till a Trustee was

in fact elected. The title remained in the incumbent until such time. In the case of *Sidharta Unnanse v. Udayara* [21] a case decided in 1919, de Sampayo J. held that the incumbent priest, as *de facto* Trustee, was entitled to maintain a possessory action to recover a field belonging to a Dagoba. This right was recognised because a Trustee had not been elected as required by the Ordinance. (Vide Drieberg J. in *Terunnanse v. Don* Aron [22]. On the other hand in the case of *Wimalatissa v. Perera* [23] it was held that the incumbent was not entitled to sue for rights to land and only the Trustee could do so. See also *Dias vs. Ratanapala Terunnase* [24]

These provisions in the Ordinance of 1889, and especially section 20 thereof, did not however remove certain inalienable rights and interests of the incumbent in the temple and its endowments. In the year 1919 in the case of *Devarakkita v. Dharmaratne* [25] the incumbent priest was declared entitled to the control and administration of the Vihare. Ennis, A. C. J. expressed himself thus:

> "Till the passing of the Buddhist Temporalities Ordinance a question of the incumbency involved without doubt the possession of the lands and other property of the Vihare. After the enactment of these Ordinances the property of the Vihare was vested in the trustee, and it is suggested now that the incumbent has no material interest in the property. I am unable to say that this is so; it would seem that the prevailing priest or incumbent has the control and administration of the Vihare itself, although the property vests in the trustee, and, therefore, the right to an incumbency is still a legal right, and not purely an ecclesiastical matter."

The incumbent was not however granted a right to obtain ejectment. So also in the case of *Sumana Tissa Unnanse v. Sometara Unnanse* [26] in which the incumbent priest was granted only a declaration of his right to the incumbency of the Vihare but was denied the right to eject the trespasser and the right to damages. I will revert to this later in this judgment. In the year 1921 in the case of *Piyadasa vs. Deevamitta* [27] De Sampayo J. reiterated this right of control and management. He stated:

> "The first defendant, in the first place, depends on the document granted to him by the High Priest Galgiriawa Terunnanse. The document is an informal non-notarial instrument, and is therefore insufficient to create such an interest in the property as the first defendant claims. Moreover, I doubt whether the High Priest, even apart from the Buddhist Temporalities Ordinance, though he had control and management of the premises and might regulate its occupation and use,

had any right to give away any part of it or to create an interest therein to last beyond his own tenure of office. The first defendant, in the next place, falls back upon the general principle that *sangika* property is common to the entire priesthood, and that an individual priest cannot be ejected therefrom. This principle was stated by Cayley C. J. in *Dhammejoty v. Tikiri Banda*[28] as follows: 'A Buddhist priest cannot be ejected from a Buddhist vihare except for some personal cause, irrespective of the rights of property'. There is no doubt about this Buddhist law, and it is therefore unnecessary to examine further the authorities on that subject. This right of the priesthood, however, surely does not mean that an individual priest can select for himself a particular place in the vihare independently of the chief incumbent and against his wishes. I think that any persistent assertion of an insistence on such an alleged right is a 'personal cause', for which he may properly be asked to leave. Such conduct would amount to contumacy, and in the exercise of ecclesiastical discipline and order, the incumbent has, I think, sufficient authority even to eject the offending priest."

In the year 1926 in the case of *Gooneratne Nayake Thero v. Punchi Banda Korala*[29] the chief priest of Dambulla Vihare was declared entitled to the gabadage (store) and multenge (kitchen) of the Vihare and their unhampered use for the purpose of performing the religious rites and ceremonies of the Vihare. A Trustee was not entitled to appoint or dismiss the ministerial officers attached to the Temple. Lyall Grant J. stated as follows:

"In order to understand the position, one has to inquire into the precise functions which the gabadage and the multenge serve in the temple economy. The gabadage is the store-room containing rice set apart for the temple offerings and for the maintenance of the priests. It also contains some utensils used in the handling of the rice. The Multenge is the kitchen to which the rice is taken from the gabadage, and where it is prepared for the purpose of 'pooja' and offerings in the temple.

It is clear from the evidence that this preparation of rice is part of religious ceremony.

