

KAMPANE GUNARATNA THERO
v.
MAWADAWILA PANNASENA THERO

SUPREME COURT

G. P. S. DE SILVA, C.J.,

WIJETUNGA, J. AND

GUNASEKERA, J.

S.C. APPEAL NO. 3/97

C.A. NO. 18/89 (F)

D.C. COLOMBO CASE NO. 4975/ZL

6TH AND 18TH MAY AND 12TH JUNE, 1998.

Buddhist Temporalities – Claim of Viharadhipathi to a temple – Temple property not dedicated to Sangha according to vinaya – Deed "of dedication" not accompanied by the requisite religious ceremony – Maintainability of the action.

The plaintiff sued the defendants for a declaration that he is the lawful Viharadhipathi of the temple known as Mahajana Rajaramaya, for ejection of the defendants from the temple premises and for recovery of possession of the same. The temple was constructed on an allotment of crown land which had been leased to the Trustees of a Buddhist Association for the purpose of constructing a Buddhist temple and dedicating it to the Sangha after which it was stipulated that the lessor will issue a fresh lease of the land for 99 years in favour of the trustee or the controlling Viharadhipathi of the temple. The temple was constructed and a deed "of dedication" was executed with the approval of the Government Agent and the Commissioner of Buddhist Affairs. The deed appointed the plaintiff as the Viharadhipathi of the temple.

Held:

1. The fact that a deed "of dedication" was executed with the full authority of the state did not by itself, render the temple a Sanghika Viharaya which was the basis of the plaintiff's action. A mere claim to the office of Viharadhipathi independently of the title to the temple and temporalities is untenable.
2. As the deed "of dedication" had not been accompanied by a solemn ceremony in the presence of 4 or more monks representing the "Sarva Sangha" or "entire priesthood", as prescribed in vinaya, the temple and its property did not become-Sanghika property. The title to the property remains with the State. In other words, the property remains "Gihi Santhaka".

Cases referred to:

1. *Wickramasinghe v. Unnanse* 22 N.L.R. 236 at 239, 242.
2. *Wijewardena v. Buddharakkita Thero* 59 N.L.R. 121 at 125.
3. *Mapalane Dhammadaja Thero v. Rotumba Wimalajothi Thero* 79 N.L.R. (Vol. 1) 145 at 163 and 164.

APPEAL from the judgment of the Court of Appeal.

P. A. D. Samarasekera, PC., with *G. L. Geethananda* for the plaintiff-appellant.

T. B. Dissanayake, PC., with *B. Coswatte* and *Nihal Samarasinghe* for the 1st defendant-respondent.

Cur. adv. vult.

June 30, 1998

G. P. S. DE SILVA, CJ.

The plaintiff instituted these proceedings in June, 1985 and prayed for the following reliefs: (a) a declaration that he is the lawful Viharadhipathi of the temple known as Mahajana Rajaramaya, Rajagiriya; (b) that the defendants be ejected from the temple and premises described in the schedule to the plaint and the plaintiff be placed in possession thereof. The schedule to the plaint sets out an allotment of **Crown land** depicted as parts of lots 20, 22 and 47 in P. P. 20394.

After trial, the District Court held that the plaintiff was entitled to a declaration that he is the lawful Viharadhipathi of the temple and to a decree in ejectment against the 1st defendant (The 2nd defendant had already left the temple). Upon an appeal preferred by the 1st defendant, the Court of Appeal allowed the appeal and set aside the judgment of the District Court. The finding of the Court of Appeal was that there was **no valid dedication of the temple to the Maha Sangha**, that the absolute title to the land remained with the State, and therefore the plaintiff could not have and maintain this action.

Against the judgment of the Court of Appeal, the plaintiff has lodged the present appeal. Special leave to appeal was granted by this court upon the following principal question. "Whether there was a valid dedication of the temple constructed on the land leased by the State, although (a) such dedication was by the lessees acting with the authority of the State, and (b) the contemplated future lease was for 99 years only.

