

1951

Present : Basnayake J. and Gunasekara J.ROMANIS FERNANDO, Appellant, and WIMALASIRI THERO,
Respondent*S. C. 91—D. C. Colombo, 18,161**Buddhist Temporalities Ordinance—Sections 4 (2) and 20—Meaning of expressions
“ temple ” and “ controlling viharadhipati ”.*

Plaintiff was a bhikku of several years' standing. He went from Colombo to Kelaniya, and some of his lay followers secured a place of residence for him there. A block of land was purchased and living quarters were erected for him by the *dayakas*. The land was formally donated to the *Sangha* in the customary manner on the date of the occupation of the new *avasa*. Thereafter the *dayakas* held *pinkamas* for the purpose of inviting the lay Buddhists to subscribe towards the erection of a preaching hall and an image room or *vihare*. The subscriptions so collected from time to time were handed to the defendant, who was the Treasurer of the Society formed with the object of putting up other buildings associated with a place of Buddhist religious worship.

In an action brought by the plaintiff to recover the subscriptions which the defendant was unlawfully withholding—

Held, that the plaintiff was the “ controlling viharadipati ” of a “ temple ” within the contemplation of those expressions in section 20 of the Buddhist Temporalities Ordinance. No particular type of building or buildings are necessary to constitute a temple. The definition of “ temple ” is very wide.

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

H. V. Perera, K.C., with *Kingsley Herat*, for the defendant appellant.

N. E. Weerasooria, K.C., with *S. P. Wijewickrema* and *T. B. Dissanayake*, for the plaintiff respondent.

Cur. adv. vult.

June 13, 1951. BASNAYAKE J.—

On the facts this appeal has no merit whatsoever. The only question that need be considered is whether the plaintiff is the "controlling viharadhipati" of a "temple" within the contemplation of those expressions in section 20 of the Buddhist Temporalities Ordinance. It is contended for the appellant that the place in respect of which the plaintiff brings this action is not a temple.

I shall state the facts only so far as they are relevant to the consideration of the above question. The plaintiff is a bhikkhu of several years' standing. Till 1942 he was living in Colombo. Shortly after the Japanese air raid on Ceylon in that year, the plaintiff took up residence in a place called Polpitimukalana near Kelaniya. At first he found temporary accommodation in a small avasa. This he had to vacate before long. One E. D. R. Fernando, who had known the plaintiff for a long time, helped him with the aid of other lay followers to secure a place of residence. A quarter acre block of land was purchased for Rs. 500 with money provided by Fernando. At first a small hut was erected thereon with the assistance both in cash and in services provided by the *dayakas*. Thereafter permanent living quarters of cabook and brick were constructed. These too were erected by the *dayakas*. The land was formally donated by Fernando to the *Sangha* in the customary manner on the date of the occupation of the new avasa. Thereafter the *dayakas* held *pinkamas* for the purpose of inviting the lay Buddhists to subscribe towards the erection of a preaching hall and an image room or vihare. The subscriptions so collected from time to time amounted to Rs. 2,879. They were handed to the defendant, who was the Treasurer of the Society formed with the object of putting up other buildings associated with a place of Buddhist religious worship. This action is to recover that sum of money which the defendant is unlawfully withholding.

The expression "temple" is thus defined in the Buddhist Temporalities Ordinance:

" 'temple' means vihare, dagoba, dewale, kovila, avasa, or any place of Buddhist worship, and includes the Dalada Maligawa, the Sripadasthana, and the Atamasthana of Anuradhapura."

No particular type of building or buildings are necessary to constitute a temple. The definition is very wide. The plaintiff's avasa is a temple. There is overwhelming evidence that the money claimed from the defendant were offerings made for the use of the temple by devout lay

supporters. By virtue of section 20 of the Buddhist Temporalities Ordinance they vest in the trustee or the controlling viharadhipati of the temple. The place in question has no trustee. The plaintiff who is undoubtedly the principal bhikkhu of the temple and therefore its viharadhipati within the meaning of that expression as used in the Ordinance is by virtue of section 4 (2) its controlling viharadhipati. He is therefore entitled to recover the money from the defendant.

The appeal is dismissed with costs.

GUNASEKARA J.—I agree.

Appeal dismissed.

