Present : Maartensz A.J.

1929.

TERUNANSE *v.* TERUNANSE.

13—C. R. Matara, 1,475.

Buddhist law—Succession to incumbency—Right to appoint stranger—Decision of Maha Sangha Sabha—Irregularity.

Where a Buddhist priest was appointed incumbent of a temple by deed under which it was provided that in the event of his dying without a pupil the incumbency shall pass to another temple,—

Held, that the incumbent had no right to appoint a stranger to succeed him to the exclusion of his own pupils.

The decision of the Maha Sangha Sabha may be set aside on the ground of irregularity.

APPEAL from a judgment of the Commissioner of Requests of Matara.

Weerasooria, for defendant, appellant.

Soertsz, for plaintiff, respondent.

November 1, 1929. MAARTENSZ A.J.—

The defendant in this action appeals from a decree of the Court of Requests of Matara declaring the plaintiff entitled to the incumbency of Nimalayawatte Vihare and to the enjoyment of all the lands, rights, and privileges appurtenant to the said incumbency.

The action was tried on the following issues:—

(1) Is plaintiff entitled to the incumbency of Nimalayawatte Vihare ?

(2) Did the Mahanayake of Malwatte Vihare hold an inquiry to which the defendant was a party and declare plaintiff incumbent of Nimalayawatte Vihare ?

(3) If so, is such declaration valid ?

(4) Prescription.

(5) Damages.

(6) Whether the deeds pleaded by plaintiff convey to him title to the incumbency of Nimalayawatte Vihare ?

(7) Are these deeds valid in law ?

The learned Commissioner answered all the issues in favour of the plaintiff, and the contention of the appellant was that the evidence did not justify his findings on the issues.

It is clear from the evidence and the findings of fact arrived at by the Commissioner that Rewatte Terunanse was the incumbent of the vihare in question and another called Pethangahawatte Vihare.

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Rewatte Terunanse by deed P1 gifted Pethangahawatte Vihare to Aparekke Gooneratne, who was not his pupil, and Nimalayawatte Vihare to Sunanda, his senior pupil.

As regards Nimalayawatte Vihare the deed provides thus: " that of these temples the Nimalayawatte temple shall be governed and possessed by Nagahawatte Sunanda as *sanghika* during his lifetime and in the event of his dying without a pupil the said temple shall pass over to Pethangahawatte temple. "

In case No. 2,020 of the District Court of Matara brought by Sobita, Rewatte Terunanse's pupil, against Aparekke Gooneratne, Sobita Terunanse was declared entitled by consent to the incumbency of the Sudamarama Viharesatana and immovable property appertaining thereto including, *inter alia*, the subsidiary temple known as Nimalayawatte (P 2). Sunanda not being a party to this action was not bound by the decree, and the District Judge finds that Sobita did not assert his claims against Sunanda but allowed him to be the incumbent of the temple in dispute.

Sobita Terunanse by deed No. 2,127 (P 3) dated September 15, 1915, appointed the plaintiff " Chief incumbent, principal, and trustee for the management of the temple Pethangahawatte Sudharmarama Vihare " and the other subsidiary vihares.

In 1917 Sunanda sued the plaintiff to be declared entitled to the Pethangahawatte Vihare. His action was dismissed and the dismissal was affirmed in appeal mainly on the ground that the defendant (the present plaintiff) had acquired a title to the incumbency by prescription.

Shaw J. observed in his judgment that it was not necessary to discuss the question " whether or not Sobita's senior pupil when fully qualified can claim the vihare from the defendant, as being successor to Sobita under the *sisyanusisya paramparawa*. "

Sunanda on April 11, 1923, by deed No. 5,093 appointed the plaintiff custodian of the Nimalayawatte Vihare (P 6). Sunanda died in November, 1923.

It is admitted that both Sobita and Sunanda left pupils. In fact Sunanda's pupil, Sudhananda, after Sobita's death disputed plaintiff's right to the incumbency of Nimalayawatte Vihare.

In my opinion the first question to be decided is whether Sobita and Sunanda conveyed to the plaintiff a valid title to the incumbency of Nimalayawatte by their deeds Nos. 2,127 and 5,093.

The learned Commissioner held that the deeds executed by Sobita and Sunanda were voidable and not void and that the defendant, who is not a pupil of either of them, cannot question their validity.

I am unable to agree with the decision that the deeds were voidable and not void.

A deed conveying title to immovable property executed by a minor is voidable and not void because he has a title to convey, and it is only the minor who can plead that the deed is void owing to his minority. A deed executed by a person who has no title to convey is void against all the world. As for example, a deed conveying title executed by a person who has only a life interest.

