*Present:* Jayewardene A.J.

1924.

KUSELHAMY *et al. v.* DINGIRALA.

*227—C. R. Kegalla 19,314.*

*Devale—Right to officiate as kapurala—Hereditary claim—Appointment by Basnayake Nilame.*

Hereditary right is alone insuffiicent to entitle a person to act as kapurala in a devale. He must also be appointed to the office by the Basnayake Nilame.

APPEAL from a judgment of the Commissioner of Requests, Kegalla. The plaintiffs claiming to be "kapuralas" or officiating priests of the Bamunugama Kataragam Devale sued the defendant, another kapurala of the same devale, to recover a sum of Rs. 250, being the value of a half share of the rights and privileges of the office of kapurala for the year August, 1920-August, 1921. The original kapurala of the panguwa in question, Dingirala, died, leaving two children, Ausadahamy and Appuhamy, who, according to the plaintiffs, jointly possessed during the year.

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Ausadahamy died leaving as his heirs the defendant and Punchappuhamy; and Appuhamy also died leaving the plaintiffs as heirs, and the plaintiffs alleged that they continued to possess in the same way as their fathers. They further said that it became their turn (*i.e.*, of the plaintiffs and of the defendant and his brother) to officiate as kapurala during the period August, 1920-August, 1921. By an arrangement, Dingirala, the defendant, undertook to enjoy the rights and privileges during that period, promising to allow the plaintiffs to possess during the next term—August, 1923-August, 1924. In spite of the agreement, the defendant had, they allege, taken possession during the period 1923—24 and refused to admit the rights of the plaintiffs. The defendant specially denied the agreement alleged in the plaint, and pleaded that by immemorial custom only the eldest male in the family perform the duties and ceremonies of kapurala, and that he, as the eldest male descendant, performed them to the exclusion of the plaintiffs. The main issue was with regard to the existence of the customs pleaded by the defendant. The learned Commissioner held that the accepted practice was to appoint the eldest surviving male member of a family, provided he is a fit and suitable person to act as kapurala.

*H. V. Perera* (with him *Rajakariar*), for appellants.

*Navaratnam* (with him *Schokman*), for respondent.

October 10, 1924. JAYEWARDENE A.J.—

This is an interesting case in which questions are raised with regard to the rights of "kapuralas" attached to village devales in the Kandyan Provinces. The plaintiffs claiming to be "kapuralas" or officiating priests of the Bamunugama Devale sue the defendant, another "kapurala" of the same devale, to recover a sum of Rs. 250, being the value of a half share of the rights and privileges of the office of "kapurala" for the year August, 1920, to August, 1921.

It would appear that about the year 1872, when the Service Tenure Register was compiled, there were three kapurala panguwas of this devale. The village devales, according to the report of the Service Tenure Commissioners for 1857—59, are left in charge of a "kapurala" or hereditary priest of the "*deyo*," who is generally the largest tenant of the devale, and holds his lands as officiating priest. The panguwas of these "kapuralas" are registered as *paraveni nil-panguwas* (see P 4 and P 5). In the register two of these are called the "Loku Kapurallage Panguwa" and "Madduma Kappurala Panguwa," respectively, and the third, I presume, is called the "Kuda Kapurala Panguwa" (but no extract

has been filed to prove this), and they consist of fields, gardens, and chenas, and the services the pangukarayas have to perform are given in detail.

The proprietor of these panguwas was the Bamunugama Kataragam Devale. The services were to be performed in *tattumaru*—that is, once in three years by each tenant or set of tenants. The officiating "kapurala" became entitled to the offerings made and to any other rights or privileges attached to the office during his year of service. The "kapurala" of the "Madduma Panguwa," who is called in the register Dingirala, died leaving two children, Ausadahamy and Appuhamy, who, according to the plaintiffs, jointly possessed during their *tattumaru* year. Ausadahamy died leaving as his heirs the defendant and Punchiappuhamy; and Appuhamy also died leaving the plaintiffs as his heirs, and the plaintiffs alleged that they continued to possess in the same way as their fathers. The plaintiffs' cause of action is the breach of an agreement between themselves and the defendant. They say that according to the *tattumaru* arrangement, it became their turn (that is, of the plaintiffs, the defendant, and his brother) to officiate as "kapurala" during the period August, 1920, to August 1921.

"By an arrangement, however, Dingirala, the defendant, undertook to enjoy the rights and privileges during that period, promising to allow the plaintiffs to possess during the next term—August, 1923, to August, 1924. In spite, however, of such agreement, the defendant has now taken possession during the period 1923 to 1924, and refuses to give up the same to the plaintiff."

