1977 *Present :* **Pathirana, J., Ratwatte, J. and Wanasundera, J.**

KARAGAMPITIYA JINARATANA THERO, Plaintiff-Appellant *and* PUSSELLE PANNANANDA THERO, Defendant-Respondent.

S.C. 172/69 (F) – D.C. Ratnapura 7121

Buddhist Ecclesiastical Law – Sanghika Property – Proof of formal ceremony of dedication by presumption – Temple established within living memory – Sisyanusisya paramparawa – Right of appointment of Viharadhipathi vested in Sangha – Concept of abandonment.

A formal ceremony of dedication, to establish that the temple is sanghika property, can be presumed from documentary evidence even though the temple was established within living memory and no witnesses have been called to testify to the formal dedication.

When a temple is dedicated to the sangha in the absence of proof of any other form of succession attaching to the temple, the right of succession is presumed to be in accordance with the rule known as sisyanusisya paramparawa.

When a Viharadhipathi disrobes leaving no pupils the line of pupillary succession becomes extinct and the right to appoint a Viharadhipathi vests in the Mahanayake of the sect.

When a temple had been dedicated to the Maha Sangha the concept of abandonment of such a temple cannot be attributed to the Maha Sangha.

APPEAL from judgment of the District Court of Ratnapura.

A. A.de Silva for Plaintiff-Appellant

J. C. T. Kotelanda for 11th defendent-respondent.

Cur. adv. vult.

December 13, 1977. PATHIRANA, J.

The plaintiff-appellant instituted this action on 26.1.1967 against the defendant-respondent claiming a declaration that he was the lawful Viharadipathi of the Temple known as "Vivekaramaya" at Dodampe in the Ratnapura district and for the ejectment of the defendant therefrom. The temple is exempted from the operation of section 4(1) of the Buddhist Temporalities Ordinance.

The plaintiff's case was that in 1921 Saranatissa Thero, the senior pupil of Sumanajothi Thero of the Saddhamma Yuktika Nikaya of the Amarapura Sect founded the said temple on property dedicated to the Maha Sangha as sangika property belonging to the aforesaid Sect. The right of succession to the said temple was regulated by the rule known as sisyanusisya

paramparawa. In 1921 Saranatissa Thero disrobed and died in 1925 leaving no pupils, whereupon his tutor Sumanajothi Thero lawfully officiated as Viharadipathi of the said temple till his death in 1931 in which year he was also appointed Mahanayake of the Saddhamma Yuktika Nikaya of the Amarapura Sect. On the death of his tutor, Sumanajothi Thero, the plaintiff claimed that as he was the sole surviving pupil he succeeded to the incumbency. Alternatively, the plaintiff claimed to have been selected and appointed as the controlling Viharadipathi of the said temple by the Mahanayake of the Nikaya, Tangalle Somarathana Thero by letter of appointment, P13, of 6.2.66 and as such was entitled to the incumbency of the said temple.

The defendant denied that the said temple was sanghika property as it was not a temple dedicated to the Maha Sangha and accordingly the plaintiff could not make any claim thereto on the basis that it was sanghika property. The Mahanayake therefore had no right or power to make the purported appointment of the plaintiff as the Viharadipathi.

In or about 1926 the dayakayas invited Dhammasena Thero to reside in the said temple and administer to the religious needs of the people and functioned as Viharadipathi till he was murdered on 2.11.65. Thereafter the dayakayas invited the defendant to carry out the duties and functions of Viharadipathi of the said temple which he accepted and functioned as Viharadipathi. Alternatively the defendant pleaded that the dayakayas invited Dhammasena Thero to be the Viharadipathi of the said temple in 1926 and on his death in 1965 the defendant succeeded to the office of Viharadipathi. The defendant further pleaded that upon the disrobing of Saranatissa Thero in 1921 the Saddhamma Yuktika Nikaya abandoned its rights to the said temple. The defendant also averred that the plaintiff's claim was barred by lapse of time.

