1917.

Present : Wood Renton C.J. and De Sampayo J.

WIMALASURIYA *v.* WICKRAMARATNA.

325—D. C. Matara, 5,035.

Buddhist temple—Acquisition of title to land by prescription—Proclamation of September 18, 1819—Buddhist Temporalities Ordinance, 1905, s. 41.

The prohibition against the acquisition of property by a Buddhist temple without the license of the Governor does not prevent a Buddhist temple from acquiring title by prescription to a land.

The Proclamation of September 18, 1819, was confined to the Kandyan Provinces.

THE facts are set out in the judgment of De Sampayo J.

Bawa, K.C., and *M. W. H. de Silva*, for the plaintiff, appellant.

Keuneman and *Drieberg*, for the defendant, respondent.

Cur. adv. vult.

November 21, 1917. WOOD RENTON C.J.—

I do not think that we are in a position in this case to differ from the learned District Judge on the facts. No doubt the legal title is in the plaintiff, and it is too late to raise for the first time now in appeal the point taken by the defendant's counsel that he has not

[1] *(1911) 15 N. L. R. 120.*

put in evidence, or proved the existence of, the decree in the mortgage action. The existence of that decree was assumed in the second issue. But in spite of the plaintiff's paper title, there is evidence of long possession of lot B on behalf of the temple. That evidence is corroborated by the entry in the commutation register (D 3), and it is not countered by proof of any very definite acts of ownership on the part of the plaintiff's testator or his predecessor in title.

The only other point in the case is that, under the concluding paragraph of the Proclamation of September 18, 1819, a donation or bequest to a temple, unless licensed in the manner prescribed by the Proclamation, is absolutely prohibited, and is incapable of transmitting title to the donee. To that contention the answer appears to me to be that, even if the Proclamation of September 18, 1819, were still in force, and had not, as I think it has, been impliedly repealed by section 41 of the Buddhist Temporalities Ordinance, 1905,[1] its operation was confined to the Kandyan Provinces,[2] section 41 of the Ordinance of 1905 does not prohibit a temple from acquiring, without license, title by prescription.[3]

I would dismiss the appeal, with costs.

DE SAMPAYO J.—

The plaintiff claims a declaration of title to the land marked B in the survey plan filed of record. Both the lots A and B in that plan formed one land, and belonged to Dona Cornelia Tillekeratne. She mortgaged the entire land in 1879 to one Mathes Balasuriya, but pending the mortgage she transferred lot B by way of gift to the Buddhist temple called Sirinivasa at Aturaliya, of which the defendant is the present trustee under the Buddhist Temporalities Ordinance, No. 8 of 1905. Mathes Balasuriya sued on the mortgage bond, and having obtained a decree he had the entire land sold and purchased it himself in 1884. The plaintiff who claims the land under Mathes Balasuriya has good documentary title, but the District Judge has dismissed the plaintiff's action on the ground that the temple has acquired title to lot B by prescription. The plaintiff appeals.

The finding of the District Judge as to prescriptive possession is supported by the evidence, and I do not think there is any good reason for interfering on that question of fact. But Mr. Bawa, for the plaintiff, contends that as Buddhist temples are prohibited from acquiring property without the license of the Governor, it was not possible for the temple to prescribe for the land. Section 41 of the

[1] *No. 8 of 1905.*

[2] *See the decision of the Full Court in Godinho v. Koning (1846) Ram. 1843–55, page 132, where the fact is mentioned that an Ordinance (No. 2 of 1840) for extending the provisions of the Proclamation to the whole Island was disallowed by the Crown.*

[3] *Silva v. Fonseka. (1912) 15 N. L. R. 239.*

1917.

DE SAMPAYO J.

Wimala suriya v. Wickrama-ratna

Buddhist Temporalities Ordinance, No. 8 of 1905, makes it unlawful for any temple to "acquire" any immovable property of the value of Rs. 50 or upwards. The word "acquire" in the context means acquisition by the modes mentioned in the next sentence of that section, viz., by "devise, grant, or conveyance," or other investive act whereby an individual transfers to another, and does not include the species of acquisition by prescription, which confers title by operation of law. This point is covered by the authority of *Silva v. Fonseka*.[1] It is impossible, in fact, to conceive how and at what stage the license of the Governor can or will be granted for possessing property deliberately against the true owner. This naturally brings me to a further argument based on the Proclamation of September 18, 1819. That Proclamation, after declaring it unlawful to make a donation or a bequest of any land to any temple without previously receiving a license in writing to make such donation or bequest, provides that any land gifted or bequeathed contrary to that order shall not be considered as the property of the temple, but shall be given to the nearest heir of the person who disobeyed the order, provided he sues for the same within a certain time, "or else the land shall become forfeited to the Crown." Mr. Bawa's argument is that acquisition by prescription of a land so liable to forfeiture is not available. This contention cannot be entertained, for several reasons. I do not see, in the first place, why the provision as to forfeiture in favour of the Crown prevents prescription from taking effect in the usual way. Moreover, the Proclamation makes it clear that it is only acquisition by donation or bequest for which a license is required, and which, without such license, is prohibited. All other modes, *e.g.*, purchase or exchange, are beyond the scope of the Proclamation. It is also doubtful whether the Proclamation in respect of this provision is in operation now. Section 41 of the Buddhist Temporalities Ordinance, which contains a complete provision relating to acquisition of lands by temples and has no reference to the Crown, appears to me to have tacitly repealed the provisions of the Proclamation on the same subject. Under that section there will be no forfeiture to the Crown. Apart from this, it is to be noted that the Proclamation is applicable to the Kandyan Provinces only. It followed upon the Proclamation of November 21, 1818, which was enacted after the Kandyan rebellion of that year, and to which the preamble expressly refers. The very provision in question is directed against donations and bequests by any inhabitant of "these provinces," meaning thereby the Kandyan Provinces which had just before been annexed to the British Crown. It is clear that if the Proclamation is still in operation with regard to mortmain, it is so only in the Kandyan Provinces, and that all other parts of the Island—this case concerns the Matara District—are governed by section 41 of the Buddhist.

[1] *(1912) 15 N. L. R. 239.*

Temporalities Ordinance. In *Godinho v. Koning*[1] the Proclamation is even called the "Kandyan Proclamation," and the judgment of the Court also points out that the Ordinance No. 2 of 1840, which was intended to extend the law of mortmain generally into the Island in regard to all dispositions of land for religious or charitable purposes, was disallowed by Her Majesty.

I think that the finding of the District Judge as to prescription remains unaffected by the legal argument, and I would dismiss the appeal, with costs.

Appeal dismissed.