1957 *Present :* **Basnayake, C.J., and Pulle, J.**

WIJEWARDENE and another, Appellants, *and* BUDDHARAKKITA THERA, Respondent

*S. C. 183—D. C. Colombo (Inty.) 7,338/L*

*Buddhist ecclesiastical law—Vihare—Not a juristic person—Sanghika property—Requirement of customary mode of dedication—Will—Creation of a trust for the benefit of a Vihare—Status of official trustee of the temple in relation to the trust property—Trusts Ordinance, s. 109—Buddhist Temporalities Ordinance, s. 20.*

A Buddhist Vihare or temple is not a juristic person and cannot therefore receive or hold property. The Buddhist Temporalities Ordinance does not give, either expressly or by implication, corporate status to a Buddhist temple.

Any property given to the Sangha must be dedicated in the manner prescribed in the Vinaya. Then and then only can it become *sanghika* property.

Although property can be given to the Sangha only as *sanghika* property and in accordance with the customary mode of dedication, a person is not prevented from creating a trust for the advancement of the Buddhist religion or for the benefit of a Vihare in accordance with the Trusts Ordinance. Such property would be governed by the trust created by the author of the trust and not by the provisions of the Buddhist Temporalities Ordinance. Accordingly, if a testator leaves property to certain trustees for the use of a specified Buddhist temple, the property, and the management and disposal of the income thereof, would vest in the trustee appointed by the will and not in the trustee of the temple appointed in terms of the Buddhist Temporalities Ordinance.

APPEAL from a judgment of the District Court, Colombo.

*H. V. Perera, Q.C.*, with *K. Herat*, for 1st and 3rd Defendant-Appellants.

*E. B. Wikramanayake, Q.C.*, with *S. Nadesan, Q.C.*, *G. T. Samarawickrema* and *Prins Gunasekera*, for Plaintiff-Respondent.

*Cur. adv. vult.*

June 18, 1957. BASNAYAKE, C.J.—

By her Last Will, Helena Wijewardene, widow of Tudugallege Don Philip Wijewardene, Mohandiram, made a bequest of 250 acres of paddy land situate at Kalawewa for the benefit of the Raja Maha Vihare at Kelaniya. The bequest which was made in Clause 5 is in these terms :

"I give two hundred and fifty acres out of all that paddy field called Kalawewa Farm situate in the North Central Province Ceylon to the Raja Maha Vihare, Kelaniya. The selection of the 250 acres I leave to my Executors and the management of the same for the benefit of the said Vihare I entrust to my Trustees hereinafter named."

By clause 7 of the same Will she created a charitable trust for religious as well as other purposes and made bequests of her property both movable



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and immovable to her children. The following religious purposes are specially mentioned :—

(*a*) to continue gradually the restoration work now being carried on by me at the Kelaniya temple.

(*b*) to support in such manner and to such extent as my trustees may think fit such Buddhist charitable institutions and temples as my trustees may from time to time select.

In the final clause of the Will the testatrix gave her trustees power to sell any of the trust property and to invest the proceeds in other immovable property. That clause reads as follows :—

"I give my Trustee under this my Will full power and authority to sell and convert into money by Public Auction or private contract any property of mine if according to the circumstances at the time it becomes necessary or expedient so to do and to invest the proceeds of such sale and conversion in other immovable property."

After the administration was over, on 27th November 1942, the Executors of Helena Wijewardene's estate transferred to the trustee of the Raja Maha Vihare, Mapitigama Dhammarakkita, the paddy fields bequeathed for the benefit of that Vihare. The habendum in the Executors' conveyance is to the following effect :—

"To have and to hold the said property and premises hereby conveyed unto the said Reverend Mapitigama Dharmarakkhita High Priest and his successors in Office as aforesaid subject always to the conditions in the said will expressly contained namely that management of the said property for the benefit of the said Vihare shall be in the Trustees in the said Will named or provided for and their successors duly appointed in terms of the said Will such Trustees being at present the said Don Richard Wijeywardene, Don Edmund Wijeywardene and Don Louis Wijeywardene."

Mapitigama Dhammarakkita died on 19th July 1947 and he was succeeded by the plaintiff Mapitigama Buddharakkita, who instituted this action on 15th October 1954, against the three defendants one of whom is a trustee designated in the Will and the other two are the successors of the other original trustees who are dead. He prayed—

(*a*) that the defendants be ordered to account for the income from the said lands more fully described in the schedule and that judgment be entered in favour of the plaintiff for such sum as may be found due to him on such accounting.

(*b*) in default of such accounting judgment be entered in favour of the plaintiff ordering the defendants jointly and severally to pay to the plaintiff the sum of Rs. 350,000.

(*c*) for interest at the rate of six per centum per annum on all sums found due from the time they became due till date of action and thereafter at the legal rate on the aggregate amount of the decree till payment in full.

(*d*) for a declaration that the plaintiff is entitled to possess the lands more fully described in the schedule hereto and for ejectment of the defendants and all those holding under the defendants from the said lands.

(*e*) for costs of suit.