The learned District Judge dismissed the plaintiff's action holding that the temple was not proved to be sangika property. He held that the property where the temple stood was "gihisanthaka" property as there was no reliable evidence that the premises where the temple stood had in fact been dedicated to the Sangha by the owners of the property. Even on the assumption that the property was sanghika property he held that when Saranatissa Thero as Viharadipathi of this temple disrobed in 1921 leaving no pupils, the pupillary line became extinct and the temple vested in the Maha Sangha. The right of appointing a new Viharadipathi was thereupon vested in the Mahanayake of the Sect to which this temple belonged. Saranatissa Thero's tutor Sumanajothi Thero could not as he claimed have therefore succeeded to the incumbency. When the line of pupillary succession became extinct the succession did not revert to the tutor and through him to his only surviving pupil, the plaintiff.

Regarding the claim made by the plaintiff that the Mahanayake of the Nikaya had appointed him as controlling Viharadipathi of the temple he held

that the purported appointment on P13 dated 6.2.66 was in fact no appointment. He further held that after Saranatissa Thero disrobed in 1921 the Saddhamma Yuktika Nikaya has abandoned its right to this temple, and as such the plaintiff cannot claim to hold office as Viharadipathi. The dayakayas had invited Dhammasena Thero of the Ramannya Nikaya, a different sect, in 1926 and he continued to control and manage the temple till he was murdered on 12.11.65. He also held that the action was barred by lapse of time.

For the purpose of this appeal I shall accept the correctness of the following findings of the learned District Judge. This temple was established by Saranatissa Thero in 1912, on which occasion there was a ceremony in the temple and that Saranatissa Thero functioned as Viharadipathi of this temple till he disrobed in 1921 leving no pupils. Dhammasena Thero was installed in this temple by one Lokumahattaya, one of the chief dayakayas but not with the permission of Sumanajothi Thero the tutor of Saranatissa Thero as claimed by the plaintiff. After the death of Saranatissa Thero, Sumanajothi Thero, his tutor, did not officiate as the Viharadipathi and after the latter's death in 1931 the plaintiff did not exercise his rights as Viharadipathi and it was Dhammasena Thero who was resident in the temple

Mr. Jayewardene for the plaintiff-appellant has canvassed the correctness of these findings before us.

On the question whether the temple stood on sanghika property, the learned District Judge held that there was no proof of any formal dedication as understood by the Buddhist Ecclesiastical Law that the property on which the temple stood belonged to the Maha Sangha and therefore the temple was not sangika property. No witnesses had given evidence to prove the formal dedication to the Maha Sangha with the customary ceremonies although the plaintiff called the witnesses who were present at the ceremony on 23.11.1912 on the occasion when the temple was inaugurated. Neither have any witnesses, even those called by the defendant spoken of such customary ceremony on this occasion. Regarding the documentary evidence relied on by the plaintiff, namely P1, P2, P14, P16, P17 and P18 to prove that the premises were dedicated to the Sangha, the learned District Judge held that these documents were of very little value to show that there was in fact a formal dedication of the temple, and the premises to the Sangha, nor was there a presumption of dedication in regard to this temple as it is common ground that the temple was established in 1912 as this was not a temple the origin of which was lost in the dim past.

The learned District Judge's conclusion no doubt finds support in the following high authority of de Sampayo, J. in *Wickremasinghe v. Unnanse*[1]

[1](1921) 22 N.L.R. 236 at 242.

"No authority has been cited from the Buddhist scriptures or from past judicial decisions in support of the proposition that a building intended to be appropriated to religious worship and built or acquired with the contributions of the faithful becomes at once sanghika without any further act. This appears to be opposed to principle, and is contradicted by the expert evidence given in this case. It is by a gift that a temple or any other property can become sanghika, and the very conception of a gift requires that there should be an offering or dedication. Accordingly, we find that the expert evidence is to the effect that until a dedication takes place the temple remains gihisanthaka (lay property). This dedication may take the form of a writing or may be verbal, but in either case it is a formal act, accompanied by a solemn ceremony in the presence of four or more priests, who apparently represent the Sarva Sangha or entire priesthood. There is no proof of any such dedication in the present case. It was argued that after a lapse of many years a dedication could be presumed. That undoubtedly would be so in the case of a temple whose origin is lost in the dim past. But not only the origin of this temple, but every event in connection with its subsequent history, is known, and the facts are such that the presumption can have no place."