In order to ascertain how far the duties of the trustee extend, one has to consider the scope and intention of the Ordinance. It is clear that the main intention of the Ordinance is to remove from the priesthood the general control and management of the property belonging to a temple. Such property usually consists – apart from the temple buildings and ornaments – of lands which are set aside for the maintenance of

temple worship.

No intention is shown in the Ordinance, and it is inconceivable that any such intention could exist, to interfere in any way with the due performance of religious rites.

The general effect of section 20 appears to be that the property is vested in the trustee for the purposes set out in sub-section (a), (b), (c) and (d).

Sub-section (b) relates to the maintenance of the priesthood and ministerial officers attached to such temple, and sub-section (c) relates to the 'due performance of religious services and ceremonies as heretofore carried on, in, by, or in connection with, such temple'.

Rice brought into the gabadage is rice which has either been grown on temple lands, and is therefore an issue or the profit of immovable property, or it is an offering for the use of the temple, or it is rice bought by the trustee from the rents and profits of the temple. In any case, it is rice vested in the trustee which he has placed in this building.

But the general store of rice of which the trustee is in charge is kept in a building called the 'attuwa', and when he removes any of this rice to the gabadage he makes an appropriation for the purposes set out in sub-sections (b) and (c), as contemplated by section 20 of the Ordinance. Once he has made such an appropriation, it appears to us that he has nothing further to do with the disposal of the rice. He has handed it over for the special purpose of religious worship, and the manner in which it is so used is entirely a matter for the Nayake Unnanse or high priest."

With regard to the interference by the Trustee he stated as follows:

"The second issue is as to the appointment of ministerial officers attached to the temple. We can find nothing in the Ordinance which entitles a trustee to appoint or dismiss such officers.

Their duties are religious or quasi-religious, connected with the rites and ceremonies of the temple, and they are officers who must appropriately come under the jurisdiction of the high priest. That this is so appears clearly from the appellant's own evidence. He admits that the account given by the plaintiff of the duties of the Kattiyana Ralas is correct, and that after

the Padaviya Vidane has removed rice from the store he (the appellant) has nothing further to do with it. He cannot point to any duties which the officials perform which are of a purely secular nature and which pertain to duties entrusted to the trustee.

An incumbent's right to maintenance from the income of the temple and its endowments was a right that could be enforced against the Trustee. *Gunaratne v. Punchi Banda* (30). See also *Terunanse v. Ratnaweera*(31)

The above cases show clearly that the Buddhist Temporalities Ordinances of 1889 and 1905 left untouched an incumbent's inalienable customary rights and interests in the temple and its endowments required to be exercised or used by him for the purpose of his office.

The next enactment is the Buddhist Temporalities Ordinance of 1931 (Cap. 318). We now have a return to the strict Ecclesiastical law in that "incumbent" has been replaced by "Viharadhipathi", Section 2 defines the term as follows:

> "Viharadhipathi" means the principal *bhikku* of a temple other than a *dewale* or *kovila* whether resident or not."

Realisation seems to have dawned on all concerned that the Viharadhipathi carried with him all the powers accruing to that office, which was of special significance, and the chief resident monk (adhikari) was in fact merely the agent of the Viharadhipathi, resident elsewhere. Title was vested in the Trustee appointed by the Viharadhipathi. Section 20 reads as follows:

> "All property, movable and immovable, belonging or in anywise appertaining to or appropriated to the use of any temple, together with all the issues, rents, moneys, and profits of the same, and all offerings made for the use of such temple other than the *pudgalika* offerings which are offered for the exclusive personal use of any individual *bhikku,* shall vest in the trustee or the controlling *Viharadhipathi* for the time being of such temple subject however, to any leases and other tenancies, charges, and incumbrances already affecting any such immovable property."