The defendants pleaded that the last Will created a charitable trust over the land for the benefit of the Vihare and that the power to use the income of the trust property for its benefit was vested in them as trustees in the last Will, and they asked that the action be dismissed.

The following issues were framed at the trial :—

(1) Is the plaintiff entitled—

(*a*) to an accounting in respect of the income from the 250 acres depicted in Plan No. 278 of 10th May 1947, referred to in the schedule to the plaint ;

(*b*) to be paid the said income.

(2) If issue (1) is answered in the affirmative, what sum is the plaintiff entitled to on the accounting ?

(3) In default of proper accounting, to what sum is plaintiff entitled ?

(4) Is the plaintiff entitled to be placed in possession of the said 250 acres ?

(5) Did the Last Will referred to in paragraph 3 of the plaint create a charitable trust in respect of the land referred to in the schedule to the plaint for the benefit of the Rajamaha Vihare, Kelaniya ?

(6) Is the power to use the income of the said property for the benefit of the said Vihare vested in the 1st and 3rd defendants and Mr. P. R. Wijewardene as trustees of the said Last Will ?

(7) If issues 5 and 6 or either of them is answered in the affirmative, is the plaintiff entitled—

(*a*) to maintain this action ;

(*b*) to be paid the income derived from the said property ?

It was agreed that issues (1), (4), (5), (6) and (7) should be tried first.

The plaintiff gave evidence and stated that the trustees have been and are still in possession of the paddy fields, that they are managing it, and that they use the income for certain purposes connected with the Vihare, such as making improvements to the Vihare, paying the tom-tom beaters their salaries and making donations to the Vihare whenever the Sabha is in need of money. He made no allegation that the trustees were mismanaging the property or misappropriating the funds.

The defendants led no evidence and after hearing the arguments the learned Judge held that the gift made by the deceased testatrix was a bequest to the Temple which according to his view of the Buddhist Temporalities Ordinance was capable of receiving property. He read the Will as conferring on the trustees the management of the property only and not the control of the income, but held that the plaintiff was not entitled to possession. He did not refer to the execution of the conveyance by the Executors as of any consequence and attached no importance to it, and he held that the plaintiff was entitled to receive the income from the paddy fields while the defendants were entitled to

manage them and possess them. He answered the first issue in the affirmative, the fourth, fifth and sixth in the negative, and held that the seventh did not arise for decision.

Learned counsel for the appellants submits that the learned District Judge has failed to read the Will as a whole for the purpose of ascertaining the intention of the testatrix, and that it is wrong to base the construction of the Will on any one clause. He contends that a Buddhist Vihare or temple, which is an inanimate thing, is not a juristic person and cannot therefore receive or hold property.

I am in agreement with the submissions of learned counsel for the appellants. Clause 5 purports to create a trust for the benefit of the Temple and for that purpose the 250 acres of paddy field at Kalawewa are given to the trustees who are required to manage the same for the benefit of the Vihare. No case has been cited in which it has been held that a Buddhist Temple is a juristic person. The question appears to have been raised in the case of *Sadhananda Terunanse v. Sumana Tissa et al.* [1] but not decided.

Learned counsel for the respondent argued that by implication the Buddhist Temporalities Ordinance has given corporate status to a Buddhist Temple. I am unable to agree with that contention. The present Ordinance does not declare a temple to be a juristic person nor did any of the previous Buddhist Temporalities Ordinances do so. The property of a temple was vested in a trustee on behalf of the Sangha and it was the trustee that was always empowered to sue and be sued. To constitute a corporation it is not necessary that any particular form of words should be used in the statute. It is sufficient if the intention to incorporate appear clearly therefrom. There is no such intention expressed in the Buddhist Temporalities Ordinance nor is such an intention implied in the statute. In fact the scheme of the Ordinance can be regarded as negativing such an intention.

Learned counsel for the respondent also argued that Clause 5 of the Will did not create a trust but merely made provision for management of the property that was given to the Vihare, which was a juristic person capable of taking property. I have already expressed the view that a temple is not a juristic person. I am also unable to agree with counsel's contention that Clause 5 does not create a Trust.

It would appear from the case of *Wickremesinghe v. Unnanse* [2], that for a dedication to the Sangha there must be a donor, a donee, and a gift. There must be an assembly of four or more bhikkhus. The property must be shown ; the donor and donee must appear before the assembly, and recite three times the formula generally used in giving property to the Sangha with the necessary variation according as it is a gift to one or more. Water must be poured into the hands of the donee or his representative. The Sangha is entitled to possess the property from that time onwards. No property can become *sanghika* without such a ceremony. Sometimes there is a stone inscription recording the grant or a deed is given.

The procedure laid down in the above case for giving property to the Sangha is in accord with the Vinaya (Kullawagga Sixth Khandhaka, sections 2, 4, and 5). A temple does not, by the mere fact that it is a

[1] *(1934) 36 N. L. R. 422.* [2] *(1921) 22 N. L. R. 236.*

place of worship, become the property of the Sangha. . A private individual can have on his property a temple and it would be his private property. 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. In order to perfect the paper title and complete the entries in the Register of Documents kept under any law for the time being regulating the registration of documents it has been the practice after the formal dedication is over for the donor to execute a deed conveying the property for the use of the Sangha to a trustee named in the deed. He is at times entrusted with the administration of the gift subject to the terms specified in the grant.