The solemn ceremony has been described by Basnayake, C.J., in *Wijewardene v. Buddarakkitha*[2] :–

"It would appear from the case of *Wickremasinghe v. Unnanse*, that for a dedication to the Sangha there must be a donor, a donee, and a gift. There must be an assembly of four or more bhikkhus. The property must be shown; the donor and donee must appear before the assembly, and recite three times the formula generally used in giving property to the Sangha with the necessary variation according as it is a gift to one or more. Water must be poured into the hands of the donee or his representative. The Sangha is entitled to possess the property from that time onwards. No property can become sanghika without such a ceremony. Sometimes there is a stone inscription recording the grant or a deed is given."

In *Pannavasa Thero v. Sudassi Thero*[3] – it was held that where there is evidence that a Buddhist temple came into existence before any person was born, proof of a formal dedication of the temple as sanghika property is not essential and the dedication may be presumed since it is not possible to call witnesses who can speak to that matter from personal knowledge.

Mr Jayewardene's submission is that these were not the only two methods by which a formal dedication could be proved or presumed. He submitted on a construction of the documents P1, P2, P14, P16, P17 and P18

[2](1957) 59 N.L.R. 251 at 124. [3](1958) 68 N.L.R. 512.

and the fact that by P5 dated 20.3.1936 the Public Trustee under section 21 of the Buddhist Temporalities Ordinance sanctioned the lease by the controlling Viharadipathi of certain lands belonging to this temple, in their totality point to either evidence or presumptive evidence of a formal dedication of the said temple to the Maha Sangha. He submitted on the construction of these douments the inference is inescapable that a ceremony attended by the requisite acts constituting a valid formal dedication had taken place. The documentary evidence in this case proves that there was a dedication. The only question is whether there was a formal dedication *viz*, a dedication preceded by the customary solemn ceremonies.

I shall now examine the documentary evidence in the light of the contention advanced by Mr. Jayewardene. This temple was inaugurated on 23.11.1912. P14 is an extract from the newspaper "Arya Sinhala Vansaya" dated 3rd December, 1912, which was a report sent to this newspaper by Pemananda Thero who was present at the ceremony and was called as a witness by the plaintiff. It is true that Pemananda Thero neither in his evidence nor in P14 speaks of the formal ceremony of offering or dedication to the Sangha. This news item merely refers to the offering of Katina Pooja and other offerings to the Bhikkus headed by Saranatissa Thero at Vivekaramaya for the benefit of the members of the Sangha belonging to the Saddhamma Yuktika Nikaya on 23.11.1912, the full moon day, and to the chief dayakayas, Bandara Mahattaya and Loku Mahattaya. P1 is a Pooja Pattraya (Article of dedication) dated 12.9.1912 by which a paddy-field called Kondemule Aswedduma (not the land on which the temple is established) was dedicated by its owners, the Chief dayakayas, Lokumahatmaya and his wife Ran Menika. This dedication reads as follows:–

> "...the undivided two-third share of the above is hereby dedicated to the Sasana in Sanghika ownership being mindful of the Noble Sangha and desirous of establishing a Vihara so that the Sangha may be benefited as regards their fourfold requirements. Further it is declared that neither the two of us, nor our heirs, successors or administrators shall have any claim on the said land so dedicated to the Sasana. In the event of any dispute arising over the said dedicated land, only shall (they) appear in defence thereof, resolve such dispute and ensure to the custody of the Sasana, but not to claim any title thereto. Witness to the fact that it is so offered to the **Buddha Sasana in Sanghika ownership** by attaching the signature of the said Kuttikandevidanalage Lokumahatmaya and his wife Weerasingama Rallaya Rammenika on 23rd November, 1912, before the Sangha of the Saddhamma Yuktika Nikaya in Dodampe Vivekaramaya and we the above named two (persons) have signed hereto."

P16 which is dated 23.11.1912 pertains to the land called Puhulwelahena on which the temple stands by which 16 persons who were owners have donated this land to the Maha Sangha for the benefit of the priests coming from all directions. P17 is a donation to the temple again on the same day

23.11.1912 of the land called Horakandewelahena. The owners dedicated it to the Sasana for the benefit of priests coming from all directions. This land is also part of the temple. It is possible that the original intention of the donors was to build the temple on the land referred to in the document P1 but they later changed their minds and built the temple on the land Puhulwelahena and Horakandewelahena referred to in P16 and P17. P18 is a donation by the owners on the same day 23.11.1912 of the field called Madakandaliyedda "to the Sasana for the benefit of all priests coming from all directions". P2 which is referred to as a deed of "handing over", recites that the priests of Saddhamma Yuktika Nikaya were controlling the institutions mentioned in the document among which is the land Puhulwelahena on which this temple stands, as belonging to the Saddhamma Yuktika Nikaya.

