Present: Schneider J. and Maartensz A.J. 1927

GUNARATNE *v.* PUNCHIBANDA.

67—D. C. Kandy, 33,617.

Buddhist Temporalities—Claim for Maintenance by incumbent—Res judicata—Past maintenance—Claim to right—Civil Procedure Code, s. 207—Ordinance No. 8 of 1905, s. 30.

The decree in an action for maintenance brought by the incumbent of a Buddhist temple against the trustee is not *res adjudicata* in a subsequent action for a similar claim by the successor in office of the incumbent.

A decision as to what is a reasonable sum for maintenance does not involve an adjudication on a right within the meaning of section 207 of the Civil Procedure Code.

An incumbent is not entitled to claim past maintenance except in the form of reimbursement of expenses incurred in maintaining himself or the priesthood.

Where the trustee of a Buddhist temple has acted under the instructions of the District Committee in defending an action he is not personally liable in costs.

APPEAL from a judgment of the District Judge of Kandy. The plaintiff, claiming to be the High Priest of the Dambulla Vihare, instituted this action to recover a sum of Rs. 965 for past maintenance from the defendant, who is the trustee of the vihare. He also claimed an order for future maintenance. The defendant pleaded that the plaintiff, not being resident in the vihare was not entitled to maintenance and that the claim for past maintenance was not sustainable. At the trial the plaintiff contended that action No. 20,156 of the same Court estopped the defendant from opposing the plaintiff's claim. The learned District Judge held that the decision in the previous action was *res judicata* not only on the question of plaintiff's right to maintenance but also upon the plaint as to what is a reasonable sum for maintenance.

H. V. Perera, for defendant, appellant.

Keuneman, for plaintiff, respondent.

October 27, 1927. SCHNEIDER J.—

The plaintiff, stating that he had been appointed the high priest of the Dambulla vihare in June, 1924, instituted this action in January, 1926, claiming a balance sum of Rs. 965 as due to him

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at the rate of Rs. 60 per mensem for past maintenance up to the date of action from the defendant who is the trustee of that vihare. He also claimed an order that future maintenance be paid at the same rate. The defendant pleaded three defences. First, that the plaintiff not being resident in the vihare was not entitled to maintenance. Next, that Rs. 15 a month was a reasonable allowance for maintenance; and lastly, that the claim being for past maintenance was not sustainable. He also pleaded that a larger sum than that, admitted by the plaintiff in his plaint, had been paid to him by the defendant. At the trial the plaintiff pleaded that action No. 20,156 of the same Court decided in 1912, estopped the defendant from opposing the plaintiff's claim by the defences raised.

At the trial nine issues were framed and the District Judge decided that he would try the issues numbered 8 and 9 as he thought that they would probably dispose of the whole case. He heard argument upon those two issues which raised the question whether the decree in the action mentioned was *res judicata* in regard to the plaintiff's claim of a right to receive maintenance (issue 9) and the question whether it was competent to the Court to entertain the action as it involved an ecclesiastical matter (issue 8.) He delivered his judgment in September, 1926, holding on issue 8 that the Court had jurisdiction respecting the subject-matter of the action upon considerations other than the decision in action No. 20,156, and that the decision in the action mentioned was *res judicata* not only on the question of the plaintiff's right to claim maintenance as the issue he tried set out but " also on issues 1, 2, 5, 6, and 8." I agree with the District Judge that his decision of issue 9 involved the decision of issues 1 and 5 which merely raise the same question in different forms. The defendant-appellant's counsel has admitted the right of the plaintiff, a non-resident high priest, to claim maintenance out of the temporalities of the vihare. If I may say so, he has made this admission rightly, because although in his answer the defendant denied that the plaintiff was entitled to that right, he at the same time admitted in the answer that he paid certain sums of money to the plaintiff in recognition of the right claimed by the plaintiff. On this appeal we are, therefore, not called upon to decide whether the decision of the action No. 20,156 is *res judicata* as regards the claim made by the plaintiff in this action to a right of maintenance. But as the learned Judge has held that it is *res judicata* not only as regards that right but also upon the question whether Rs. 60 per mensem is a reasonable sum for the maintenance of the plaintiff (issue 2) and upon the question that the plaintiff is entitled to claim for past maintenance (issue 6) it would appear that it is necessary to consider the question whether the holding is right

