

MANIS ALIAS MANISA

V.

MARTHELIS APPUHAMY

COURT OF APPEAL
ABDUL CADER, J AND RODRIGO, J
C A 90 76 (M. C CIVIL)
M C NEGOMBO 1744 L
DECEMBER 3, 1981.

Kapurala is succession to the office hereditary.

The succession to the office of Kapurala is established by ancient custom. It is hereditary. An outsider cannot under any circumstances succeed a Kapurala. The successors will always be a member of the Kapurala families.

Case referred to :

Nugawela (Bannayake Nilame v. Mihathala (1945) 47 NLR 17.
D. R. P. Goonetillake for defendant-appellant
No appearances for respondent and he is absent.

Cur adv vult.

December 18, 1981

RODRIGO, J.

This action is concerned with the claim of the plaintiff to have a hereditary right to fill the office of "Kapurala" that had fallen vacant in the Paththini Devale attached to Galkanda Temple. The defendant having forcibly frustrated the attempt of the plaintiff to fill such office, the plaintiff has filed this action for a declaration that he is entitled by hereditary succession to fill the vacant office. The Judge of first instance has held with him and given the declaration asked for. The defendant has appealed.

The defendant disputes the assertion of the plaintiff that the Kapurala in a Devale assumes office by hereditary succession, and he claims that the office has customarily been filled by appointment at a meeting of lay devotees from the four "Peruwas" of the Devale. Before discussing these respective claims I shall turn to give an account of the facts of the case. This Devale is called by the parties Paththini Devale. It is, however, not the

Paththini Devale of Kandy which is one of the four chief Devalas in Kandy associated with the Dalada Maligawa (Tooth Relic Temple). This is a village Devale of ancient origin dedicated to the Goddess Paththini and does not stand by itself but forms part of a village Vihara called the Gaikanda Vihara situated in the Negombo District. Both the Vihara and the Devale are in terms of the Buddhist Temporalities Ordinance of 1931— vide s. 10 and 11 — in the custody, control and management of the Viharadipathi who is the trustee, this Vihara being exempted from the operation of s. 4(1) of the said Ordinance.

The plaintiff claims a hereditary right of succession to the office of Kapurala in this Vihara. It is not in dispute that one Adikari Appuhamilage Kaluhamy was the Kapurala of this Devale long years ago so far as the family of the plaintiff could trace the pedigree. The Vihara is ancient. The plaintiff is a member that comes down the line of ancestors from this Kaluhamy. It has always been a member of this lineage that had performed the functions of this office hitherto. This is the finding of the trial Judge. Accordingly the plaintiff's father Hendrick officiated as Kapurala till he died. Then the plaintiff succeeded him. The dispute, however, arose on account of there having been two Kapuralas functioning in this place. This Devale consisted of two rooms or sub-divisions which is not unusual. The practice presumably grew to accommodate more than one member of the Kapurala family. Both Kapuralas did not officiate on the same day. They took turns but performed in the separate rooms on different days by agreement. So that when Hendrick was Kapurala, an uncle of the plaintiff was also Kapurala performing alternatively with Hendrick. On Hendrick's death the plaintiff succeeded as his son and officiated with the plaintiff's uncle, one Simon. Simon died issueless. Therefore the plaintiff as a hereditary member succeeded him and became or tried to become the sole Kapurala. The defendant is a total stranger to the plaintiff's pedigree. He is alleged to have assisted Simon when he was ill before his death. He is now seeking to succeed Simon. Since he had no claim to hereditary succession he appears to have organised a meeting of the lay devotees of this temple by getting some notices printed and distributed convening a meeting of the lay devotees, expecting them to sponsor his appointment as Kapurala in succession to Simon. But the meeting had ended in disarray without any business being transacted.

A Devale is an ancient local institution constituting a place of worship. Though it is a place of Buddhist worship and is therefore called a "temple" in the Buddhist Temporalities Ordinance of 1931 — s.2 — as much as does a Vihara, it is distinct in origin and mode of worship. It is dedicated to Hindu gods and the persons officiating in it are not Buddhist priests. From ancient

times there have been laymen called Kapuwas. There can be more than one Kapuwa and the chief Kapuwa attracted the honorific addition of "Rala" and came to be called "Kapurala". The Kapurala of Paththini Devale is usually called "Paththini-hamy." Though the Devale here is a Paththini Devale the plaintiff calls himself "Kapurala." Dr. Hayley in his Treatise on the Laws and Customs of the Sinhalese says:—

"The popular religion is, therefore, an amalgamation of the Buddhist faith with the worship of certain gods, whose nature, names and attributes, have become to some extent localized, but most of whom can be sufficiently identified with the gods of the Hindus of India, or Tamils of Ceylon. . . . Kataragama, so-called from the village in which this most famous temple is situated, is Karttikeya, another name for Skanda, the son of Siva. Kattini, the Lady, is a goddess. To these and other less important deities many temples, called devales, are dedicated, often situated side by side with Buddhist vihares."*

The succession to the office of Kapurala is established by ancient custom.

The case of *Nugawela (Basnayake Nilame) v. Mohathala*¹ was concerned with the succession to the office of Kapurala. The Basnayake Nilame, the trustee of the Devale, claimed a right to appoint the Kapurala. Said, Soertsz, A. C. J. at page 18 :—

"The defendant (Basnayake Nilame) is unable to adduce a single instance in respect of any Devale in which a stranger has been appointed Kapurala. He says that in regard to the Devale concerned in this action 'I was under the impression that these people were hereditary Kapuralas as in the other Devales,' but he appears to have taken a different view when for the first time he found out that there were no 'kapu pangua' attached to the Alutnuwara Devale. Neither the appellant nor his Counsel was able to show that the hereditary quality of a Kapurala's office was dependent on whether or not a "panguwa" was attached to the office. The dictum in Dr. Hayley's book on Sinhalese Laws and Customs at page 532 indicates that this hereditary quality of the office applied without any discrimination to all Kapuralaships. He says, "The priests called Kapuwas, Kapuralas or Pattinihamis. . . . appointed by the villagers or lay managers do not belong to any order,

Dr. Hayley's Practice on the Laws and Customs of the Sinhalese, p. 532.

but conduct the ceremonies of each temple according to custom, usually learned from relations whom they succeed in office." I am unable to subscribe to Mr. H. V. Perera's contention that the words 'whom they succeed in office' mean nothing more than a fortuitous succession of instances and do not mean that such is the established custom. I find it impossible myself to resist the conclusion to which the trial Judge came when he held that the office is hereditary, it being left to the Kapurala family to make such arrangements for the performance of the services as expediency and convenience dictated subject to the approval of the Basnayake Nilame who, clearly, enjoys the control and management of the devales and could, therefore, impose reasonable terms and conditions which, in the long course of time, have become more or less well established."

It is a well established principle that an outsider cannot under any circumstances succeed a Kapurala. The successor will always be a member of one of the Kapurala families.* *

We, therefore, affirm the judgment of the Court of first instance and dismiss this appeal. Since there was no appearance for the plaintiff-respondent we do not award him costs of this appeal.

ABDUL CADER, J.

I agree.

Appeal dismissed.

** Walter Pereira's Laws of Ceylon, p. 143.