The document P5 by which the Public Trustee had sanctioned the lease of certain lands belonging to this temple on 20.3.1936 leads to the inference that they were sanghika property. In *Wickremasinghe v. Unnanse* – (supra), Shaw A.C.J. observed:

> "I do not think that the Buddhist Temporalities Ordinance is intended to apply to premises that are private."

Basnayake C.J., in *Wijewardene v. Buddharakkita Thero* (supra) at page 125 made the following observations:

> "Learned Counsel for the respondent also argued that even if the property had been given to the trustees for the benefit of the Vihare, by virtue of section 20 of the Buddhist Temporalities Ordinance it vested in the trustee appointed under the Buddhist Temporalities Ordinance. I am unable to uphold that submission. The Buddhist Temporalities Ordinance deals with sanghika property which has been dedicated to the Sangha of a particular Vihare. It declares that such property is vested in the trustee or controlling Viharadipathi of the Vihare. Property can be given to the Sangha only as sanghika property and in accordance with the customary mode of dedication, but a person is not prevented from creating a trust for the benefit of a Vihare in accordance with the Trusts Ordinance."

No doubt, in this case although the temple was established within the living memory of witnesses, that is, in 1912, no witness came forward to speak the formal ceremony of dedication to the Maha Sangha although the documents I have referred to, distinctly speak of the land on which the temple stood that it was donated by the owners "to the Sangha in sanghika for the benefit of the priests coming from all directions". The question is whether in these circumstances we can draw the presumption that there was a formal ceremony of dedication, preceding the donation referred to in the document P16 of 23.11.1912. The fact that there was a ceremony is established by the news report P14. Our Courts have held that the

presumption of dedication can arise after lapse of many years where the orgin of the temple is lost in the dim past, or where a Buddhist temple came into existence before any living person was born. In this case there is very reliable evidence that on 23.11.1912 there was a dedication of the land in question to the Maha Sangha for the benefit of the priests coming from all directions. The news paper report refers to the chief dayakayas "as devotees to the religion who could be seldom found in the present day." It was very unlikely in these circumstances that such devoted dayakayas who were dedicating this property to the Maha Sangha would not have in the circumstances observed a formal dedication enjoined by custom. I am of the view that the learned District Judge had misdirected himself on the evidence in not drawing the presumption that there had been a formal dedication in the circumstances of this case. I would therefore hold that the property on which the temple in question stands is sanghika property. Once it is sanghika property the dayakayas have no right to instal or remove any priest or administer the affairs of the temple.

When a temple is dedicated to the Sangha in the absence of proof of any other form of succession attaching to the temple the right of succession is presumed to be in accordance with the rule known as sisyanusisya paramparawa. The dedicators, the grantors or the dayakayas cease to have any right or control over the temple. *Wellegama Dhamma Joty Unnanse v. Wellegama Sarananda Unnanse*[4] and *Wickremesinghe v. Unnanse* – (supra). The contention of Mr. Wimalachandra, who appeared for the defendant-respondent, is that dayakayas were entitled in 1926 to instal Dhammasena Thero, a total stranger, and a person from a different sect to manage and control the temple, must therefore fail. Dhammasena Thero's occupation of the temple and his claim to be the Viharadipathi thereof had no legal validity and the character of his occupation was that of an imposter and a trespasser. It must, therefore, follow that the defendant who is not even a pupil of Dhammasena Thero who was installed by the dayakayas in the temple after the death of Dhammasena Thero in 1965 had no right to occupy the temple or claim to be the Viharadipathi thereof. In short the dayakayas had no right to instal Dhammasena Thero or the defendant in the temple to control and manage the affairs of this temple in view of my finding that the temple is sanghika property.