that it is *res judicata* in regard to these two matters. In my opinion it is not *res judicata* in regard to any claim made or question raised in this action. It is well settled law that a judgment *in personam* or a decree, as our Civil Procedure Code puts it (section 207), binds only the parties and "privies." "Privies" include all persons who succeed to the position of a party or hold in subordination to his rights. But the person estopped must claim through the party and not independently. It is this general rule of law which our Code sets out in the explanation below section 207 of the Code that "every right to relief of any kind which can be set up between the parties to an action upon the cause of action for which the action is brought becomes on the passing of the final decree a *res adjudicata* which cannot afterwards be made the subject of action for the same cause of action between the same parties." It was argued before us, and it appears to have been argued also in the lower Court, that section 207 is not exhaustive of the whole law of *res adjudicata* obtaining in Ceylon. This argument rests upon the authority of *Samichi v. Peiris*,[1] decided by a Full Bench of this Court. But there is no distinction between the law of Ceylon and that of England on the point that a matter is *res adjudicata* only as between the parties and their privies to the litigation.

The whole of the record in case No. 20,156 was before us and showed that the question of the right of the plaintiff to claim a sum of money as arrears of maintenance due to him as the High Priest of the Vihare, although he did not reside within the vihare, was adjudicated upon, and that the plaintiff obtained a decree for the payment of a sum of Rs. 2,160 as for arrears of maintenance and also for payment at the rate of Rs. 720 per annum for future maintenance. The parties to that action were not the plaintiff and defendant in the present action, but the priest who held the appointment of High Priest at that date and the then trustee of the vihare. The defendant in the present action might be regarded as a "privy" of the defendant in that action for the reason that he is the successor in title of that defendant to the temporalities of the vihare and that action decided the right of the plaintiff in it to a claim for maintenance out of those temporalities. There is accordingly an identity of the defendants in the two actions; but is there of plaintiffs? I think not. A priest becomes the high priest of the vihare in question not by virtue of any form of succession recognized by the law but by being appointed to the office by some person or persons. The law has not recognized a continuity of succession to temporal rights as existing between one high priest so appointed and his successor

[1] *(1913) 16 N. L. R. 257.*

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as it has in recognizing the succession called Sissiyanu Sissia Paramparawa. To regard such a continuity of succession as existing would be to invest a high priest with the character of a corporation "sole", for which there is no authority in law. There being no identity of parties in the two actions the older action not only does not estop the parties to this action upon any matter in dispute but it is irrelevant and should not have been admitted as evidence in this case. If there had been an identity of parties it would have estopped the defendant from denying the right of the plaintiff to claim maintenance but not from raising in this action the abstract question whether a person in the plaintiff's position can sustain a claim for past maintenance. For one reason that question as an abstract question was not raised or tried in that case but it was impliedly dealt with in that the plaintiff there was allowed a sum of money for past maintenance. The defendant's conduct in that action was an admission of that right, and an admission can create an estoppel. But assuming that the question was expressly adjudicated upon, that would not prevent it from being once again raised in this action. In the view I take of the law, that was an erroneous decision. It is well settled law that an erroneous decision as regards the law will operate as *res adjudicata quoad* the subject-matter of the action in which it is given but no further, and that it does not prevent the Court from deciding the same question between the same parties in a subsequent action according to law (*Katiritamby et al. v. Parupathi Pillai et al.*).[1] Nor does the older case estopped the defendant in this case from raising the issue as to what was reasonable sum to be paid for maintenance. The decision as to what was a reasonable sum in that case did not involve the decision of a claim to a "right". It is only where the decision is of a right (section 207) that the decree in one action will operate as a bar in a subsequent action. If it were otherwise it would involve the importing of the evidence in the older action into the present.

I hold therefore that the older action does not debar the defendant from raising any one of the issues he has raised in the present action. In my opinion the plaintiff cannot maintain this action to recover the sum of Rs. 965 claimed for past maintenance.

The plaintiff's right to claim maintenance from the defendant arises from the provisions of section 20 (*b*) of the Buddhist Temporalities Ordinance, No. 8 of 1905, which enacts that the "issues, rents, profits, and offerings shall be appropriated to the maintenance of the priesthood and ministerial officers attached to each temple."