Mr. Samarasekera for the plaintiff-appellant submitted, (1) that the question whether the temple is a "Sanghika" temple is completely irrelevant to the decision of this case; (2) the crucial issues were whether a temple called the Mahajana Rajaramaya was constructed by the trustees on the land admittedly leased by the State and, if so, who is the lawful Viharadhipathi of the temple (i.e. is it the plaintiff or the 1st defendant?); (3) that the plaintiff never sought a declaration of title to the land; he sought a declaration only to the office of Viharadhipathi.

On the other hand, Mr. T. B. Dissanayake for the 1st defendant-respondent contended (a) that on a consideration of the averments in the plaint, the documents relied on by the plaintiff, and the oral evidence of the plaintiff, it is clear that the case for the plaintiff is that he is the **Viharadhipathi of a Sanghika temple**; (b) that there was no dedication in terms of the **Vinaya** and the temple remained "Gihi Santake" (lay property); (c) this action necessarily involved a claim of title to property although this was not expressly averred in the plaint; (d) the action as framed was misconceived in law.

In order to consider the rival contentions, it is necessary to set out in detail the averments in the plaint.

Paragraphs in the plaint—

"(2) By Indenture of Lease dated 17th October, 1960, the Government of Ceylon granted a lease of a parcel of Crown land in extent two roods (AO. R2. PO) more fully described in the schedule to the plaint to Rev. Wadhibasinge Balapitiye Dhammananda, Manameldura Piyadasa de Zoysa and Edward Bandula Abeysekera, the Trustees of the Association called Baudha Sanskarna Samwardhana Society on a rental of Rs. 37.50 per annum. (Indenture of lease was marked as P2 at the trial).

(3) *Inter alia* the said lease contained the conditions that the land demised was to be used for the purpose of building a Buddhist Temple to be dedicated to the Sangha and a Bhikku will be in charge and control of the Temple, subject to the approval by the Public Trustee of Ceylon or any other Officer who may be entrusted with the supervision of Buddhist Temporalities.

(4) In accordance with the terms and conditions of the said lease which is produced herewith marked "A" and pleaded as part and parcel of the plaint the Trustees of the said Society, the lessees, constructed the buildings on the leased property which is now known and referred to as "MAHAJANA RAJARAMAYA RAJAGIRIYA".

(5) The Government Agent of Colombo by his letter dated 25th May, 1982, requested the Secretary of the Bauddha Sanskarana Samwardhana Society to forward a letter addressed to the Commissioner of Buddhist Affairs expressing the consent of the Trustees to dedicate the temple to the Mahasangha and name a person as Viharadhipathi.

(6) Further the Government Agent of Colombo by the said letter requested the Secretary of the said society to forward to him three copies of a draft of a Deed of Dedication duly completed as indicated by him. A copy of the said draft of the Deed of Dedication is annexed hereto marked "B" and is pleaded as part and parcel of this plaint. (The draft Deed of Dedication was produced at the trial marked P3).

(7) On 15th September, 1982, the Commissioner of Buddhist Affairs approved the draft of the Deed of Dedication and instructed the Secretary to get a Notary to attest the Deed of Dedication in triplicate and get it registered.

(9) In compliance with the directions of the Commissioner of Buddhist Affairs and in terms of the condition 3 (c) of the lease marked "A" the Deed of Dedication No. 2022 of 4th December 1983 was executed by the Trustees of the Society. (The Deed of Dedication was marked P4 at the trial).

(10) By the said deed the temple known and called Mahajana Rajaramaya **was dedicated to the Mahasangha** and the plaintiff was duly and lawfully appointed as the first Viharadhipathi thereof.

(12) From about September, 1982, the two defendants jointly and severally disputed the rights and title to the Viharadhipathiship of the temple by not allowing the plaintiff to enter the temple to perform his duties and functions as the lawful Viharadhipathi.

(15) This temple is exempted from the operation of s. 4 (1) of the Buddhist Temporalities Ordinance, Chapter 318, L.E.C."