I now pass on to the next question whether the plaintiff is entitled to be declared Viharadipathi of the said temple on the basis of succession through his tutor Sumanajothi Thero. The learned District Judge has held that the plaintiff was not so entitled as once the line of pupillary succession becomes extinct, succession did not revert to the tutor of Saranatissa Thero and through him to the plaintiff as his sole surviving pupil. He followed the case of *Attadassi Unnanse vs. Indajothi Unnanse* (supra) where it was held that where an incumbent of a Vihara to which the rule of sisyanusisya paramparawa succession applies, dies without leaving a pupillary line of

[4](1881) 5 S.CC. 8.

succession, succession becomes extinct and the right of appointing a successor is vested in the Sangha. It could not therefore be contended that the claim of pupillary succession included not only the descending line but also when the descending line became extinct, the ascending line. Mr. Jayewardene, however relied on a passage from a judgment of Jayawardene A.J., in the case of *Gunananda Unnanse v. Devarakkita Unnanse* - (supra) and submitted if an incumbent dies leaving no pupils or fellow pupils entitled to succeed, his tutors or their pupils descending in the pupillary line of the incumbent of the temple succeeds. A judgment of this Court in the case of *Wellegama Dhamma Joty Unnanse v. Wellegama Sarananda Unnanse* – (supra) is cited as authority for this proposition, where Dias, J. held as follows:–

> "...I am not aware of any case in which the point has been expressly decided; but I always understood the rule to be that after exhausting the descending line you must resort to the ascending, line such as the tutor of the deceased incumbent, and, failing him, the fellow-pupils of the deceased incumbent."

The report does not say by what tenure the Vihara in question was held. I however find that a contrary view had been taken in the case of *Sumana Terunnanse v. Kandappuhamy*[5]. In this case three pupils alleging that they were the co-pupils of one Indajoti Unnanse, the incumbent of Godagamuwa Vihara, all of whom they claimed were the pupils of Pannala Terunnanse, claimed the incumbency of the temple on the death of Indajoti Unnanse in 1885 leaving no pupils. His tutor had predeceased him without executing a deed disposing of the Vihara or nominating a successor to the incumbency. The plaintiffs, however, admitted that Pannala Terunnanse was never the incumbent at any time of the temple in question and that Indajoti Unnanse got the incumbency in some other way than by succession from his and the plaintiff's tutor. The question was whether the plaintiffs as co-pupils of Indajoti Unnanse were entitled to claim the incumbency.

Lawrie A.C.J. in this case having referred to the 5 S.C.C. case made the following observations at page 15:

> "In 5 S.C.C. 8, I find a decision which is very puzzling to me. There Dias and Clarence, J J., held that, on the death of an incumbent without leaving a pupil, his tutor succeeded to the vihare; but it is not explained by what tenure that vihare was held; surely, not by pupillary succession, for in that case the tutor would have been the incumbent, and the pupil would have had, during his tutor's life, only the expectancy of succession if he survived. But if it was not held by sisyanusisya paramparawa, why was the tutor selected? Dias, J., said "I always understood the rule to be that after exhausting the descending line you must resort to the ascending line,

[5](1893) 3 N.L.R. 14.

such as the tutor of the deceased incumbent, and, failing him, his fellow pupils."

I confess I do not understand this. The descending line cannot be exhausted if there be an ancestor or a collateral qualified to take. The descent is from a founder or original grantee, and the line of his succession is not exhausted so long as there are persons alive who descend in the pupillary line from him. But when that line is exhausted, there is no ascending line to which you can resort. Any other line is a line of strangers to whom the incumbency cannot go.

I take the law to be that, on the death of the last of the line descending from tutor to pupil from the original incumbent, the sisyaparamparawa, the connected chain, ends. There is no sacerdotal descent left."

It was held that the plaintiffs had no right to the incumbency. The plaintiffs had not averred any right by pupillary succession from the incumbent and they were not the line of succession and had therefore no right. This could only mean that as Pannala Terunnanse was never the incumbent of the temple and as Indajoti Unnanse acquired the temple in some other way than by succession from his tutor or plaintiff's tutor they were, as co-pupils not in the line of succession and therefore not entitled to succeed to Indajoti Thero in respect of the temple.