The Trustee or the Controlling Viharadhipathi remained as the person who could bring on action *rei vindicatio* in respect of the Temple and its lands. *Therunuanse v. Andrayas Appu*(32) *Weeraman v. Somaratne Thero.*(33) Management of the property belonging to a Temple not exempted from the provisions of section 4(1) vested in the Trustee. Application of income received by the Trustee is go-

verned by section 25. They have to be applied *inter alia* for maintenance of the temple, the bhikkhus ministerial officers and the due performance of religious worship and such customary ceremonies" as heretofore maintained." Besides recognising the "Viharadhipathi" of a temple in place of the "incumbent"the Ordinance of 1931 made some other significant changes. District Committees and elected Trustees ceased to exist. In their place we have a Trustee nominated by the Viharadhipathi (section 10) for every temple not exempted from the operation of section 4(1) and a "Controlling Viharadhipathi" for the management of a temple exempted from the provisions of section 4(1) but not exempted from the operation of the entire Ordinance (section 4 (2)). The Public Trustee is given a number of duties and functions by the provisions of this Ordinance. All property, movable and immovable, are vested in the Trustee or Controlling Viharadhipathi. Vide section 20 (which corresponds to section 20 of the 1905 Ordinance). Section 25 stipulates the purpose for which the income of the temple shall be appropriated by the Trustee. Section 18 empowers a Trustee or Controlling Viharadhipathi to sue and be sued as Trustee or Controlling Viharadhipathi in the name of the temple. (Vide section 30 of 1905 Ordinance). Another important innovation in the 1931 Ordinance is the provision for the registration of Bhikkus. [Section 41(1)]. It is not necessary here to refer in detail to the various differences between the 1905 Ordinance and the 1931 Ordinance. For the purpose of this case I need only refer to the provisions of section 34 which reads as follows:

> "In the case of any claim for the recovery of any property, movable or immovable, belonging or alleged to belong to any temple, or for the assertion of title to any such property, the claim shall not be held to be barred or prejudiced by any provision of the Prescription Ordinance.
>
> Provided that this section shall not affect rights acquired prior to the commencement of this Ordinance.

This was a most important addition and one of the reasons for its introduction, I think, is the recognition of the existence and the rights and powers of the Viharadhipathi *vis a vis* the temple and its endowments. It provided that the Prescription Ordinance shall not apply in two instances:

1. To any claim for the recovery of property movable or immovable, belonging to or alleged to belong to any temple, and

2. To any claim for the assertion of title to any property of any temple.

The application of the second of these is obvious. Title to temple property is vested in the Trustee by virtue of section 20 and he alone is entitled to assert title and to institute actions *rei vindicatio* in respect of such property. The first limb must therefore apply to recovery other than by way of action *rei vindicatio* Action for recovery of dues from Nilakarayas would be covered by this. So also would all these rights of the Viharadhipathi in the temple property. The right to an incumbency is a legal right enforceable in law and it is not purely an ecclesiastical matter. *Devarakkita* v. *Dharmaratne* (supra). With this legal right goes not rights of ownership in the property of the temple but those other rights acquired by virtue of his office which rights are enforceable in law against Trustees and all those denying such rights. He has the right to be maintained from the funds of the temple and its temporalities and he is entitled to call on the Trustee for this and even to enforce his right in law. This is recognised by the provisions of section 25 of the Ordinance (Cap. 318), *Gunaratne* v. *Punchi Banda* (supra). Indeed, I would go further, He is entitled to claim such income for discharging his duty of maintaining all his pupils and all resident priests. He is entitled to the full possession of the Vihare and all buildings within the temple premises and their unhampered use for the purpose of performing his religious duties and ceremonies, *Gunaratne Nayake Thero* v. *Punchi Banda Korale* (supra). For this purpose he is entitled to the income of the temple and its temporalities (section 25). He has the sole right to the appointment, control and dismissal of the ministerial officers of the temple who assist in the maintenance and the performance of the religious rites of the temple. (28 N.L.R. at 149[29].) He has the control and management of the temple premises and its occupation. No priest can select for himself a place of occupation independently of the wishes of the Viharadhipathi. A priest who is guilty of contumacy can be ejected from the temple. *Piyadasa v. Deevamitta* (supra). *Dharmaratne vs. Indasara Isthavira*[34] *Podiya vs. Sumangala Thero* (supra). He alone has the right to appoint a Trustee in whom title thereafter vests. (Section 10(1)). For all these he clearly must have possession of the buildings which comprise the temple and of the buildings and other property used for the purpose of residence of the monks and for the services conducted in the temple. The lands which constitute the endowments are, in a sense, appurtenant to the temple and some of them are held by tenants on performance of services, and the income of the rest is intended to be used for the purposes of the temple. It is true that the Buddhist Temporalities Ordinance provides that such lands should vest in a duly appointed trustee. In the case of this temple, there is no such trustee but the 1st defendant is not setting up any distinct title to