Learned counsel for the respondent also argued that even if the property had been given to the trustees for the benefit of the Vihare, by virtue of section 20 of the Buddhist Temporalities Ordinance it vested in the trustee appointed under the Buddhist Temporalities Ordinance. I am unable to uphold that submission. The Buddhist Temporalities Ordinance deals with *sanghika* property which has geen dedicated to the Sangha of a particular Vihare. It declares that such property is vested in the trustee or controlling Viharadhipati of the Vihare. Property can be given to the Sangha only as *sanghika* property and in accordance with the customary mode of dedication, but a person is not prevented from creating a trust for the benefit of a Vihare in accordance with the Trusts Ordinance. Such trust property does not become *sanghika* or *pudgalika* property. Nor does such property vest in the trustee of the temple appointed in terms of the Buddhist Temporalities Ordinance. Such property would be governed by the trust created by the author of the trust. Section 109 of the Trusts Ordinance which provides that Chapter 10 of that Ordinance shall not apply to religious trusts regulated by the Buddhist Temporalities Ordinance, does not have the effect of bringing within the category of religious trusts regulated by the Buddhist Temporalities Ordinance every trust which a person may create for the benefit of a Buddhist temple or for any Buddhist religious purpose. It excludes the application of that Chapter to such trusts as are governed by the Buddhist Temporalities Ordinance. The main object of the Buddhist Temporalities Ordinance is to regulate the management and control of the vast temporalities granted by the Sinhalese Kings to the Sangha of the ancient temples of the Island, as the Sangha being mendicants who have given up all worldly interests were unable to protect and manage them. The history of the legislation on this subject goes beyond 1889. When the Kandyan Provinces were ceded to the British Government and after it gave up its active participation in the protection of the Buddhist religion, from time to time, efforts were made to regulate by law the vast endowments made by the Sinhalese Kings to the cause of the Buddhist religion. Till 1931 the trustees were laymen but in that year the Buddhist Temporalities Ordinance introduced a departure from the practice of excluding bhikkhus from the office of trustee on account of the abuse of their trust by the lay trustees. That Ordinance permitted a Viharadhipati to nominate himself as trustee instead of appointing a lay trustee. I see no justification for enlarging the scope of the Buddhist Temporalities Ordinance by holding that it

governs every trust designed for the advancement of the Buddhist religion or the maintenance and welfare of a temple. A question similar to the one that arose in this case arose in the case of *Wijewardene Nilame v. Naina Pulle*[1]. In that case the Government of Ceylon transferred certain lands to the Dewe Nilame of the Dalada Maligawa and the Nayakas of Malwatta and Asgiriya in trust for the use of the Vihares and Dewales of the Kandyan Province which had been in receipt of allowances from the Government up to about the year 1847. The chief question for decision in that case was whether the trustees under the Buddhist Temporalities Ordinance superseded the trustees appointed by the Crown grant. The provisions of that Ordinance (No. 8 of 1905) in regard to the vesting of property in a trustee were the same as those in the present Ordinance and this Court held that the property granted by the Crown did not fall within the terms of the Ordinance. Ennis J. stated in the course of his judgment :

"If, for example, a testator left property to a trustee for the use of a specified Buddhist temple and a specified philanthropic institution, the official trustees of the temple could not interfere in the management of the property by the trustees appointed by the will ; the same position occurs when the property is vested in trustees for the benefit of a number of different Vihares. The Ordinance, in my opinion, provides only for the vesting and administration of property, which belongs etc. exclusively to a particular temple, in the trustees appointed under the Ordinance."

De Sampayo J. agreed with the judgment of Ennis J. and stated that—

"Although the property is granted for the use of the Vihares and Dewalas, I think, and if it were necessary to decide it I should hold, that a special trust of the above kind can subsist with the trusts created by the Ordinance and that the trustees' rights are not merged in the powers of the trustees under the Ordinance. It seems to me that the Ordinance substitutes the trustees thereunder appointed for the priestly incumbents under the Buddhist ecclesiastical law and that the subject matter of the trusts created by the Ordinance are the temporalities which were or would have been administered by such priestly incumbents. It is true that in this case the trustees under the Crown Grant happen to be the Dewe Nilame and the High Priests of Malwatte and Asgiriya, but that circumstance is in the nature of an accident and does not affect the general question whether the Ordinance is intended to draw in property which is already legally vested in trustees appointed by an instrument of trust independently of the ordinary administration of temple property. The income, when divided and given over, may, if at all, be said to belong to the respective temples, but the management and possession of the property itself and the disposal of the income would surely remain with such trustees."

I am in respectful agreement with the view cited above.

The order of the learned District Judge is wrong. We therefore set it aside and allow the appeal with costs both here and below.

PULLE, J.—I agree.

*Appeal allowed.*

[1] *1 C. W. R. 167.*