This is their cause of action, and they claim a half share of the rights and privileges, that is, of the offering, &c., of the year 1920 to 1921, which, as I said, they value at Rs. 250. The defendant specially denied the agreement alleged in the plaint, and also pleaded that by immemorial custom only the eldest male in the family performs the duties and ceremonies of "kapurala," and that the right does not belong to every male member of the family, and that he, as the eldest male descendant, has always performed the office of "kapurala" to the exclusion of the plaintiffs. The main issue raised was with regard to the existence of the custom pleaded by the defendant. No issue was framed with regard to the agreement pleaded in the plaint and of its breach by the defendant. The learned Commissioner thinks that "there is every reason to believe that the accepted practice is to appoint the eldest surviving male member of a family, provided he is a fit and suitable person to act as "kapurala."

He is also of opinion that the profits derived by a "kapurala" from a small devale like the one in question must be regarded as a reward for services rendered by the "kapurala," and that the plaintiffs not having performed any services during 1920 to

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1921 cannot lay claim to any remuneration. He dismissed the action. One important fact has emerged from the evidence recorded at the trial, that is, that the Basnayake Nilame of the devale has been granting a "*sittu*"—see D 1 to D 7—or writing appointing and empowering certain members of these families to act as "kapuralas."

The report of the Service Tenure Commissioners for 1857 to 1858 calls the Basnayake Nilame the head landlord of these devales; he generally lived at Kandy or wherever the provincial devale was. It also records the fact that the other officers of the devale purchase their appointments from him, and reimburse themselves from the nilakarayas and out of the offerings. The Basnayake Nilame also got a share of the offerings. This shows that the Basnayake Nilame appointed the "kapurala" for the year. He would, I am sure, in practice appoint a member of one of the "kapurala" families, for to discharge the duties of the office of "kapurala" a special training is required, and he would also follow, as far as possible, any rule established by custom in making such appointments, for the office is regarded as hereditary. In respect of this devale, there is a "*sittu*"—D 6—which shows that so far back as the year 1872, the Basnayake Nilame exercised the right of appointment and appointed Ausadahamy to officiate as "kapurala" for a period of twelve months. This practice has continued up to date. When the Buddhist Temporalities Ordinance was passed in 1889, the Basnayake Nilame purported to act under the powers vested in him as trustee under the Ordinance—D 2. It seems to be, therefore, clear that according to the usages of this devale, hereditary right is alone insufficient to entitle a person to act as "kapurala," he must also be appointed to the office by the Basnayake Nilame. Rightly or wrongly, the defendant obtained a "*sittu*" from the Basnayake Nilame to act as "kapurala" for the year 1920 to 1921, and I cannot see how the plaintiffs who obtained no such "*sittu*" could have officiated as "kapuralas" for that period, or claim a share of the offerings made during that period from the defendant. If the plaintiffs had proved the agreement pleaded in the plaint, they might have been entitled to recover damages for breach of it; in such a case entirely different considerations would apply. But the plaintiffs made no attempt to prove it, although the defendant had expressly denied it. The right which they claim to officiate as "kapuralas" cannot be decided in an action to which the Basnayake Nilame is not a party.

They should apply to the Basnayake Nilame for a "*sittu*" or authority at the proper time, and if their application is not entertained, they should bring an action against him to vindicate their right, joining, if necessary, the defendant and the other descendants of Ausadahamy who claim the right. I do not know how they can obtain a declaration of their right in this

case, even if they had prayed for one. The learned Commissioner, as I have pointed out above, thinks that the office of "kapurala" descended to the eldest surviving male member of the family. I am unable to agree with his view on the evidence led in this case. The Basnayake Nilame himself repudiates it. He says that it is not true that only the eldest male member of the family is entitled to officiate as "kapurala"—all male members take by turns—and that the office of "kapurala" is performed on the authority of a "*sittu.*"

In view of this evidence, I think the question of the immemorial custom on which the defendant relies should be left open to be decided in an action to which the Basnayake Nilame is a party.

I would, therefore, hold that the plaintiffs have no cause of action against the defendant. They failed to prove the cause of action pleaded in the plaint, and they had no "*sittu*" which entitled them to perform the duties of a "kapurala" in 1920 and 1921. Their action has been rightly dismissed.

The appeal must also be dismissed, with costs.

*Appeal dismissed.*