such lands. He admits that they constitute the endowments of and belong to Selawa Vihara and he is in possession only because he claims to be the Viharadhipathi of the said temple. Plaintiff will not obtain complete relief in respect of the dispute adjudicated upon in this action, and the 1st defendant will be permitted to continue, to some extent, his denial of the rights of the plaintiff under the dedication relied on in the plaint if the Defendant is not removed from the control and possession of the lands which he has entered into on his claim to be the Viharadhipathi which claim has now been found to be wrong and unsupportable. Recovery of such possession is "the recovery of property" referred to in the first part of section 34. When a Viharadhipathi sues to be declared entitled to the office of Viharadhipathi of a temple and to eject those disputing his rights or to recover possession of the temple and its endowments he is enforcing a right he has in law and any such claim is exempt from the provisions of the Prescription Ordinance by virtue of the provisions of section 34 (Cap. 318). Therefore all cases that have held that such an action is bound by the provisions of either section 3 or section 10 of the Prescription Ordinance have been wrongly decided and should no longer be considered good law.

We are conscious of the fact that the law as stated by us may not be fully in accord with the Buddhist doctrines and scriptures, but decisions of long standing and the legislation on the subject are the proper basis on which we may proceed even though we are a final court of appeal. Any real changes in the law must come from the legislature and it would not be proper for us to encroach on the functions of that body.

Issue 24 reads thus:

(24) Was Paranatala Anunayake ever the Viharadhipathi of Selawa Temple ?

The learned District Judge answered this issue "No". The President of the Court of Appeal thought that this issue referred to Paranatala Ratnapala (1) in regard to whom an admission was made at the commencement of the trial and that admission was later amended. The President of the Court of Appeal expressed surprise at the answer to the issue in view of the relevant facts and other findings. It has been submitted to us that the issue refers to Paranatala Unnanse who was a pupil of Moratota himself, who was later Annunayake, and was beheaded by the King. This issue was raised by Counsel for the Plaintiff apparently because the first claim of the Defendant was that Paranatala became the Viharadhipathi after Moratota and that he left, as his pupil, Mahilla, and the 1st Defendant claims to be in line of succession from Mahilla.

This submission appears to us to be correct and the President of the Court of Appeal erred in thinking that the Issue referred to Paranatala Ratanapala (1).

In view of the findings above no useful purpose will be served in discussing the issue as to whether Selawa Vihare is a Charitable Trust. If and when such need arises it will be time to decide whether *Sobitha Thera* v. *Wimalabuddhi Thera*[35] was correct in law. I have grave doubts as to its correctness.

As stated earlier the 1st Plaintiff died pending the decision in appeal. By its order dated 10th March, 1975, the then Supreme Court ordered the substitution of the 2nd Plaintiff in his stead. The order proceeded on the basis that it was admitted that the 2nd Plaintiff is the only pupil of the deceased. This was a decision made in terms of section 404 of the Civil Procedure Code following the decision in the case of *Dhammananda Thero* v. *Saddananda Thero*[36]. The substituted Plaintiff is therefore entitled to the reliefs claimed in the plaint against the 1st Defendant who is an impostor. The appeal of the first Defendant is dismissed and the first Plaintiff as Viharadhipathi of Selawa Temple is hereby declared entitled to the control and possession of the temple and its endowments and I order that he be restored to and be quieted in possession of Selawa Temple and its endowments. I further order the first Defendant not to interfere with the first Plaintiff's control and possession of the temple and its endowments and further direct that the first Defendant be ejected from the endowments described in the schedule to the plaint. The first Plaintiff will be entitled to costs of this appeal. The order of the Court of Appeal in respect of costs in that Court and the District Court will stand.

SAMARAWICKREMA, J. I agree
ISMAIL, J. I agree
WEERARATNE, J. I agree
WANASUNDERA, J. I agree

1st defendant's Appeal dismissed