

1971 Present : H. N. G. Fernando, C.J., and Thamotheram, J.

A. B. PANANWALA BASNAYAKE NILAME and 2 others,
Appellants, and D. W. PUNCHI BANDA DISSANAYAKE
and another, Respondents

S.C. 10/67 (F)—D.C. Kegalle, 16275/M

*Buddhist ecclesiastical law—Kapurala of a dewale—Hereditary right—
Disqualification on the ground of misconduct—Right of his sons
to officiate as Kapurala.*

Members of a certain family had a hereditary right to officiate as Kapuralas of the Aluthnuwara Dewale at Hingula. Accordingly, the right of the plaintiffs' father Mudiyanse, who was a member of that family was recognized. In 1958 Mudiyanse was refused the office on the ground that numerous grounds of misconduct had been proved against him and that he had thereby forfeited his right to the office. In the present action the two sons of Mudiyanse relied, both on a deed of assignment from their disqualified father and on their own right as members of the family, to claim the office for themselves. Their claim was resisted on the ground that their right would not accrue until the death of their father.

Held, that although Mudiyanse forfeited his personal right by misconduct, the rights of his descendants were not thereby forfeited.

A PPEAL from a judgment of the District Court, Kegalle.

H. W. Jayewardene, Q.C., with C. R. Gunaratne and L. C. Seneviratne, for the respondents-appellants.

A. C. Gooneratne, Q.C., with R. C. Gooneratne, for the plaintiffs-respondents.

Cur. adv. vult.

February 13, 1971. H. N. G. FERNANDO, C.J.—

In this action instituted in 1963, the two plaintiffs, who are the sons of one Dissanayake Wannakuralage Mudiyanse, claimed a declaration that they are entitled to officiate as Kapuralas of the Aluthnuwara Dewale at Hingula. The action is one of a long series of actions which commenced in the early nineteen forties, when Mudiyanse, the plaintiffs' father, together with two other members of the Wannakuralage family sued the Basnayake Nilame of the Maha Vishnu Dewale in Kandy for a similar declaration. In that first action, No. M. R. 1444, this Court affirmed a judgment of the District Court of Kandy holding that the plaintiffs in that action, as members of the Wannakuralage family, had a hereditary right to officiate as Kapuralas of the Aluthnuwara Dewale, alternately with members of the Weediya-gedera family, for two-year terms (c.f. the judgment of the Supreme Court reported in 47 N. L. R. 17).

Subsequently to the decision of the first action, the Basnayake Nilames of the Maha Vishnu Dewale did recognize the right of the plaintiffs' father Mudiyanse to officiate as Kapurala. But in 1953, Mudiyanse was refused the office, and that refusal was upheld by the District Court of Kandy in 1961, the District Judge deciding that numerous grounds of misconduct had been proved against Mudiyanse and that he had thereby forfeited his right to the office. In the present action, the two sons of Mudiyanse have relied, both on a deed of assignment from their disqualified father and on their own right as members of the Wannakuralage family, to claim the office for themselves.

In the first action, the claim of the Wannakuralage family to be hereditary Kapuralas was established on the basis that one Atugedera Appuhamy had been the Kapurala of this Dewale some time prior to 1867, and that his daughter Dingiri Menika had contracted two marriages; by her first marriage she had a son Siyatu who had been Kapurala; and by her second marriage a son Appuhamy ex-Arachchi who had also been Kapurala. Thereafter the sons of Siyatu Kapurala, and also the sons of Appuhamy ex-Arachchi, had functioned as Kapuralas. In fact two of the successful plaintiffs in action No. 1444, were Siyatu's sons Mohottala and Punchi Appuhamy, and the third successful plaintiff was Mudiyanse the son of Appuhamy ex-Arachchi. The judgment in that action thus recognized the joint rights of the descendants of both Siyathu and of Appuhamy ex-Arachchi, and the joint rights of both branches of descendants was thereafter recognized by subsequent appointments made by the Basnayake

Nilames. The two plaintiffs, being the sons of Mudiyanse and the grandsons of Appuhamy ex-Arachchi, now claim as the latter's descendants.

It is clear from the pleadings and issues in the present action that the plaintiffs' claim is resisted on the ground that their right will not accrue until the death of their father Mudiyanse. This would undoubtedly be so if the right of their branch is already enjoyed by Mudiyanse or a brother of Mudiyanse, but that is not in fact the case. I agree with the learned District Judge that, although Mudiyanse forfeited his personal right by misconduct, the rights of his descendants were not thereby forfeited. I agree also that the incapacity attaching to Mudiyanse is no different from an incapacity arising through senility or unsoundness of mind, and that in the event of a branch not having a representative of one generation as Kapurala on account of such incapacity, the right accrues to the succeeding generation of that branch. The claim of the plaintiffs had thus to be upheld.

The documents produced in evidence at the trial, and the constant litigation concerning the office of Kapurala of this Dewale, show that much financial profit can be derived by the individuals who hold the office, and that the right to exercise the functions of the office has sometimes been assigned in exchange for a cash payment. Indeed Mudiyanse stated in evidence in the present case that his income for a two-year period as Kapurala had been about Rs. 50,000. If I am right in deploring a state of things in which offerings made at Dewales out of religious piety are appropriated for private gain, a remedy must be applied by the Legislature, for the Courts have not the power to deny hereditary rights and attendant privileges long established by religious custom.

I can neither share nor discount the foreboding expressed by Mr. Jayewardene on behalf of the Basnayake Nilame that, since Mudiyanse was proved to have been guilty of misconduct in the capacity of Kapurala, his sons may prove to be equally unsuitable for that office. In fact however, the claim of the plaintiffs was not contested on grounds of their unfitness.

The appeal is dismissed with costs.

THAMOTHERAM, J.—I. agree.

Appeal dismissed.