A claim made for maintenance implies that the necessity for maintenance exists, or has existed, because the person claiming had no other means of maintenance, or has not been maintained

1 (*1921*) *23 N. L. R. 209.*

by other than the person from whom it is claimed. It would appear that it is in recognition of this principle that in the Maintenance Ordinance, No. 19 of 1889, in section 3 it is provided that the order for maintenance shall be for an "allowance payable from the date of the other." Under that Ordinance no claim for past maintenance can be made. The assertion of right to a claim for past maintenance was attempted to be asserted in *Ranasinghe et al. v. Pieris*,[1] but the Court refused to recognize such a right. That case was in regard to the claim of a wife and a child made against the husband and father—and the claim of a Buddhist priest, it seems to me, will be governed by the same principle. This view was taken in a decision of this Court which has not been reported. I refer to S. C. No. 344—D. C. Kandy No. 285,151.[2] In his judgment Ennis J., speaking of the claim for damages, by which he means for past maintenance, says he finds "a difficulty in supporting the judgment on that point as the priesthood and the ministerial officers attached to the temple appeared to have been maintained in some way, and any balance of income left over had unquestionably vested in the trustee, but that the person claiming past maintenance might be able to show that he has a personal claim in connection with expenditure from his own pocket for the maintenance of the priesthood, or that he had incurred obligations to pay others in respect of that maintenance and to be entitled to reimbursement." I venture to say that that would appear to be the correct view of the law. The plaintiff in this action does not claim to be reimbursed because he has incurred obligations in maintaining himself. His action for the recovery of the sum of Rs. 965 therefore fails. On this point his counsel contended that he should be given an opportunity to amend his plaint if necessary and prove that he has a claim for reimbursement. I am not disposed to allow any such indulgence for that would be to allow the whole character of the action to be altered.

There remains the claim for future maintenance at the rate of Rs. 60. I am unable to accept the District Judge's finding that that is a reasonable sum. His finding on this question was greatly influenced by the decision of the older case and his regarding it as *res judicata* on that question. The evidence shows that the high priest was never at any time paid regularly at the rate of Rs. 60 per mensem or Rs. 720 per annum but that the payments were always in arrear. The evidence of Hapugoda, the Secretary of the District Committee, is that the accounts from 1913 to 1924 show that the high priest has been paid on an average not more than Rs. 30 or Rs. 40 per mensem. The defendant, the trustee, says that he can pay the plaintiff between Rs. 20 or Rs. 25 per

[1] *(1909) 13 N. L. R. 21.*

[2] *S. C. Minutes, May 29, 1925.*

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mensem. It seems to me that it would be unreasonable considering the uncertain sources from which the income is derived to fix a definite sum which has to be paid monthly or yearly. The amount allowed for the plaintiff's maintenance must depend upon the income actually recovered and the disbursements which have to be made. The District Committee and the trustee would appear to be the persons to determine the allocations. I would give judgment for the plaintiff for a sum of Rs. 30 per mensem as from the date of action till date of this decree, and thereafter, for such reasonable sum as the trustee can pay upon a proper allotment of the income received by him.

I think the District Judge was not justified in ordering the defendant personally to pay the costs of this action. The defendant is accountable to the District Committee. He has acted upon the instructions of that Committee in defending this action. The result of the defence justified his conduct. The Ordinance (No. 8 of 1900, section 30) specially provides that a trustee who is a defendant is not to be personally liable in costs for any act *bona fide* done by him under any of the powers or authorities vested in him under the Ordinance. I set aside the decree of the lower Court and direct that decree be entered for the plaintiff for future maintenance, meaning thereby maintenance as from the date of this action in terms of my holding above, and that the defendant's costs of this action and of the appeal be paid from the income of the temple. The plaintiff must bear his own costs.

It was urged that the defendant was debarred from raising by this appeal the questions involved in the issue decided by the District Judge in his judgment in September, 1926, because the time for appeal from that judgment had elapsed before this appeal was filed. I do not think it necessary in regard to this contention to say anything more than that the appealable time has to be reckoned not from the date of the judgment, but of the order or decree (Civil Procedure Code, section 756). The matters decided by the judgment of September, 1926, were reduced into the form of a decree and entered into the decree of January 12, from which this appeal has been preferred. This appeal was therefore preferred within the time allowed by law, and the objection fails.

MAARTENSZ A.J.—I agree.