In the case before us Sumanajoti Thero was never at any time the incumbent of this temple. Saranatissa Thero was installed in this temple in 1912 for the first time as Viharadipathi after it was dedicated to the Sangha and not by succession. The decision in *Sumana Terunnanse v. Kandappuhamy* was examined and commented upon by Jayawardene A.J. in *Gunananda Unnanse v. Dewarakkita Unnanse* (supra) at 270:–

"In the case of *Sumana Terunnanse v. Kandappuhamy*, it was held that under the sisyanusisya paramparawa, if the last incumbent leaves no pupil and has nominated no successor by deed or will, the incumbency can pass to his co-pupils **only if their common tutor was himself in the line of succession from the original proprietor-priest or incumbent of the vihare.** Lawrie, J., thought that where a priest becomes entitled to an incumbency from a priest who is not his tutor, his co-pupils would not succeed him if he dies having no pupils, unless they were also pupils of the priest who granted the incumbency."

I am, therefore, of the view when Saranatissa Thero disrobed in 1921 leaving no pupils the line of pupillary succession became extinct. His tutor therefore who was at no time incumbent of this temple could not have succeeded to the incumbency and therefore on the tutor's death, the plaintiff

as the sole surviving pupil also could not have succeeded to this incumbency. I, therefore, agree with the learned District Judge that as the pupillary succession became extinct on Saranatissa Thero disrobing in 1921 the right to appoint a Viharadipathi was vested in the Maha Nayake of the Sect– *Mawelle Dhammavisuddhi Thero v. Kalawana Dhammadassi Thero*[6] and *Dhammaloka Thero v. Saranapala Thero*[7].

The next question for decision is whether the learned District Judge was correct in holding that the Saddhamma Yuktika Nikaya has abandoned its rights to the temple and therefore the plaintiff could not claim any right to hold office as Viharadipathi of the temple.

The plaintiff quite advisedly did not contend that a particular priest abandoned the temple as this would be inconsistent with his claim that when Saranatissa Thero disrobed in 1921 leaving no pupils the line of pupillary succession having been exhausted, the temple vested in the Maha Sangha. Issue No. 18 which sets out the defendant's contention reads as follows:–

Issue No. 18: Did the alleged Saddhamma Yuktika Nikaya abandon the rights, if any, to the said Vivekaramaya?

The learned District Judge has answered this issue in the affirmative. His reasons are that when Saranatissa Thero disrobed in 1921 this temple was abandoned thereafter and the dayakayas invited Dhammasena Thero to reside in this temple and manage its affairs which he did till his death in 1965. Thereafter the dayakayas installed the defendant in the temple. He rejected the plaintiff's contention that Dhammasena Thero was installed in the temple with the permission of Sumanajothi Thero. He also held that neither Sumanajothi Thero nor the plaintiff functioned as Viharadipathi of the temple at any time. He held further that the plaintiff had not attended any important ceremony in this temple after the death of Saranatissa Thero. He, therefore, concluded that after Saranatissa Thero's death in 1921 the temple had been abandoned.

The question therefore arises whether the concept of abandonment can apply to the Maha Sangha, (in this case the Saddhamma Yuktika Nikaya) in respect of this temple which, as I have held, had been dedicated to the Maha Sangha. In other words, whether the rights of the Maha Sangha (in this case the Saddhamma Yuktika Nikaya) to this temple had been extinguished by abandonment. In finding an answer to this question I have to keep in mind what Bertram C.J. has stated in *Saranankara Unnanse v. Indajoti Unnanse*[8]– at 394:

[6](1954) 56 N.L.R. 284. [7](1956) 57 N.L.R. 518.
[8](1918) 20 N.L.R. 385.

"But when we are dealing with ecclesiastical property, a region in which we are enforcing simply the ecclesiastical law based upon the original authoritative texts developed by religious customs, we ought not to recognize claims and transactions which are in their terms or in their nature inconsistent with the fundamental principles of those texts and those customs."

Inherent in the idea of dedication of a Buddhist temple to the Maha Sangha is that the dedication is made for "the use of the Sangha of the four directions whether present or to come". On the basis of this formula which is recited in the act of dedication to the Maha Sangha one finds it difficult to accept the proposition that the concept of abandonment of such a temple can ever be attributed to the Maha Sangha. It was held in *Dhammaloka Thero v. Saranapala Thero* – (supra) that upon the extinction of the line of pupillary succession governed by the rule of succession known as sisyanu sisya paramparawa the temple vests in the Sangha and the right of appointing a new Viharadipathi vests in the Maha Nayake of the fraternity which has jurisdiction over it. The fact that a stranger had functioned as Viharadipathi for a long time did not defeat the Maha Nayake's right of appointment, which is a right that cannot be lost by prescription. By a parity of reasoning the Maha Nayake of the sect to which a particular temple has been dedicated can always assert his rights to such a temple on behalf of the Maha Sangha despite the fact that such a temple had been for many years abandoned.