It is to be noted that paragraph 3 of the plaint speaks of a Buddhist temple to be constructed on the land (taken on lease from the State) and it is to be **dedicated to the Sangha**. Further, there is the averment that there will be a Bhikku "in charge and control of the temple". Section 20 of the Buddhist Temporalities Ordinance provides that "all property, movable and immovable, belonging or in anywise appertaining to or appropriated to the use of any temple . . . shall vest in the trustee or the controlling Viharadhipathi for the time being of such temple . . .". It seems to me that the submission of Mr. Dissanayake that the averments in paragraph 3 attract the provisions of section 20 of the Buddhist Temporalities Ordinance is well-founded. Mr. Dissanayake further pointed out that the exemption from the operation of section 4 (1) of the Buddhist Temporalities Ordinance pleaded in paragraph 15 is the usual pleading in a straight forward "Viharadhipathiship case". Although Mr. Samarasekera submitted that the Buddhist Temporalities Ordinance does not necessarily deal only with Sanghika property, yet the view taken in the decisions of this Court are to the contrary. As far back as 1920, Shaw, A.C.J. in *Wickremasinghe v. Unnanse*⁽¹⁾ observed ". . . I do not think that the ordinance is intended to apply to premises that are private property". Again, His Lordship Chief Justice Basnayake in *Wijewardena v. Buddharakkita Thera*⁽²⁾ stated: "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 Viharadhipathi of the Vihare".

Similarly paragraphs 5 and 6 speak of dedication to the Maha Sangha and paragraph 10 explicitly avers that: "By the said deed (i.e. the Deed of Dedication P4) the temple known and called Mahajana Rajaramaya was **dedicated to the Maha Sangha** and the plaintiff was duly and lawfully appointed as the first Viharadhipathi thereof."

Turning now to the documents, it seems to me that the documents too are on the basis that the temple is dedicated to the Maha Sangha. This is evident from the definition of the expressions "trustee" and "Viharadhipathi" in clauses 3 (b) and (c) of the lease P2. Trustee is defined as "a trustee of the temple **appointed under the provisions of the Buddhist Temporalities Ordinance**". The term Viharadhipathi

in P2 is also defined in terms similar to the concept of the "Controlling Viharadhipathi" referred to in section 4 (2) of the Buddhist Temporalities Ordinance. In the draft Deed of Dedication P3 there are several references to the fact of dedication to the "Maha Sangha" and the deed itself is on the basis that the dedication of the temple is to the Maha Sangha. The Deed of Dedication P4 is in the same terms and it clearly states that the "dedication" of the temple is accepted by the plaintiff on his own behalf **and on behalf of the Maha Sangha.**

Upon a consideration of the oral evidence of the plaintiff himself it is clear that his position too is that the temple is a Sanghika temple. The material part of his evidence in examination in chief reads as follows (as translated) :

- Q. Is this place (i.e. temple) Sanghika?
 A. Now it is Sanghika.
 Q. Since when is it Sanghika?
 A. Since the date of the dedication to me. . . .
 Q. This was given to you as a Sanghika gift?
 A. As a Sanghika gift.
 Q. You say you are the Adhipathi of Sanghika property?
 A. Yes.
 Q. How was it rendered Sanghika?
 A. It was the intention of the Dayaka Sabha. It was so declared.

Having regard to the averments in the plaint, the documents P2, P3 and P4 and the oral testimony of the plaintiff himself, I hold that the plaintiff has instituted this action on the basis that the temple called Mahajana Rajaramaya is a Sanghika temple. "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 . . . until a dedication takes place the temple remains 'gihi santhaka' (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 4 or more priests who apparently represent the 'Sarva Sangha' or entire priesthood" *per De Sampayo, J. in Wickremasinghe v. Unnanse (supra)*. His Lordship Chief Justice Basnayake cited Wickremasinghe's case (*supra*) in *Wijewardena v. Buddharakkita (supra)* and stated: "No property can become Sanghika without such a ceremony . . . A temple or any

other property given to the Sangha must be dedicated in the manner prescribed in the Vinaya. Then and then only can it become Sanghika property". (at pages 124 and 125). In the present case there is no proof of a "dedication" in the manner prescribed in the Vinaya. The fact that the State validly leased the property to the "Trustees" in terms of the Crown Lands Ordinance for the purpose of constructing a temple and that a deed "of dedication" (P4) was executed with the full authority of the State do not render the temple a Sanghika Vihara. The contemplated lease for a period of 99 years would make no difference at all, for the title to the property still remains with the State. In other words, the property remains "Gihi Santhaka". The essence of a valid dedication is that the property must cease to be "Gihi Santhaka"; the dedication must be in terms of the Vinaya.