The plaintiff sued the defendant on the footing that the vihare in question was *sanghika* property. It is settled law that in the absence of evidence to the contrary the succession to *sanghika* property must be presumed to be in accordance with the rule of descent known as *sisyanusisya paramparawa*. I need only refer to the case of *Dharmapala Unnanse v. Medagama Sumana Unnanse et al.* [1] According to the *sisyanusisya paramparawa* rule of descent, on the death of a priest the incumbency devolves by operation of law on his senior pupil unless he has by will or deed appointed any particular pupil as his successor (*Dhammajoti v. Sobita* [2]).

As an incumbent's choice is limited to his pupils it follows that he may not by will or deed transfer his right to the incumbency to a stranger to the exclusion of the direct line of succession.

In this case not only is there no evidence that the succession had been otherwise provided for, but by implication deed P 1 provided that Sunanda's successor should be his pupil, for it provides that "in the event of his dying without a pupil the said temple shall pass over to Pethangahawatte temple."

I am of opinion that neither Sobita nor Sunanda had any title to convey to the plaintiff and that the deeds executed by them conferred no title on him. The sixth issue should therefore have been answered in the negative. The seventh issue, if it is intended to raise the question whether Sobita and Sunanda had a title which they could transfer by deed, must be answered in the negative. It need not be answered if it is meant merely to raise the question whether the deeds had been duly executed.

As the plaintiff did not derive title from Sunanda, he is a trespasser, and Sunanda's possession cannot be relied on by him in support of his claim to have acquired a title by prescription. The plaintiff cannot rely on his own possession, if any, as ten years have not elapsed since Sunanda's death.

I accordingly hold that the plaintiff has not acquired a title by prescription.

There remains the issue whether the defendant is bound by the decision of the Malwatte Maha Sangha Sabha.

It was held in the case of *Sumangala Unnanse v. Dhammarakkita* [3] that "the Maha Sanga Sabhawa, or the Great Council of Buddhists, is not a recognized tribunal and its decisions have not the effect of

[1] *(1910) 2 Cur. L. R. 83.* [2] *(1913) 16 N. L. R. 408.*

[3] *(1908) 11 N. L. R. 360.*

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res judicata. Even if the decision of the Maha Sangha Sabhawa be considered as the award of arbitrators, such decision is liable to be set aside on the ground of irregularity or misconduct in the proceedings."

I am of opinion that the defendant's contention that the procedure observed by the Maha Sanga Sabha was irregular must be upheld.

The inquiry in this case was held on a petition sent by the plaintiff to the Malwatte Maha Sangha Sabha against the defendant and others, one of them was Sudhananda, Sunanda's pupil. The dispute was not referred to the Sabha by agreement, nor was there any agreement at the inception of the proceedings that the parties should be bound by the decision of the Sabha.

When a complaint of this nature is made to the Sabha either an inquiry is held at Kandy, the headquarters of the Malwatte Sangha Sabha, or if the place is distant from Kandy the high priest of the district is delegated to hold an inquiry.

The plaintiff's petition was sent to the Weligama Agra Bodhi Vihare for inquiry.

The high priest's evidence is that he held the inquiry in the presence of plaintiff and defendant, who led evidence and agreed to abide by the result of the inquiry.

In cross-examination he said that he has held several such inquiries and given decisions himself, but that in this case he could not come to a decision.

It was clearly the duty of the high priest of the Agra Bodhi Vihare to give a decision. As he could not give a decision the inquiry should have been held by another priest or the Sabha should have referred the plaintiff to his legal remedy.

I say it was clearly the duty of the high priest to give his decision on the dispute referred to him for inquiry, because the chief high priest who delivered judgment in the case after setting out that the petition was inquired into by the high priest in an assembly of about twenty elderly priests on July 20, 1925, says that " the said high priest should have delivered judgment in the case."

The decision of the Malwatte Sangha Sabha was arrived at mainly on the notes of evidence recorded by the high priest and is therefore in my opinion irregular and invalid. I accordingly hold that the defendant is not bound by the decision of the Sangha Sabha.

The plaintiff's action therefore fails. He cannot be declared entitled to the incumbency merely because the Commissioner has rejected the claim of title put forward by the defendant.

I am unable to accede to the suggestion made by Counsel for the respondent that the action should be treated as an action brought on behalf of Sobita's pupils. There is nothing in our procedure to justify it. It would in my opinion be unjust to the defendant to

treat a case which has been brought and fought out by the plaintiff as a claim of title on his own behalf as an action brought on behalf of the pupils of Sobita.

Other defences might have been raised against an action on behalf of Sobita's pupils such as that they were not in Sunanda's line of succession. Nor am I prepared to accede to the suggestion that the plaintiff is entitled to hold the decree as the *de facto* incumbent.

I doubt very much whether the decision in the case of *Sobetta Unanse v. Ratnapalle Unanse* [1] could be justified under the provisions of the Civil Procedure Code.

I allow the appeal and dismiss plaintiff's action with costs in both Courts.

Appeal allowed.