I would therefore hold that the learned District Judge was wrong in his decision that by reason of abandonment the Saddhamma Yuktika Nikaya had lost its rights to the said temple.

I will next deal with the question whether the learned District Judge was right in holding that the plaintiff's action was time-barred. I have held in this case the temple is sanghika property and the rule of succession known as sisyanu sisya paramparawa applies to this temple. The dayakayas therefore had no right to appoint any person to manage or administer this temple as such, Dhammasena Thero who claimed to function as Viharadipathi till 1965 and the defendant who also claimed to function as such thereafter were imposters or trespassers who had no lawful right to this temple. It was held in *Kirikitta Saranankara Thero v. Dhammananda Thero*[9] – that an imposter could not acquire a right to an incumbency by prescription; nor can the rights of a true incumbent be extinguished by prescription. Although the operation of the Prescription Ordinance, may destroy the remedy accruing from a particular "denial", the right or status itself still subsists. If any priest claiming to be entitled to this temple as Viharadipathi instituted an action

[9](1955) 55 N.L.R. 313 at 315.

against Dhammasena Thero when he was alive, no doubt, he would have been met with the plea that his cause of action was prescribed as on the undisputed evidence Dhammasena Thero was in control of this temple from 1926. He, however, died in 1965 and the defendant claiming to be the Viharadipathi thereof is now disputing the plaintiff's rights to the said temple. This action was instituted on 26.1.67 praying for a declaration that the plaintiff is the lawful Viharadipathi of the said temple and for the ejectment of the defendant therefrom. Even if one were to assume that the period of prescription for such a cause of action is three years, the plaintiff has instituted the action in time. I, therefore, hold that the plaintiff's action is not time-barred.

The pupillary line of succession to this temple having therefore become extinct consequent to Saranatissa Thero disrobing in 1921 without leaving any pupils and the succession not reverting notionally to the original tutor Sumanajothi Thero and through him to his sole surviving pupil, the plaintiff, the temple therefore vests in the Sangha. The right of appointing a new Viharadipathi to the temple vests in the Maha Nayake of the fraternity who has jurisdiction over it. *Dhammatilaka Thero v. Saranapala Thero* – (supra)

The plaintiff claims to be the Viharadipathi of this temple by virtue of the appointment P13 dated 6.2.1966 by the Maha Nayake of the sect to which the temple belongs. The Maha Nayake, Tangalle Somarathana Thero gave evidence for the plaintiff and produced the document P13. The learned District Judge although he refers to Somarathana Thero as a person who claimed to be the Maha Nayake of the sect, I am satisfied on his evidence that he was in fact at the relevant time the Maha Nayake of the Saddhamma Yuktika Nikaya to which sect this temple belongs. His evidence stood uncontradicted.

The learned District Judge having referred to P13 and the evidence of the Maha Nayake Thero held that P13 was not an appointment of the plaintiff as Viharadipathi of the temple. The reason he gave was that it was not the position of the Maha Nayake that he appointed the plaintiff to be the Viharadipathi of the temple but that he was of the opinion that the plaintiff was entitled to hold that office.

Mr. Jayewardene has strenuously contended that this finding is erroneous and is not based on a proper construction of the document P13. Mr. Wimalachandra who appeared for the defendant on the other hand has invited us to read the whole document along with the evidence of the Maha Nayake on this question. He submits that P13 cannot be construed as an appointment of the plaintiff as Viharadipathi. His position is that P13 merely narrates certain facts chronologically regarding the temple from the time that

Sumanajothi Thero was the Viharadipathi. It refers to Dhammasena Thero having lived in the temple without any right to the incumbency and his death. It merely reiterates the fact that the plaintiff managed the affairs of the temple and had the right and power to do so. He also referred to the conflict between the evidence of the Maha Nayake and the construction sought to be put on P13 by the plaintiff. He drew our attention in this connection to the evidence of the Maha Nayake Thero in cross-examination, the relevant portion of which I now quote:–