Finally, Mr. Samarasekera's contention that the present action was **only** for a declaration to the office of Viharadhipathi is not acceptable. As stated earlier the relief prayed for included ejectment and an order for restoration of possession. These reliefs attract a claim to property. As submitted by Mr. Dissanayake, the rights attached to the office of Viharadhipathi necessarily involve rights to immovable property. Mr. Dissanayake very relevantly cited the following passage from the judgment of Pathirana, J. in *Mapalane Dhammadaja Thero v. Rotumba Wimalajothi Thero*⁽³⁾. "The temple which is the symbol of the office of Viharadhipathi and its appurtenances which include the residential quarters of bhikkus all stand on immovable property. The question of title to all these is involved in an action for the Viharadhipathiship of a temple, not to mention that the title to its temporalities all of which by operation of law after the Ordinance of 1931 vests in the lawful Viharadhipathi. . . Two concepts are therefore associated with the office of Viharadhipathi of a temple. First, there is the holder of such an office. Secondly, by virtue of the office there are interests which are attached to such office by operation of law . . . An action for declaration of title to the office of Viharadhipathi though in form it may appear to be an action for an office or status is in substance an action for the temple and all its temporalities." Referring to the relief in ejectment, Pathirana, J. stated: "To eject means to oust the defendant from the temple and its temporalities and put the plaintiff in possession thereof. Ejectment of the defendant cannot therefore be said to be purely incidental to the claim to be incumbent. The temple and the office of Viharadhipathi are so inextricably interwoven that it is almost impossible to visualize one without the other."

(at page 164). Thus the submission advanced on behalf of the plaintiff-appellant that the action was purely for a declaration in respect of the **office** of Viharadhipathi and not for a declaration of **title** to the land is untenable. The view taken by the Court of Appeal is relevant to the decision of the case and is correct. The plaintiff's action is clearly misconceived in law.

For these reasons the appeal fails and is dismissed, but in all the circumstances, without costs.

WIJETUNGA, J. – I agree.

GUNASEKERA, J.

Whilst I agree with the judgment of my Lord the Chief Justice with whom my brother Wijetunga, J. has agreed in which the facts relating to this appeal are fully set out I am of the view that the plaintiff-appellant's action cannot be maintained for the following reasons as well.

Special leave to appeal had been granted in this case upon the following principal question. "Whether there was a valid dedication of the temple constructed on the land leased by the State, although—

- (a) such dedication was by the lessees acting with the authority of the State, and
- (b) the contemplated future lease was for 99 years only".

The evidence relating to this aspect of the matter appears at pages 169 onwards of the Court of Appeal brief. According to the evidence of the plaintiff Kampane Gunaratna Thero, although he claims that the temple in question has become Sanghika property from the day it was bestowed on him and that the Dayaka Sabha had the intention of dedicating it to the Maha Sangha, there is no evidence on record to establish that the formalities and the ceremonies that have to be complied with for a dedication to the Maha Sangha for the said property to become Sanghika property as referred to by Shaw, A.C.J. in *Wickramasinghe v. Unnanse* 22 NLR 236 have been fulfilled.

Further, according to the lease agreement 'P2' the lessees were to hold the land until the dedication of the temple in the manner provided for in clause 11 of its 6th schedule (vide the 3rd schedule at page 61), and according to clause 14, "upon the dedication of the temple in the manner provided in clause 11 the lessor was to issue a fresh lease of the land for 99 years in favour of the trustee or the controlling Viharadhipathy, in trust for the temple so dedicated". From the above clauses it appears that title to the temple in question was to remain in the State.

In my view not only has there been no dedication as required by the Vinaya rules but also the intention has been that the title to the property was to remain in the State. In these circumstances, I answer the question upon which leave was granted in the negative. The appeal is therefore dismissed but without costs.

GUNASEKERA, J.

Appeal dismissed.
