

Present: Middleton J. and Wood Renton J.

1912.

SILVA v. FONSEKA.

375—D. C. Kalutara, 4,593.

Buddhist Temporalities Ordinance, No. 8 of 1905, s. 41—Temple may acquire title to land by prescription.

Section 41 of the Buddhist Temporalities Ordinance (No. 8 of 1905) does not preclude a temple, or any duly authorized representative of the temple for that purpose, from acquiring title to any land by prescription.

The section is concerned with devises, grants, and conveyances, and does not apply to the acquisition of title by prescription.

THE facts are set out in the judgment.

De Sampayo, K.C., for the appellant.

H. A. Jayewardene, for the respondent.

January 31, 1912. MIDDLETON J.—

This was an action by the trustee of the Elaboda Vihare praying for a declaration to an undivided half share of an allotment of land called Maittawatta *alias* Sittawatta brought against the first defendant, who claimed to be the owner of half of the land, and against the second defendant, who claimed to be the owner of the other half. The claim against the second defendant to the other half was admitted, but the claim of the first defendant to the half claimed by the plaintiff was in issue. Various issues were settled, and the case really turns upon the question whether the first defendant or the plaintiff as trustee of the vihare has obtained a title by prescription to the land in question. The learned District Judge has found that the evidence is sufficient to establish that the temple has acquired a title by prescription, and I have no doubt that the evidence on the record is sufficient to enable him to arrive at that conclusion. The second defendant's evidence is entirely in favour of the contention put forward by the plaintiff, and it appears that in 1898 Sartinu, who was claiming from a predecessor in title of the first defendant, was held not to be entitled to the half which the first defendant now claims. But upon a writ issued against Sartinu, it was held by the Court that the property belonged to the heirs of the priest called Indrajoty Terunnanse, who had purported to buy the land in question many years ago. From 1898 there is evidence that

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the possession has been on behalf of the temple. There are written documents, one in 1898, the other in 1900, and another in 1906, constituting one of them a sort of informal lease, the other a planting voucher, and the third a lease by the trustee and the priest. The evidence put forward by the first defendant is doubted by the District Judge, and I think, from the way in which it was given, these doubts were well founded. In my opinion the evidence is sufficient for us to hold that the judgment is correct, and based upon reasonable grounds, and that the appeal should be dismissed with costs.

WOOD RENTON J.—

I concur, and I will only add a word in regard to the interesting point of law which was raised by Mr. de Sampayo for the first time in appeal under section 41 of the Buddhist Temporalities Ordinance, No. 8 of 1905. Mr. de Sampayo's contention was that that section precludes a temple, or any duly authorized representatives of the temple for that purpose, from acquiring any land or immovable property unless the licence of the Governor under the public seal of the Island be obtained. There is no doubt but that in the first paragraph of the section the word "acquire" is used, but it seems to me that the remaining paragraphs clearly show that the section is concerned with devises, grants, and conveyances, and does not apply to the acquisition of title by prescription. With these observations I agree that the appeal should be dismissed with costs.

Appeal dismissed.