> "My object in writing P13 was because that the defendant priest does not belong to our Nikaya and to settle the disputes. Rev. Saranatissa was the Viharadipathi of this temple. I was the Maha Nayake during Rev. Saranatissa's time. I came to know Rev. Saranatissa in 1917. I did not appoint Rev. Saranatissa as Viharadipathi. By P13 I did not appoint Rev. Jinaratana as Viharadipathi, but Rev. Jinaratana was functioning as Viharadipathi of the Dodampe Vivekaramaya at the time of the writing of P13. Plaintiff priest could have done what he wanted to do as Viharadipathi. P13 was sent to the Plaintiff priest as an advice. Without P13 he could have still functioned as Viharadipathi. I advised him to do this as Viharadipathi. In P13 I mentioned historical matters in connection with Dodampe Vivekaramaya as I was Maha Nayake. As I know the history of this temple I gave P13 to plaintiff priest. Plaintiff priest also knew the history of this temple."

The Maha Nayake when he gave evidence was 73 years old, and the relevant portion which I have quoted above is in narrative form. One cannot discount the possibility that these may have been answers to leading questions in cross-examination. In order to appreciate the significance and meaning of the document P13 the prudent course would be to be guided by the relevant passage in the original Sinhala of P13 which reads thus:–

> "එම ආරාමයේ පාලනය භාරගෙන දායක කාරකාදීන්ගේ ආගමික කටයුතු ඉටු කරන ලෙස මෙයින් නිවේදනය කරමි.
>
> මෙ ස්ථානය පාලනය කිරීමට ස්ථවිරයන්ට අයිතිය සහ බලයද තිබෙන බව දැනගන්න."

The English translation of it would be "I hereby inform you to accept the management of the temple and minister to the religious duties of the dayakayas. Let it be understood that you have the right and power to manage the temple". Mr. Wimalachandra in support of his contention argued that the tenor of this letter did not show that there was a vacancy in the office of the Viharadipathi which necessitated such an appointment but it is only a reiteration of the existing state of affairs and merely confirms the fact that the plaintiff was entitled to manage the affairs of the temple. I find it difficult to accept the contention of Mr. Wimalachandra that P13 is not an appointment of the plaintiff to be the Viharadipathi of this temple. The function of a

Viharadipathi of a temple is to manage the temple and he has the right and power to do so. This right and power are given in P13 to the plaintiff. It is true that P13 does expressly not affix the label of Viharadipathi to the plaintiff in respect of the rights and powers that are conferred by it. But if one looks at the true nature of the rights and powers that are granted by P13 in favour of the plaintiff it is not possible to resist the conclusion that the Maha Nayake intended by P13 to appoint the plaintiff to perform the duties of the Viharadipathi of the temple. I am, therefore, satisfied on a reading of P13 and the evidence of the Maha Nayake that the appointment was necessitated because Dhammasena Thero died and that there was a dispute regarding the temple since the defendant priest did not belong to the same Nikaya.

In construing a document like P13 one must find out the plain intention of the person making it from the meaning of the words used though there may not be the express use of the word "Viharadipathi". See *Jinarathana Thero v. Somarathana Thero*[10]. The Sinhala words "අයිතිය, බලය" and "පාලනය" in this context in relation to a temple sufficiently connote the powers and rights of the Viharadipathi of a temple.

Regarding the evidence of the Maha Nayake under cross-examination that he did not appoint the plaintiff as Viharadipathi by P13, I would think that he probably was having in mind the fact that in P13 there was no reference to the plaintiff being expressly appointed to the office of Viharadipathi.

Mr. Jayewardene also relied on the maxim "allegans contraria *non est audiendus,*" namely, that "a man shall not derogate from his own grant".

For these reasons I am satisfied that the Maha Nayake Thero intended by P13 to appoint the plaintiff as Viharadipathi of the temple in question. The plaintiff therefore succeeds in this appeal.

His appeal is allowed and the judgment and decree of the learned District Judge are set aside. Judgment is entered for the plaintiff as prayed for. The plaintiff will be entitled to costs both here and in the District Court.

RATWATTE, J. – I agree.

WANASUNDERA, J. – I agree.

Appeal allowed.

[10](1946) 47 N.L.R. 228.