Present: Wood Renton J. and Pereira J. 1913.

SUMMANASARA UNNANSE *v.* SENEVIRATNA.

338—D. C. Kalutara, 4,774.

Action to be declared entitled to the management of a school.

An action to be declared entitled to the management of a school, apart from any claim to the fabric, was held to be bad.

PEREIRA J.—If the plaintiff was the proprietor of the school, there could have been no difficulty in the way of his instituting an action *rei vindicatio* in respect of it; but it appears that he has really no proprietary rights. He bases his claim to be declared entitled to the management of the school on the ground that he "opened" the school (whatever that may mean), and had it registered as a grant-in-aid school with himself as proprietor. The status of "manager of a school" is hardly one recognized by our law.

THE facts are set out in the judgment.

H. A. Jayewardene, for the plaintiff, appellant.

A. St. V. Jayewardene, for the defendant, respondent.

Cur. adv. vult.

February 14, 1913. WOOD RENTON J.—

The appellant in his original plaint sued the defendant-respondent for a declaration of his title as proprietor of a vernacular school. He alleged that he had opened the school in 1897, maintained it till 1900, and registered it in 1900 as a grant-in-aid school. He appointed the father-in-law of the defendant-respondent to manage the school during his absence from Ceylon. On his return to Ceylon in March, 1911, the respondent refused to give back the management of the school, and continued to remain in possession both of the building and of its furniture. The appellant purported to sue as incumbent of a vihare within whose premises the school, according to him, was situated. The respondent in his answer contended that the appellant could not maintain the action as incumbent, and that it was only the trustee for the temple who could sue for the recovery of property belonging to it. He admitted the opening of the school in 1897, its registration in 1900, and its management by the appellant till 1904. He alleged that in 1905 the appellant had abandoned the school; that his own father-in-law had built the school on land belonging to him at his expense; and that since his father-in-law's death he had been duly appointed manager. At the trial the appellant entirely abandoned his claim for a declaration of his

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title as proprietor of the school, and altered the prayer in his plaint to one for a declaration of his title to the management of it. After a good deal of somewhat confusing discussion in the District Court and a previous appeal to the Supreme Court, the learned District Judge held, after hearing the evidence of Mr. Harward, the Director of Public Instruction, that the appellant's claim to the management of the school, disassociated as it had been by the amendment of the plaint from any claim of title to the fabric itself was bad. But he said that he would hear evidence as to the claim to the furniture. The appellant stated that if he could not get a declaration of title to the management of the school he did not wish the furniture. The learned District Judge thereupon dismissed his action with costs. I think that he was perfectly right in doing so. The evidence of Mr. Harward clearly shows that the appointment of managers to grant-in-aid schools rests with him, and that he would not be bound to give effect to any decree of the District Court, or, for that matter, of the Supreme Court, on the subject. Although Mr. Harward, after the plaintiff's return to Ceylon, appointed him manager on the assumption that he was in possession of the school, this appointment was subsequently revoked, and the respondent is now the *de facto* manager. The appellant's counsel invited us to give him an opportunity of falling back on his original claim for a declaration of title to the school. But this, I think, we ought not to do. I would dismiss the appeal with costs, without prejudice, however, to any fresh proceedings that appellant may be advised to take for the recovery of the school building itself, or otherwise.

PEREIRA J.—

I agree. In this case the plaintiff claims to be declared entitled " to the management " of a certain school and " to the furniture, together with everything appertaining thereto." He avers in his plaint that he is one of the incumbents of Kanda Vihare, and as such he " opened " the school " for boys at the said vihare premises," and maintained it until 1900, when he had the school " registered as a grant-in-aid school " with himself as its " managing proprietor." If the plaintiff was the proprietor of the school, there could have been no difficulty in the way of his instituting an action *rei vindicatio* in respect of it; but it appears that he has really no proprietary rights, and that he cannot appear in Court as proprietor. That being so, he bases his claim to be declared entitled to the management of the school on the facts stated above, namely, that he " opened " the school (whatever that may mean), and had it registered as a grant-in-aid school with himself as proprietor. The status of " manager of a school " is hardly one recognized by our law. It appears that there is such a position provided for by what is referred to by Mr. Harward as " The Revised Code." As to that, it is sufficient to say that, according to Mr. Harward's

evidence, the plaintiff is not " manager " under " The Revised Code." His position, then, is that he claims to be declared entitled to the management of the school because he, as an incumbent of Kanda Vihare, " opened " the school. It is clear that he cannot in law maintain such a position.

Appeal dismissed.